

IN THE
SUPREME COURT OF THE UNITED STATES
_____ 2019 TERM

NUMBER _____

JOSEPH BALLARD
Petitioner

v.

STATE OF LOUISIANA
Respondent

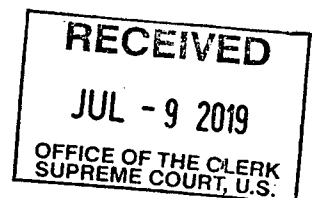
PETITION FOR WRIT OF CERTIORARI

ORIGINAL BRIEF ON THE MERITS

Respectfully submitted by,

x Joseph Ballard

Joseph Ballard/#418752, pro se
Louisiana state penitentiary
Main Prison East/Ash-2
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QUESTIONS PRESENTED FOR REVIEW

1. Is Louisiana obligated to implement and maintain a Centralized Inmate Banking System capable of withdrawing and forwarding timely accurate state prisoner pauper payments as required under the Louisiana Prison Litigation Reform Act (LSA-R.S. 15:1179 et. seq.) to prevent violations of due process, equal protection of the laws and meaningful access to the courts through statutory application of the automatic stay, abandonment and dismissal provisions of the LPLRA?
2. Has Louisiana's failure to implement and maintain a DPS&C Centralized Inmate Banking System capable of withdrawing and forwarding timely and accurate state prisoner pauper payments as required under the Louisiana Prison Litigation Reform Act (LSA-R.S. 15:1179 et. seq.) violated Mr. Ballard's right to Due Process, Equal Protection of the Laws and Meaningful Access to the Courts as contemplated in *Bounds v. Smith*, 430 U.S. 817, 821, 97 S.Ct. 1491, 1494, 52 L.Ed.2d 72 (1977), clarified in *Lewis v. Casey*, 518 U.S. 343, 353, n. 3, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996),¹ through application of the statutory automatic stay, abandonment and dismissal provisions of the LPLRA, in violation of *USCA 1* and *USCA 14*?

¹ See also *Meltzer v. C. Buck LeGraw & Co.*, 91 S.Ct. 1624, 402 U.S. 936, (U.S. Ga. 1971), pre-dating implementation of the federal and Louisiana State Prison Litigation Reform Act.

LIST OF PARTIES

RULE 12.6 STATEMENT


Petitioner, Joseph Ballard/#418752, hereby certifies that the following persons have an interest in this outcome of this case:

Petitioner Joseph Ballard/#418752

James M. LeBlanc, Secretary
Department of Public Safety and Corrections
P.O. Box 94304, Capitol Station
Baton Rouge, LA 70804-9304

These representations are being made so that the Justices of this Honorable Court may evaluate possible conflicts of interest, disqualification or the need for recusal. There are no other parties to this action within the scope of U.S. Supreme Court Rule 29.1.

Respectfully Submitted this 2 day of July, 2019.



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JURISDICTIONAL STATEMENT

The judgment of the Louisiana State Supreme Court sought to be reviewed was entered in **Docket Number 2018-CI-0052 on April 8, 2019**. The petition is timely because it is being filed within 90 days after denial of a timely sought writ to the Louisiana Supreme Court.² This Court has Jurisdiction to review the Judgment of the Louisiana Supreme Court pursuant to the U.S.C.A. 3 § 2, clause 1, 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitutional Amendment I, states, in pertinent part:

“....Congress shall make no law....abridging....the right....**to petition the Government for a redress of grievances.**” [Emphasis Added].

United States Constitutional Amendment XIV, Section 1, in pertinent part:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without **due process of law**, nor deny to any person within its jurisdiction the **equal protection of the laws.**” [Emphasis Supplied].

STATEMENT AND PROCEDURAL HISTORY OF THE CASE

This case concerns the State of Louisiana through its Department of Public Safety and Corrections [“DPS&C”] refusing to establish or maintain a Centralized Inmate Banking System [“CIBS”] capable of timely and accurately collecting court-ordered costs in pauper prisoner cases subject to the statutory automatic stay, abandonment, and dismissal provisions of the Louisiana Prison Litigation Reform Act (LSA-R.S. 15:1179 et. seq.)(“LPLRA”).

Louisiana Courts have **refused** to address the issue emphasized above or the DPS&C deliberate failure to establish and maintain a CIBS after documenting its banking system is irreparably broken and preventing pauper prisoners from ever having a meaningful day in court. Mr. Ballard has been denied

² 28 U.S.C. § 2101(c) and Supreme Court Rules 13.1 and 13.3.

meaningful access to the courts, substantive and procedural due process and equal protection of laws regarding availability of remedies after allowed to go completely blind in his right eye in excess of 13 years.

For the last six years, Mr. Ballard has sought as relief repair and maintenance of the broken DPS&C CIBS and nothing more. Voluminous evidence, both testimonial and documentary, clearly demonstrate DPS&C Banking officials both know and refuse to repair the admittedly broken banking system. DPS&C Banking officials have admitted the CIBS repeatedly, randomly and inexplicably “glitches” without human error. The result is the CIBS fails to timely withdraw and forward accurate payments statutorily required under the LPLRA. Yet, the DPS&C has refused to repair the CIBS, citing LPLRA-compliant repair is cost prohibitive. The result? Failure to timely and accurately withdraw and pay court ordered pauper payments, through the automatic stay, abandonment and dismissal provisions of the LPLRA has unlawfully abrogated Mr. Ballard’s constitutional right to have a meaningful day in Court for remedies technically” available” under state law after the DPS&C deliberately allowed Mr. Ballard to go completely blind in his right eye caused by delaying scheduled emergency eye surgery for eight months. Mr. Ballard’s tort claim has already been deemed, abandoned and dismissed since May 2013. Mr. Ballard has been assessed the costs of that tort claim which must be paid before permitting his timely filed Motion to Set Aside Judgment of Dismissal and the broken DPS&C CIBS has failed to pay those costs.

