# Focal Point

A publication of the Sacramento Chapter of the California Lands Surveyors Association



March 2023

# Guest Speakers for March: Mark Counts and Aaron Chamberlin will present CALMS\* \*Must be present to understand this acronym...

Please note - the early bird discount expires after the March meeting

# President's Message

As I left our last meeting, I walked to my car feeling excited about what the future holds. I feel good about the direction that the chapter is moving, and the topics presented were geared towards developing the next generation of surveyors. Sherry Toutges gave a wonderful presentation describing the benefits of Trig-Star, followed by a very informative discussion from Dean Lambert and Kenneth Fitzpatrick who described their vision for rejuvenating the Survey Program at Sacramento City College. Both programs will be vital for increasing the number of surveyors throughout the state and especially to our region. It was also exciting to see the number of attendees who showed up for the meeting. We had about 25 attendees, which is a major increase from our typical 10 to 15. To me, this shows that many throughout the industry share the same interest in getting the Survey program back up and running again.

After the discussions, we continued the sense of giving back by voting to assist the Trig-Star program with a donation of \$1,000. These funds will be used to hopefully draw more interest from students and to help reward the winners from the surrounding schools. The giving continued by voting to sponsor 2 students at the conference, and then, to top it all off, Kevin Aiken announced that he would like to donate a hand made violin to the chapter. This will be auctioned off at the CLSA conference with the proceeds being used to benefit the students. This is an amazing gesture which we were more than happy to accept. It's great to be a part of an organization that is so focused on giving back and supporting the future.

I hope to see you all at our next meeting on March 2<sup>nd</sup> and at the conference later in the month.

Justin Lambert, PLS 2023 Sacramento Chapter President

# Guest Editorial by Robert J. Reese LS

A MONUMENTAL QUESTION: DO YOU SET MONUMENTS OR MARKERS?

I have been mulling over some semantics recently highlighted in a discussion with a client and after a (successful) search for a 50-year-old marker on a very large parcel along the California coast. Perhaps, I thought, this might be of interest to our surveying community. It concerns the *things* we surveyors set as place identifiers, *physical objects* placed to mark infinitesimal points on the face of the earth, *places* to which we assiduously assign spatial addresses (coordinates) that have relative relationships with other such places. In particularly I'm referring to those physical marks that (purportedly) identify legal boundaries or rights of way. These *things* we call MONUMENTS.

We land surveyors are legally and solely entitled to be the setters of these MONUMENTS. I know because it says so in the California Professional Land Surveyors Act (PLSA), pretty close to the beginning of the code.

It is unlawful for any person to practice, offer to practice, or represent himself or herself, as a land surveyor in this state, or to set, reset, replace or remove any survey **monument** on land in which he or she has no legal interest, unless he or she has been licensed or specifically exempted from licensing under this chapter [emphasis added] (California Business and Professions Code §8725)

Also, the Nevada Revised Statutes (NRS) have similar definition of land surveying and the privilege thereof.

A person who, in a private or public capacity, does or offers to do any one or more of the following practices land surveying:

...(c) Determines, by the use of the principles of land surveying, the position for any **monument** or reference point which marks a property line, boundary or corner, or sets, resets or replaces any such monument or reference point. [emphasis added] (Nevada Revised Statutes §625.040)

This thing called a MONUMENT is mentioned 36 times in the PLSA, and 25 times in the NRS, but not once with a definition of what this MONUMENT is or is supposed to be. Yes, it's qualities – durable, sufficient in number, etc. – are noted, but it is left to the land surveyor (or individual licensed to perform land surveying, or individual exempted therefrom) to determine what a MONUMENT is and to statutorily mark it with her or his assigned license number.

We also set *things* that are NOT representative of property corners or lot corners etc. These things we call CONTROL POINTS. They, too, have spatial addresses and positions relative to other such CONTROL POINTS that assist us in determining the location of MONUMENTS. I've noticed that sometimes these things we surveyors set called CORNER MONUMENTS and CONTROL POINTS look awfully similar, sometimes virtually indistinguishable. So why don't we set CORNER POINTS or CONTROL MONUMENTS? Maybe you do and I just don't know about it?

