

19-5702

NO. 18A1311

IN THE

SUPREME COURT OF THE UNITED STATES

Tony D. WALKER,
PETITIONER,

v

GREENBAY CORRECTIONAL INSTITUTION HEALTH
SERVICES UNIT, MARY SAUVEY, KATHY LEMENS,
STEPHANIE WILAS, CASSANDRA BAIER, ASHLEY
HUMPHNER, ALAN DEGROOT, DONNA LARSON,
WAUPUN CORRECTIONAL HEALTH SERVICES UNIT,
RESPONDENTS,

ORIGINAL

Supreme Court, U.S.
FILED

AUG 08 2019

OFFICE OF THE CLERK

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. WHETHER 28 U.S.C. § 1915(G) IS OVERBROAD, UNCONSTITUTIONAL, AND INVALID WHERE CONGRESS HAS ENACTED THE STATUTE THAT INTENTIONALLY CHILLS AND VIOLATES INDIGENT PRISONERS FIRST AMENDMENT CONSTITUTIONAL RIGHTS TO PETITION THE COURTS FOR REDRESS OF THEIR GRIEVANCES MERELY BECAUSE THE INDIGENT PRISONERS HAVE HAD 3 OR MORE ACTIONS DISMISSED FOR ALLEGEDLY FAILING TO STATE A CLAIM OR BECAUSE THEIR CLAIMS WERE ALLEGED TO BE TRIVOLIOUS OR MALICIOUS?
2. WHETHER CIRCUIT COURT ERRED AND ABUSED ITS DISCRETION WHEN IT FOUND THAT PETITIONER SATISFIED THE "IMMINENT DANGER" EXCEPTION OF 28 U.S.C. § 1915(G), BUT STILL DENIED HIM LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL AND ORDERED THE CLERKS OF THE COURTS NOT TO ACCEPT ANY DOCUMENTS FROM HIM UNTIL HIS PREVIOUS FILING FEES ARE PAID IN FULL?
3. DID THE DISTRICT COURT ERR AND ABUSE ITS DISCRETION WHEN, DURING SUMMARY JUDGMENT PROCEEDINGS, IT WEIGHED, AND MADE CREDIBILITY DETERMINATIONS REGARDING THE EVIDENCE AND COMPLETELY DISREGARDED OR DOWN-PLAYED PETITIONERS DOCUMENTARY EVIDENCE WHICH CONTRADICTS AND IS CONTRARY TO THE RESPONDENTS ALLEGATIONS CONTAINED IN THEIR DOCUMENTS?
4. WHETHER A PRISONER SATISFIES THE REQUIREMENTS OF THE PRISON LITIGATION REFORM ACT WHEN THEY, BOTH, FOLLOW THE PROCEDURAL RULES ESTABLISHED BY THE STATE FOR EXHAUSTING THEIR ADMINISTRATIVE REMEDIES AND COMPLETE THE FORMS SUPPLIED BY THE DEPARTMENT OF CORRECTIONS FOR THAT PURPOSE IN ACCORDANCE WITH THE INSTRUCTIONS ON THE INTAKE COMPLAINT FORMS?
5. WHETHER A PRISONER AUTOMATICALLY WAIVES HIS RIGHT TO MEDICAL PRIVACY AND HIS RIGHT TO PROVIDER-PATIENT PRIVILEGE WHEN THEY FILE AN ACTION ALLEGING VIOLATION THEIR EIGHTH AMENDMENT RIGHT TO RECEIVE MEDICAL CARE FROM PRISON OFFICIALS?

6. WHETHER DISTRICT COURT CLEARLY ABUSED ITS DISCRETION WHEN IT DENIED PETITIONER'S MOTIONS FOR SANCTIONS AGAINST THE RESPONDENTS FOR SWEARING TO FALSE STATEMENTS IN AN AFFIDAVIT AND FOR INTENTIONALLY RELEASING AND OBTAINING HIS PROTECTED HEALTH INFORMATION BEFORE HE PROVIDED THEM AUTHORIZATION TO DO SO?
7. DID THE DISTRICT COURT ERR AND ABUSE ITS DISCRETION WHEN IT DISMISSED A CLAIM AND DEFENDANT THAT WERE NOT INCLUDED IN THE RESPONDENTS SUMMARY JUDGMENT DOCUMENTS AND DENIED A MOTION TO REINSTATE THAT SINGLE DEFENDANT AND THE CLAIM AGAINST THEM?

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PETITION FOR A WRIT OF CERTIORARI

Tony D. WALKER, appearing pro se, respectfully petitions this court for a writ of certiorari, pursuant to Supreme Court Rule 12.4, to review the judgments, decisions, and orders of the District Court for the Eastern District of Wisconsin and the United States Court of Appeals for the Seventh Circuit in this action. This case involves questions regarding the application and constitutionality of 28 U.S.C. § 1915 (2) and, because petitioner is challenging such, 28 U.S.C. § 2403 (2) may apply. See SCR 29.4(3).

OPINIONS BELOW

The decisions, judgments, and orders of the District Court for the Eastern District of Wisconsin and the Court of Appeals for the Seventh Circuit granting summary judgment to the respondents and denying petitioner's request to proceed in forma pauperis on appeal are not reported.

JURISDICTION

The Court of Appeals denied petitioner's motion to reconsider its February 4th, 2019 order denying his petition to proceed in forma pauperis on March 11th, 2019. Petitioner had until June 4th, 2019 to file his petition with this court. On May 31st, 2019 petitioner applied for a 60 day extension which this court granted on June 14th, 2019 and gave him until, and including, August 8th, 2019. This court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

FEDERAL RULE OF CIVIL PROCEDURE 11 SIGNING PLEADINGS, MOTIONS, AND OTHER PAPERS; REPRESENTATIONS TO THE COURT; SANCTIONS.

(b) REPRESENTATIONS TO THE COURT. By presenting to the court a pleading, written motion, or other paper -- whether by signing, filing, submitting or later advocating it -- an attorney or represented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(3) The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

28 U.S.C. § 1915 PROCEEDING IN FORMA PAUPERIS.

(a) IN NO EVENT SHALL A PRISONER BRING A CIVIL ACTION OR APPEAL A JUDGMENT IN A CIVIL ACTION OR PROCEEDING UNDER THIS SECTION IF THE PRISONER HAS, ON 3 OR MORE PRIOR OCCASIONS, WHILE INCARCERATED OR DETAINED IN A FACILITY, BROUGHT AN ACTION OR APPEAL IN A COURT OF THE UNITED STATES THAT WAS DISMISSED ON THE GROUND THAT IT IS TRIVOLIOUS, MALICIOUS, OR FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED, UNLESS THE PRISONER IS UNDER IMMINENT DANGER OF SERIOUS PHYSICAL INJURY.

42 U.S.C.S. § 1320d-6 WRONGFUL DISCLOSURE OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.

(a) OFFENSE. A PERSON WHO KNOWINGLY AND IN VIOLATION OF THIS PART [42 U.S.C.S. § 1320d ET SEQ] --

- (1) USES OR CAUSES TO BE USED A UNIQUE HEALTH IDENTIFIER;
- (2) OBTAINS INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION RELATING TO AN INDIVIDUAL, OR
- (3) DISCLOSES INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION TO ANOTHER PERSON,

STATUTORY PROVISIONS INVOLVED (CONT.)

shall be punished as provided in subsection (b). For purposes of the previous sentence, a person (including an employer or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section 1180(b)(3) [42 U.S.C. § 1320d-9(b)(3)]) and the individual obtained or disclosed such information without authorization.

45 C.F.R. 164.512 USES AND DISCLOSURES FOR WHICH AN AUTHORIZATION OR OPPORTUNITY TO AGREE OR OBJECT IS NOT REQUIRED.

(e) STANDARD: DISCLOSURES FOR JUDICIAL OR ADMINISTRATIVE PROCEEDINGS.

