

ORIGINAL

19-8630

No. _____ (For Assignment) White Cover

FILED

MAY 2 / 2020

IN THE SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK
SUPREME COURT, U.S.

RICHARD CHARLES LUSSY, Plaintiff/Appellant/ PRO SE PETITIONER)

-v-

HENRY PAUMIE LUSSY, LAUNA LYNN ROQUE, JUAHLEE MURIE)

BORNFF, MERNA GREEN ASSESSORS OFFICE MONTANA)

DEPARTMENT OF REVENUE, AND WADE J. DAHOOD ESQ.)

Defendants'/Appellees'/RESPONDENTS')

ON PETITION FOR A WRIT OF CERTIORARI (RULE 39) TO
NINTH CIRCUIT COURT OF APPEAL 18-35937 LAST RULED ON MERITS
OF THIS CASE FROM UNITED STATES DISTRICT COURT BUTTE
MONTANA DIVISION CV-17-79-BU-BMM-JCL

PETITION FOR A WRIT OF CERTIORARI

Counsel of Record:

Attorney-In-Fact As Pro Se Petitioner, Plaintiff, Appellant/Injured
Richard C. Lussy, Esq.

RICHARD LUSSY & ASSOCIATES (Property Appraisers)
860 Sixth Avenue South, P.O. Box 152, Naples, Florida 34106
Phone (239) 263-5413

State Certified General Real Estate Appraiser RZ0001564
Real Estate License SL531638

International Designate Appraisal Institute
Esquire Entitlement: Florida State Supreme Court

ONE QUESTION SUPPORTED

This corrigibly capable \$277,700+/year public servant Chief Justice of last resort "Rule 10: Writ of certiorari/mandamus is not a matter of right, but of judicial discretion" essential service after \$1,131,313 finite tax monies already spent serves a compelling government interest to reduce government corruption after 8-unsuccessful elections: 1988-92-96-00-04-08-12-16 into August 18, 2020 election per unsuccessful prior US Supreme Court: **No. 18-1206 Writ-of-Certiorari & No. 19-481 Writ-of-Mandamus**. Pursuant *Stare Decisis* Precedent-Judge Made Case Studies cannot make Federal Rules of Common Law that block & stop jury trials as control issues not cohesive & predictable result except preserving lawyer hearsay power in free public law. *Stare decisis* is not technically, legally binding, not legally positive, not voted on democratically, not create law. Thus, Chief Judge must reflect this inferior *Bell v Trambley* direct comparison to superior *Ray v. Blair* with no "ministerial-lawyer-exception" as no lawyers are required to be judges-justices per U.S. Constitution. Ministerial oath of office judicious & fair require Ministerial Function Test to remedy judgitis-bias, belligerence & bad-behavior due to functional illiteracy, inadequate training, boast of *juris doctor diploma* with no doctor experience, inarticulation, lack of computer skills with superior's support Magistrate JC Lynch etc: ORDER: "judgment Dismissal Without Leave to Amend". ISSUES: Civil RICO et al Bad Behavior to suppress First Amendment Originated Manipulated, Falsified & Clerk deletion/destruction of Public Records (CV-17-17-79-BU & CV-78-67-BU) RE: 55- Constitutional Violations: 3-Constitutional Challenges: 1-Statute, 1-FTR Gold Recording Form, Clerk 2-Evidence case destruction-deletions. REMEDY: narrow decision only that case should not be thrown out now, leaving difficult legal questions for another day for 100-percent juror-voter-electors decision to decide for themselves with no self-interest, no discrimination.

QUESTION: **[A-part]** Whether conflicting free speech: superior *Ray v. Blair* does not' address constitution question allowing electors-voters-jurors to decide for themselves opposite: *Bell v Trombley* all hearsay *stare decisis* to further errant ignorance of ministerial function test after swearing to ministerial oath of office not to apply ministerial (lawyer-not-clergy) exemption with no particularization by appeal court.

[B-part] Whether the court below can continue to refuse non-lawyer Pro Se Plaintiff Petitioner RickLUSSY to confront & compete against officers of the court & respectfully the court in *Ray v. Blair* not to further suppress Due Process Of Law (read: 100-percent jury trial verdict of non-lawyers in due process of law-redress, with four cameras, two judges (Federal & Mont) two juror oaths, twelve jurors & two-alternates).

[C-part] Whether to apply ministerial oath of office to this particularized 82-page First Amended Complaint (221-page appendix) to go forward for second opinion.

IT IS RESOLVED: FROM: *judgment March 06, 2020* "dismiss & not amend". TO PART

A-B-C: Justice decision: restart discovery for jury verdict not to be thrown out: now.

LIST OF PARTIES & RELATED CASES (Rule 12.6)

[X*] All parties* appear in caption of the case on cover page RickLUSSY.

*Notice is to add the eleven necessary & indispensable parties service supported with \$1,131,313¹ finite tax monies after approval in the US Supreme Court for a petitioned Second Amended Complaint after the First Amended Complaint remand to Trial Court with four cameras, two judges: one-Federal & one-State Judge, twelve jurors, two alternates to rule & address this sham² *judgment* is 100-percent not lawful & not moral (MCA 28-2-701) on all ⁵⁵⁻²⁴ 47 issues of fact to be decided by jury verdict (MCA 25-7-103)³ not by government Lawyer-Judges.

(1) Jeremiah C. Lynch U.S. Magistrate, (2) Brian M. Morris, Article III US Judge (KEYSTONE KOP)⁴ [CV-17-79-BU/9th Circuit Court Of Appeal 18-35937]; (3) Tyler Gilman Clerk [No. CV-78-67-BU], (4) 9th District Circuit Appeal Judge Murguia, (5) 9th District Circuit Appeal Judge Christen; (6) 9th District Circuit Appeal Judge Bade; (7) Kurt Krueger 3rd Dist. Court Judge [No. DV 18-37/DA-19577; DV 18-38/DA-19-578) & DP-18-31 [RE: Formal Probate Dorothy Helen Lussy]; (8) Ms. Susie Krueger Court Clerk Deer Lodge County; (9) Andre Burke Director Over Office of President: American Bar Association Trade Union; (10) John Mudd Executive Director Montana Bar Association Trade Union & (8) Diana Moss, President American Antitrust Institute & (11) Elected: Ben Krakowka Anaconda-Deer Lodge County Montana Attorney.

[] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows. (Nothing follows as not yet appropriate, except of constructive notice to sue). RELATED CASES: "Rule 10 no citizen rights just 100-percent United States Supreme

¹ Free Public Law salary compensation: 3-Appeal Judges (@ \$223,700), Magistrate (\$191,000+) Judge (\$210,900+), Clerk (\$58,313+) total \$1,131,313.

² Sham n. (17c) 1. A false pretense or fraudulent show; an imposture. 2. Something that is not what it seems; a counterfeit. 3. Someone who pretends to be something that he or she is not; a faker. Blacks Law Dictionary 10th Edition (2014) page 1585.

³ MCA 25-7-103 All Issues Of Fact To Be Decided By Jury, where the trial is by jury, other than those mentioned in 25-7-102 are to be decided by the jury, and all evidence thereon is to be addressed to them, except when otherwise provided by this code.

⁴ "Judicial Keystone Kop" is Brian M. Morris "liberal Federal Judges are passing anti-Trump resistance." Caption: Indigenous Environmental Network & North Coast River Alliance & Northern Plains Resource Council Plaintiffs vs. U.S. Department of State et al & TransCanada Keystone Pipeline & TransCanada Corporation Defendants-Intervenors. CV-17-GF-BMM & CV-17-31-GF-BMM, Doc. "211" filed 11/08/2018 page 1 of 54. Source Wall Street Journal, November 13, 2018 Op-ed section.

Court discretion" identically produced No. 18-1206 Certiorari & No. 19-481 Writ of Mandamus to self-administer August 18, 2020 after unsuccessful 1988-92-96-00-04-08-12-16 elections.

