Original

19-7989

ORIGINAL

US Sup Ct. No. _____

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IN THE

SUPREME COURT OF THE UNITED STATES



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ROGER BRYNER – PETITIONER

VS.

CLEARFIELD CITY AND UTAH STATE RECORDS RECORD'S COMMITTEE – RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UTAH COURT OF APPEALS

**Roger Bryner**
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## QUESTIONS PRESENTED

1) Once the "unmeritorious ... redundant, immaterial, impertinent or scandalous" bar of Utah Rule of Civil Procedure 83C(a)(1)(C) is interpreted fairly, must it be invalidated especially in light of the ruling of the US Supreme Court in IANCU v. BRUNETTI?

2) Has the almost all-mormon judiciary of the State of Utah applied the overbroad language of Rule 83(a)(1)(C) to punish those who legitimately question it's correct function and provide evidence of personal bias and systematic bias related to religion?

3) Was it correct for the Court of Appeals to affirm summary judgment when there not only was disputed material facts, but evidence discovered prior to the decision shows the affidavits of law enforcement were perjured?

4) Did the Court of appeals misrepresent the standard for prevailing under Rule 83 when it ruled that opposition to dismissal after outright surrender of an opponent is vexatious and failure to make a finding under 83(c)(1)(B) was harmless and substituted for by the final order, despite (c)(2) saying it is not the same.

5) Are the actions of the Utah Courts a violation of the due process provisions of the US Constitution?

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## RELATED CASES

A separate Petition will be filed regarding case #20190608 in the Utah Supreme Court, which is related to this case.

## TABLE OF CONTENTS



## INDEX TO APPENDICES

## TABLE OF AUTHORITIES CITED

## OPINIONS BELOW

The order of the Court of Appeals of the State of Utah under review was issued on May 8, 2019 in court of Appeals case no. 20170477 and is unpublished but attached as Exhibit A.

The orders of the second district court of the state of Utah in case #15070477 are unpublished and attached as Exhibits B and C.

## JURISDICTION

The date on which the highest state court decided my case was November 25, 2019. A copy of that decision is attached as Exhibit D.

The Jurisdiction of this Court is invoked under 28 U.S.C. §1258(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1st Amendment to the US Constitution

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 a redress of grievances.

UCA 63G-2-404

(6)

(a) The court shall:

(i) make the court's decision de novo, but, for a petition seeking judicial review of a State Records Committee order, allow introduction of evidence presented to the State Records Committee;

(ii) determine all questions of fact and law without a jury; and

(iii) decide the issue at the earliest practical opportunity.

(b) In a court's review and decision of a petition seeking judicial review of a State Records Committee order, the court may not remand the petition to the State Records Committee for any additional proceedings.[1]

(7)

(a) Except as provided in Section 63G-2-406, the court may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the interest favoring access is greater than or equal to the interest favoring restriction of access.

63G-2-802. Injunction -- Attorney fees.

(1) A district court in this state may enjoin any governmental entity or political subdivision that violates or proposes to violate the provisions of this chapter.

(2)

[1] This section was added after the initiation of my case, but in no way allowed prior remand orders. To the contrary remand has never been allowed and is inconsistent with the very next paragraph in (7).

(a) A district court may assess against any governmental entity or political subdivision reasonable attorney fees and other litigation costs reasonably incurred in connection with a judicial appeal to determine whether a requester is entitled to access to records under a records request, if the requester substantially prevails.

Utah Rule of Civil Procedure 83(a)(1)(C)

(a)(1)(C) In any action, the person three or more times does any one or any combination of the following:

(a)(1)(C)(i) files unmeritorious pleadings or other papers,

(a)(1)(C)(ii) files pleadings or other papers that contain redundant, immaterial, impertinent or scandalous matter,

Utah Rule of Civil Procedure 83(c)

(c) Necessary findings and security.

(c)(1) Before entering an order under subparagraph (b), the court must find by clear and convincing evidence that:

(c)(1)(A) the party subject to the order is a vexatious litigant; and

(c)(1)(B) there is no reasonable probability that the vexatious litigant will prevail on the claim.