(1) PERMITTED DISCLOSURES. A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:

- (i) in response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized in such order; or
- (ii) in response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:

(A) the covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or

(B) the covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(5) of this section.

STATUTORY PROVISIONS INVOLVED (CONT.)

WISCONSIN STATUTE SECTION 146.82 CONFIDENTIALITY OF PATIENT HEALTH CARE RECORDS.

(1) CONFIDENTIALITY. All patient health care records shall remain confidential. Patient health care records may be released only to the persons designated in this section or to other persons with the informed consent of the patient or of a person authorized by the patient. This subsection does not prohibit reports made in compliance with § 252.12(2), 255.40, or 979.01; records generated and disclosed to the control substances board pursuant to § 961.385; testimony authorized under § 905.04(4)(h); or releases made for purposes of health care operations, as defined in 45 C.F.R. 164.501, and as authorized under 45 C.F.R. 164, subpart E.

(2) ACCESS WITHOUT INFORMED CONSENT.

(2) NOTWITHSTANDING SUB. (1), PATIENT HEALTH CARE RECORDS SHALL BE RELEASED UPON REQUEST WITHOUT INFORMED CONSENT IN THE FOLLOWING CIRCUMSTANCES:

4. UNDER A LAWFUL ORDER OF A COURT OF RECORD.

20. IF THE PATIENT HEALTH CARE RECORDS DO NOT CONTAIN INFORMATION AND THE CIRCUMSTANCES OF THE RELEASE DO NOT PROVIDE INFORMATION THAT WOULD PERMIT THE IDENTIFICATION OF THE PATIENT.

WISCONSIN STATUTE SECTION 905.04 PHYSICIAN-PATIENT, REGISTERED NURSE-PATIENT.

(2) GENERAL RULE OF PRIVILEGE. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental, or emotional condition, among the patient, the patient's physician, the patient's registered nurse, the patient's chiropractor, the patient's psychologist, the patient's social worker, the patient's marriage and family therapist, the patient's professional counselor or persons, including members of the patient's family, who are participating

STATUTORY PROVISIONS INVOLVED (CONT.)

IN THE DIAGNOSIS OR TREATMENT UNDER THE DIRECTION OF THE PHYSICIAN, REGISTERED NURSE, CHIROPRACTOR, PSYCHOLOGIST, SOCIAL WORKER, MARRIAGE AND FAMILY THERAPIST, OR PROFESSIONAL COUNSELOR.

UNITED STATES CONSTITUTION AMENDMENT 1. RELIGIOUS AND POLITICAL FREEDOM. CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES.

STATEMENT OF THE CASE

THIS CASE INVOLVES THE CONSTITUTIONALITY OF A STATUTE ENACTED BY CONGRESS, THE CORRECT INTERPRETATION AND APPLICATION OF A STATUTE, PRISONER'S RIGHT TO CONFIDENTIALITY OF PROTECTED HEALTH INFORMATION, PRISONER'S RIGHT TO PETITION THE COURTS FOR REDRESS OF GRIEVANCES, WHETHER PRISONER SATISFIES THE EXHAUSTION REQUIREMENTS OF A STATE WHEN THEY FOLLOW ALL PROCEDURAL RULES ESTABLISHED BY THAT STATE FOR DOING SO, AND THE CORRECT SUMMARY JUDGMENT STANDARD FOR CASES INVOLVING EXHAUSTION.

IN 2016 PETITIONER FILED AN ACTION ALLEGING THAT THE RESPONDENTS VIOLATED HIS EIGHTH AMENDMENT CONSTITUTIONAL RIGHT TO RECEIVE MEDICAL CARE WHEN THEY DISCONTINUED ALL PAIN MEDICATIONS FOR HIS CHRONIC ILLMENTS AND CONDITIONS, AND THEREAFTER COMPLETELY REFUSING TO PROVIDE ANY MEDICAL CARE FOR HIS CHRONIC ILLNESSES. PETITIONER ALSO APPLIED FOR AN INJUNCTION TO REQUIRE THE RESPONDENTS TO TREAT HIS CHRONIC ILLNESSES. PETITIONER HAS HAD 3 OR MORE ACTIONS DISMISSED FOR

FAILURE TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED AND WAS REQUIRED TO REQUEST PERMISSION TO PROCEED IN FORMA PAUPERIS UNDER THE "IMMINENT DANGER" EXCEPTION OF 28 U.S.C. § 1915(G). ON JANUARY 13, 2017 THE DISTRICT COURT ALLOWED PETITIONER TO PROCEED IN FORMA PAUPERIS AND ORDERED THE RESPONDENTS TO RESPOND TO HIS APPLICATION FOR INJUNCTION, BUT DID NOT ORDER THAT THE RESPONDENTS HAVE ACCESS TO PETITIONER'S PROTECTED HEALTH INFORMATION. THE RESPONDENTS DID NOT SEND A REQUEST TO PETITIONER FOR AUTHORIZATION TO OBTAIN HIS PROTECTED HEALTH INFORMATION UNTIL FEBRUARY 8, 2017, (APPENDIX AT 9), AND PETITIONER DID NOT GIVE THEM AUTHORIZATION TO ACCESS HIS MEDICAL RECORDS UNTIL FEBRUARY 10, 2017, (APPENDIX AT 7-8), BUT ON FEBRUARY 3, 2017, BEFORE ANY ACCESS TO PETITIONER'S MEDICAL RECORDS WERE REQUESTED, THE RESPONDENTS FILED A BRIEF IN OPPOSITION TO PETITIONER'S REQUEST FOR INJUNCTION, (APPENDIX AT 1-2), AND AN AFFIDAVIT FROM HIS TREATING PHYSICIAN THAT CONTAINED HIS PROTECTED HEALTH INFORMATION (PHI). (APPENDIX AT 3-6). ON OCTOBER 6, 2017 THE RESPONDENTS MOVED FOR SUMMARY JUDGMENT ALLEGING THAT PETITIONER FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES BY PROVIDING MULTIPLE ISSUES IN THE DETAILED SECTION OF HIS GRIEVANCE, WHICH THEY CLAIM VIOLATES THE RULES OF EXHAUSTION. THE DISTRICT COURT ACCEPTED ALL OF THE RESPONDENTS' STATEMENTS AS THE TRUTH, MADE ARGUMENTS FOR THEM THAT THEY DID NOT MAKE, DISREGARDED AND DOWNPLAYED PETITIONER'S EVIDENCE, AND GRANTED SUMMARY JUDGMENT TO THE RESPONDENTS. (APPENDIX AT 10-19). THE DISTRICT COURT ALSO DENIED A MOTION FOR SANCTIONS THAT PETITIONER FILED AGAINST THE RESPONDENTS FOR OBTAINING AND RELEASING HIS MEDICAL RECORDS WITHOUT AUTHORIZATION OR A COURT ORDER PERMITTING THEM TO DO SO. *id.* ON NOVEMBER 11, 2018 PETITIONER FILED A NOTICE OF APPEAL IN THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ON NOVEMBER 13, 2018, THE COURT OF APPEALS ORDERED PETITIONER TO PAY THE FILING FEE FOR THE APPEAL OR HAVE IT DISMISSED. PETITIONER SENT A LETTER TO THE COURT OF APPEALS EXPLAINING THAT HE WAS ALLOWED TO PROCEED UNDER THE "IMMINENT DANGER" EXCEPTION OF 28 U.S.C. § 1915(3) IN THE DISTRICT COURT AND STATING THAT THEY HAVE TO DETERMINE WHETHER HE CAN PROCEED IN FORMA PAUPERIS UNDER THE "IMMINENT DANGER" EXCEPTION OF 28 U.S.C. § 1915(3).