Provisions of the LPLRA; specifically obligates the DPS&C to make timely and accurate court ordered payments.³ The only way the DPS&C can possibly track prisoner pauper suits, timely enter court pauper orders assessing filing fees, and make accurate court-ordered pauper payments for prison-

³ LSA-R.S. Art. 15:1186(B)(1).

ers in strict conformity with the LPLRA,⁴ is to implement and maintain a CIBS. The LPLRA is unique from the federal PLRA, in that, from the day the district court assesses a pauper filing fee it:

“[A]utomatically stays all proceedings, including any service of process until the fees due the clerk by the prisoner in this matter are paid [and d]uring pendency of the stay the prisoner may not take any action to prosecute the suit, including but not limited to filing any pleadings, discovery, or motions other than a motion for voluntary dismissal or a motion to lift the stay because all costs have been paid.”⁵

“If the prisoner does not pay the full court costs or fees **within three years from when they are incurred**, the suit shall be abandoned and dismissed without prejudice. This provision shall be operative without formal order, but, on the court’s own motion or upon ex parte motion of any party, the clerk or other interested person by affidavit which provides that the full court costs and fees have not been paid within three years from when they were incurred, the trial court shall enter a formal order of dismissal as of the date of its abandonment. The order shall be served on the plaintiff pursuant to Code of Civil Procedure Article 1313 or 1314.”

The DPS&C has refused to establish and maintain a CIBS capable of timely entering court-assessed pauper filing fees or ‘making monthly payments of twenty percent of the preceding month’s income credited to the prisoner’s account....[to] the clerk of court each time the amount in the account exceeds ten dollars until the filing fees are paid’ subjecting Louisiana prisoners to violation of rights secured them under the USCA 1 and USCA 14.

REASONS FOR GRANTING THE WRIT

Under the strict and automatic operation of the LPLRA (LSA-R.S. 15:1179 et. seq.), the only way Louisiana can protect its prisoner pauper civil litigants’ constitutional rights to meaningful access to the courts, substantive and procedural due process and equal protection of the laws is to require the Louisiana Department of Public Safety and Corrections to repair its broken Centralized Inmate Banking System so it is capable of paying court-ordered pauper fees in accord with the manner

⁴ LSA-R.S. Art. 15:1186(A)(1), (2) and (B)(1).

⁵ LSA-R.S. Art. 15:1186(B)(2)(a).

prescribed by the LPLRA.

This Honorable Court should grant certiorari and remand this case to the Louisiana courts determine what must be minimally required to repair the Department of Public Safety and Correction's Centralized Inmate Banking System. These actions are minimally necessary to enforce this Court's prior rulings and rights protected under USCA 1 and USCA 14, and the Bill of Rights made applicable to the States under USCA 14. Alternatively, if Louisiana does not repair the DPS&C CIBS enabling it to make timely and proper court payments as required under the LPLRA, then this Court is authorized to prohibit application of the automatic stay, abandonment and dismissal provisions of the LPLRA as proper relief.

ISSUES PRESENTED to LOUISIANA SUPREME COURT FOR REVIEW

1. **ISSUE #1**—Does the LPLRA [Louisiana Prison Litigation Reform Act (LSA-R.S. 15:1179 et. seq.)] impose upon the DPS&C a statutory ministerial duty to repair, establish and/or maintain a Centralized Inmate Banking System capable of timely and accurately withdrawing and forwarding prisoner pauper court-ordered payments subject to its provisions?
2. **ISSUE #2**—Did prejudicial legal error result from the lower courts' failure to hold an LSA-R.S. Art. 49:964(D) and (F) hearing, apply the Manifest Error and/or Arbitrary and Capricious tests to determine whether the DPS&C findings, conclusions and actions were manifestly erroneous, an abuse of discretion; or arbitrary and capricious requiring REVERSAL and REMAND?

The Louisiana Supreme Court declined certiorari without comment.⁶ However, LA. Justice Hughes stated:

⁶ See Appendix – AA.

“Proper venue for the review of an LPLRA proceeding is in the parish where the offender’s prison is situated. *See* R.S. 15:1184(F); *see also* La. Dist. Ct. R. 60.1(C) & 60.3(A). Thus the 19th JDC was not empowered here to grant petitioner the relief that he prayed for in his ARP petition. Petitioner is entitled to a hearing on the motion to set aside the dismissal for abandonment.”

This conclusion epitomizes how far astray the Louisiana Courts have missed the issue central to decision in this case. Mr. Ballard brought the issue in the 19th Judicial District Court because it is the only court with jurisdiction to require the DPS&C repair its broken centralized Inmate Banking System to prevent violations of rights protected under USCA 1 and USCA 14. In fact, it appears each successive Louisiana court has found a fresh reason to deny relief upon conclusion completely alien to the issue Mr. Ballard brought.