CONSTRUCTIVE NOTICE TO SUE Deputy Jeffrey Atkins, Clerk Scott S., Harris, U.S. SUPREME COURT & Ray Richards: For No Hearing, No Sworn Testimony: Former No. 18-1206 Writ of Certiorari: R.C. "RICK" LUSSY v. Florida Elections Commission & Gaylord A. Wood Jr. Bar #89465 and Former No. 19-481 Writ of Mandamus In re: R.C. "RICK" LUSSY aka CANDIDATE, 2016 & 2020-2024 ELECTIONS. Important to Public 1988-92-96-00-12-16, August 18, 2020 Election(s): Government sabotage surveillance of RickLUSSY in 24/7, Physical Comings & Goings Secret Surveillance Warrants hire Sabotage Surveillance Agents to Bribe 4TH, 5TH, 6TH et al proxy-shills, To Target-Stalk-Attack-Bully-Badger-Torment RickLUSSY as facilitator of (1819) Missing 13th Amendment aka Titles of Nobility Amendment.

INDEX OF APPENDIX:

Part One: Docket Progress Report CV-17-79-BU-BMM-JCL, Exhibit A-8574, (Missoula 5-pages). Please note Document #65 in this Report was omitted: **ELEVEN EXCEPTIONS To: FINDINGS & RECOMMENDATION** . . .

Part Two: Docket Progress Report 18-35937, Exhibit A-8582, Ninth Circuit Court of Appeal (San Francisco 6-pages) Original version of both as filed with Clerk is in this Appendix.

- (1) Exhibit A-8571 (8/5/19) Evidence Racketeering Organized Crime sex threat to RickLUSSY, Embassy Suites, Hilton-Hotel, 3984 NW S. River Dr. Miami.
- (2) FIRST AMENDED COMPLAINT Document 8, filed 11/08/17, (82-pages);
- (3) FINDINGS AND RECOMMENDATION by Jeremiah C. Lynch United States Magistrate Judge, Document 63, (15-pages), dated & filed 05/02/18. Not specified on document if it was reported.
The original version of the opinion as filed is in the Appendix hereto, pp 1-15.
- (4) **ELEVEN EXCEPTIONS To: FINDINGS & RECOMMENDATION** (DOCUMENT #63) SUBSTANTIVE PROCEDURE, LAW & FACT ERRORS THAT JUDGE BRIAN MORRIS IS JUSTIFIED TO 100% THROW OUT AS A DOUBLE NEGATIVE IS AN AFFIRMATIVE: 100% FRAUD ON COURT BY OFFICER OF COURT'S FALLIBLE COURT JUDGE LYNCH: NO-GOOD BEHAVIOR US ARTICLE III § 1: AFFIDAVIT AFFIRMATIVE DEFENSE ALLOW LEAVE TO AMEND COMPLAINT & RESTATEMENT OF (\$89,828.56) DEFAULT.

By Richard Charles Lussy aka HON RICK ESQ aka RickLUSSY Pro Se Plaintiff-Appellant-Pro Se Petitioner,

Document 65, (51-pages, 37-narrative & 14-exhibit), dated 05/15/18 & filed 05/22/18. Unknown if document if reported.

The original version of the opinion as filed is in the Appendix hereto, pp 1-51.

(5) **ORDER ADOPTING FINDINGS AND RECOMMENDATIONS** by Brian Morris, Article III United States Judge, Document 66, (6-pages), dated & filed 10/29/18. Not specific on document if reported.

The original version of the opinion as filed is in the Appendix hereto, pp 1-6.

(6) **JUDGMENT IN A CIVIL CASE** by Tyler P. Gilman, Clerk, Document 67, (1-page), dated & filed 10/30/18. Not specific on document if reported.

The original version of the opinion as filed is in the Appendix hereto, p 1.

(7) **ANSWER TO REPLY BRIEF** by Richard Charles Lussy, Docket Entry 14 (24-pages), dated 3/24/19 & filed 3/28/2019.

The original version of this is in the Appendix hereto, pp i-vii, 1-17.

(8) **MANDATE** "The judgment of this Court, entered March 06, 2020, takes effect this date..." by Molly C. Dwyer Clerk of Court by Rhonda Roberts Deputy Clerk Ninth Circuit Rule 27-7, ID: 11645749, Dkt Entry: 29; Document 71, (2-page with envelope), Dated March 30, 2020 & filed 03/31/20. Not specific on document if reported.

The original version of the opinion as filed is in the Appendix hereto, pp 1-2.

(9) **MEMORANDUM* NOT FOR PUBLICATION**. Before: MURGUIA, CHRISTEN, and BADE, Circuit Judges. Case 18-35937, Filed March 6, 2020, ID: 11620445, Dkt Entry: 26-1; Case CV-17-79-BMM-JCL, Document 70, Filed March 6, 2020.

*This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

**The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

The original version of the opinion as filed is in the Appendix hereto, pp 1-3.

(10) **APPELLANT PETITION TO REHEAR** (3/6/2020) **MEMORANDUM-JUDGMENT** "DISMISSED WITHOUT LEAVE TO AMEND" REQUIRES REJUDGMENT WITH COURT APPROVAL (F.R.Civ.P. #15(2)) TO AMEND & **JOIN NECESSARY & INDESPENSABLE PARTIES: FIVE MORE TO TOTAL NINE; RE WITH MINISTRIAL FUNCTION TEST TO ENFORCE PUBLIC SERVICE OATH REQUIRING SUPPORT OF U.S. CONSTITUTION (F.R.Civ.P. #38(b)(1), 39(a)) UNDER FOUR CAMERAS.**

By Richard Charles Lussy aka HON RICK ESQ aka RickLUSSY Pro Se Plaintiff-Appellant-Pro Se Petitioner,

Ninth District Court of Appeal Document #30, (17-pages -0-exhibit),
Dated as served 03/20/20 & filed 03/30/20 the same day as Mandate filing.
The original version of the opinion as filed is in the Appendix hereto, pp 1-17.

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JURISDICTION

Timely submission this Writ of Certiorari postmark 90-days before June 4, 2020.

"The judgment of the court of appeals was entered on March 06, 2020, that takes effect this date." (cert. doc. 71 filed 3/31/20). Pro Se Petitioner untimely served Petition To Rehear. The postmark (3/20/2020) was mistook for due date (3/20/2020) & filed (3/30/2020). Please see Appendix General Docket Page 5 of 6: Exhibit A-8586 (App. cert. doc. 30 (17-pages), filed 3/30/20).

Allegation Jurisdictional Statement is satisfied in two federal jurisdictions: per 28 USC § 1332 diversity-by-multistate citizenship with more than \$75,000 at stake. The second is a federal question: 28 USC § 1331 arising out of federal law and U.S. Constitution. Diversity multi-state citizenship include: Montana State (Pro-Se-Dahood, Henry Paumie Lussy-& Merna Green Assessors Office), Washington State (Launa Lynn Roque, Juahlee Murie Bornff) and Florida State (Richard C. Lussy-aka-RickLUSSY) pursuant federal laws of United States Constitution:

Federal Question-A: 28 USC § 1332 complaint, block-&-stop cite Bell v Twombly⁵ as Rule of Common Law not technically binding & no published Rule. Conflict with superior Ray v Blair.⁶ suppression of voters-jurors-electors in Due Process Of The Law.

Federal Question-C 28 USC § 1332 complaint unwritten lawyer-judge-court-rule "*The judge will not let you or any non-lawyer succeed in free public law*". A fact witness: *American Antitrust Society* founder.

OPINIONS BELOW

The US District Court published forms website was downloaded as *single spaced* Complaint Form. (cert. doc. 63, page 4 of 15, Line 9, filed 5/2/18), The installed U.S. public recording device switch not flipped by U.S. Clerk for sound to jury verdict.