ON FEBRUARY 4, 2019, THE COURT OF APPEALS FOUND THAT PETITIONER SATISFIED THE IMMINENT DANGER EXCEPTION BUT STILL DID NOT ALLOW HIM TO PROCEED IN FORMA PAUPERIS ON APPEAL STATING THAT HE HAD NOT IDENTIFIED A GOOD FAITH ISSUE THAT THE DISTRICT JUDGE ERRED IN GRANTING SUMMARY JUDGMENT TO THE RESPONDENTS.

(APPENDIX A 20-21). THE COURT OF APPEALS THEN ORDERED THAT PETITIONER PAY THE FILING FEE AND ALL OTHER OUTSTANDING FEES IN THE DISTRICT COURT AND THE COURT OF APPEALS WITHIN 14 DAYS OR HAVE THE APPEAL DISMISSED FOR FAILURE TO PROSECUTE WHILE, ALSO, REPEATING THAT IT HAD ORDERED THAT UNTIL PETITIONER HAS PAID IN FULL ALL OUTSTANDING FEES IN BOTH THE DISTRICT COURT AND THE COURT OF APPEALS, THE CLERKS OF ALL FEDERAL COURTS IN [THE SEVENTH] CIRCUIT WILL RETURN UNFILED ANY PAPERS SUBMITTED EITHER DIRECTLY OR INDIRECTLY BY [PETITIONER] OR ON HIS BEHALF." id. A 21.

ON MARCH 6, 2019 THE COURT OF APPEALS DISMISSED PETITIONER'S APPEAL, (APPENDIX A 22), AND ON MARCH 11, 2019 DENIED HIS MOTION FOR RECONSIDERATION. (APPENDIX A 23). THE DEADLINE FOR FILING A PETITION FOR WRIT OF CERTIORARI IN THIS COURT WAS JUNE 9, 2019. ON MAY 31, 2019 PETITIONER REQUESTED A 60 DAY EXTENSION TO FILE HIS PETITION, AND ON JUNE 14, 2019 JUSTICE KAVANAUGH GRANTED HIS REQUEST ORDERING THAT THE TIME WAS EXTENDED TO AND INCLUDING AUGUST 8, 2019. (APPENDIX A 24).

REASONS FOR GRANTING PETITION FOR WRIT OF CERTIORARI

- A. CONGRESS HAS ACTED BEYOND ITS AUTHORITY BY IMPLEMENTING AND ENACTING LEGISLATION, SPECIFICALLY A STATUTE, WHICH ABRIDGES, CURTAILS, CHILLS, AND TRAMPLES INDIGENT PRISONERS FIRST AMENDMENT CONSTITUTIONAL RIGHT TO PETITION THE GOVERNMENT FOR ADDRESS OF THEIR GRIEVANCES AND AUTOMATICALLY SHUTS THE COURTHOUSE DOORS FOR MANY OF THEM REGARDLESS OF THE MERITS OF THEIR CLAIMS.
- B. REAL AND SIGNIFICANT QUESTIONS OF FEDERAL AND STATE STATUTORY AND CONSTITUTIONAL LAWS ARE PRESENTED.
- C. THIS PETITION DEMONSTRATES A NEED FOR THIS COURT TO CONSIDER ESTABLISHING, IMPLEMENTING AND/OR CHANGING A POLICY WITHIN THIS COURT'S AUTHORITY.
- D. ANY DECISION BY THIS COURT WILL HELP DEVELOP, CLARIFY, AND/OR HARMONIZE THE LAWS.
- E. THIS CASE CALLS FOR THE APPLICATION OF A NEW DOCTRINE RATHER THAN MERELY THE APPLICATION OF WELL SETTLED PRINCIPLES TO THE FACTUAL SITUATIONS.
- F. THE QUESTIONS PRESENTED ARE NOVEL ONES, THE RESOLUTION OF WHICH WILL HAVE NATION-WIDE IMPACT.
- G. THE QUESTIONS PRESENTED ARE FACTUAL QUESTIONS OF LAW OF THE TYPE THAT IS LIKELY TO RECUR UNLESS RESOLVED BY THIS COURT.
- H. THE DISTRICT COURT AND CIRCUIT COURT DECISIONS CONFLICT WITH FEDERAL STATUTES AND RULES.
- I. THE DECISIONS OF THE DISTRICT COURT ARE IN CONFLICT WITH CONTROLLING OPINIONS OF BOTH THIS COURT AND CIRCUIT COURT DECISIONS.
- J. THE DISTRICT COURT AND CIRCUIT COURT DECISIONS ARE IN CONFLICT WITH OPINIONS OF THIS COURT AND OTHER CIRCUIT AND DISTRICT COURT DECISIONS.

1. 28 U.S.C. § 1915(A) is overbroad, unconstitutional, and invalid where Congress has enacted the statute that intentionally chills and violates indigent prisoners' first amendment constitutional rights to petition the courts for redress of their grievances merely because the indigent prisoners have had 3 or more actions dismissed for allegedly failing to state a claim or because their actions were alleged to be frivolous or malicious.

The circuit court's denial of petitioners' request to proceed in forma pauperis on appeal, because he has had 3 or more actions dismissed for failing to state a claim, was made pursuant to 28 U.S.C. § 1915(A), which Congress enacted to direct federal courts to deny indigent prisoners, whom have had 3 or more of their actions dismissed for failure to state a claim, an opportunity to commence an action in those courts. See 28 U.S.C. § 1915(A), *supra*, at 2. This action violates the constitution and is invalid under the first amendment, which holds in relevant part:

"CONGRESS SHALL MAKE NO LAW... RESPECTING... PROHIBITING... OR ABRIDGING... THE RIGHT OF THE PEOPLE... TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES"

UNITED STATES CONST. AMEND. 1, *supra*, at 5. This constitutional amendment makes it extremely clear that Congress has no authority whatsoever to enact legislation abridging the rights of prisoners to petition the courts for redress of their grievances. The amendment's "instruction comes in terms of the mandatory shall, which normally creates an obligation impervious to judicial discretion." LEXICON INC. v MILBERG WEISS BERSHAD HYNES & LERACH, 523 US 26, 35 (1998) (citation omitted), and this court holds that "the first amendment to the constitution prohibits Congress from abridging" the right of

THE PEOPLE TO ASSEMBLE AND TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES . . . AND PROTECTS IT AGAINST ENCROACHMENT BY CONGRESS. THE RIGHT WAS NOT CREATED BY THE AMENDMENT, NEITHER WAS ITS CONTINUANCE GUARANTEED, EXCEPT AS AGAINST CONGRESSIONAL INTERFERENCE." UNITED STATES V. CRUIKSHANK, 92 US 542, 552 (1876). THIS CONSTITUTIONAL PROTECTION AGAINST INTERFERENCE APPLIES TO COURTS ALSO. SEE CITIZENS UNITED V. FEC, 558 US 310, 326, 130 S. CT. 876, 891 (2010) ("COURTS, TOO, ARE BOUND BY THE FIRST AMENDMENT"). EVEN IF THIS COURT ATTEMPTS TO LABEL 28 U.S.C. § 1915(G) AS "REGULATORY," IT STILL WOULD HAVE NO LEGS TO STAND ON WHERE THIS COURT ALSO HOLDS THAT "... REGULATORY MEASURES... NO MATTER HOW SOPHISTICATED, CANNOT BE EMPLOYED IN PURPOSE OR IN EFFECT TO SIFLE, PENALIZE, OR CURB THE EXERCISE OF FIRST AMENDMENT RIGHTS." NAACP V. BURTON, 371 US 415, 439 (1963) (CITATION OMITTED), "FOR IF THE GOVERNMENT COULD DENY A BENEFIT TO A PERSON BECAUSE OF HIS CONSTITUTIONALLY PROTECTED [RIGHT TO PETITION GOVERNMENT FOR REDRESS OF GRIEVANCES], HIS EXERCISE OF THOSE FREEDOMS WOULD IN EFFECT BE PENALIZED AND INHIBITED. THIS WOULD ALLOW THE GOVERNMENT TO PRODUCE A RESULT WHICH [IT] COULD NOT COMMAND DIRECTLY." SPEISER V. RANDALL, 357 US 513, 516 (1958). SUCH INTERFERENCE WITH CONSTITUTIONAL RIGHTS IS IMPELMISSIBLE." PERAY V. SINDERMAN, 408 US 593, 597, 92 S. CT. 2694, 2697 (1972).