(c)(2) A preliminary finding that there is no reasonable probability that the vexatious litigant will prevail is not a decision on the ultimate merits of the vexatious litigant's claim.

## STATEMENT OF THE CASE

On June 3, 2015 Clearfield City arrested Roger Bryner for failure to signal and DUI and took him to jail, impounding his car and forcibly drawing his blood after stabbing him with needles over 20 times while being restrained.

As is typical with criminal defendants in Utah, to gain access to documents needed for his criminal defense, your Appellant Bryner was required to make a civil GRAMA request on July 10, 2015. Clearfield denied access to records without payment of a fee and numerous documents were omitted including Clearfield City's contract with it's public defender, faxes to the state crime lab, the warrant application and after summary disposition a document submitted with the blood sample signed on the night of the arrest that showed clearly that law enforcement perjured themselves in their affidavits. No review of redactions in the provided documents was conducted by the court. Below is the provision of the public defender contract hidden by Clearfield at R. 365:

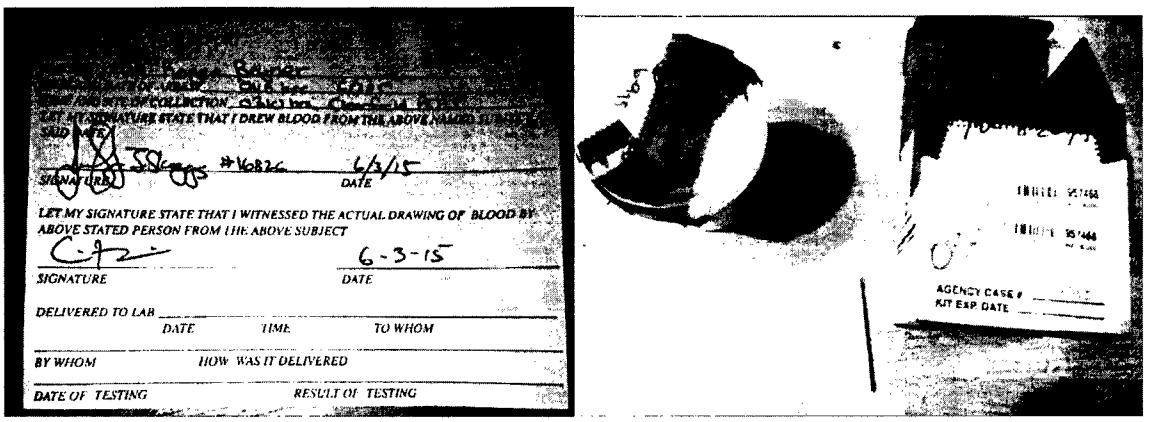
> 7. **Public Defender Fee Recovery.**
>
> Attorney shall assist and cooperate with the City in implementing and maintaining a public defender fee recovery program whereby defendants receiving the assistance of appointed counsel who have been convicted of a crime (for these purposes the term "convicted" includes entering into a plea-in-abeyance) shall repay to the City a portion ($75/case) of the expenses for the legal representation as a matter of restitution.

From October 20, 2015 to the present day Clearfield withheld faxes between themselves and the Utah Crime Lab made on 6-9-2015. These faxes and the custody documents transmitted to the lab were made before the GRAMA request on July 10, 2015, and thus should have been produced. Clearfield never complied with it's obligation to provide those documents and I was only provided with the last written form accompanying evidence when they were returned to me after dismissal of my case.

It is reasonable to presume that the arresting officers produced an affidavit in support of the search warrant they obtained on the night of the arrest. Clearfield did not produce a copy until over a year after the suit was originated.