CONSTITUTIONAL PROVISIONS STATUTES POLICIES AT ISSUE COVERUP IS UNLAWFUL A COVERINGUP.

A. US Constitution (1789) Article III §1 Not Good Behavior to perform ministerial oath of office without discretion or discarding basic obligations of public service.

U.S. Constitution Article "III - § 1. "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme

⁵ Bell v Twombly 550 US Sup. Ct. 544 (2007) "*failure to get the ball across the goal line*"(d.c. #61, 4/6/18 P13 L1-3) not binding in American Law: *stare decisis* is no Rule of Common Law, not a statute & requires hearsay with no live fact witness testimony.

⁶ Ray v. Blair 343 U.S. Sup. Ct. 214 (1952), "Faithless Electors Are Faithful to the Constitution" Source Wall Street Journal A-19, Wednesday, May 13, 2020.

and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office. (Emphasis)

B. First Amendment U.S. Constitution public servant basic obligation(s) to service.

U.S. Constitution: (1791) Amendment I 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. (emphasis)

C. Seventh Amendment To U.S. Constitution assisting Ministerial Oath & Fitness Test:

U.S. Constitution (1791) Amendment VII rights in civil cases. In suits at the common law, where value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of United States, than according to the rules of the common law. (emphasis)

D. TITLES OF NOBILITY AMENDMENT (1819) AKA MISSING THIRTEENTH AMENDMENT to assist Ministerial Oath & Fitness Test in Due Process of Law.

“If any citizen of the United States shall accept, claim, receive or retain any title of nobility or honour, or shall, without the consent of Congress, accept and retain any present, pension, office or emolument of any kind whatever, from any emperor, king, prince or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.”

E. TWO MONTANA STATE STATUTES

Foundation: Montana Code Annotated (MCA) 25-7-103 Issues Of Fact To Be Decided

By Jury according to Rules of the Common Law[FN#3] assist superior Ray v. Blair[FN#6] so to not suppress voter-elector-juror decision for themselves.

ONE: MCA 15-8-111⁷ 100% (willing seller) Market Value Assessment (85%+/- unwilling seller) Level Challenge constitutional Property Tax Appraisal Consistency.

Appraisal-market Value Standard-Exceptions

TWO MCA 15-7-102. Notice classification, market value⁸ taxable value to owners.

⁷ MCA 15-8-111 Appraisal-market Value Standard-Exceptions (1) All taxable property must be appraised at 100% of its market value except as otherwise provided.

⁸ MCA 15-7-102. Notice classification, market value, and taxable value – appeals.

F. PUBLIC POLICIES AT ISSUE include Basic Obligation Public Service.⁹ 5 CFR §2635.101.

G-1. POLICY public servant emolument¹⁰ to obtain salary \$1,131,313[FN#1].

G-2. POLICY is ministerial¹¹ of extraordinary prosecutorial power.

G-3. POLICY public servant ministerial oath(s) of office require one oath (A) Oath in U.S. Constitution,¹² (B) 28 USC§453,¹³ (C) 5 USC § 3331,¹⁴ & (D) 5 USC § 3332,¹⁵.

⁹ Basic obligation of public service. 5 Code of Federal Regulation (CFR) § 2635.101

(a) *Public service is a public trust.* ... lengthy 14 sections too long to insert here.

¹⁰ Emolument n. (15th century) Any advantage, profit, or gain received as a result of one's employment or one's holding of office. Black's Law Dictionary 10 Ed. (2014) p638,

¹¹ Ministerial adj. (16th-C) Of, relating to, or involving an act that involves obedience to instructions or laws instead of discretion... Blacks Law Dict. 10thEd (2014) p1146.

¹² OATH OF OFFICE (source The Declaration of Independence, The Constitution of the United States (© 2010) Heritage Foundation, page 5). *An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following:*

"I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me god.

¹³ Loyalty Oath 28 USC § 453 of Justices & judges. Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of is office: "I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God."

¹⁴ Loyalty Oath 5 USC § 3331 of office. An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: "I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." This section does not affect other oaths required by law."

¹⁵ Loyalty Oath 5 USC§3332 "Officer affidavit; no consideration paid for appointment. "An officer, within 30 days after effective date of his appointment, shall file with oath of office required by § 3331 of this title an affidavit that neither he nor

G-4. POLICY Ministerial (clergy) Exception¹⁶ prove fiction ministerial lawyer exception.

G-5. POLICY petition addresses ministerial function test¹⁷ ministerial duty¹⁸ in duty to act¹⁹ no discretionary act²⁰ no discovery Rule²¹ to collect: \$1,131,313[FN#1].

G-6. POLICY petition is to cover up²² from fraud on court by officers of court.²³²⁴

anyone acting in his behalf has given, transferred, promised, or paid any consideration for or in expectation or hope of receiving assistance in securing appointment."

¹⁶ Ministerial (clergy) Exception. 1. ... 2. In *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S. Ct. 694-708 (2012), the Supreme Court ruled for first time First Amendment requires a "ministerial exception" that allows religious employers to discriminate against their employees without any court review. 3.

¹⁷ Ministerial Function test. (1990) The principle that the First Amendment bars judicial resolution of a Title VII Employment-Discrimination claim based on a religious preference, if the employee's responsibilities are religious in nature, as in spreading faith, supervising a religious order, and the like. 42 USCA Section 2000e-1(a). See Title VII Of The Civil Rights Act of 1964. Blacks Law Dictionary 10th Ed. (2014) p1146.

¹⁸ Ministerial Duty See Ministerial act under act (2) 2. See DUTY (2). (1837) A duty that requires neither the exercise of official discretion nor judgment. Cf. discretionary duty. Blacks Law Dictionary 10th Edition (2014) page 617.

¹⁹ Duty to Act (17th Century) A duty to take some action to prevent harm to another, and for the failure of which one may be liable depending on the relationship of the parties and the circumstances. Blacks Law Dictionary 10th Ed (2014) p 615.

²⁰ Discretionary act (18th Century) A deed involving an exercise of personal judgment and conscience. – Also termed discretionary function. See Discretion; Abuse of Discretion, Blacks Law Dictionary 10th Edition (2014) page 565.

²¹ Discovery Rule (1916) Civil procedure. Rule that a limitations period does not begin to run until plaintiff discovery (or reasonably should have discovered) injury giving rise to claim. *discovery rule usu. Applies to injuries that are inherently difficult to detect, such as those resulting from medical malpractice. See Statute of Limitations, Accrual Rule Cf. Occurrence Rule. Blacks Law Dictionary 10th Edition (2014) page 565.

²² Cover up n (1927) attempt to prevent authorities or public from discovering truth about something;... conspiracy of deception, nondisclosure, & destruction of evidence, ... often involves obstruction of justice. Black's Law Dictionary. 10th Ed (2014) p 446.

²³"Fraud On The Court By An Officer Of The Court & Disqualification of Judges, State & Federal" www.ballew.com/bob, Exhibit A-3751 (3-pages).

²⁴ Fraud on the court (1810) In a judicial proceeding, a lawyer's or party's misconduct so serious that it undermines or is intended to undermine the integrity of the proceeding. Examples are bribery of a juror and introduction of fabricated evidence.

G-7. POLICY petition is to amend by court order F.R.Civ.P. 12(h)&15(a)(2)).

CORPORATE DISCLOSURE STATEMENT: U.S. RULE 29.6

Required by U.S. Rule 29.6 disclosure to identify conflicts of interest to public:

Part One: 25% at complaint filing, then 75% now 0% on 305 Main Street Washoe Amusement Co. Inc. Pro Se Plaintiff/Petitioner RickLUSSY as 1-of-4-fine-boys-equal 25% share grew to 75% (cert. doc. #8, Exhibit A-8531 pp63-64 of 82).