Either the Louisiana must provide its prisoners a Centralized Inmate Banking System capable of making court payments in the manner required by the LPLRA, or the automatic stay, abandonment and dismissal provisions of the LPLRA cannot be enforced.

Since the LPLRA statute is presumed constitutional and the Louisiana Supreme Court has explicitly found it such, the only other legal remedy available is in the 19th Judicial District Court to secure an order requiring the DPS&C repair its CIBS.

ISSUES PRESENTED To The LOUISIANA FIRST CIRCUIT COURT OF APPEAL

ERROR #1: The District Court Failed To Use The Manifest Error And Arbitrary And Capricious Tests In Reviewing The Administrative Tribunal’s Conclusions And Exercise Of Discretion.

ERROR #2: Failure To Rule On The Motion To Conduct A Full-Scale Judicial Inquiry Pursuant To LSA-R.S. 49:964(D) And (F).

ERROR #3: The District Court Relied Upon Erroneous Findings And Conclusions And Refused To Address The Issues Set Before It On Judicial Review.

The First Circuit Court of Appeal⁷ erroneously concluded Mr. Ballard was ‘seeking to challenge a statute through an administrative process.’ The Circuit Court even erroneously stated: “Ballard has not demonstrated that his substantial rights have been prejudiced by any action or inaction on DPS&C’s part with respect to his inmate banking account.”

The findings and conclusions of the Circuit Court are conflicting; erroneously concluding Mr. Ballard was challenging a statute through an administrative process, then erroneously finding the actions of the DPS&C do not involve substantial rights as to Mr. Ballard’s inmate banking account. The issue of the DPS&C establishing and maintaining a CIBS has so far been swept aside by Louisiana.

ISSUES and RELIEF REQUESTED IN THE PETITION FOR JUDICIAL REVIEW

34. The DPS&C Centralized Inmate Banking Services department has failed in its duty to follow the rule outlined in Title 15 § 1186. Proceedings in forma pauperis A(2), B(1)(2)(a)(b)(c) in paying the court costs from his offender account.
35. The DPS&C is using LSA-R.S. 1186 (B)(2)(a)(b)(c) stay, abandonment and dismissal provisions under the LPLRA as a liability shield to block civil liability against the tortious actions against the DPS&C.
36. Petitioner challenges the DPS&C Centralized Inmate Banking System for not [paying] current court costs owed by offenders and it is becoming an ever increasing reason for unreasonable delay in having Petitioners a day in court.

V. Relief.

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

1. The Petitioner is specifically seeking declarative and injunctive relief against the Department to enjoin them from continuing to use LSA-R.S. 15:1186(B)(2)(c) as a liability shield in order to obtain judgments of “abandonment.”
4. Petitioner is challenging the present manner in which Court ordered pauper payments are being paid under the current DPS&C Headquarter Offender Banking scheme.
5. This challenge includes that DPS&C is not current with fees or accrued costs owed, and that the DPS&C fails to begin paying costs as ordered.” Emphasis Supplied]

⁷ Appendix-BB.

Honorable Commissioner Quintillis K. Lawrence⁸ correctly stated in his Report and Recommendation:

"Petitioner complains that the Department has violated his [constitutional] rights because it has not paid his court costs in a timely manner, causing him harm in the dismissal of his suit filed in the 20th JDC."

However, Commissioner Lawrence then veered widely erroneous stating:

"The Petitioner seeks to enjoin any further deductions under the current *statutory provision* that allows the department to pay inmate's court costs."

This statement is wholly erroneous and completely unsupported by the record. This erroneous statement does not appear in any pleading or argument posited by Mr. Ballard. Indeed, the current statutory provision [LPLRA] obligates the DPS&C establish and maintain a CIBS which is capable of paying court payments. All Mr. Ballard asked the Court to do is require DPS&C to repair its CIBS so it was capable of *making those court payments* in compliance with the LPLRA; this in protection of his constitutionally protected meaningful access to the courts, substantive and procedural due process and equal protection of the laws. USCA 1 and USCA 14.

Counsel for DPS&C admitted the CIBS is riddled with glitches. The CIBS is more than forty years old and has never been updated to correspond with the statutory payment requirements outlined in the LPLRA. Thus, the DPS&C cannot perform its ministerial duty to pay court-ordered pauper costs timely and accurately when deposits are credited to the prisoner accounts as required under the LPLRA, and prisoner pauper litigants will necessarily suffer continued deprivations of rights protected under USCA 1 and USCA 14.

On Thursday, February 6, 2014, Mr. Ballard filed a Petition for Judicial Review seeking relief

⁸ Commissioner Lawrence retired from working at the 19th Judicial District Court shortly after this case went on appeal. He was replaced by Commissioner Kina T. Kimble. This statement is not intended as a negative connotation as to either Commissioner Lawrence or the propriety of the court system.

from DPS&C arbitrary decision refusing to repair the CIBS which has not and cannot collect court-ordered pauper payments in prisoner civil delictual actions stayed pursuant to the LPLRA.

Because the DPS&C CIBS did not pay court-ordered payments as required under the LPLRA, despite Mr. Ballard receiving adequate funds, his civil tort was automatically "dismissed" as "abandoned" because the fee was not paid within 3 years required by the LPLRA. Mr. Ballard has been deprived of meaningful access to the courts, equal protection and the right to substantive and procedural due process for his valid action under Louisiana tort law.