"THIS INVOLVES SOLELY A QUESTION OF CONSTITUTIONAL INTERPRETATION, A FUNCTION ULTIMATELY THE RESPONSIBILITY OF THIS COURT." ELROD V. BURNS, 427 US 347, 352, 96 S. CT. 2673, 2679 (1976) (CITATION OMITTED). THIS ISSUE WARRANTS THE COURT'S ATTENTION, AND THIS COURT HAS HELD:

"IT IS MOST TRUE THAT THIS COURT WILL NOT TAKE JURISDICTION IF IT SHOULD NOT; BUT IT IS EQUALLY TRUE THAT IT MUST TAKE JURISDICTION IF IT SHOULD. THE JUDICIARY CANNOT, AS THE LEGISLATURE MAY, AVOID A MEASURE BECAUSE IT APPROACHES THE CONTAINES OF THE CONSTITUTION. WE CANNOT PASS IT BY BECAUSE IT IS DOUBTFUL. WITH WHATEVER DOUBTS,

with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is exercise our best judgment, and conscientiously perform our duty."

EX PARTE YOUNG, 209 US 123, 143 (1908). "ON THE OTHER HAND, WE MUST REMEMBER THAT, WHEN THE VALIDITY OF AN ACT OF CONGRESS IS DRAWN IN QUESTION, AND... A SERIOUS DOUBT OF CONSTITUTIONALITY IS RAISED, IT IS A CARDINAL PRINCIPLE THAT THIS COURT WILL FIRST ASCERTAIN WHETHER A CONSTRUCTION OF THE STATUTE IS FAIRLY POSSIBLE BY WHICH THE QUESTION MAY BE AVOIDED." UNITED STATES V THIRTY-SEVEN (37) PHOTOGRAPHS, 402 US 363, 369 (1971) (CITATIONS OMITTED).

THE MORE IMPORTANT REASON THAT THIS COURT SHOULD DECIDE THIS ISSUE IS "ACCESS TO THE COURTS BY PRISONERS" IS "CLEARLY A MATTER OF PUBLIC CONCERN." HUNTER V HEATH, 95 F. SUPP. 2d. 1140, 1152 (D. OR. 2000). "ANY DISCUSSION OF THE RIGHTS OF INMATES MUST BEGIN WITH THE WELL-ESTABLISHED PRINCIPLE THAT AN INMATE, WHETHER ALREADY CONVICTED OR MERELY DETAINED PENDING TRIAL, REMAINS ALL THE RIGHTS OF AN ORDINARY CITIZEN EXCEPT THOSE EXPRESSLY, OR BY NECESSARY IMPLICATION, TAKEN AWAY FROM HIM BY LAW." MILLER ET AL V CARSON ET AL, 401 F. SUPP. 835, 865 (M.D. FLA. 1975) (CITATIONS OMITTED) AFF'D 563 F.2d. 741 (5th CIR. 1977).

AS THIS COURT HAS STATED: "[P]RISONERS IN PRISON, LIKE OTHER INDIVIDUALS, HAVE A RIGHT TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES WHICH, OF COURSE, INCLUDES ACCESS TO THE COURTS FOR THE PURPOSE OF PRESENTING THEIR COMPLAINTS." CRUZ V BERO, 405 US 319, 321 (1972) (CITATION OMITTED). "FILING A COMPLAINT IN COURT IS A FORM OF PETITIONING ACTIVITY...." MCDONALD V SMITH, 472 US 479, 484 (1985). "A PRISON INMATE'S RIGHT OF ACCESS TO THE COURTS IS THE MOST FUNDAMENTAL RIGHT

he or she holds. All other rights of an inmates are illusory without it, being entirely dependent for their existence on the whim or caprice of the prison warden. "Demahoy v Cullen, 855 F.2d. 442, 446 (7th Cir. 1988) (citation omitted). "Prisoner grievances, unless frivolous, concerning the conditions in which they are being confined are deemed petitions for redress of grievances and thus are protected by the first amendment." Hasan v DOL, 400 F.3d. 1001, 1005 (7th Cir. 2005). "When one files a petition one is addressing government and asking government to fix what, allegedly, government has broken or has failed in its duty to repair." Foraker v Chaffinch, 501 F.3d. 231, 236 (3rd Cir. 2007) (quoting Connick v Myers, 461 US 438, 442 (1983)). This court has clearly stated that "constitutional protection extends to genuine grievances, and the genuineness of a grievance does not turn on whether it succeeds." Belk & K Constr. Co. v NLRB, 536 US 516, 532 (2002). "As long as plaintiff's purpose is to stop conduct he reasonably believes is illegal, petitioning is genuine both objectively and subjectively." Id. at 534 (citation omitted). When prisoners have their constitutional right to petition the courts for redress of their grievances taken away from them because Congress enacted an arbitrary statute that sweeps all prisoners (whether good or bad, sane or insane, or genuine or a goofball that simply want to harass prison staff) into the same category, Congress has intentionally violated the first amendment by denying all of them access to the courts simply because they have had 3 or more actions dismissed. "When Congress finds a problem exists, [this court] must give that finding due deference, but Congress may not choose an unconstitutional remedy." Citizens United, 538 US, at 361, 130 S.Ct. at 911. "Denying a prisoner access to the courts violates the first amendment." Snyder v Nolan, 380 F.3d. 279, 290 (7th Cir. 2004) (citing Bill Johnson's Rest. Inc. v NLRB, 461 US 731, 741 (1983)). This court must decide this issue and strike down 28 U.S.C. § 1915(a) as unconstitutional,

BECAUSE "THE LOSS OF FIRST AMENDMENT FREEDOMS, FOR EVEN MINIMAL PERIODS OF TIME, UNQUESTIONABLY CONSTITUTES IRREPARABLE INJURY."
ELROD V BURENS, 427 US 347, 373-374, 96 S.Ct. 2673, 2690 (1976) (CITATION OMITTED).

2. CIRCUIT COURT ERRED AND ABUSED ITS DISCRETION WHEN IT FOUND THAT PETITIONER SATISFIED THE "IMMINENT DANGER" EXCEPTION OF 28 U.S.C. § 1915(A), BUT STILL DENIED HIM LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL AND ORDERED THE CLERKS OF THE COURTS NOT TO ACCEPT ANY DOCUMENTS FROM PETITIONER UNTIL HIS PREVIOUS FILING FEES ARE PAID IN FULL.