Disclosure proof is fraud on court by Pro Se officer of court: Wade J. Dahood.

Part Two: 25% of Butte Georgetown Mining & Milling Inc. a family stock company.

Part Three 25% then 75% at complaint signing fee simple estate: 1818 Tammany St. real & personal property Mother & Father's homestead Ex.A-8483 (d.c. #8, p77 of 82).

I declare under penalty of perjury that foregoing is true & correct. Executed on

May 27, 2020 Rick RickLUSSY/Richard C Lussy Pro Se Plaintiff/Appellant/Petitioner

STATEMENT OF CASE

Facts Giving Rise To This Case

FROM Incorrect: “[D]istrict court’s judgment dismissing his action alleging federal and state law claims arising out of the administration of the assets of Lussy’s mother’s estate.” (d.c. #70, Memorandum filed 3/06/20)

TO Correct With Pleadings Read: A short concise statement: opponents are lying for a living. Otherwise First Amended Complaint evidence including: “*rambling of speculative allegations of no sense*” to be weighted by a jury.

[A] Part One: Before 11/9/2015 for 2015 to present: Merna Green Montana Department of Revenue Assessors Office [A-i] public servant refusing to serve the public; [A-ii] then slander by repetition of libel per se Dahood case CV-78-67-BU to reopen for ongoing fraud. [A-iii] Default \$89,828.56 clerk to court is not good behavior.

[B] Part Two destroyed evidence civil RICO pattern: [B-i] On 11/9/20 Pro Se Wade J. Dahood said Living Trust died when your mother died: destroyed *Revocable living trust* to be Last Will & Testament; [B-ii] On 4/6/15 his Pro Se Law Firm said Blessed Mother Estate has already been adjudicated by Judge Dolton. [B-iii] Fact witness Judge Dolton in related case said he did not adjudicate case & Clerk Krueger (Doc 65 p46 of 61) said no probate Index-Trust-Estate-Will has ever been filed. [B-iv] After funeral mass 11/7/15 HPaumieLUSSY said mother: “*she never did anything for me (bright beet red face & neck)*,” from mothers basement & driving her Pontiac G9

(emphasis) Blacks Law Dictionary 9th Edition, 2009, page 732.

car. [B-v] HPaumieLUSSY abandonment-isolation attempt of Mom for her to despair and give him a Power of Attorney & Administrator of Estate. [B-vi] November 11, 2015 LaunaLynnROQUE & JuahleeMurieBORNFF boxed up Mothers personality w/modest diamond ring refused to share &/or purchase: 4-fine boys (Rick) Sara & Jerry (Janna).

Particularized 55-claims that Trial-Appellate Courts did not read.

#1.) Nov. 2, 2015 Certificate of Death Blessed Mother (Saint) Dorothy Helen Lussy left this world (*cert. doc. First Amended Complaint 8, page 40 of 82*).

#2.) COUNT IV-A Before 11/9/2015 for 2015 property tax year Merna Green a public servant not serve-public-refuse-RickLUSSY on-phone: 3-property tax appeal forms Exhibits A-8533-4-5, (Doc #8 pp69-70-71) not on www. (*Doc. 8, p32 of 82-pges L 9-32*)

#3.) COUNT IV-C. MernaGREEN prompts US Constitutional challenge of Montana Statute MCA 15-8-111 Property Assessment Market Value (willing seller) per Fed. R.Civ.P. 5.1 consistent to Montana Code Annotated Rule 5.1(a)(1)(2).²⁵

#4) Her repetition of libel per se Dahoo CV-78-67-BU shall be reopened for fraud.

#5.) Merna-GREEN's continuing default (\$89,828.56 @ 15% interest on 4/6/18) clerk-to-court pending Default Judgment Federal Rule of Civil Procedure 55(b)(2) on appeal judge not in good behavior argument, Missoula hearing, (*Doc. 61, pp45-65*) & First Amended Complaint (*Doc. 8, p32 of 82-p L 9-32*).

#6) Her defamation of RickLUSSY on phone to be reopened for underlying Bennett President of Bank & Mark Davidson-Guy McCllland RickLUSSY Plaintiff Lawyers.

#7) US Clerk Supervisor Conley unconstitutional *FTR Gold Recording Ordering Form* on April 7, 2018 is audio record “destruction” no switch flipped by willful omission of public audio-tape record 4/6/18 all free public law & installed in court room. Only transcript exists. No plan B. (*cert. doc. 65 page 42 of 51*).

#8.) Magistrate JC Lynch prosecutor & “judge” inability to run his stopped computer: Lynch refused to certify constitutional per Rule 5.1 with no-reply-yet-from Governor.

“.... The notion that all pro se & government lawyers’ hearsay is vested with unreviewable power to both execute and interpret the law is foreign to our USA system of government....” concurrent pursuant *Cet. Doc. 61, 4/6/18 pp 45-65*.

#9.) RickLUSSY is to protect & preserve estate capital & property from fraud. *Doc. #8, p25 (Line 1) of 8.*

²⁵ Montana Code Annotated Rule 5.1(b) Of Civil Procedure, Constitutional Challenge To Statute-Notice And Intervention **(b)** Intervention; ... within 60-days after the notice is filed or after the court certifies the challenge... holding the statute unconstitutional.

#10.) Wade J. Dahood surprise meeting 11/9/2016 aid & abet Henry Paumie Lussy et al. false representation: RickLUSSY sign Ex. A-8306. (Doc. #8, p25 (Line 4-5) of 82.

#11.) RickLUSSY Doc. #8, p25 (Line 7-8) of 82: Exhibit A-8381 Sign... before property distributed from trust.

#12.) Doc. #8, p25 (Line 9-10) of 82: Daughters Juahlee Murie Bornff with Launa Lynn Roque parties Henry William Lussy not present, not benefit f/money or property.

#13.) November 11, 2015 Doc. #8, p25 (Line 10-11) of 82: Juahlee Murie Bornff with Launa Lynn Roque boxed Blessed Mother's personalty to Vancouver WA.

#14.) HPaumieLUSSY denied ignored RickLUSSY access to 1818 Tammany Street homestead. Issue: Doc. #8, p25 (Line 12-13) of 82.

#15.) Case Record CV-78-67-BU destroyed consistent pattern of recidivist Dahood case CV-17-79-BU-JCL-BBM with destroyed Revocable Living Trust. Another related case Dahood v RickLUSSY disappeared is civil RICO: Doc. #8, p25 (Line 18-19) of 82.

#16.) COUNT IV-B. MernaGREEN violate US Constitution Art I § 8, deny legally sufficient info to appeal now last resort to sue Fed. court Doc. 8, p32 of 82-pges L 15-20.

#17.) COUNT IV U.S. Magistrate JC Lynch as prosecutor belligerent & insincere double talk is judgitis²⁶ bad behavior U.S.Art III ¶1. (cert. Doc. 61, pp 45-65)

#18.) Required voter-elector-juror oversight of public servants in Missing 13th Amendment aka (1819) Title of Nobility Amendment (non-lawyer to access free public law to compete with American Bar Association ("ABA"), British Accredited Registry (BAR) & Affiliated Business Arrangement (Cet. Doc. Complaint Doc. 8, pp5-22 of 82).

#19.) RickLUSSY is a competent little person (cert. doc. 61, p60 L14-14) without emolument of power control by plexus lawyer-government.

#20.) In both civil fraud consubstantial with criminal fraud jury verdict referral to government prosecutor.

#21.) JUDGE JC. LYNCH is mollycoddling opposing counsel Jeffrey Wade Dahood. PP44-45 L 18-19 to end) (Cer. doc. 61).

²⁶ Judgitis (1956) An emotional disequilibrium that results when a judge confuses the trappings of judicial office with his or her own personal grandeur; the self important condescension to which certain emotionally insecure judges are susceptible. See Judicial Diva(2) Black's Law Dictionary 10th Edition (2014) page 970.