And here in California there is even a program called MONUMENT PRESERVATION that purports to support the *preservation* of "monuments"! Not only are CORNER MONUMENTS targets for preservation, but so are CONTROL POINTS when they rise to a certain importance. (Govt. Code §§27584-27585)

So... I have some questions.

1 What is a MONUMENT anyway, and what does it mean to a lay person when we tell them we set MONUMENTS at their property corners?

2 Why this distinction of specie as to what is hammered into the ground, or scribed or set to mark a particular place?

3 What qualities raise a thing to a level worthy of the moniker "MONUMENT"?

Regarding question 1, perhaps Mr. Webster needs to jump in here. *monument (noun)* 

1 obsolete: a burial vault: sepulcher; 2: a written legal document or record: a treatise; 3a(1): a lasting evidence, reminder, or example of someone or something notable or great; 3a(2): a distinguished person; 3b: a memorial stone or a building erected in remembrance of a person

### **Reese Editorial continued from Page 2**

or event; 4 archaic: an identifying mark: evidence; also: portent, sign; 5 obsolete: a carved statue: effigy; 6: a boundary or position marker (such as a stone); 7 National Monument (https://www.merriam-webster.com/dictionary/monument)

### Ah, there it is, right there at 6: a boundary or position *marker*.

For a while now I have been referring to such things in conversation with clients and other surveyors as MARKERS. It seems there is little question in the mind of lay persons that when I put a thing at their property corner, it is a MARKER – it MARKS the location. I may tell them it is a 2" iron pipe with a small brass tag on it with a secret code number, or it is a 1" domed brass disk in the sidewalk, or ... whatever. I have never had the label MARKER questioned or misunderstood. However, I have been queried by a client with a surprised look: "How big is the monument?". Thus the answer to question 1 above may be..."confusing?"

Question number two may be simply semantics – but only to us as a professional group. A CONTROL POINT is something that is <u>not</u> the other thing, a MONUMENT. OK, fair enough. The 1" iron pipe or No.5 rebar I set, both having a plastic cap with the notation "CONTROL POINT" along with my business name is simply not a MONUMENT. (Some may question why not my LS number? Reason to follow.) However, many times I have had to explain to a property owner that that colored plastic thing here that says "CONTROL POINT" is a CONTROL POINT, and that colored plastic thing over there with an LS number that someone else set is a MONUMENT, appearing to the uninitiated almost identical – plastic, about the same size, some bright color, with some writing on it. Perhaps the situation deserves reconsideration by our group.

And now to question number three. What makes a MARKER a MONUMENT? I have now arrived at the reason for this diatribe. We surveyors set all types of MARKERS: nails, nails with brass tags, bronze discs of varying diameter, stones, tree scribing, iron rods and pipes, car axles, the list is long. But my question is what do most people envision when they hear the word MONUMENT? Personally, I see the Washington Monument. I see the obelisks that mark the international border between the Unites States and Mexico. I see a number of markers of "lasting evidence of something notable or great". How do you see your surveys? Do you see them as something "notable and great", no matter how quotidian the endeavor is to you or how small the lot in the block? I submit that the property owner may attach more importance to your survey than you do.

As a case in point, and the incident that led to this writing, I offer this anecdote. I was retracing a survey done in 1970's by an individual licensed to perform land surveying services. It was a pretty important survey I thought, and covered a large, valuable and pristine tract described along a part of the California coast that has spectacular views. That survey set  $\frac{1}{2}$ " rebar and plastic caps. I found said rebar, bent, buried, without the benefit of the identifying cap, but in the expected position and it clearly had the hallmarks of a piece of steel in the ground for nearly half a century. What does the landowner for whom the survey was performed think of such a non-durable marker, one that says "My survey effort is worth an 18" piece of  $\frac{1}{2}$ " rebar and a cheap plastic cap set to mark the corners of your valuable land." Now, in counterpoint, I have had the honor of retracing one County Surveyor who, in the early 1900's cast his own (impressive) bronze disks, 4" in diameter, with the name of the client, his name and the date of the survey cast into the marker and set them in a 2" iron pipe, buried in the ground. Talk about lasting evidence of something " notable and great"!