SINCE PETITIONER HAS HAD 3 OR MORE ACTIONS DISMISSED FOR FAILURE TO STATE A CLAIM, HE CAN ONLY FILE AN ACTION ALLEGING THAT HE IS IN IMMINENT DANGER OF SUFFERING A SERIOUS PHYSICAL INJURY, PURSUANT TO 28 U.S.C. § 1915(A), IF HE WANTS TO PROCEED WITH HIS ACTION IN FORMA PAUPERIS. THAT INCLUDES APPEALS ALSO. SEE 28 U.S.C. § 1915(A), SUPRA, AT 2. THE CIRCUIT COURT IN THIS ACTION, WHEN PETITIONER ATTEMPTED TO APPEAL THE DECISION OF THE DISTRICT COURT, FOUND THAT HE SATISFIED THE "IMMINENT DANGER" EXCEPTION OF 28 U.S.C. § 1915(A), BUT STILL DENIED HIS REQUEST TO PROCEED IN FORMA PAUPERIS ON APPEAL STATING "ALTHOUGH WE CONCLUDE THAT WALKER HAS SATISFIED THE IMMINENT DANGER REQUIREMENT IN § 1915(A), HE HAS NOT IDENTIFIED A GOOD FAITH ISSUE THAT THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT TO THE DEFENDANTS." (APPENDIX AT 21). THE COURT'S DECISIONS ARE ARBITRARY AND CONFLICTS WITH, BOTH, THE STATUTE AND ITS OWN PRECEDENT. FIRST, ONCE THE CIRCUIT COURT FOUND THAT PETITIONER SATISFIED THE "IMMINENT DANGER" EXCEPTION OF 28 U.S.C. § 1915(A), HE SHOULD HAVE BEEN ALLOWED TO PROCEED ON HIS APPEAL IN FORMA PAUPERIS. BY ITS TERMS, § 1915(A) PROHIBITS A PRISONER FROM PROCEEDING IN FORMA PAUPERIS ON APPEAL IF THE PRISONER HAS THREE STRIKES UNLESS THE

prisoner is under imminent danger of serious physical injury." Williams v. Paramo, 775 F.3d 1182, 1188 (9th Cir. 2015).

SECOND, THE COURT'S REASON FOR DENYING PETITIONER'S REQUEST TO PROCEED IN FORMA PAUPERIS ON APPEAL IS UNREASONABLE, CONFLICTS WITH ITS OWN PRECEDENT, AND DOES NOT EXIST IN THE LAW. ALTHOUGH "A... COURT HAS WIDE DISCRETION IN DENYING AN APPLICATION TO PROCEED IFP UNDER 28 U.S.C. § 1915. ... HOWEVER, IN DENYING SUCH APPLICATIONS A COURT MUST NOT ACT ARBITRARILY. NOR MAY IT DENY THE APPLICATION ON ERRONEOUS GROUNDS." MARTINEZ v. KRISTI KLEANERS, INC., 364 F.3d 1305, 1306-1307 (11th Cir. 2004) (CITATIONS OMITTED). PETITIONER DOES NOT HAVE TO IDENTIFY A GOOD FAITH ISSUE OR ANY OTHER ISSUE WHEN HE FILES HIS NOTICE OF APPEAL AND THE PRECEDENCE IN THIS CIRCUIT IS THAT "A NOTICE OF APPEAL IS NOT SUPPOSE TO CONTAIN GROUNDS OR ARGUMENT." CELSKI v. EDWARDS, 164 F.3d 396, 398 (7th Cir. 1999) (CITING FED. R. APP. P. 3(c) AND FORMS APP. FORM 1; SMITH v. BARAY, 502 US 244, 247-49, 112 S.Ct. 678 (1992) (OTHER CITATION OMITTED)). CLEARLY, THE COURT'S REASONS FOR DENYING PETITIONER'S REQUEST TO PROCEED IN FORMA ON APPEAL ARE ARBITRARY AND UNREASONABLE, WHERE THE CIRCUIT COURT ALSO HELD:

"SINCE A PLAINTIFF WHO WAS ALLOWED TO PROCEED IN FORMA PAUPERIS IN THE DISTRICT COURT RETAINS HIS IFP STATUS IN THE COURT OF APPEALS UNLESS THERE IS A CERTIFICATION OF BAD FAITH, FED. R. APP. P. 24(2)(3), NO INFERENCE OF BAD FAITH CAN BE DRAWN FROM THE PLAINTIFF'S FAILURE, AT THE TIME HE FILED HIS NOTICE OF APPEAL, TO GIVE REASONS WHY HIS APPEAL IS IN GOOD FAITH."

CELSKI, 164 F.3d at 398. THE CIRCUIT COURT SIMPLY CONJURED UP AN IMAGINARY REASON TO DENY PETITIONER APPELLATE REVIEW OF THE DISTRICT COURT'S OUTRAGEOUS AND ERRONEOUS DECISIONS.

FINALLY, THE COURT'S ORDER DIRECTING ALL CLERKS IN THE CIRCUIT TO RETURN UNFILED ANY PAPERS SUBMITTED EITHER DIRECTLY OR INDIRECTLY

by PETITIONER or on his behalf VIOLATES THE PROVISIONS OF 28 U.S.C. § 1915 (2) WHICH ONLY PROHIBITS A PRISONER FROM BRINGING A CIVIL ACTION OR APPEAL IN FEDERAL COURTS IF THEY HAVE 3 OR MORE STRIKES AGAINST THEM UNLESS THEY ARE UNDER IMMINENT DANGER OF SERIOUS PHYSICAL INJURY. SEE 28 U.S.C. § 1915 (2), SUPRA, AT 2. THE STATUTE GOES NO FURTHER AND DOES NOT PERMIT ANY FEDERAL COURT TO REFUSE TO ACCEPT DOCUMENTS FROM A PRISONER WHICH ALLEGES THAT THEY ARE IN IMMINENT DANGER OF SUFFERING SERIOUS PHYSICAL INJURY. "THE COURT MUST TAKE THE STATUTE AS IT FINDS IT." REITER V SONOTONE CORP., 442 US 330, 344 (1979), "AND APPLY IT AS WRITTEN." BURRAGE V UNITED STATES, — US —, 134 S. CT. 886, 892 (2014). WHERE, AS HERE, THE STATUTE'S LANGUAGE IS PLAIN, THE SOLE FUNCTION OF THE COURT IS TO ENFORCE IT ACCORDING TO ITS TERMS." UNITED STATES V RON PAID ENTERPRISES, INC., 489 US 235, 241 (1989) (CITATION OMITTED). "CONGRESS EXPRESSES ITS PURPOSE BY WORDS. IT IS FOR [COURTS] TO ASCERTAIN -- NEITHER TO ADD NOR TO SUBTRACT, NEITHER TO DELETE NOR TO DISTORT." 62 CASES OF TAM V UNITED STATES, 340 US 593, 596 (1951). "CONGRESS WROTE THE STATUTE IT WROTE, MEANING A STATUTE GOING SO FAR AND NO FURTHER." MICHIGAN V BAY MILLS INDIAN CMTY., — US —, 134 S. CT. 2024, 2033-34 (2014) (CITATION OMITTED). THIS COURT SHOULD CONSIDER THESE ISSUES AND DETERMINE WHETHER THE CIRCUIT COURT'S ACTIONS AND DECISIONS WERE LAWFUL, CORRECT, OR INCORRECT AND UNREASONABLE.

3. DISTRICT COURT ERRED AND ABUSED ITS DISCRETION WHEN, DURING SUMMARY JUDGMENT PROCEEDINGS, IT WEIGHED, AND MADE CREDIBILITY DETERMINATIONS REGARDING, THE EVIDENCE AND COMPLETELY DISREGARDED OR DOWN-PLAYED PETITIONER'S DOCUMENTARY EVIDENCE WHICH CONTRADICTS AND IS CONTRARY TO THE RESPONDENTS' ALLEGATIONS CONTAINED IN THEIR DOCUMENTS.