#22.) No legal notice²⁷ RickLUSSY for probate estate settlement (Cer.Doc.61,p5,L 25) AND (cer. doc 65 page 46 of 51) AND (cer. doc. 61, P 40 L9-17).

#23.) No legal due process Fed. Question plead to proceed w/live fact-sworn testimony.

#24.) Magistrate LYNCH unfit not understand what he read as overlord no service belligerent-bias judgitis. www.RickAppraiser2020Election.org Mission Statement.

#25.) U.S. CLERK destroying case record evidence by her own-admission Exhibit A-8478 (2 of 2) CV-78-67-BU[FN.#8] with filed record destroyed. [FN#8] Art. III § 1.

#26.) Magistrate JC LYNCH set aside civil RICO law plead by RickLUSSY disregard 1st amended complaint: not-good-behavior Art. III § 1. (cr.doc.61 p 40, L 9-17).

#27.) HPaumielLUSSY "care"-giver in-basement: (A) Of Mother: "She never did anything for me" spoke with beet red head and neck after 11/7/2015,...(B) ... (C) ... (D) ... (E) ... (F) PURPOSE isolate Mom to-despair-as-vulnerable force her to sign...

#28.) RickLUSSY contests all defendant's public record manipulation, falsification (A) Exhibit A-8282, ... missing remaining pages); (B) Exhibit A-8306, ... (C) all necessary for Formal procedure Estate Settlement DP 18-31 refused by Dahoo: and (D) Exhibit A-8304, ... \$35,000 cashiers check.

#29.) RickLUSSY contests real property fee-ownership of 1818 Tammany Street Exhibit A-8483 as conspicuous²⁸ omission of "DEED" Uniform Commercial Code§1-104.

#30.) RickLUSSY contest personal property owned 1818 Tammany St. post 11/2/15.

#31.) RickLUSSY contests all personal property in 1818 Tammany St. now occupied by HPLUSSY include jewelry Mother earned, gifts from Dad & Rick from Tiffany's.

#32.) RickLUSSY contests Mothers' 1st Montana Bank lock box & financial accounts.

#33.) Rick contests all Butte Georgetown Mining & Milling Company Inc. ownership.

²⁷ Due process of law. "An orderly proceeding wherein a person is served with notice, actual or constructive, & has an opportunity to be heard & to enforce & protect his rights before court having power to hear & determine case. Kazubowski v. Kazubowski, 45 Ill. 2d 405, 259 N.E. 2d Black's Law Dictionary 8th Ed. (1979) p 449.

²⁸ Construction UCC § 1-104 unified coverage Conspicuous UCC § 1-201 General Definitions (10) "Conspicuous": A term or clause is conspicuous when it is so written that reasonable person against whom it is to operate ought to have noticed it. ... (as: NON-NEGOTIABLE BILL OF LADING) ... (In Montana fact to law by jury verdict).

#34.) RickLUSSY remedy “cost to cure” windmill construction roof 1818 Tammany St.

#35.) RickLUSSY contest Dahoo “Full Release Recipients” contingent fee contract.

#36.) RickLUSSY contests 3-constitutional parts per F.R.Civ.P. 5.1 certification not given. (cert. doc. 61 (transcript 4/6/18) p 21 L6-7).

#37 RickLUSSY challenges constitutionality of Montana Code Annotated 18-8-111 for 3-tax appeals: 2015 to present Ex. A-8533/A-8534/A-8535 (cer doc. 8 pp 69-70-71).

#38.) RickLUSSY contest U.S. Clerk policy for destruction of case record CV-78-67-BU.

#39.) RickLUSSY contests Merna Green’s defamation of RICKLUSSY over the phone.

#40.) RickLUSSY contests Merna Green public servant refuse to legally serve public.

#41.) RickLUSSY contests Merna Green’s double agency employment insider attacker with International Green Machine for double pay use government emolument[FN#10].

#42.) RickLUSSY contests necessary & non-dispensable party Ray Richards insider attacker: proxy f/*International Green Machine* with lawyer trade union enterprise contract.

#43.) RickLUSSY contest recidivist Pro Se Wade Dahoo use judges as proxy’s’.

#44.) To decertify accreditation the governmental empowered: American Bar Association (“ABA”) as a cartel with Affiliated Business Arrangement for jury verdict.

#45.) To delist-decertify sub-mediocre ABA as sole accreditation of three year law schools replication of Old England pre-to-post 1776 contrary to US Monroe Doctrine.²⁹

#46.) RickLUSSY challenges to decertify, delist ABA for inadequate training of law students (a) deceptive public advertising ...: (b) no jury trial core course...; (c) while boast graduate diplomas are “juris doctor” with no doctor experience what-so-ever.

#47.) RickLUSSY challenges gross negligence Clerk FTR Gold Recording or Transcript Designation & Ordering Form 04/2018 (cer. doc. 65 (5/22/18) p 42 of 51).

#48.) RickLUSSY Constitution not require lawyer-lobbyist to be judges-justices.

²⁹ Monroe Doctrine (1823) Kings East of Atlantic, No Kings West of Atlantic Ocean Principle United States will allow no intervention or domination by any non-American nation in Western Hemisphere. ... Blacks law Dictionary 8th Ed., (2004) p1028-9.

#49.) RickLUSSY delisting of American Bar Association (“ABA”) as a cartel³⁰ or else a 100-percent jury trial would have occurred already. No class-court-experience.³¹ With no accountability to voters-as-owners of monopoly gov’t in fee simple estate.³²

#50.) RickLUSSY notes Lawyer-lobbyist trade union enterprise contract with *International Green Machine* (300-shills per county plus embedded government & business employees) these forty one years (CV-78-67-BU to CV-17-79-BU-JCL-BMM) with government lawyer judge W-2 employees secret surveillance warrants (“SSW”) for 24/7, physical comings & goings, electronic file word/number changes/file deletions, telephone taps, sabotage surveillance while creating malicious incidents to ruin Rick.

#51.) RickLUSSY notes judges-justices are proxy lobbyists for ABA-(see #49) pledge-promise never to enforce Ministerial Oath of Office while refusing outside oversight that Titles of Nobility aka Missing 13th Amendment shall remedy.

#52.) RickLUSSY notes Wade J. Dahood Esq. is (A) super majority culpable; (B) ...; (C) ... (D) ... (cer doc 65 p50 of 51) Exhibit A-8306 destroyed Mother’s Living Trust.

#53.) RickLUSSY (A) (Little Person (cer. doc. 61 P60 L14-14) notes JC Lynch Magistrate the fraud originator by manipulating & falsifying public records (cert doc 63 (5/2/18) (15-p)) in; (B) 61 (trans 4/6/18) p 21 L6-7). (D) (E) (F) (G) ministerial function test cannot ignore RickLUSSY’S free speech for Justice should freely give leave to amend (FRCivP 12(h)(ii) & 15((a)(2)).

#54.) Petitioner demonstrate corrupt government: [A],[B],[C] constitution violations.

#55.) Magistrate Lynch demonstrates (a) no understanding of what he reads-if-he-read-court-file, (b) failed “state-a-claim” with 55-claims (Cert Doc. 63, p1 of 15); (c) his bluff & bluster infers a *contempt of court* “tipping point”; (c) confident prevarication for

³⁰ The University of Chicago law professor Todd Henderson, writing for Forbes in 2016, offered a blunt assessment: “The American Bar Association operates a state-approved cartel.” Source: *The Atlantic*, “Gilded future of the top 10 percent-and the end of opportunity for everyone else” June 2018 page 56.

³¹ “Law schools have all but abandoned the education of trial lawyers, and the truth is that you’ll graduate knowing very little more about the art than you do now... .” By F. Lee Bailey, The Defense Never Rests, (1971) Page 17.