Mr. Ballard was permitted to go blind because he was delayed urgently needed eye surgery more than eight months after surgery was scheduled to prevent blindness, and because the DPS&C failed to provide a CIBS capable of paying court costs required by the LPLRA.

FIRST QUESTION PRESENTED FOR REVIEW

1. Is Louisiana obligated to implement and maintain a Centralized Inmate Banking System capable of withdrawing and forwarding timely accurate state prisoner pauper payments as required under the Louisiana Prison Litigation Reform Act (LSA-R.S. 15:1179 et. seq.) to prevent violations of due process, equal protection of the laws and meaningful access to the courts through statutory application of the automatic stay, abandonment and dismissal provisions of the LPLRA? Mr. Ballard answers: Yes!

ARGUMENT FOR FIRST QUESTION PRESENTED FOR REVIEW

The LPLRA was written and Legislatively enacted with the presumption that the State of Louisiana independent agency—the DPS&C—already had in place a Centralized Inmate Banking System [“CIBS”] capable of timely and accurately collecting court-ordered pauper payments. It is a matter of law that the LPLRA *imposes upon DPS&C a ministerial duty* to establish and maintain a CIBS capable of withdrawing and forwarding prisoner pauper court-ordered payments subject to the provisions of the LPLRA. To find otherwise effectively declares Louisiana prisoners strangers to remedies under state civil statutes, a conclusion absurd on its face.

For Louisiana prisoner pauper litigants, meaningful access to the courts as envisioned by *Bounds v. Smith*, and modified by *Lewis v. Casey* is conditioned entirely upon *paying the entire filing fee within thirty-six months after the fees are incurred* under the LPLRA. Because the DPS&C has a broken CIBS incapable of paying court costs as required by the LPLRA, every Louisiana prisoner pauper is a stranger to state remedies for tortious acts committed during the prisoner’s incarceration.

In 2002, Louisiana enacted its own version of the PLRA pursuant to LSA-R.S. 15:1181 – 1190.⁹ The purpose of enacting the LPLRA was to provide for *civil actions with respect to prison conditions*. The definition provision of the LPLRA,¹⁰ shows the legislative intent was to provide for civil actions with respect to *prison conditions or effects of officials’ actions on prisoners’ lives*, as opposed to matters concerning incarceration vel non. The language of *LSA-R.S. 15:1187*, when read in the context of the LPLRA as a whole, indicates that the sanction is not to apply to all types of civil actions that a pris-

⁹ The LPLRA was enacted by Acts 1997, No. 731, § 1, and became effective on July 9, 1997.

¹⁰ LSA-R.S. 15:1181.

oner possibly could bring, but only those with respect to prison conditions or officials' actions affecting the lives of those confined in prison.¹¹ Mr. Ballard clearly brought a civil action in 2006 seeking remedies permitted pauper prisoners under provisions of the LPLRA because he was deliberately allowed to go blind from delayed emergency right eye surgery to repair a detached retina.

In July of 1998, Louisiana Legislators enacted 1997, No. 731, § 1 in the form of the Louisiana Prison Litigation Reform Act (LPLRA). The LPLRA, cited as LSA-R.S. 15:1181 – 1190, was enacted to curtail baseless and/or nuisance suits by prisoners. The LPLRA basically mirrored the Federal PLRA which was established by Federal law 28 U.S.C.A. 1915.

However, in Act 89 of the 1st Extraordinary Session of 2002, the Louisiana Legislature significantly changed the nature of pauper status to which a Louisiana prisoner is entitled. Unlike the Federal PLRA, Louisiana enacted additional restrictions through three provisions detailed briefly below: First, LSA-R.S. 15:1186(B)(2)(a) which provides that if a prisoner files a motion to proceed in forma pauperis:

(a) "The order granting a prisoner's request to proceed in forma pauperis automatically stays all proceedings, including any service of process, until all costs of court or fees due the clerk by the prisoner in this matter are paid. During the pendency of the stay the prisoner may not take any action to prosecute the suit, including but not limited to filing any pleadings, discovery, or motions other than a motion for voluntary dismissal or a motion to lift the stay because all costs have been paid." [Emphasis Supplied].

Second, LSA-R.S. 15:1186(B)(2)(b) states:

(b) "If at any time during the pendency of the action additional costs of court or fees due the clerk by the prisoner accrue and are unpaid by the prisoner, then upon order of the court ex proprio motu or upon motion of the clerk or any other party, the action may be stayed as provided herein until all such additional costs are paid."

And finally, LSA-R.S. 15:1186(B)(2)(c), which provides:

¹¹ See Frederick v. Ieyoub, 762 So.2d 144, 1999-0616 (La. App. 1 Cir 5/12/00); Colquitt v. Claiborne Parish, 823 So.2d 1103, 36, 260 (La. App. 2 Cir. 8/14/02).

(c) “If the prisoner does not pay the full court costs or fees within three years from when they are incurred, the suit shall be abandoned and dismissed without prejudice. This provision shall be operative without formal order, but, on the court’s own motion or upon ex parte motion of any party, the clerk or other interested person by affidavit which provides that the full court costs and fees have not been paid within three years from when they were incurred, the trial court shall enter a formal order of dismissal as of the date of its abandonment.” [Emphasis Supplied].

These provisions, despite Article 1 § 22 of the Louisiana Constitution of 1974 providing:

“All [Louisiana] courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights.”