IN THIS INSTANCE, THE DISTRICT COURT GRANTED SUMMARY JUDGMENT TO THE RESPONDENTS STATING THAT, BY PETITIONER PROVIDING THE DETAILS

of his multiple ailments and conditions in the details section of his prison grievance, by raising his ailments and conditions, and stating that the medical staff and special need committee refused to treat and accommodate his ailments and conditions, then petitioner failed to comply with the administrative procedures, and thereby failed to exhaust his administrative remedies. (Appendix A 10-19). Here, Wisconsin Administrative Code Chapter DOC 310.09 sets out the procedures by which a complaint can be filed and holds:

- (1) complaints filed by an inmate or a group of inmates shall:
- (a) be typed or written legibly on forms supplied for that purpose.
- (b) be signed by the inmate.
- (c) not contain language that is abusive, obscene, profane, or threatens others, unless such language is necessary to describe the factual basis of the substance of the complaint.
- (d) be filed only under the name by which the inmate was committed to the department or the legal name if an inmate has had a name change.
- (e) contain only one issue per complaint and shall clearly identify the issue.

Wisconsin Administrative Code Chapter DOC 310.09(1). None of the sections in Wisconsin Administrative Code (Wis. Adm. Code) § DOC 310.09(1) require prisoners to provide details of their complaints when submitting them to the institution complaint department. "Wisconsin Admin. Code requires only that inmate complaints be: (1) typed or written legibly on forms; (2) signed; (3) free of abusive or profane language; (4) filed under the inmate's proper name; and (5) related to only one issue." Wisconsin has not established any other rule or regulation prescribing the contents of a grievance or the necessary degree of factual particularity that must be provided in an inmate complaint." Lindell v O'Donnell, 2005 U.S. Dist. Lexis 24767, * 58-59 (W.D. Wis. 2005).

Wisconsin Department of Corrections (DOC) Division of Adult Institutions (DAI) Policy and Procedure (P&P) Number 500.10.01 holds that "special needs committees" must be comprised of qualified health care professionals, including the responsible health authority that

SUPERVISES THEM, AND A SUPPORTING STAFF MEMBER. THIS WAS POINTED OUT TO THE DISTRICT COURT. WISCONSIN DOC DAZ P&P NUMBER 500.10.01 ALSO DEFINES "HEALTH CARE" AS THE SUM OF ALL ACTIONS, PREVENTATIVE AND THERAPEUTIC, TAKEN FOR THE PHYSICAL AND MENTAL WELL-BEING OF A POPULATION. AMONG OTHER ASPECTS, HEALTH CARE INCLUDES MEDICAL, DENTAL, MENTAL HEALTH AND DIETETIC SERVICES AND ENVIRONMENTAL CONDITIONS. THIS WAS ALSO POINTED OUT TO THE DISTRICT COURT. THE DOC-400 INMATE COMPLAINT FORMS CONTAIN A SECTION TITLED "BRIEFLY STATE WHO OR WHAT IS THE ONE ISSUE OF THIS COMPLAINT," AND IN THIS SECTION PETITIONER WROTE THAT HIS ONE ISSUE WAS "GBCI MEDICAL STAFF AND SPECIAL NEEDS COMMITTEE HAS REFUSED TO TREAT AND ACCOMMODATE MY CHRONIC AILMENTS AND CONDITIONS." THE SAME FORM ALSO CONTAINS A SECTION TITLED "WHAT ARE THE DETAILS SURROUNDING THIS COMPLAINT?" AND ALTHOUGH THE ADMINISTRATIVE RULES DO NOT REQUIRE SUCH DETAILS, THEY DO REQUIRE PRISONERS TO SUBMIT THEIR COMPLAINTS ON THE FORMS PROVIDED FOR SUCH. WISCONSIN ADMIN CODE CHAPTER DOC 310.09(1)(2), SUPRA, AT 16.

THE RESPONDENTS FILED THEIR SUMMARY JUDGMENT DOCUMENTS, NOT ARGUING THAT THE ONE ISSUE WRITTEN BY PETITIONER WAS NOT IN ACCORDANCE WITH THE ADMINISTRATIVE RULES, BUT THAT SINCE HE PROVIDED THE DETAILS OF HIS CONDITIONS AND AILMENTS, AS MANDATED BY THE COMPLAINT FORMS THEMSELVES, HIS COMPLAINT ALLEGEDLY VIOLATED THE RULES. THE DISTRICT COURT SIMPLY TOOK THEIR VERSION OF THE FACTS AS THE TRUTH AND DISREGARDED ALL OF THE FACTS AND EVIDENCE SUBMITTED BY PETITIONER AND DOWNPLAYED THE SAME. THE DISTRICT COURT ALSO MADE ARGUMENTS FOR THE RESPONDENTS REGARDING EXHAUSTION AND THE EVIDENCE THAT THE RESPONDENTS NEVER MADE, WHICH IT COULD NOT DO. THE DISTRICT COURT DISREGARDED THIS COURT'S HOLDING THAT THE CLEAR-AND-CONVINCING STANDARD OF PROOF SHOULD BE TAKEN INTO ACCOUNT IN RULING ON SUMMARY JUDGMENT DOES NOT DENIGRATE THE ROLE OF THE JURY. IT BY NO MEANS AUTHORIZES TRIALS ON AFFIDAVITS. CREDIBILITY DETERMINATIONS, THE WEIGHING OF EVIDENCE, AND THE DRAWING OF LEGITIMATE INFERENCES FROM THE FACTS ARE JURY FUNCTIONS, NOT THOSE OF A JUDGE, WHETHER

HE IS RULING ON A MOTION FOR SUMMARY JUDGMENT OR FOR A DIRECTED VERDICT. THE EVIDENCE OF THE NON-MOVANT IS TO BE BELIEVED, AND ALL JUSTIFIABLE INFERENCES ARE TO BE DRAWN IN HIS FAVOR." ANDERSON V LIBRARY LOBBY INC., 477 US 242, 255 (1986) (CITATION OMITTED). ALSO,

"[D]ISTRICT COURTS SHOULD NOT ENGAGE IN SEARCHING, SKEPTICAL ANALYSES OF PARTIES TESTIMONY IN OPPOSITION TO SUMMARY JUDGMENT." BENTAS V THUPIN 816 F.3d. 214, 221 (2ND CIR. 2016) (CITATION OMITTED). WHILE DISTRICT JUDGE MAY ANALYZE AND DISSECT EVIDENCE, HE MAY NOT EITHER DISTORT IT OR ADD TO IT. SEE U.S. V GONZALES-TORRES, 980 F.2d. 788 (1ST CIR. 1992), "AND THE COURT MAY NOT DOWNPLAY HIS EVIDENCE, OR CONDUCT A 'PAPER TRIAL' ON THE MERITS OF HIS CLAIM." FEED V McBRIDE, 178 F.3d. 849, 852 (7TH CIR. 1999) (CITATIONS OMITTED). FURTHERMORE, "THE COURT IS NOT PERMITTED TO ACT AS THE LITIGANTS' ADVOCATE AND CONSTRUCT LEGAL ARGUMENTS THAT THE [PARTY] HAS NOT MADE." SCOTT V WHITE, 126 F. Supp. 3d. 665, 671 (E.D. VA. 2014) (CITATION OMITTED). HERE, THE JUDGE DISREGARDED AND IGNORED THE ADMINISTRATIVE RULES THEN CONDUCTED A "COMB AND SEARCH" FOR EVIDENCE TO SUPPORT THE RESPONDENT'S MOTION, AND FINDING NONE IN THIS INSTANCE, AND MUCH ELSE, SIMPLY TILTED AT A WINDMILL OF ITS OWN INVENTION. PETITIONER FOLLOWED ALL ADMINISTRATIVE RULES AND THE INSTRUCTIONS ON THE INMATE COMPLAINT FORMS WHEN HE FILED HIS GRIEVANCES, AND THE DISTRICT COURT SHOULD NOT HAVE FOUND THAT HE FAILED TO EXHAUST HIS REMEDIES WHERE THIS COURT HOLDS THAT "AN ADMINISTRATIVE PROCEDURE IS UNAVAILABLE WHEN (DESPITE WHAT REGULATIONS OR GUIDANCE MATERIALS MAY PROMISE) IT OPERATES AS A SIMPLE DEAD END WITH OFFICERS UNABLE OR CONSISTENTLY UNWILLING TO PROVIDE RELIEF TO AGGRAIVED INMATES." ROSS V BLAKE, — US —, 136 S.Ct. 1850, 1859 (2016) (CITATION OMITTED), AND "WHEN PRISON ADMINISTRATIONS THWART INMATES FROM TAKING ADVANTAGE OF A GRIEVANCE PROCESS THROUGH MACHINATIONS, MISREPRESENTATIONS, OR INTIMIDATION." Id. At —, 136 S.Ct. At 1860. "LIKEWISE, A PLAINTIFF HAS TAKEN ADVANTAGE OF THE AVAILABLE REMEDIES WHERE THE INMATE SATISFIES ALL OF THE ADMINISTRATIVE REQUIREMENTS BUT HAS HIS GRIEVANCE DISMISSED FOR A REASON AS TO WHICH THE ADMINISTRATIVE RULEBOOK IS SILENT." HICKS V IRVIN, 2010 U.S. DIST. LEXIS. 68262, * 17-18 (N.D. ILL. 2010) (CITATIONS OMITTED).

