No. 18-8669

In the

Supreme Court of the United States

James Paul Arlotta,

Petitioner,

V.

Assistant Erie County New York District Attorney David Anthony Heraty & Diocese of Buffalo employee"Kimberly" through Bishop Richard Malone,

Respondents,

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR REHEARING

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Table of Contents

Page

PETITION FOR REHEARING.....3
REASONS FOR GRANTING THIS PETITION.....4-6
CONCLUSION.....6-7

PETITION FOR REHEARING

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, ***it is the Right of the People to alter or to abolish it, and to institute new Government***, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security," Declaration of Independence, July 4, 1776.

A reminder for this court's attention, as per 28 U.S.C. § *455*...

"(a) mandates that any justice, judge, or magistrate judge of the United States "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned, (b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding;"

What about chief justice Robert's relationship with respondents' the diocese of Buffalo; let this court and the ***people of the United States*** be reminded how the chief justice has a bronze plaque commemorating his attendance as a student at respondent St. Bernadettes roman catholic parish, this court's docket# 17-9078. The other roman catholic justices'; do they have any legitimate excuses'?

A critical reading of the Fed. R. App. P.; more specifically Rule 41 (2) (D). Has come to this Petitioner's attention that the U.S. C. A. for the 2d Cir issued its Mandates in the docket associated with this court's docket# 18-8637 . When Fed. R. App. P. 41 (2) (D) states...

"(D) The court of appeals must issue the mandate immediately when a copy of a Supreme Court

order denying the petition for Writ of Certiorari is filed."

Any communication(s)' with the U.S.C.A. for the 2d Cir. will confirm this statement. Yet, this petitioner was never sent via U.S. Postal Service a copy of the mandate, but rather informed over telephone ***verbatim***. While the Administrative Offices of the U.S. Courts claims that ***they will never talk about*** legal issues' over the phone or in an email?

As no one knows what this court's intentions' are regarding its rules. This petitioner can only iterate the violations' of ***civil due process referenced with rule 10 of this court. Regarding this court's supervisory powers'.***

CONCLUSION

McDonnell v. U.S., 136 S. Ct. 2355 (2016), page 23...

> "Although the opinion refers to normal political interaction between public officials and their constituents, Chief Justice Roberts wrote in his opinion, "we cannot construe a criminal statute on the assumption the government will 'use it responsibly.'"...A related concern is that, under the government's interpretation the term "official act," is not defined "with sufficient definiteness that ordinary people can understand what conduct is prohibited" or in a manner that does not encourage arbitrary and discriminatory enforcement."

So are "***WE THE PEOPLE***" to be subject to a "government" that will not use a criminal statute "*responsibly?*" What about this court? What about 28 U.S.C. § 455? Are "***WE THE PEOPLE***" too ordinary to distinguish between right and wrong; that ***"WE"*** need the "*moral guidance"* of vatican city state? If that is the case, the roman catholic justices' are discriminatory and arbitrary; going against the *Federal Rules of Civil and Appellate Procedure.* ***Since my state and federal civil right's have been violated by "judge" Frank P. Geraci Jr., by his ruling sua sponte, in violation of the aforestated federal rules. What about the precedence set by the case Neitzke v. Williams, 490 U.S. 319, (1989)...***

"Held: A complaint filed in forma pauperis is not automatically frivolous within the meaning of § 1915(d) because it fails to state a claim under Rule 12(b)(6). The two standards were devised to serve distinctive goals, and have separate functions. Under Rule 12(b)(6)'s failure to state a claim standard -- which is designed to streamline litigation by dispensing with needless discovery and factfinding -- a court may dismiss a claim based on a dispositive issue of law without regard to whether it is based on an outlandish legal theory or on a close but ultimately unavailing one, whereas, under § 1915(d)'s frivolousness standard -- which is intended to discourage baseless lawsuits -- dismissal is proper only if the legal theory (as in Williams' Fourteenth Amendment claim) or the factual contentions lack an arguable basis. The considerable common