Officer C. Ferreira perjured himself in his affidavit at R. 1517 attached as Exhibit F when he stated at ¶10 "I am not aware of any additional paper documents....". On 1/9/2019 the City of Clearfield returned the blood evidence to me after the case against me was dismissed. I opened it breaking the evidence seal on 4/28/2019 and discovered the following paper document, signed by C. Ferreira on

the second line as a witness and dated 6/3/2019 in the box:




Over the course of over 2 years of continued prosecution (and harassment outside of court) by Clearfield City Your Appellant Bryner eventually became "the prevailing party in the underlying (criminal) case" (See ruling of Judge Jill M. Pohlman dated May 10, 2018 in case 20180068 attached as Exhibit H). This victory would not have happened without filing a GRAMA request for documents and appealing the denial of the production of documents which is at issue in this case.[2]

Procedurally, your appellant made a GRAMA request on July 10, 2015 to the City of Clearfield. This request was denied and dishonestly omitted documents in the possession and control of Clearfield. The denial was appealed, first to the City administrator then to the Utah State Record's Committee. Clearfield prevailed in Records Committee, successfully denying access to documents in it's possession

[2] It was necessary to appeal a dismissed criminal case to simply obtain in writing the fact I "prevailed" in the criminal case and prevent additional lies about not prevailing by Utah courts about this issue.

which it falsely claimed it did not have and to it's contract with a public defender without payment of a fee in opinion 15-27 on October 20, 2015. See R. 30-36.

Case #150701062 was filed by way of a petition for review under UCA 63G-2-404 and 802 within the 30 days required as well as a claim for declaratory relief (omitted by the Court of appeals). The complaint was amended at R.45 once without leave of the court.

In response to the amended lawsuit being filed against them and served upon them on 11/20 (See R.216, affidavit of service) on December 8, 2015[3] Clearfield surrendered for the first time on the issue of fees, in a letter made part of the record by them in their first motion to dismiss at R. 281-282 attached as Exhibit E.

The City of Clearfield filed multiple "repetitive" motions to dismiss, both before and after filing an answer and proceeded to claim they had never been served documents they were emailed because they had not consented to email service, and make repeated personal alcohol related and corrupt attacks on your appellant Bryner. See R. 219, first motion to dismiss, R. 1182, "Motion to dismiss Renewed", and "City's combined response to Plaintiff's Motions" at R. 1213. The combined response in particular had no substance whatsoever other than complaining that Your Appellant Bryner would not reasonably negotiate and that they had not consented to service by email in the GRAMA case, despite all service in the criminal

[3] Had Your Appellant Bryner waited past 11/20 to file the litigation, perhaps to mediate or negotiate with Clearfield, he would have forever waived his rights to access the documents under existing Utah case law.

case against me and the GRAMA case being by emails and consent being given by an attorney which subsequently left the employ of Clearfield City and the Clearfield Record's Manager under GRAMA proceedings. By any standard, other than non-mormon alcohol defendants being always wrong in Utah and mormon city officials always winning, it was the City of Clearfield and not your appellant who violated the norms of practice and civility and presented unmeritorious arguments.

Eventually the court scheduled it's very first hearing in March 2016 and continued the hearing to May 9, 2016. There instead of addressing the multiple outstanding motions to dismiss and motions for summary disposition in any way, the Court on it's own motion remanded the case back to the Utah State Records Committee. See remand order at R. 1392-1393. Your appellant never consented to the remand in the first place, and never consented to or initiated any proceeding in the Utah State Record's Committee. Your appellant also made a jurisdictional objection docketed as "06-02-16 Filed: Jurisdictional Objection" at R. 1426-1427. Despite this, the Utah State Record's Committee held a hearing without input from Your Appellant and over his written objections, the content of which was set by it's own notice of hearing setting it's own agenda and issued a written ruling on June 15 2016 designated 15-27 (remand). However the absence of any initiating document in the Utah State Record's Committee is not properly before this appeal, but in case #160903793 in 3rd district court as ruled upon by The Court of Appeals in case #20160870 in the order which was filed in this case as part of "12-08-16

Filed: Jurisdictional Objection 3 Supported by Order of the Court of Appeals" at R. 2564-2567 attached as Exhibit I.