4. A PRISONER SATISFIES THE REQUIREMENTS OF THE PRISON LITIGATION REFORM ACT WHEN THEY, BOTH FOLLOW THE PROCEDURAL RULES ESTABLISHED BY THE STATE FOR EXHAUSTING THEIR ADMINISTRATIVE REMEDIES AND COMPLETE THE FORMS SUPPLIED BY THE DEPARTMENT OF CORRECTIONS FOR THAT PURPOSE IN ACCORDANCE WITH THE INSTRUCTIONS ON THE INMATE COMPLAINT FORMS.

THIS ISSUE IS ACTUALLY ARGUED IN THE THIRD ISSUE OF THIS PETITION, AND PETITIONER INCORPORATES THE ARGUMENTS AND FACTS FROM ISSUE NUMBER 3 HEREIN AS IT WRITTEN AND SET FORTH AS A SEPARATE ARGUMENT.

5. PRISONERS DO NOT AUTOMATICALLY WAIVE THEIR RIGHT TO MEDICAL PRIVACY OR PROVIDER-PATIENT PRIVILEGE WHEN THEY FILE AN ACTION ALLEGING VIOLATION OF THEIR EIGHTH AMENDMENT RIGHT TO RECEIVE MEDICAL CARE FROM PRISON OFFICIALS.

PETITIONER FILED HIS ACTION, IN THE DISTRICT COURT, ALLEGING VIOLATIONS OF HIS EIGHTH AMENDMENT RIGHT TO RECEIVE MEDICAL TREATMENT FROM THE PRISON'S MEDICAL STAFF. THE DISTRICT COURT ALLOWED HIM TO PROCEED IN FORMA PAUPERIS. PETITIONER APPLIED FOR A PRELIMINARY INJUNCTION REQUESTING THAT THE DISTRICT COURT ENJOIN THE RESPONDENTS TO PROVIDE HIM APPROPRIATE MEDICAL CARE AND THE COURT ORDERED THE RESPONDENTS TO RESPOND TO THE REQUEST. THE RESPONDENTS DID NOT SEND A REQUEST TO PETITIONER FOR AUTHORIZATION TO HAVE ACCESS TO, AND OBTAIN HIS, PROTECTED HEALTH INFORMATION (PHI) UNTIL FEBRUARY 8, 2017. (APPENDIX A-9), AND PETITIONER DID NOT GIVE THEM AUTHORIZATION TO ACCESS AND OBTAIN HIS PHI UNTIL FEBRUARY 10, 2017. (APPENDIX A-7-8). THE RESPONDENTS HAD ALREADY CONTACTED PETITIONER'S PHYSICIAN IN THE MONTH OF JANUARY 2017 AND HAD HIM PROVIDE THEM WITH INFORMATION REGARDING PETITIONER'S HEALTH, ILLNESSES AND CONDITIONS THAT WERE NOT PART OF THE ACTION, AND TREATMENT FOR THOSE ILLNESSES AND CONDITIONS THAT WERE NOT PART OF THAT ACTION. (APPENDIX A-3-6), WHICH THEY FILED WITH THE COURT AND, THEREBY, RELEASED TO THE GENERAL PUBLIC ON FEBRUARY 3, 2017. (APPENDIX A-1). AS THEIR REASON FOR CONTACTING PETITIONER'S PHYSICIANS WITHOUT

SEEKING AN ORDER FROM THE COURT OR AUTHORIZATION FROM PETITIONER TO HAVE ACCESS TO AND OBTAIN PETITIONER'S PHI WAS THAT THE ACTION HAD RECENTLY BEEN FILED AND THAT THE RESPONDENTS HAD NOT HAD AN OPPORTUNITY TO ANSWER THE COMPLAINT, NOR TO OBTAIN A MEDICAL RELEASE, SO THAT IN ORDER TO TIMELY RESPOND TO THE COURT'S ORDER FOR RESPONSE, THEY CONSULTED PETITIONER'S PHYSICIAN. (APPENDIX 1-2). IF THE RESPONDENTS HAD ENOUGH TIME TO CONTACT PETITIONER'S TREATING PHYSICIAN FOR PETITIONER'S PHI, THEY HAD ENOUGH TIME TO CONTACT PETITIONER FOR AUTHORIZATION OR THE COURT FOR AN ORDER TO ACCESS AND OBTAIN THE SAME. 45 C.F.R. § 164.512(e) CREATES A PROCEDURE FOR OBTAINING AUTHORITY TO USE MEDICAL RECORDS IN LITIGATION. NORTHWESTERN MEM'L HOSP. v. ASHCROFT, 362 F.3d 923, 925-26 (7th Cir. 2004).

PETITIONER FILED A MOTION FOR SANCTIONS WITH THE DISTRICT COURT COMPLAINING ABOUT THE VIOLATION AND THE COURT DENIED THE MOTION SAYING:

"HIPAA DOES NOT FURNISH A PRIVATE RIGHT OF ACTION. TO THE EXTENT PLAINTIFF IS ASSERTING THAT HE HAS A CONSTITUTIONAL INTEREST IN PROTECTING THE CONFIDENTIALITY OF HIS MEDICAL RECORDS, HE WAIVED THAT INTEREST WHEN HE FILED SUIT AGAINST DEFENDANTS ALLEGING THAT THEY PROVIDED HIM INADEQUATE MEDICAL CARE. 'THUS HIS MEDICAL RECORDS WOULD BE DISCOVERABLE BY DEFENDANTS BECAUSE THEY WOULD HAVE HIGHLY RELEVANT INFORMATION REGARDING HIS CLAIMS. SEE FED. R. CIV. P. 26(b)(1). TO PROPERLY SECURE SUCH DISCOVERY, DEFENDANTS WOULD HAVE NEEDED A PROTECTIVE ORDER LIMITING WHO COULD REVIEW THE RECORDS AND HOW THEY COULD USE THEM OR A PROPERLY EXECUTED MEDICAL RELEASE FORM. THEY WERE PROVIDED WITH THE LATTER BECAUSE PLAINTIFF'S HANDWRITTEN AUTHORIZATION FOR RELEASE APPEARS TO BLANKET THE ENTIRE TIMELINE FOR THIS CASE AS IT DOES NOT INCLUDE AN AUTHORIZATION EFFECTIVE DATE. DOCKET NO. 55-2 AT 60-61. THUS, DEFENDANTS DID NOT IMPROPERLY OBTAIN PLAINTIFF'S MEDICAL INFORMATION FROM DR. SYED BECAUSE PLAINTIFF AUTHORIZED THE RELEASE."