³² Fee Simple Estate Defined *Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.* The Appraisal of Real Estate (red cover) 10th Edition 1992, Page 122. The highest form of ownership rights. Appraising Real Property, by Byrl N. Boyce, William N. Kinnard, Jr. 8th Printing, 1987, Introduction to Appraisal and Appraising. Page 1.

a living of words & numbers (half a millions dollars cert. doc. 61 p64 L10) for \$89,828.56; (Cert Doc. 65, p22 of 51) (d) he is pattern RICO etc. const. violations.

55-REASONS ABOVE: WHY CERTIORARI SHOULD BE GRANTED BELOW

I

Review Is Warranted For Constitutional Conflict: (a) *Inferior Bell v Twombly* Not Directly Comparable To Superior *Ray v. Blair*; (b) To Apply Ministerial Oath Of Office Opposite Fiction Ministerial Lawyer Exemption; (c) Role Of *Stare Decisis*: Case Study To Common Law, Civil Law & Mixed Systems Not Suppress First Amendment: Jury Verdict Ibid.

First-(a), the mandate of conventional conservatism (status quo) is to apply logic for reasonableness. Reasonableness is similarly-legal to: highest & best use³³ a commercial real estate appraisal discipline and part functional literacy. By direct comparison *Bell v Twombly* is inferior & not comparable to *Ray v. Blair* is superior. *Bell v Twombly* demands a heightened pleading particularization of facts not published in Federal Rules of Civil Procedure: book. Warranted is a second opinion by jury verdict “as is” First Amended Complaint denied by trial/appeal courts. THEREBY superior *Ray v. Blair* requires juror-voter-electors to decide for themselves with no suppression. Result is to charge by delisting: U.S. Magistrate LYNCH correctly accused of judgitis-bias, double-talk word, attitude & physical actions taken. “*No flip of the switch*” for electronic oral tape recording is missing. The recidivist U.S. Clerk of Court

³³ Course Description Highest & Best Use and Market Analysis is rooted in two long-held tenets of the appraisal profession. The first is that value is created by buyer's perceptions of anticipated benefits. The second is that appraisers can measure anticipated benefits by using valuation models based on established economic principles and applying informed judgment to the conclusions derived from mathematical analysis. The link between these two tenets is that mathematical models used in valuation appraisals lead to sound conclusions only when the numbers used in these models reflect reasonable perceptions of the future benefits to be derived from a specific use of real (& personal) property in a specific market. Appraisal Institute Course 520 Highest & Best Use and Market Analysis September 8, 2000, page XI.

again proved to be a proxy lawyer judges to eliminate evidence as their public charge.

Second-(b), apply *Ministerial Oath of Office* to all office holders in jury verdict.

The fiction *Ministerial Lawyer Exemption* is applied by proxy lawyer judges serving their own lawyer-lobbyist-trade-union-enterprise: special interest-group with 100-percent market share. In plain-light is unwritten law. Requires civil RICO pattern in a jury trial verdict referral consubstantial for government criminal RICO prosecution.

Third-(c), the "*Role Of Case Study To Common Law, Civil Law & Mixed Systems* is not to suppress the Establishment Clause, First Amendment: Jury Verdict decision: juror-voter-elector issues of fact to law MCA 25-7-103[FN#4] (Question Part B page ii.)

"The different roles of case law in civil law and common law traditions create differences in the way that courts render decision. Common law courts generally explain in detail the legal rational behind their decisions, with citations of both legislating and previous relevant judgments, and often an exegesis of the wider legal principles. These are called *ratio decidendi* and constitute a precedent binding on other courts; further analysis not strictly necessary to the determination of the current case are called *obiter dicta*, which have persuasive authority but are not technically binding. By contrast decisions in civil law jurisdictions are generally very short, referring only to statutes, not very analytical, and fact-based.³⁴ The reason for this difference is that this civil law jurisdiction apply legislative positivism – a form of extreme legal positivism – which holds that legislation is the only valid source of law because it has been voted on democratically; thus, it is not the judiciary's role to create law, but rather to interpret and apply statute, and therefore their decisions must reflect that." Source "*Contrasting role of case law in common law, civil law, and mixed systems*" Wikipedia page 14 of 30, 12/18/2019 1:29 PM. (emphasis)

The judge-made-case-study of *stare decisis* to become Rules of Common Law to control jury trial U.S. Amendment VII qualification is illegal-&-not possible. It is part of block & stop lawyer *juris doctor*, no-doctor-experience, inadequate 3-year-law-school-training prohibiting free-public-law-governance-to include patronage/pizzo/tribute.

These two U.S. Supreme Court Cases: Ray v. Blair[FN#6] & Bell v Twombly[FN#5] are not technically binding as *stare decisis* cannot make Rules of The Common Law, in part-authority-MCA Evidence Rule 301(1)[FN#46] Conclusive Presumption specifically declared conclusive by statute & M.R.Civ.P. Rule 81[FN#48] that *stare decisis* cannot make Rules Of Common Law to prohibit United States Constitution Amendment VII (1789) Jury Trial consubstantial with (1791) First Amendment establishment clause with no Ministerial Lawyer Exemption. Therefore, U.S. Magistrate Lynch etc et al cannot prohibit Pro Se Non-Lawyer RickLUSSY free speech in free-public-courts, before free-public-lawyer-judges in free-public-law. This is to extort to: re-resell free public air to the birds, re-reselling free ice to the Polar Bears and re-reselling free public water to the fish fully articulated in the Titles of Nobility Amendment aka (1819) Missing Thirteen Amendment remedy: lawyer-judge: patronage/pizzo/tribute.

II

REVIEW Is Warranted To Correct Constitutional Conflict Violations:

(a) Ministerial Oath of Office Employees Refuse Duties Of Loyalty Gross

Negligent Originate, Manipulate, Falsify Delete Public Records;

(b) No Good Behavior Of U.S. Constitution Article III § 1 & 1st Amend;

(c) Ray v. Blair Suppression of Law To Inferior Hearsay: Bell v Twombly.

(d-i) Clear Errors: Gross 15-Page Findings & Recommendation; (d-ii) Refuse Justice-Rule To Amend; (d-iii) Refuse Rule 5.1 Certify Constitutional Challenge MCA 15-8-111; (d-iv) Allow No Oral Evidence Of Clerk Not Flick Switch On" For FTR Oral Public Recording.

First-(a): Pre-employment Ministerial Oath of Office[FN#19-#22] for this court's narrow court ruling deciding only that the case should not be thrown out till after the August 18, 2020 Collier County Florida Property Appraiser Election.

Appellate court "*judgment entered March 06, 2020 Dismissal Without Leave to*

³⁴ Brian A. Blkum, Contracts, 4th edn. (NY: Wolters Kluwer, 2007), 37.

Amend: MEMORANDUM warrants review as to, two fold not-good behavior of LYNCH & General Docket Clerk as origin of manipulated-falsified public records:

FROM: "Not Good Behavior of Jeremiah C. Lynch U. S. Magistrate et al Is A Violation of United States Constitution Article III Judiciary § 1." (cer doc 61 4/16/18 (8-pages)

TO #60 General Docket Clerk (in Appendix Exhibit A-8574 (4 of 5)) NOTICE OF FILING BY Richard Charles Lussy (App) (Entered 04/17/2018. No caption.

And

FROM: "Eleven Exceptions To: Findings & Recommendations (Document #63) Substantive Procedure, Law & Fact Errors That Judge Brian Morris Is Justified To 100% Throw Out As A Double Negative Is An Affirmative: 100% Fraud On Court By Officer Of Court's Fallible Court Judge Lynch: No-Good Behavior US Article III § 1: Affidavit Affirmative Defense Allow leave To Amend Complaint & Restatement of (\$89,828.56) Default" (cer doc 64 & 65 5/22/18 (51-pages)

TO #64 General Docket Clerk OBJECTION TO 63 Findings and Recommendations Filed by Richard Charles Lussy (APP) Entered 5/15/18) No caption

And

TO #65 General Docket Clerk AFFIDAVT/DECLARATION re 63 FINDINGS AND RECOMMENDATINS; granting re 45 Motion to Dismiss for Failure To State A Claim, granting 12 Motion to Dismiss for failure for Failure to State a Claim, denying 35 Motion for Default Judgment Signed by Judge Brian Morris on 10/29/2018 (TAG) (Entered: 10/29/2018). No accurate caption.