Despite these continued jurisdictional objections and a ruling from the Court of Appeals supporting the jurisdictional argument, and the failure of any party to file a petition for review in this case under UCA 63G-2-404, and multiple motions to recuse the judges involved the trial court ignored any ruling on the issue of jurisdiction. The trial court also ignored any ruling on the GRAMA issues and instead issued an order to show cause against Your Appellant docketed as "10-19-16 Issued: Order to Show Cause" at R. 1537. A hearing was held on 11-4-2016 before Judge Morris where the Judge stated "Time 9:28 - Judge makes statement that there is no pending motions in this case other the this Order to Show Cause." (see minute entry of 11-4-16) This statement suggest he has simply ignored or overruled without comment all prior motions for summary disposition, which he later ruled upon. He also set a schedule for Your Appellant to respond to his OSC "Time 9:46 - Motion cutoff is the 16th of November for response or further motions in regards to the November 18th continued Order to Show Cause. No ruling on Summary Disposition." Not disclosed or discussed by Judge Morris at any time was a long history of prior bias against your Appellant personally, see motion to recuse, prior order of Judge Morris admitting bias, and extraordinary writ granted against him and Judges Hillder, Kay and Dawson by the Court of Appeals at R. 1328-1334 attached as Exhibit G.

Your appellant argued against vexatious litigant sanctions by filing records of some, but not all, of the DOZENS of legal cases I prevailed in by 11-16, as well as a motion to declare Rule 83(a)(1)(c) unconstitutionally vague and overbroad and an affidavit from him outlining the testimony he would like to give at hearing. (see R.2014 to R.2347) All these motion were unopposed and submitted to the court before hearing on November 18, 2016. Judge Morris finally, after multiple motions to recuse, entered a partial recusal of himself on 11-17-2016 from further OSC proceedings. See R. 2368. Judge Allphin held an OSC hearing on 11-18-2016. Complete transcripts under Appellate Rule 11 were prepared by your Appellant and filed with the court on November 25, 2016 at R.2424 (p2420) showing that the Trial Court never once specified any language that was "unmeritorious ... redundant, immaterial, impertinent or scandalous" but rather suggested that your appellant should know what he did wrong and identify it himself in argument, and not allowing defending of all sections of the documents in question based upon the court's failure to specify. This is a distinctly mormon perversion of justice. See R. 2438-2439, transcript of OSC attached as Exhibit J. The Trial Court had not officially decided summary disposition and no ruling on the likelihood of prevailing was made in the order as required by Utah Rules of Civil Procedure 83(c)(1)(B), as pointed out by the order of the Court of appeals attached as Exhibit A at pages 3-4.

The trial court granted summary disposition in favor of Clearfield on all GRAMA issues, and made at least the following errors: 1) there was conflicting

testimony from Bryner and 2 police officers regarding documents produced on the night of arrest. In fact, photographic evidence was discovered that the affidavit of law enforcement contained perjury. Because of this disputed question of fact only an evidentiary hearing should have been held and the issue should not have been decided on summary disposition; See R. 2749-2750 and Exhibit F. 2) in camera review of redactions is not precluded in a de-novo review, and the court failed to exercise it's discretion in weighing the reasons favoring in camera review of redactions and incorrectly ruled that since the Record's committee, in the notice of hearing they created, failed to raise the issue. Your Appellant was prohibited from raising it in a de-novo review; and 3) As evidenced by the eventual provision of the public defender contract, faxes, application for a warrant, and blood sample documents, Clearfield City did not meet it's obligations under GRAMA.