Page 490 U. S. 320

ground between the two standards does not mean that one invariably encompasses the other, since, where a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff, dismissal on Rule 12(b)(6) grounds is appropriate, but dismissal on the basis of frivolousness is not. This conclusion flows from § 1915(d)'s role of replicating the function of screening out inarguable claims from arguably meritorious ones played out in the realm of paid cases by financial considerations. Moreover, it accords with the understanding articulated in other areas of law that not all unsuccessful claims are frivolous. It is also consonant with Congress' goal in enacting the in forma pauperis statute of assuring equality of consideration for all litigants. To conflate these standards would deny indigent plaintiffs the practical protections of Rule 12(b)(6) -- notice of a pending motion to dismiss and an opportunity to amend the complaint before the motion is ruled on -- which are not provided when complaints are dismissed sua sponte under § 1915(d). Pp. 490 U. S. 324-331.

837 F.2d 304, affirmed.

MARSHALL, J., delivered the opinion for a unanimous Court.

JUSTICE MARSHALL delivered the opinion of the Court.

The question presented is whether a complaint filed in forma pauperis which fails to state a claim under Federal Rule of Civil Procedure 12(b)(6) is automatically frivolous within the meaning of 28 U.S.C. § 1915(d). The answer, we hold, is no."

So, violations' of this petitioner, a non service connected disabled white veteran's state and federal civil rights' are of no significance to "***WE THE PEOPLE***" who he swore an oath to...

"that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice." Title 10 U.S.C. § 502.

The same constitution the roman catholic justices' are obviously ignoring Title 28 U.S.C. § 455.

In the case, *Van Deelen v. Johnson*, 497 F.3d 1151 (10th Cir. 2007) it states...

> "[II A] "The defendants argue, vigorously that Mr. Van Deelen's lawsuits and administrative appeals do not amount to "constitutionally protected activity" and thus fails the first prong of the *Worrell Test.* This is so, defendants submit, because Mr. Van Deelen's activity involved only private disputes and not issues of public concern," We can not agree...[A] One might well (as defendants do) question the merits of Mr. Van Deelen's petitions on their significance...But a private citizen exercises a constitutionally protected First Amendment right anytime he or she petitions the government for redress; the petitioning clause of the 1st Amendment does not pick and choose its causes. The minor and questionable, along with the mighty and consequential, are all embraced. This is, of course, not to say that the "public concern" test proffered by the defendants and adopted by the district court has no place in the law of the 1st Amendment. Rather, the test quite properly applies to claims brought by government employees-but its scope goes no further."

So, the "complaints'" of members of the United States Armed Forces mean nothing, but it is *acceptable* that they lose the ***rights*** to "Life, Liberty and the pursuit of Happiness?" That their bodies' and minds' are expendable for the people of the United States of America? Their sacrifices' ignored, but they fight against theocracy. Only to come home to a ***theocratic*** supreme court of the United States of America? So the roman catholic justices' can further violate ***my state and federal "GOD" given civil right's?*** **THIS PONTIFICAL COURT AND VATICAN CITY STATE. THAT EXPECT THE *PEOPLE OR ANYONE ELSE TO PRAY THEIR COURT!* MAY *WE THE PEOPLE* FORSAKE THOSE IGNORANT IN THE "NAME OF THE ROMAN CATHOLIC GOD," NOT AS MARTYRS', BUT IN THEIR CONTEMPT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA!** Afford Supreme

CERTIFICATE OF PARTY *Amended 06/10/2019
NOT
REPRESENTED BY COUNCIL

I, (James P. Arlotta ,) hereby certify that this Petition for Rehearing is presented in Good Faith and not for delay....on this date, 06/10/2019 ....before this court.

James P. Arlotta
In Forma Pauperis *Pro Se Litigant-Appellant*
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Pro Se Party

* May I also add in this certificate that the grounds are regarding the circumstances, as per 28 U.S.C. § 455, stated in the petition. Which would necessitate that United States Code intervenes substantially to control. Necessitating RECUSAL of the roman catholic justices. In the affect/ effect of. *

Regarding Susan Frimpong's 06/10/2019 telephone message.