Think about what you set as a MONUMENT, that MARKER that represents your survey work, the product of your professional expertise and experience. How proud are you of your survey effort? What will your client think of their new property marker? How much more effort is it to set, say, an iron pipe with a bronze disc in concrete (which could easily outlast your lifetime (and be relied upon by those following in your footsteps) than a <sup>1</sup>/<sub>2</sub>" rebar and plastic cap, one which can be bent or removed with slightest effort by natural forces or by man?

That, my fellow surveyors, is a MONUMENTAL question.

# Ask a Title Officer with Tom Bollinger of Fidelity Title

## What is a Preliminary Report?

A preliminary title report is a report prepared by a title company prior to issuing a policy of title insurance that shows the ownership of a specific parcel of land, together with the liens and encumbrances that are pertinent to said parcel of land.

This report is used by buyers to determine the exact condition of the title they are contemplating to buy. Real estate practitioners can also use a prelim to analyze pertinent title issues relative to properties and projects they are working on.

What is in a preliminary title report? A prelim includes all pertinent items that are publicly recorded against the subject property. Below are the major items listed in a preliminary report, but not limited to.

- 1. Vesting: This shows who owns the property, how they own it as well as the type of estate it is owned in.
- 2. Date: Date the report is good through.
- 3. Property address: The street address of the property.
- 4. Legal description: A separate attachment to the report shows how the property is legally described in the public records.
- 5. Taxes: The current taxes due and status of the taxes are listed here.
- 6. Easements: All recorded easement that benefit or obligate the owner are included in a report.
- 7. Covenants, Conditions and Restrictions (CC&R's): The CC&R's describe the rules, requirements and limitations about what can be done with properties in the community.
- 8. Financial Liens: This would include all Deeds of Trust and other financial obligations recorded against the property.
- 9. Judgments: Any Judgements recorded against the property would be listed here.

The above information is a summary of what is a preliminary title report, and the information included in a report. If you have any questions, please feel free to call me. Tom Bolinger, Vice President of Fidelity National Title, (916) 952-9800.

# **Editor's Message**

As discussed at the last chapter meeting, the court decision is in for the Crownholm lawsuit against the director and members of the California Board of Engineers, Land Surveyors and Geologists. While the Institute for Justice plans to appeal, the decision right now is good for the Board and good for us. A brief summary of the original 19 page decision is included in this issue for your reading pleasure.

We are introducing a new feature to the Focal Point this month – Ask a Title Officer. Going forward, we encourage you to pose questions to Tom Bollinger to keep this column interesting and relevant.

You are running out of time to sign up for the 2023 CLSA / NALS conference in Reno! This looks to be a good one with Gary Kent, Dennis Mouland, Steve Parrish, a CFEDS program, a technicians' track and more, taking place during National Surveyors Week, at the Silver Legacy Resort and Casino. Hope to see you there!

# **Spot the Presidents**



This photo was snapped at the 2015 CLSA / NALS Conference. How many former CLSA Presidents can you spot? Bonus points for naming them. Email the Focal Point editor with your guess. Winner will receive a free cocktail from the editor at the next Sacramento Chapter meeting. Ex-presidents are excluded from the contest. (Does anyone else think its weird that they all sit together?)

## **JOB POSTING**

The CA Department of Water Resources will be hiring a Party Chief. An open examination is available at:

<u>3WRAJ.PDF (ca.gov)</u>

# IN ATTENDANCE

Adam Foster Justin Lambert Russ Smith Kevin Akin Carl C. de Baca Annette Hovorka Dan Beever Jimmy Byrum Andriy Buchko Scott Bryant Mike Quartaroli Sherry Toutges Jill Van Houten Rob McMillan Curt Burfield Adam Forth John Wilusz Jonathan Rohrs Andrea Tirapelle Adam Forth Andrew Tapley Scott Bryan Brandon Rickley Angela Lambert Kenneth Fitzpatrick