When ratified in 1791, the Bill of Rights applied to the Federal Government.¹² “The Constitutional Amendments adopted in the aftermath of the Civil War....fundamentally altered our country’s federal system.”¹³ With only “a handful” of exceptions, this Court has held that the Fourteenth Amendment’s Due Process Clause incorporates the protections contained in the Bill of Rights, rendering them applicable to the States.¹⁴ A Bill of Rights protection is incorporated, if it is “fundamental to our scheme of ordered liberty,” or “deeply rooted in this Nation’s history and tradition.”¹⁵

The purpose of enacting the PLRA was to curtail baseless and nuisance suits by prisoners.¹⁶ A mere formal right of access to the courts, or better stated, the mere right to file the original initiating action/complaint/suit does not pass constitutional muster. Unlike the federal statute, the LPLRA requires prepayment in full within three years. The prisoner pauper is not permitted to prosecute the claim and no service is effected; nor are prescriptive periods even tolled if the case automatically deemed abandoned and dismissed.

12 *Barron ex rel Teiman v. Mayor of Baltimore*, 7 Pet. 243, 8 L.Ed 672 (1833).

13 *McDonald v. Chicago*, 561 U.S. 742, 754; 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010).

14 *Id.* at 764-765, and nn. 12-13, 130 S.Ct. 3020.

15 *Id.* at 767; 130 S.Ct. 3020 [internal quotation marks omitted, emphasis deleted].

16 *Poullard v. Hanson*, 823 So.2d 1130, writ denied, 836 So.2d 45, 2002-2730 (La. 1/24/03).

The United States Supreme Court has long set forth specific minimal requirements within the penal system. For instance, in Bounds v. Smith,¹⁷ the Court held:

“The fundamental constitutional right of access to the courts require prison authorities to assist inmates in the preparation and filing of meaningful legal papers...or that he had suffered arguably actionable harm that he had wished to bring before the courts, but was so stymied by inadequacies...that he was unable to file a complaint.”

This access must be “adequate, effective, and meaningful.”¹⁸ In Lewis v. Casey,¹⁹ the United States Supreme Court revisited this issue with a more stringent standard, reasoning:

“Insofar as the right vindicated by Bounds is concerned,...meaningful access to the courts is the touchstone,” and the inmate therefore must go one step further and demonstrate that the alleged shortcomings in the...legal assistance program hindered his efforts to pursue a legal claim.²⁰

“Bounds does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything...The tools it requires to be provided are those that the inmates need in order to attack their sentences directly or collaterally...or to **challenge unconstitutional conditions of confinement.**”

The DPS&C knows its CIBS is broken, failing to make court-ordered pauper payments. The DPS&C knows this failure to make timely accurate payments to the clerk of court has resulted in Mr. Ballard civil action being deemed automatically abandoned and dismissed. Yet, the DPS&C has maintained it is not obligated to repair its broken banking system and is perfectly free to deny prisoner civil litigants meaningful access to the courts due to automatic operation of the LPLRA which Louisiana has found is constitutional on its face. These actions or omissions by the LDPS&C failing to repair its broken CIBS is an unconstitutional policy, practice or custom which repudiates the constitutional right and is the moving force specifically designed to deny or delay meaningful access to

¹⁷ Bounds v. Smith, 430 U.S. 817, 828, 97 S.Ct. 1491, 1498, 52 L.Ed. 2d 72 (1977).

¹⁸ *Id.*

¹⁹ Lewis v. Casey, 518 U.S. 322, 350, 116 S.Ct. 2174, 2180, 135 L.Ed. 2d 590 (1996).

²⁰ Bounds, at 837 97 S.Ct. At 1495.

the courts.²¹ Failing to establish and maintain a CIBS is the moving force behind the violation in this complaint.²²

Established law dictates liability may exist “without overt personal participation in the offensive act if the supervisory officials implement a policy so deficient that the policy itself is a repudiation of constitutional rights and is the moving force of the violation.”²³ A policy may be a “statement, ordinance, regulation, or decision that is officially adopted” by an official who has policymaking authority or a “persistent, widespread practice” that is not formally authorized but “is so common and well-settled as to constitute a custom that fairly represents...policy.”²⁴ Knowledge of a custom is attributable to a policymaker. The statute unambiguously states that “the action may be stayed as provided herein until all such additional costs are paid...[if] additional costs of court or fees due the clerk by the prisoner accrue.”²⁵ The DPS&C knows of this policy through Mr. Ballard’s Petition for Judicial Review.

The Federal PLRA applies a strict screening process prior to proceeding with litigation. The Federal PLRA requires that the District Court “scrutinize” the basis of a prisoner’s complaint, and, if appropriate, dismiss the case without service of process if the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief.²⁶ This screening eliminates frivolous suits, but if the inmate makes it past

21 It is well-established that prisoners have a constitutional right to access to the courts. *Bounds v. Smith*, 430 U.S. 817, 821, 97 S.Ct. 1491, 1494, 52 L.Ed.2d 72 (1977). This is especially so when the litigant has asserted actual standing. *Lewis v. Casey*, 518 U.S. 343, 353, n. 3, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996).

22 Compare *Thompkins v. Belt*, 828 F.2d 298, 304 (5th Cir. 1987). and *Johnson v. Moore*, 958 F.2d 92, 94 (5th Cir. 1992) (internal quotation marks and citation omitted).