## REASONS FOR GRANTING THE PETITION

The US Supreme Court issued it's opinion in Iancu v. Brunetti, 2019 U.S. LEXIS 4201 at [*3] ruling 'Once the "immoral or scandalous" bar to trademark registration under 15 U.S.C.S. § 1052(a) is interpreted fairly, it must be invalidated.' The First Amendment to the US Constitution does not contain an exemption for the courts of the State of Utah. The opinion of the Court of Appeals under review in this case held exactly the opposite, that Scandalous is not vague, and moreover the Court of Appeals not only ignored, but actively suppressed, the reference to the obvious and repeated mormon bias of the Court's of Utah. In citing

Simmons v. Waykar, 2014 UT App 145 the Court of appeals references itself for authority to contradict the recent findings of the US Supreme court. No language was quoted by the trial court was allegedly "Scandalous" under Rule 83 other than a reference to Mormons and racism. The transcripts attached as Exhibit J show that not only was no other language referenced, defense of that other language was suppressed by the Mormon Trial Judge. If references to Mormons and racism can be sanctioned by the Courts of Utah as "Scandalous" then not only is the plain language of the rule overbroad, but the application by the all-mormon judiciary of Utah is in itself Scandalous.

This is supported by the evidence of a long running bias against your appellant Bryner by Judge Morris and other Judges of the 2nd district. As show in Exhibit G, the past bias of Judge Morris was so extreme that the Court of Appeals had to intervene in a criminal case in which I eventually prevailed. The transcripts in Exhibit J show the behavior of a mormon judge seeking a confession and blocking any defense when that confession was not forthcoming. If the all-mormon Court of the State of Utah wish to prohibit, on pain of no further access to the courts, "unmeritorious ... redundant, immaterial, impertinent or scandalous" material the minimum requirement for constitutionality of such prohibition is specification of what was scandalous. Other than one paragraph in the order in Exhibit C discussing mormons and racism, no other specification was ever made either before or after the hearing. But for the prohibition on "unmeritorious ... redundant,

immaterial, impertinent or scandalous" documents the vexatious litigant order could not have entered. At a minimum, due process requires "[t]imely and adequate notice and an opportunity to be heard in a meaningful way." Salt Lake City Corp. v. Jordan River Restoration Network, 2012 UT 84, ¶ 50, 299 P.3d 990.

Because the Trial Court provided no notice of the objectionable speech, and in fact actively suppressed defense of it, these proceedings are evidence of the all-mormon Judiciary of the State of Utah applying the unconstitutionally broad language of Rule 83 in an arbitrary and capricious manner, targeted at the constitutionally protected valid speech mentioning the word mormon and racism on the same page.

The Court of appeals has disregarded all prior Utah case law regarding de-novo review in GRAMA cases, and apparently makes up new case law that never existed which was conveniently "corrected" by the legislature. There has never been, and even according to the court of Appeal never again will be, a remand back to a public records administrative body in Utah for consideration of redactions or any other issue. The Court of appeals in foot note 1 of Exhibit A, and cites Bryner v. Department of Public Safety 2016 UT App 199 which overturned such a remand by simply stating different rules apply. In fact, the situation is much worse here as GRAMA expressly prohibits, and always has prohibited, remand and instead mandated de-novo review. The addition of UCA 63G-2-404(6)(b) in no way states that remand was allowed prior to it's addition, quite the contrary the unchanged

provisions of (6)(a) and (7) have always prohibited it. The language indicates the shock of the legislature at my case. Furthermore the logic is perverse that allows the Trial Court to rule that there was error and no in-camera review, issue a remand order in which the initially prevailing party was not afforded the asked for in-camera review, have the remand proceeding fail to conduct that review, then deny the party any opportunity for any redress because of the second administrative outcome. In the words of Judge Roberts in Knick v. Township of Scott, the claim dies aborning.

There is no way to reconcile the order of the Court of Appeals in case 20160870 (attached as Exhibit I) with the ruling in this case attached as Exhibit A. The court of appeals is saying that it explicitly allowed two courts, one in the 2nd district and one in the 3rd, to have simultaneous jurisdiction over the same issue and for the one in the 2nd district to resolve all issues in the case without consolidation and without any orders ever being issued in the other case. The Court of appeals claims I misunderstood their prior order, to the contrary their current position is completely inconsistent with all prior case law and I understand the motivations for making this error, without which reversal would be necessary on this issue alone as a jurisdictional matter.