### **SUMMARY OF RECENTLY DECIDED COURT CASE** Ryan Crownholm, et al (Plaintiff) v Richard B. Moore, et all (Defendants) United States District Court for the Eastern District of California Case No. 2:22-cv-01720-DAD-CKD

## **Order Granting Defendant's Motion to Dismiss**

Original 19-page court document excerpted by Carl C.de Baca

On September 29, 2022, plaintiffs filed the complaint initiating this action against defendants, in which plaintiffs seek a declaration by the Court that the Act, and in particular, California Business & Professions Code § 8726(a)(1), (7), and (9), and § 8792(a) and (i), is unconstitutional on its face and as applied to them. On that basis, plaintiffs also seek to enjoin defendants from enforcing the Act. Plaintiffs assert the following three causes of action in their complaint.

The first claim, brought under 42 U.S.C. § 1983 as an as-applied challenge, **asserts that defendants violated the First Amendment of the U.S. Constitution** by restraining how plaintiffs create and disseminate non-authoritative site plans to customers "for planning, infrastructure management, general information, and submission to California county and municipal building permit issuing department purposes." Plaintiffs allege that the way defendants apply the Act is a "content- and speaker-based restriction on the ability to use and generate information." They also contend the "defendants lack a state interest, compelling or otherwise, in preventing Plaintiffs from creating and disseminating non-authoritative site plans to their customers for planning, infrastructure management, general information, and submission to California county and municipal building permit issuing management, general information, and submission to California county and municipal building permit issuing department purposes."

Plaintiffs' second claim, brought under 42 U.S.C. § 1983 as a facial challenge, alleges that **California Business & Professions Code § 8726 is "unconstitutional on its face because it so vague** that there is no way to know that it outlaws picture-drawing and/or it is so overbroad that it criminalizes innumerable wholly-innocuous pictures." Plaintiffs allege that § 8726 is void for vagueness by "not providing fair warning to reasonable persons of ordinary intellect that their conduct is prohibited by the law in question"... Furthermore, plaintiffs allege that California Business & Professions Code § 8726(a)(1), (7), and (9) is overbroad because it "criminalizes a vast amount of informal mapmaking and information conveying by anyone without a surveyor's license."

Plaintiffs bring their third cause of action under the Fourteenth Amendment's due process and equal protection clauses. (*Id.* at 26.) As unlicensed land surveyors, **plaintiffs allege that "[f]orcing Plaintiffs into a regulatory framework meant to regulate professional surveyors results in unjustified barriers to Plaintiffs practicing their own occupation in violation of Due Process.**" They allege that "[p]laintiffs' occupation is so different from the occupation of professional land surveyors that the government's interest in regulating professional surveyors ensuring accurate authoritative location survey products` is not implicated" and that the "years of education experience and exams" required to become a licensed land surveyor "are not rationally related to any legitimate government interest as applied to Plaintiffs' non-authoritative site plan drawings

In their motion, defendants seek dismissal of all three of plaintiffs' causes of action due to plaintiffs' failure to state a claim under Rule 12(b)(6).

### A. First Amendment Free Speech Claim

In moving to dismiss plaintiffs' First Amendment claim, defendants argue that "the Act regulates conduct, and not protected speech, and as such it is subject to deferential rational basis review, which it easily passes." The court agrees.

### Court Decision continued from Page 6

Because plaintiffs have alleged insufficient facts to support a plausible claim that the Act's land surveying definition is irrational, the court will grant defendants' motion to dismiss plaintiffs' First Amendment claim.

#### Vagueness and Overbreadth Claim В.

Plaintiffs' second claim, brought under 42 U.S.C. § 1983 as a facial challenge, asserts that California Business & Professional Code § 8726 is "unconstitutional on its face because it so vague that there is no way to know that it outlaws picture-drawing and/or it is so overbroad that it criminalizes innumerable wholly-innocuous pictures."

As defendants argue, the fact that plaintiffs and other non-licensed persons have violated the statute without being cited for doing so does not render the Act vague. The Board does not waive its enforcement authority merely because some unlicensed persons violating the provisions of the Act have not come to the Board's attention. Accordingly, defendants' motion to dismiss plaintiffs' void for vagueness claim will also be granted.