23 *Thompkins v. Belt*, 828 F.2d 298, 304 (5th Cir. 1987).

24 *Johnson v. Moore*, 958 F.2d 92, 94 (5th Cir. 1992) (internal quotation marks and citation omitted).

25 *LSA-R.S. 15:1186(B)(2)(c)*.

26 *28 U.S.C. § 1915(e)(2)(B)*.

the screening process, the Federal Statute does not “preclude” the inmate from proceeding and/or litigating his claim.

It is the very difference of the LPLRA and the federal PLRA which is at issue. The federal PLRA does not have the distinguished automatic stay provision which **completely eliminates** the ability to litigate until costs are paid. The federal PLRA does **curtail baseless and nuisance suits by prisoners**, and does so effectively via the screening process. Unlike the federal PLRA, LSA-R.S. Art. 15:1186(B)(2)(a),(b) & (c) automatically applies its stay, abandonment and dismissal provisions if fees are not paid in full within three years after the costs are incurred. This statute has been found constitutional, assuming the DPS&C has a CIBS capable of making payments in the manner prescribed by the LPLRA. The DPS&C does **not** have such a viable banking system. The DPS&C insists it is not obligated to repair it, thereby denying pauper state prisoner litigants from having their day in court.

For years, the LDPS&C has used the automatic operation of the LPLRA stay, abandonment and dismissal provisions as a civil liability shield [against inmates’ state delictual actions] knowing as long as costs are not paid within 3 years, the DPS&C and its employees will never answer for their tortious conduct. Therefore, the LDPS&C refusal to repair its CIBS is deliberately intended to freeze out or ossify all prisoner pauper civil suits and stops inmates from litigating any civil suit for damages.

Mr. Ballard’s right to Due Process, Equal Protection of the Laws and Meaningful Access to the Courts as contemplated in Bounds v. Smith, 430 U.S. 817, 821, 97 S.Ct. 1491, 1494, 52 L.Ed.2d 72 (1977), clarified in Lewis v. Casey, 518 U.S. 343, 353, n. 3, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996), have been denied because the DPS&C refuses to repair its CIBS.

The LPLRA has been repeatedly found constitutional; thus the unconstitutional outcome²⁷ in

²⁷ Denial of access to the courts, denial of due process and equal protection under USCA 1 and USCA 14.

this case necessarily results from the DPS&C admittedly broken CIBS which has failed to withdraw and forward court payments required by the LPLRA. It is undisputed the DPS&C CIBS is broken. Therefore, the Louisiana DPS&C **must** repair its CIBS to protect prisoner pauper litigants from being denied meaningful access to the courts, due process and equal protection of the laws; consequences which naturally flow from the strict and automatic operation of the LPLRA.

In *Walp v. Scott*,²⁸ the 5th Circuit Court of Appeals ruled that the federal Prison Litigation Reform Act was intended only to penalize in forma pauperis (IFP) litigation that is truly frivolous, not to *freeze out meritorious claims or ossify district court errors*. The purpose of enacting the federal PLRA was to **curtail baseless and nuisance suits by prisoners**.²⁹ A mere formal right of access to the courts, or better stated, the mere right to file the original initiating action/complaint/suit **does not pass constitutional muster**. Filing the initiating action or application alone, without the ability to proceed further it is perfunctory to say the least. Courts have required that the access be “adequate, effective, and meaningful.”³⁰ These are clearly established laws which shows that the DPS&C CIBS must make timely, accurate payments for prisoner paupers in Louisiana under the LPLRA, or else the inevitable result is only a perfunctory access to courts, due process and equal protection of the laws.

In consideration of the foregoing, it is abundantly clear that *Yes!, Louisiana is obligated to implement and maintain a CIBS capable of withdrawing and forwarding timely accurate state prisoner pauper payments as required under the LPLRA* to prevent violations of due process, equal protection of the laws and meaningful access to the courts through application of the automatic stay, abandonment and dismissal provisions of the LPLRA?

²⁸ *Walp v. Scott*, 115 F.3d 308 (1997).

²⁹ *Poullard v. Hanson*, 823 So.2d 1130, writ denied, 2002-2730 (La. 1/24/030, 836 So.2d 45).

³⁰ *Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977).

SECOND QUESTION PRESENTED FOR REVIEW

2. Has Louisiana's failure to implement and maintain a DPS&C Centralized Inmate Banking System capable of withdrawing and forwarding timely and accurate state prisoner pauper payments as required under the Louisiana Prison Litigation Reform Act (*LSA-R.S. 15:1179 et. seq.*) violated Mr. Ballard's right to Due Process, Equal Protection of the Laws and Meaningful Access to the Courts as contemplated in *Bounds v. Smith*, 430 U.S. 817, 821, 97 S.Ct. 1491, 1494, 52 L.Ed.2d 72 (1977), clarified in *Lewis v. Casey*, 518 U.S. 343, 353, n. 3, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996),³¹ through application of the statutory automatic stay, abandonment and dismissal provisions of the LPLRA, in violation of USCA 1 and USCA 14? Mr. Ballard answers: Yes!

ARGUMENT FOR 2ND QUESTION PRESENTED FOR REVIEW

In 2006, Mr. Ballard became totally blind in his right eye. The factual reason for this blindness is but-for the DPS&C *refusal* to timely transport Mr. Ballard for a scheduled emergency eye surgery to repair a detached retina. The surgery eventually performed eight (8) months later was "too little, too late," and permanent right-eye blindness ensued.