(APPENDIX AT 11-12) (CITATIONS OMITTED). THE DISTRICT JUDGE CITED NUMEROUS DISTRICT COURT DECISIONS / CASES TO SUPPORT HIS DECISIONS. (APPENDIX AT 12). THE DISTRICT COURT'S DECISIONS ARE WRONG FOR SEVERAL REASONS. FIRST,

PETITIONER DID NOT PROVIDE A HANDWRITTEN AUTHORIZATION THAT BLANKETS THE ENTIRE TIMELINE OF THE ACTION AS THE DISTRICT JUDGE STATES. "THE COURT IS NOT FREE TO MANUFACTURE FACTS OUT OF THIN AIR." SALAHUDDIN v GODDARD, 467 F.3d. 263, 275 (2nd Cir. 2006).

SECOND, MANY CIRCUIT COURTS RECOGNIZE AND HOLD THAT "THE CONSTITUTIONAL RIGHT TO PRIVACY IN ONE'S MEDICAL INFORMATION EXISTS IN PRISON." DOE v DELIE, 257 F.3d. 309, 317 (3rd Cir. 2001) (CITATION OMITTED). "THE FOURTEENTH AMENDMENT PROTECTS AN INMATE'S RIGHT TO MEDICAL PRIVACY, SUBJECT TO LEGITIMATE PENOLOGICAL INTERESTS." Id. AT 323, SEE ALSO CALHOUN v DETELLA, 319 F.3d. 936, 941 (7th Cir. 2003) ("NOMINAL AND PUNITIVE DAMAGES AVAILABLE FOR VIOLATION OF INMATE'S NEWLY RECOGNIZED RIGHT TO MEDICAL PRIVACY") (CITING DOE, 257 F.3d. AT 314 N. 3). "THE RIGHT TO PRIVACY IN ONE'S MEDICAL INFORMATION EXTENDS TO PRESCRIPTION RECORDS." DOE, 257 F.3d. AT 315 (CITATION OMITTED). MORE IMPORTANTLY, "HIPAA CLEARLY REGULATES THE METHODS BY WHICH A PHYSICIAN MAY RELEASE A PATIENT'S HEALTH INFORMATION, INCLUDING ORAL MEDICAL RECORDS." CRENSHAW v MONTY LIFE INS. CO., 318 F.Supp.2d. 1015, 1028 (S.D. CAL. 2004). (CITATION OMITTED). "DURING THE COURSE OF LITIGATION, HIPAA AUTHORIZES SEVERAL OPTIONS FOR OBTAINING MEDICAL RECORDS FROM HEALTH CARE PROFESSIONALS, INCLUDING COURT ORDERS, SUBPOENAS, OR FORMAL DISCOVERY REQUESTS PURSUANT TO ADEQUATE PROTECTIVE ORDER." Id. (CITATION AND STATUTES OMITTED). SINCE THE RESPONDENTS ADMITTED TO THE FACT THAT THEY DID NOT GET AUTHORIZATION FROM PETITIONER TO OBTAIN HIS PHI OR A COURT ORDER AUTHORIZING SUCH, THEY CLEARLY VIOLATED PETITIONER'S RIGHT TO MEDICAL PRIVACY AND HIPAA. (SEE APPENDIX AT 1-2). "DEFENSE COUNSEL'S EX PARTE COMMUNICATION WITH DR. [SYED] DOES NOT FALL WITHIN HIPAA'S REQUIREMENT THAT CONFIDENTIAL MEDICAL INFORMATION BE DISCLOSED PURSUANT TO A COURT ORDER, SUBPOENA, OR DISCOVERY REQUEST. HIPAA DOES NOT AUTHORIZE EX PARTE CONTACTS WITH HEALTH CARE PROVIDERS. IN THIS CASE, NO PROTECTIVE ORDER SAFEGUARDING [PETITIONER'S] PRIVACY IS IN PLACE, HIPAA'S DISCLOSE PROCEDURES APPLY. ... AS A RESULT, DEFENSE COUNSEL'S PRETRIAL CONTACTS WITH DR. [SYED] AND THE DOCTOR'S DISCLOSURES WERE IN VIOLATION OF HIPAA." CRENSHAW, 318 F.Supp.2d. AT 1029 (STATUTES OMITTED).

FINALLY, "[I]T IS THE DUTY OF [FEDERAL COURTS] IN EVERY CASE TO ASCERTAIN FROM ALL THE AVAILABLE DATA WHAT THE STATE LAW IS AND APPLY IT RATHER THAN TO PRESCRIBE A DIFFERENT RULE, HOWEVER SUPERIOR IT MAY APPEAR FROM THE VIEWPOINT OF 'GENERAL LAW.'" MONTANA V WYOMING, — U.S. —, 131 S.Ct. 1765, 1773 (2011) (CITATION OMITTED). "IT IS THE DUTY OF FEDERAL COURTS AT ANY STAGE IN THE COURSE OF A PROCEEDING TO GIVE EFFECT TO STATE LAW."

JONES V SCHELLENBERGER, 255 F.2d. 784, 790 (7th Cir. 1955). "WIS. STAT. §

146.82 MANDATES THAT '[A]LL PATIENT HEALTH CARE RECORDS' REMAIN CONFIDENTIAL." SZYMCZAK V TERRACE AT ST. FRANCIS, 2006 WI App. 3, P14.

"THE WISCONSIN LEGISLATURE HAS [ALSO] DETERMINED THAT COMMUNICATIONS BETWEEN PATIENTS AND MEDICAL PROVIDERS ARE PRIVILEGED. SECTION 905.04." STATE V LOCHE, 177 WIS.2d. 590, 602 (Ct. App. 1993), AND THERE IS AN UNDERLYING LEGISLATIVE POLICY THAT REQUIRES STRICT COMPLIANCE WITH THE STATUTORY RULES FOR MEDICAL RECORDS." SZYMCZAK, 2006 WI App. 3, P25. THE WISCONSIN SUPREME COURT HAS RULED THAT A PERSON DOES NOT AUTOMATICALLY WAIVE THEIR PHYSICIAN - PATIENT PRIVILEGE SIMPLY BECAUSE THEY FILE A LAWSUIT, STATING:

"PHYSICIANS OWE AN ETHICAL DUTY OF CONFIDENTIALITY TO THEIR PATIENTS THAT IS BROADER THAN THE EXPRESS LANGUAGE OF THE STATUTORY PHYSICIAN - PATIENT PRIVILEGE. THAT ETHICAL DUTY OF CONFIDENTIALITY IS BROADER THAN THE PRIVILEGE BECAUSE THE ETHICAL DUTY APPLIES IRRESPECTIVE OF WHETHER A LAWSUIT HAS BEEN FILED. BY FILING A LAWSUIT, A PATIENT-PLAINTIFF WAIVES THE PRIVILEGE AS TO CERTAIN INFORMATION, BUT DOES NOT AUTOMATICALLY CONSENT TO THE TERMINATION OF THE CONFIDENTIAL RELATIONSHIP EXISTING BETWEEN [THE PATIENT] AND...[THE] PHYSICIAN."

STEINBERG V JENSEN, 194 WIS.2d. 440, 465 (WIS. 1995). PETITIONER NEVER WAIVED HIS PHYSICIAN - PATIENT PRIVILEGE BEFORE FEBRUARY 10, 2017 AND THE RESPONDENTS INTENTIONALLY VIOLATED HIS RIGHT TO CONFIDENTIALITY IN HIS PHI. THIS COURT SHOULD GRANT THIS PETITION.

DATED THIS 8TH DAY OF AUGUST 2019

Walker
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