Jurisdiction under GRAMA is only granted by filing of a timely petition to district court, see UCA 63G-2-404(1)(a) and Williams vs. Department of Corrections, 2011 UT App 280 ¶4. There is a petition for review in the 3rd district court, there is

not one in the 2nd, and there is no order consolidating the cases in either case. There is absolutely no support for the position of the Court of Appeals that jurisdiction is granted because the court of appeals, or any other court, said so.

The Court of appeals attached as Exhibit A at pages 3-4 claims failure to comply with Rule 83(c)(1)(B) was harmless error. However this error was not harmless but a deliberate misrepresentation by the trial court of the immense amount of "prevailing" which had already occurred. Moreover there is no reasonable way to reconcile "harmless error" ruling of the Court of Appeals with the provisions of Rule 83(c)(2) that "(c)(2) A preliminary finding that there is no reasonable probability that the vexatious litigant will prevail is not a decision on the ultimate merits of the vexatious litigant's claim." A final disposition on a claim can not be used as a necessary finding if the Supreme Court of Utah says it can't explicitly. The finding of "harmless error" by the court of Appeals renders (c)(2) meaningless.

The Court of Appeals ruled that the conflict of interest of the public defender was not relevant to a GRAMA proceeding. To the contrary, UCA 63G-2-802 which was explicitly invoked in the complaint required a finding regarding Clearfield City's systematic violation of GRAMA law by concealing and charging a fee for access to the public defender contract by defendants. It is outrageous that Clearfield was doing this, and it is even more outrageous that the courts have

shielded them. This finding is not, by the simple reading of the words of the legislature, beyond the scope of 802.

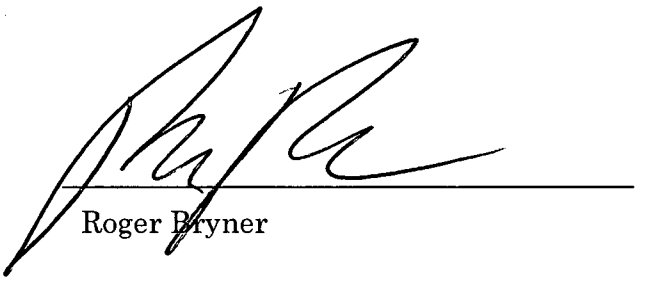
The Court of Appeals erroneously upheld summary disposition when there was a material dispute of fact. In reviewing Summary Judgment the Appellate Court should view the facts and all reasonable inferences from them in the light most favorable to the nonmoving party[4]. See MIND & MOTION v. CELTIC BANK, 2016 UT 6 at ¶6 citing Anderson Dev. Co. v. Tobias, 2005 UT 36, ¶ 31, 116 P.3d 323. See also JP Morgan Chase Bank v. WRIGHT, 2015 UT App 301 At ¶7: "We review a district court's grant of summary judgment for correctness and afford no deference to the court's legal conclusions.' Salt Lake City Corp. v. Big Ditch Irrigation Co., 2011 UT 33, ¶ 18, 258 P.3d 539." The order of the Court of appeals simply misrepresented the evidence presented. Not only did my testimony turn out to be true and accurate, but the testimony of law enforcement was perjured. See Exhibits A and F. Photographs don't misrepresent facts, unlike the Court of Appeals of the State of Utah.

[4] Both Defendants and Plaintiff moved for summary disposition. Defendant's motion was granted by the Trial Court, thus they are the moving party. There was never a stipulation to disregard law regarding conflicting testimony nor would one be valid in any case. Only by ignoring the obvious could one believe the affidavits of law enforcement.

## CONCLUSION

WHEREFORE I ask that the US Supreme Court to grant this petition for a writ of certiorari.

Dated February 21, 2020



Roger Bryner

Word and Page Court

I certify that the word count given to me by Microsoft Word is 4341 words, and the document has 22 pages, placing this document well within the limits of the applicable rules.