Smoking-gun-evidence is civil-RICO-*International-Green-Machine* methods below:

Express omissions, 100-percent concealment & insider trading: embedded fraudster employees with 300-per county shills-plus-embedded gov't & business.

I-(a). Second above 2-documents intentional constitutional violations by Lynch/Clerk.

I-(a). Third, compound-reoccurring constitutional-violation-by-malice Clerk "General Docket" Index misrepresent petitioners captions admission to destroyed case document benefiting recidivist pro se KNIGHT & DAHOOD Law Firm in CV-78-67-BU[FN#9].

I-(b). First: F.R.Civ.P. 5.1(b) LYNCH refuse Certify in constitutional error:

Constitutional Challenge MCA 15-8-111. Error Claim: Magistrate LYNCH et al *proclaimed this Rule 5.1 is not a substantive right.* (cr. Doc 61 page 21 L7) yet *stare decisis* itself-is-a-stand-alone constitutional violation, not a right!

I-(b). Second: Magistrate LYNCH in constitutional violation to block-&-stop-100-

percent jury trial ibid incorrect use of stare decisis inferior Bell v Tomley conflicts with Rule 12(b)(6) failure to state a claim contradicted here with 55-claims.

I-(b). Third: Inferior hearsay stare decisis: Bell v Tomley is not technically binding.

I-(c). First: "Clerk Not Flick Switch On" FTR Oral Recording proof this Court LYNCH is not in good behavior violate Constitution Amendment 1: Art. III § 1 as verbal record of yes-or-no mystery "speaking over" belligerence can intimate: contempt of court.

I-(c). Second: "Clerk destruction of case file CV-78-67-BU-not "flip-on-switch" to record CV-17-79-BU-JCL-BMM constitutional violation-to-further benefit-Pro Se-Dahood.

I-(c). Third: "Clerk's defense (cr doc 65 (page 42 of 51) instant playback *FTR Good Recording Transcript Designation Ordering Form* is onerous for jury const.-violation.

III

Review of MEMORANDUM Is Warranted To Apply Constitutional Conflict: Ministerial Oath Of Office/Function Test Conflict With *Bell v Twombly*.

Bellow review of MEMORANDUM Not For Publication-(not-a-precedent) is warranted for reversal of appellate court for narrow decision by U.S. Supreme Court (cert. doc 70 (3-page) not to throw out. Incorrect Judiciary-self-prescribed-Minister-Lawyer-Exception as lawyering is no religion only a business with 100% market share.

¶ No Pro Se 9th DCA number violates F.R.Civ. P. 10(b): "The district Court properly dismissed Lussy's Racketeering Influenced and Corrupt Organizations Act ("RICO") claim because Lussy failed to allege facts sufficient to demonstrate any element of Rico claim."

Defenses' Conclusive Presumptions (MCA Rule 301(1))³⁵ 55-Issue Conclusive Presumption Rule 301(1) to 100-percent-impeach trial/appellate court "failed to allege facts" call for "particularized" facts: (a) MEMORANDUM-with no proof is 100-percent-inconclusive presumption(s) (Rule 301(2)) (b) particularized plead evidence (MCA 26-1-101) in First Amended Complaint in Appendix (Doc. 8, pp 1-82), (c) jury

³⁵ MCA Rule 301 (1) Conclusive presumptions are presumptions that are specifically declared conclusive by statute. Conclusive presumptions may not be controverted.

verdict weigh evidence from live witness testimony (MCA 25-7-103[FN#4]). (d) *stare decisis* cannot prequalify & prohibit U.S.-Constitution Article VII Jury Trial with four video cameras etc. see Question Part B page 2, (e) Appellees self-administer/immunize fiction: ministerial (lawyer) exemption, (f) Hearsay all *Conclusions of Law* with no-primary sources' (name-phone-number-date-&-time) in direct comparison (MCA 26-1-101(5)); (g) No conclusive evidence by law unless declared-by-statute-(MCA 26-1-102 (2) (b)). (h) All \$1,313,313[FN#1] public paid Magistrate-Judges have not declared under oath *Conclusions of Law* are not-verified. THEREFORE narrowly reverse the case not be thrown out now.

¶¶ No Pro Se 9th DCA number violates F.R.Civ. P. 10(b): *"The district Court properly dismissed Lussy's state law fraud claim because Lussy failed to allege fraud with particularity as required under Federal Rule of Civil Procedure 9(b). See Kearns... which applies to state law claims alleging fraudulent conduct) see also In re Estate of Kindsfater."*

Defenses' to **MEMORANDUM** (a) presumption ... ¶¶ibid.

¶¶¶ No Pro Se 9th DCA number violates F.R.Civ. P. 10(b): *"The district court properly dismissed Lussy's claim based on the "Missing 13th Amendment." See Hebbe... (although pro se pleadings are liberally construed, a plaintiff must allege facts sufficient to state a plausible claim).*

Defenses' to **MEMORANDUM** (a) presumption ... ¶¶ibid.

¶¶¶¶ No Pro Se 9th DCA number violates F.R.Civ. P. 10(b): *"The district court did not abuse its discretion in denying Lussy leave to amend because amend would have been futile. See Chappell... (setting forth standard of review and explaining that a district court "acts within its discretion to deny leave to amend when amendment would be futile").*

Defenses' to **MEMORANDUM** (a) presumption ... ¶¶¶ibid.

¶¶¶¶¶ No Pro Se 9th DCA number violates F.R.Civ. P. 10(b): *"The district court did not abuse its discretion in denying Lussy' motion for default judgment against defendant Green because Lussy failed to demonstrate the possibility of prejudice and failed to plead sufficient facts to state a claim against green See Eitel... (setting forth standard of review and factors courts consider in determining whether to enter a default judgment).*

Defenses' to **MEMORANDUM** (a) presumption ... ¶¶¶¶ ibid including Default F.R.Civ.P. 55 as repeatedly filed & recorded, unless courts copy was destroyed like entire Butte U.S. CV-78-67-BU reference (cer. doc. 8 Ex. A-8978, page 39 of 82).

¶¶¶¶¶ No Pro Se 9th DCA number violates F.R.Civ. P. 10(b): *"We reject as meritless Lussy's criticism of the magistrate judge, the district court judge, and the courtroom deputy. We do not consider matters not specifically and distinctly raised and argued in the opening brief. See Padgett..."*

Defenses' to **MEMORANDUM** (a) presumption ... ¶¶¶¶ibid.

¶¶¶¶¶ No Pro Se 9th DCA number violates F.R.Civ. P. 10(b): "Lussy's motion to expedite the appeal (Docket Entry No. 15) is denied as moot.

Defenses' to **MEMORANDUM** (a) presumption ... ¶¶¶¶¶ibid.

¶¶¶¶¶ No Pro Se 9th DCA number violates F.R.Civ. P. 10(b): "Lussy's motion for sanctions (Docket Entry No. 16) is denied.

Defenses' to **MEMORANDUM** (a) presumption ... ¶¶¶¶¶ibid Respondent Dahood labeled in Answer Brief he was also representing Merna Green for Montana Department of Revenue, It was not a typographical error, by Dahood's Reply.