"Bounds does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims. The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, **and in order to challenge the conditions of their confinement.** Impairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration."³²(Emphasis Supplied).

This is exactly the type civil action prisoners are constitutionally entitled to pursue even under the limiting precedence of *Lewis v. Casey*³³ which clarified the holding in *Bounds v. Smith*.³⁴ After

31 See also *Meltzer v. C. Buck LeGraw & Co.*, 91 S.Ct. 1624, 402 U.S. 936, (U.S. Ga. 1971), pre-dating implementation of the federal PLRA and LPLRA.

32 *Lewis v. Casey*, 518 U.S. at 536.

33 *Lewis v. Casey*, 518 U.S. 343, 353, n. 3, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996).

34 *Bounds v. Smith*, 430 U.S. 817, 821, 97 S.Ct. 1491, 1494, 52 L.Ed.2d 72 (1977).

exhausting administrative remedies, Mr. Ballard, filed a Petition for Damages available under statutory remedies in the 20th Judicial District Court in 2006, and requested the district court recognize his eligibility to prosecute this action as a prisoner pauper under provisions of the LPLRA.³⁵ On October 2, 2006, the 20th Judicial District Court adjudicated Mr. Ballard a pauper granting the privilege to proceed as a prisoner pauper statutory provisions subject to applicable portions of the LPLRA.

However, but-for the broken DPS&C CIBS, and the abject failure to enter the 10/2/06 pauper order into the DPS&C CIBS computer for more than thirteen months, Mr. Ballard was only permitted 22 months to pay a huge filing and advance fees.³⁶ Twenty percent of the total funds deposited into Mr. Ballard's prison account in the first thirty-six months from 10/2/06³⁷ to 10/4/09³⁸ amounted to \$1,008.64, and was more than enough to pay the court costs incurred three years earlier, allowing Mr. Ballard to timely prosecute his tort suit under the provisions of the LPLRA.

The only reason Mr. Ballard's delictual claim³⁹ was automatically abandoned and dismissed under provisions of the LPLRA in May 9, 2013, is the broken DPS&C CIBS failed to make timely payments. These claims were proven in the Louisiana courts, but relief was inexplicably denied. Mr. Ballard only asks Louisiana require the DPS&C fix its broken CIBS. That remedy is cognizable via Petition for Judicial Review in the 19th Judicial District Court where the DPS&C is Headquartered. In fact, jurisdiction over this subject-matter is cognizable in no other court in the country, except this One.

If the DPS&C CIBS had made timely and accurate payments between 10/2/06 and 10/3/09, Mr.

35 The of the LPLRA statutory provisions *assume* the DPS&C and other agencies establish and maintain a Banking System capable of withdrawing and forwarding court-ordered payments as required thereunder.

36 The remaining 22 months from November 8, 2007 to October 3, 2009 constitutes only 61% of the 36 months statutorily granted Mr. Ballard to pay the remaining \$860.00 under the LPLRA.

37 The date the \$900.00 "pauper" fee was assessed in the 20th Judicial District Court.

38 The date that LSA-Revised Statutes Art. 15:1186(B)(2)(c) three year deadline to complete paying the filing fees incurred on 10/2/06 expired.

39 Louisiana, 20th Judicial District Court Docket No.19598 "B." for the Parish of West Feliciana.

Ballard would have paid off the \$900.00 filing fee and not suffered “automatic abandonment and dismissal” for want of prosecution on 5/9/13 under the LPLRA provisions.

Mr. Ballard complained of legal prejudice and unreasonable delay caused by the DPS&C failure to establish or maintain an adequate CIBS, failing to make payments as required by the LPLRA. The DPS&C insists the LPLRA does not categorically obligate it to make repairs to its faulty banking system which admittedly “glitches,” failing to pay court costs required by the LPLRA in Mr. Ballard’s tort claim which was subsequently dismissed in the 20th JDC.

Mr. Ballard alleged the DPS&C has deliberately failed to repair its broken CIBS to unlawfully use legal application of the LPLRA automatic stay, abandonment, and dismissal, coupled with its broken CIBS as a “liability shield,” in violation of prisoners’ constitutional right to seek relief from unlawful conditions of confinement as available under state statutes.

Mr. Ballard never has and still does not challenge the constitutionality of the LPLRA, and the problem does not lie in proper and valid application of the LPLRA. Instead, the problem squarely lies in the DPS&C using the LPLRA as a “liability shield” by failing to repair, establish or maintain a CIBS capable of performing its ministerial duty to timely and accurately collect and forward court-ordered pauper payments as required under the LPLRA.

Mr. Ballard sought to find out not only how much was owed, but to repair the DPS&C CIBS. Judicial Review was inexplicably denied for ‘reasons’ not even raised in the complaint; the issues that were raised were deliberately ignored and shoved aside because the district court did not want to investigate the allegations of collusion or order the DPS&C to take on the expensive task of repairing the DPS&C CIBS. At the time Mr. Ballard brought the Petition for Judicial Review, there was inadequate information in the administrative record from which the District Court could possibly apply the “Mani-

fest Error” and “Arbitrary and Capricious Tests,” this is the reason Mr. Ballard requested a full judicial inquiry as permitted under LSA-R.S. 49:964(D) and (F). The courts must audit the DPS&C CIBS to determine the most narrowly drawn scope of injunctive relief necessary to comply with the LPLRA.