### Overbreadth

2.

Plaintiffs' overbreadth claim presents a steep hurdle; the Supreme Court has cautioned that invalidating a statute under the First Amendment overbreadth doctrine is "strong medicine' that is not to be 'casually employed." A statute is not overbroad just because "one can conceive of some impermissible applications." ... to support a claim of overbreadth, the party challenging the statute must identify a "significant difference between their claim that the [statute] is invalid on overbreadth grounds and their claim that it is unconstitutional when applied to their [own conduct]." Here, plaintiffs "have failed to identify any significant difference" between their claim that the Act's definition of land surveying is invalid on overbreadth grounds and their claim that the Act is unconstitutional when applied to their conduct. Accordingly, defendants' motion to dismiss plaintiffs' facial overbreadth claim will be granted.

#### **Fourteenth Amendment Claim** C.

Plaintiffs bring their third claim under the Fourteenth Amendment's due process and equal protection clauses. (Doc. No. 1 at 26.) The court will address each of these theories in turn.

#### Substantive Due Process 1.

"[T]he Fourteenth Amendment's Due Process Clause includes some generalized due process right to choose one's field of private employment." However, the due process clause does not guarantee an unrestricted right to practice an occupation. Under this standard, plaintiffs must show that California's actions are "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare." Plaintiffs' complaint does not plausibly allege that the government has acted irrationally in regulating land surveying. Rather, their claim appears to simply amount to a disagreement with California's land surveying regulations. However, as the Ninth Circuit recently noted, "government regulation does not constitute a violation of constitutional substantive due process rights simply because the businesses or persons to whom the regulation is applied do not agree with the regulation or its application." For these reasons, the court will grant defendants' motion to dismiss plaintiffs' Fourteenth Amendment substantive due process claim.

### 2. Equal Protection

Plaintiffs do not allege they were subject to discrimination based on membership in a protected class. Rather, it appears that plaintiffs assert a "class of one" claim, arguing that they are being treated differently than others similarly situated to them "In order to claim a violation of equal protection in a class of one case, the plaintiff must establish that the [government] intentionally, and without rational basis, treated the plaintiff differently from others similarly situated."

Plaintiffs do not adequately plead that defendants violated their right to equal protection.

It is insufficient for plaintiffs to allege that "[o]n information and belief, hundreds, if not thousands, of non-surveyors in California routinely submit site plans based on copied GIS data or Google Maps to county and municipal building permit issuers." Plaintiffs must also allege that those individuals'

### Court Decision continued from Page 7

site maps similarly violated the statute, were reported to the Board, and despite that, defendants chose only to investigate and cite plaintiffs. For these reasons, plaintiffs' complaint fails to state a claim against defendants for violation of the equal protection clause, and defendants' motion to dismiss this claim will be granted as well.

### Leave to Amend

"Dismissal without leave to amend is proper if it is clear that the complaint could not be saved by amendment." To the extent that the pleadings can be cured by the allegation of additional facts, courts will generally grant leave to amend. At the hearing on the motion to dismiss, the court repeatedly invited plaintiffs to seek leave to amend their complaint. However, plaintiffs declined the opportunity to amend the complaint and instead chose to stand on their operative complaint.

Accordingly, the court concludes that the granting of leave to amend would be futile.

### CONCLUSION

For the reasons explained above:

Defendants' request for judicial notice (Doc. No. 15-2) is granted;

Defendants' motion to dismiss (Doc. No. 15) is granted in its entirety, without leave to amend;

The Clerk of the Court is directed to close this case.

On January 23, v2023 it was so ordered by Dale A. Drozd United States District Court Judge

*Editors Note 1: this was excerpted from the filed court document. Liberty was taken with removing citations and background information in the interest of brevity. Text in bold was done by the editor.* 

### Editor's Note 2: The plaintiff is appealing this decision.

# Sacramento Chapter, CLSA

### Minutes for meeting of February 2nd 2023

The meeting was held at Logans in Natomas called to order by President Justin Lambert.