Second review is the mandatory ministerial oath of office as ministerial & without discretion:³⁶ (A) Oath in U.S. Constitution, (B) 28 USC§453; (C) 5 USC § 3331, & (D) 5 USC § 332)[FN#15-to-#18] is to subordinate the public servant: obligatory basic job description to public service (5 CFR § 2635.101)[FN#17]. These four similar oaths conflict with Lynch-Morris trial & appellate courts. Public service is to serve fee simple estate owners[FN#36] of government: WE THE PEOPLE-registered voter taxpayers.

Third, review of **MEMORANDUM** is warranted for a reversal by addressing this miscarriage of justice, manifestly more than clear error, as remedy is in best interest of the juror-elector-voter/ing (synonyms-words) public to best decide for themselves (Ray v. Blair[FN#6]) with 55-constitutional violations in evidence, be weighted by Ministerial Oath's of Office among broken civil rules of procedure is travesty of justice.

Fourth mandatory REVIEW of evidence by Ministerial Oath's of Office Sworn/Affirmed in constitutional conflict after broken Rule F.R.Civ.P. 12(h)&15(a)(2)³⁷ that blocked & stopped First Amendment Due Process Of The Law's Public Purpose.

³⁶ Discretion (14 C) 1. Wise conduct & mgt. exercised without constraint; ... power of free decisions-making. Black's Law Dictionary 10th Ed. (2014) Page 565.

³⁷ F.R.Civ.P. 12(h)(1)(B)(ii) Defenses & Objections are a responsive pleading. Rule 15(a)(1) with 15(a)(2) Amended Pleadings. Pro Se Defendant KNIGHT & DAHOOD

Fifth a continuing jury verdict by applying Ministerial Function Test[FN#20] for certiorari so to not suppress Due Process of the Law as did the ninth appellate court Memorandum (cert. dc 70 (3/06/20 (3-pages)). Both trial & appeal courts below: prematurely affirmed to *dismiss/no amend* RickLUSSY First Amended Complaint as an apostasy to American fabric in the establishment clause, First Amendment.

Sixth Ministerial Function Test[FN#20] exclude lawyers with no Exemption[FN#19]. Conflict continues in this infant case pursuant Federal Rule Civil Procedure 12(b)(6) Memorandum selves refusal to particularize & comply with F.R.Civ.P.10(b) *A party must state its claims in numbered paragraphs* (cert. doc 70 (3/06/20) (3-pge) not done.

Seventh this Ministerial Function Test exists side-by-side with the International Green Machine an organized crime-lobbying enterprise that operate in & out of Free Public Courtrooms to manipulate & falsify/delete any public record anywhere in world. This loophole allows unregistered foreign agents, anti-American, insider attacker/proxy/third parties to participate as paid agents on behalf of Lawyer-Lobbyist Trade Union Enterprise to block & stop: Establishment Clause First-Amendment.

Eighth the most expeditious narrow reversal is not to dismiss, not to amend argument as discretionary *Stare Decisis*- conflict cannot be a “Rule of Common Law”: Bell v Twombly to superior Ray v. Blair cannot further suppress reversal of judgment.

IV

Review Is Warranted As Majority Failed to Recognize This Court’s Flexible Approach: Ministerial-Clergy-Exception Is No Ministerial-Lawyer-Exception To Allow Pro Se Non-Lawyer RickLUSSY To Compete Against Lawyers in This Establishment Clause First Amendment Cases.

will never give written consent, not even return phone calls when justice so requires.

While the Ninth Circuit majority recognized that this Supreme Court can utilize three tests over years to analyze violations of Establishment Clause, it failed to recognize the analytical flexibility of three tests considered by the majority were (1) the Lemon test named for Lemon v. Kurtzman, 403 U.S. 602, 612-613 (1971), (2) the "endorsement test" proposed by Justice O'Connor in her concurring opinion in Lynch and (3) the "coercion test" promulgated in Lee v. Weisman, 50 U.S. 577 (1992). See App., pp.8-11. The majority did not, however, consider the fact that this Court has not limited its evaluation of the Establishment-Rule-Of-Law-Clause to these three tests. In fact, in Lynch, this Court stated, "... we have repeatedly emphasized our unwillingness to be confined to any single test or criterion in this sensitive area." Lynch 465 U.S. at 679, citing, Tilton v. Richardson, 403 U.S. 672, 677-678 (1971).

The flexibility of this Court's analysis is best exemplified in Marsh v. Chambers, 463 U.S. 783, 792 (1983). In Marsh, this Court held that the Nebraska Legislature's practice of opening its daily sessions with a (Ministerial-Clergy-Exemption) prayer at both the national, state levels and affirmed legislative prayer based upon historical acceptance of practice which has become "part of society". As applied United-States-Constitution does not require judges-justices in judiciary to be lawyers. Lawyering is organized, just not a religion to be worshiped-as-a-tribal-state-religion as in ministerial-lawyer-exemption to obstruct block & stop Pro Se Petitioner RickLUSSY.

[A]n accused, in exercise of a free and intelligent choice and considered approval of court, may waive trial by jury, and so, likewise, may waive his constitutional right to assistance of counsel. P. 317 U. S. 275. 126 F.2d reversed. Certiorari, 316 U.S. 655, to review a judgment reversing a conviction and sentence in a prosecution for using the mails to defraud in violation of Criminal Code, § 215.

Argument for flexibility is tailor-made for (1819) Missing 13th Amendment aka Titles of Nobility Amendment remedy as ministerial-lawyer-exemption is a fiction.

U.S. Supreme Court, ... and with considered approval of court, ... and so, likewise, may waive his constitutional right to assistance of counsel. P. 317 U. S. 275. 126 F.2d reversed. Certiorari, 316 U.S. 655, to review judgment reversing conviction and sentence in a prosecution for using mails to defraud in violation of Criminal Code, § 215 in Adams v. United States ex rel. McCann - 317 U.S. 269 (1942).

Right to assistance of counsel & the correlative right to dispense with a lawyer's help are not legal formalisms as is the practiced ministerial-lawyer-exemption.

"...that fairness ... does not force a lawyer upon a defendant. He may waive his right to assist of counsel if he knows what he is doing & his choice is made with eyes open." Johnson v. Zerbst, 304 US 458, 304 U. S. 468, 304 U. S. 469.

Concurrent as above: Johnson includes flexibility of Marsh, when considered in conjunction with historical references to pro se non-lawyer free speech in self defense.

Given progenitor: U.S. Magistrate JC Lynch is not-of-good behavior (Constitution Article III § 1 violation) A John Carroll College on the hill graduate (Helena MT). John Carroll signer of U.S. Constitution with famous John Hancock: blockade runner allowed freedom repeatedly by American Jury, in conflict with Colonial British Judges *stare decisis*, of no written constitution. This result given eight previous unsuccessful Florida County Property Appraisal (Assessor) Elections from lawyer-judge-manipulated-public-records, now into August 18, 2020 election best avoid a continued repetition of libel per se *ad infinitum, ad nausea* to further encourage bad behavior against a fragile democracy after eight malicious lawyer-judge-public records elections.

CONCLUSION

"*Dismissed Without Leave To Amend*" demonstrate miscarriage of justice in judgment: that is manifestly more than clear error: broke F.R.Civ.P. 12(h)&15(a)(2). The

recommended remedy is a second opinion by jury verdict on this first Amended Complaint in appendix with no suppression (Ray v. Blair[FN#6]).

If "... merely a rambling of speculative allegations that make very little to no sense" and does not set forth any cognizable "causes of action or other claims for relief." (cert. doc 63 p3 L1-3; & Doc 13, at 2; Doc 19, at 2; Doc. 46, at 2).

This a travesty of justice-warrants review of U.S. Supreme Court ruling as narrow, deciding only that this case shouldn't be thrown out now in its infancy, while leaving difficult legal questions for another day.

Dated May 27, 2020 Respectfully submitted, Richard C. (Charles) Lussy

2/6/21 Plaintiff/Appellant/Petitioner