Mr. Ballard received significantly more funds deposited into his prison account for which the broken DPS&C CIBS failed to make payments between October 2, 2006 and October 3, 2009. Of the limited payments “automatically” withdrawn and forwarded, significant irregularities or discrepancies exist between the amounts and dates reflected on the DPS&C financial statements issued monthly to Mr. Ballard at the LSP facility⁴⁰ and payments received as recorded in the Clerk Ledger. The district seized upon these unexplained discrepancies to justify passing the buck and refuse ordering the DPS&C to repair its broken CIBS.

Even in October 2016—after at least three years during Judicial Review—the DPS&C CIBS had failed to pay the nominal fees of \$245.20 since incurred on May 9, 2013. Mr. Ballard has received thousands of dollars of deposits.⁴¹ The payment system as required under the LPLRA constitutes a statutory duty imposed upon the DPS&C which cannot be refused. Establishing and maintaining the CIBS to pay pauper prisoners’ court payments required by the LPLRA is needed to protect prisoners’ constitutional rights secured under both USCA 1 and USCA 14.

Corrections Attorney, Terri L. Cannon acknowledged CIBS “glitches” and offered to pay the remaining \$93.20 owed on the tort suit but stated on the record in the 19th JDC, that the DPS&C did not have the money needed to make the necessary repairs and that its repair was “not going to happen.” It

⁴⁰ See Appendix-CC; Judicial Review Exhibits L & L1.

⁴¹ For instance, as of March 23, 2015, the DPS&C Deposited 2,221.00 into his account between 12/12/13 and 3/22/15; but had only paid \$44.00 This does not include the \$600.00 in Incentive Wages and Funds Received that have been deposited monthly in the last 2 ½ years since March 23, 2015. Mr. Ballard has received no notice the \$93.20 has been paid.

appears that after Mr. Ballard properly notified the DPS&C of the broken CIBS, the DPS&C saw offering to pay the remaining \$93.20 was the financially expedient way to make this problem go away without making the necessary repairs to the CIBS. Mr. Ballard declined the offer and opted to seek repair of the DPS&C CIBS.⁴² In his ARP,⁴³ the Petition for Judicial Review and subsequent appeals through the Louisiana courts, Mr. Ballard clearly and unambiguously “challenged [the DPS&C] banking system” and sought repair of the DPS&C CIBS.

The District Court must exercise its plenary power to inform itself of the information minimally necessary for adjudicating the issue concerning the integrity of the DPS&C Banking System—i.e., whether the CIBS did and whether it is even capable of withdrawing and forwarding timely and accurate court-ordered prisoner pauper payments required under the LPLRA.

Mr. “Ballard has....demonstrated that his substantial rights have been prejudiced by any action or inaction on DPS&C’s part with respect to his inmate banking account” and the DPS&C has conceded its CIBS is broken but cited lack of funds as its reason for refusing to repair it.

Mr. Ballard is not seeking to challenge a statute through an administrative process as erroneously stated by one of the Louisiana courts. To emphasize the intent of his Petition for Judicial Review and all subsequent appeal, *including this Petition for Certiorari*, Mr. Ballard seeks relief in the form of declarative and injunctive relief requiring the DPS&C repair, establish and/or maintain its CIBS capable of making court payments in the manner set forth by the LPLRA.

⁴² Whether Mr. Ballard is capable of obtaining relief from the Motion to Set Aside is completely irrelevant to requiring the DPS&C perform its ministerial duty to establish and maintain a CIBS because Mr. Ballard is not guaranteed the 20th JDC will accept the claims unless it is judicially noticed that the DPS&C CIBS is and has failed to pay court-ordered pauper costs.

⁴³ Appendix-DD.

CONCLUSION

Mr. Joseph Ballard prays this Honorable U.S. Supreme Court grant his Application for Certiorari finding that Louisiana prisoner pauper litigants are entitled to protections of their meaningful access to the courts, substantive and procedural due process and equal protection of the laws. Since the LPLRA automatic provisions have been found constitutional by the State's highest court, then the LDPS&C must establish and maintain a Centralized Inmate Banking System capable of paying court costs as set forth in the LPLRA. Mr. Ballard prays this Honorable Court schedule a hearing and any other such relief this Honorable Court deems appropriate, ordering the State of Louisiana to show cause why the Louisiana Department of Public Safety and Corrections should not be required to establish and maintain a Centralized Inmate Banking System capable of timely withdrawing and forwarding prisoner pauper payments as required by the LPLRA.

Mr. Joseph Ballard additionally prays this Honorable Court GRANT this application to the extent that the Court enjoins the Louisiana Attorney General or any Louisiana District Court from enforcing the stay provision of the LPLRA until and unless the LDPS&C has affirmatively demonstrated to the 19th Judicial District Court it has established and is capable of maintaining a Centralized Inmate Banking System capable of timely conveying pauper orders to the DPS&C CIBS, whereafter such pauper orders are entered into the CIBS and has affirmatively demonstrated it is capable of thereafter accurately withdrawing and timely forwarding court ordered pauper payments required by the Louisiana Prison Litigation Reform Act (LSA-R.S. 15:1179 et. seq.).

Respectfully submitted this 2nd day of July, 2019.

X Joseph Ballard
Joseph Ballard/#418752