First speaker of the evening was Sherry Toutges, who was introduced by Vice President, Russ Smith. She spoke about having freebies and support awards from the Chapter and the opportunity to provide the ability to shadow professionals in their jobs. The new email is <u>Catrigstar@gmail.com</u>.

Annette Hovorka made a motion to donate \$1000 to Trigstar. The motion was seconded and passed.

The second speakers were Dean Lambert and SCC Survey program chair Kenneth Kirkpatrick. They spoke about needs for equipment and adjunct professors. Committee formed to help with the getting the effort started.

The third speaker was Carl C.de Baca who spoke on the recent BPELSG Lawsuit. Details were given about the ruling from the case and the supporters of claimant, the Institute for Justice.

President Justin Lambert reported on the ExCom meeting in which the following was discussed:

- 1. combining chapter Gmails addresses,
- 2. reviewed plan for BBQ
- 3. discussed additional things for Focal Point
- 4. made Carl officially the Focal Point editor
- 5. Discussed the sac city program a little more

He also showed the slate coasters purchased for give aways.

Vice president\_Russ Smith reported on upcoming speakers.

Secretary Annette Hovorka reported Quarterly Chapter report was submitted to State and minutes were in the Focal Point.

Treasurer Adam Foster gave a brief financial report, which the secretary did not record the amounts.

Directors have an upcoming meeting scheduled on 2/4, which will be held virtually.

### Chapter is looking for a 2<sup>nd</sup> person to fill the director's position.

### <u>1. Announcements</u>

a. Discuss Focal Point

Ideas or contributions, send to Carl.

- b. CLSA Upcoming Conference (March 25-28) Does chapter want to sponsor student?
- c. General Due Dates for Reports to the CLSA Main office from our Chapter. March 1, 2023 – Chapter Financial Reports Due

### 2. Old Business

a. Survey picnic with surveyor Olympics event and looking for a location.

### 3. New Business

a. Kevin Akin volunteered to donate a violin for the conference to benefit chapter scholarships.

b. Get list of Sacramento area LSs from State to do a membership drive. Need to create a reason for them to join. Be an active chapter.

c. Do a joint meeting/activity with Gold Country Chapter

d. Surveyors/Engineers week activity.

e. Received Chapter by-laws from Cameron. Need to review

Mailing Address: P.O. Box 34087 Sacramento, CA 95834

Respectfully submitted,

Annette Hovorka, PLS Secretary 2023

# **REGISTER TODAY - WWW.PLSEDUCATION.ORG**



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MARCH 25-28, 2023 SILVER LEGACY RENO, NEVADA

ON

# CLSA-NALS CONFERENCE 2023 REGISTRATION

NAME (First/Last)		NICKNAME or NAME (as you wish it to appear on your badge)			
COMPANY					
ADDRESS					
СІТҮ		STATE	ZIP		
PHONE	FAX				
E-MAIL					

ODTIONAL ACTIVITIES

SPOUSE/GUEST (if attending - see Spouse/Significant Other Registration below)

MEMBER REGISTRATION

	BY FEB 26	AFTER FEB 26	AMOUNT	OPTIONAL ACTIVITIES		AMOUNT	
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OTHER REGISTRATION		\$275	¢	MAIL TO:	FAX TO: (70	7) 578-4406	
Spouse/Significant Other Registration Includes badge, entrance to Exhibit Hall, Sunday	Icebreaker Recept		Φ	CLSA-NALS Conference Office		2	
Sunday and Monday Lunch and Monday Scholarship Auction.				526 South E Street	QUESTIONS?		
Full-time Student Registration		\$275	\$	Santa Rosa, CA 95404	(888) 994-3510		
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Register Online at: www.PLSeducation.org

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PLS Regular Men	nber {PLS}	\$40	Dues are HALF off Regula	ar Dues if paid		
Civil Engineer	Civil Engineer Member {Pre82CE} \$40 before March 1st, 2023. (Except St and Sustaining Membership)					
Associate Membe	er {LSIT}	\$20				
Affiliate Member {	[post-81 CE, EIT, etc]	\$20				
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