

Supreme Court, U.S.  
FILED

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19-8891

NO. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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JEFFERY L. HOWARD - Petitioner

-VS-

MANAGEMENT & TRAINING CORPORATION(MTC) et al., - Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT of OHIO  
THE OHIO THIRD JUDICIAL APPELLATE DISTRICT  
THE MARION OHIO COMMON PLEAS COURT

PETITION FOR WRIT OF CERTIORARI

Respectfully,

  
Jeffrey L. Howard  
Human and Civil Liberties Advocate  
North Central Corr. Inst. (NCCI/MTC)  
P.O. Box 1812  
Marion, Ohio 43301

5-28-2020  
Date

IN PROPRIA PERSONA

1 of 27

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

- 1) IS PETITIONER'S FIRST AMENDMENT RIGHTS VIOLATED WHEN PRIVATE FOR PROFIT CORPORATION AND ITS AGENTS DENY ACCESS TO THE PAPER NOTIFICATION of GRIEVANCE(NoG) FORMS REQUIRED BY OHIO ADMINISTRATIVE CODE(OAC) 5120-9-31(M), now (L), MAKING IT IMPOSSIBLE TO COMPLY WITH OHIO REVISED CODE(ORC) 2969.26(A)(2) WHEN FILING CIVIL ACTIONS IN STATE COURT .....
- 2) IS IT RETALIATION AGAINST PETITIONER WHEN PRIVATE FOR PROFIT CORPORATION AND ITS AGENTS DENY ACCESS TO THE PAPER NOTIFICATION of GRIEVANCE(NoG) FORMS REQUIRED BY OHIO ADMINISTRATIVE CODE(OAC) 5120-9-31(M), now (L), MAKING IT IMPOSSIBLE TO COMPLY WITH OHIO REVISED CODE(ORC) 2969.26(A)(2) WHEN FILING CIVIL ACTIONS IN STATE COURT?.....
- 3) IS IT AN EQUAL PROTECTION VIOLATION OF THE LAWS WHEN STATE COURTS REFUSED TO APPLY THE ADMINISTRATIVE EXHAUSTIVE REQUIREMENT EXCEPTION ESTABLISHED BY THIS COURT's DECISION IN Ross v. Blake, 136 S.Ct. 1850?....
- 4) IS IT AN EQUAL PROTECTION VIOLATION OF THE LAWS WHEN STATE COURTS REFUSED TO APPLY THEIR ADMINISTRATIVE APPEAL AND REMEDIES REQUIREMENT EXCEPTION ESTABLISHED BY THEIR HIGHEST COURT's DECISION IN State ex rel. Teamsters Local Union No. 436 v. Bd. of County Comm'rs, 132 Ohio St.3d 47, 52, ¶¶ 20?.....
- 5) IS IT AN EQUAL PROTECTION VIOLATION OF THE LAWS WHEN OHIO COURTS REFUSED TO APPLY THEIR PRINCIPLES OF STARE DECISIS TO COMPLAINTS FOR DECLARATORY JUDGMENT, Arnott v. Arnott, 132 Ohio St.3d 401, ¶10; Wymsylo v. Bartec, Inc. 132 Ohio St.3d 167, ¶31?.....
- 6) IS IT AN EQUAL PROTECTION VIOLATION OF THE LAWS WHEN OHIO COURTS REFUSED TO APPLY STATUTORY REQUIREMENTS FOR A FINAL APPEALABLE ORDER, Ohio Revised Code(ORC) 2505.02(B), TO THE PETITIONER?.....
- 7) IS IT AN EQUAL PROTECTION VIOLATION OF THE LAWS WHEN OHIO COURTS TO REFUSE TO APPLY THE OHIO CONSTITUTIONA REQUIREMENTS FOR A FINAL APPEALABLE ORDER, Ohio Constitution, Article IV, Section 3(B)(2) TO THE PETITIONER?.....
- 8) IS IT AN EQUAL PROTECTION VIOLATION OF THE LAWS WHEN OHIO COURTS IGNORES ITS PRECEDENTS THAT SUBJECT-MATTER JURISDICTION IS EXCLUSIVELY IN THE OHIO COURT CLAIMS WHEN THERE ARE MONEY DAMAGES AGAINST "GOVERNMENT ENTITIES" and "EMPLOYEES," WHICH MANAGEMENT & TRAINING CORP(MTC) HAS BEEN DETERMINED TO BE BOTH A STATE INSTRUMENTALITY AND INSTITUTION, State ex rel. Dunlap v. Sarko, 135 Ohio St.3d 171?.....

9) IS IT A DUE PROCESS VIOLATION FOR THE STATE COURTS TO NOT:

- a) DECLARE THE RIGHTS OF PETITIONER AND NOT DECIDE ALL THE CLAIMS; AND
- b) TO DETERMINE A PRIVATE FOR PROFIT CORPORATION A STATE INSTRUMENTALITY, INSTITUTION, GOVERNMENT ENTITY AND EMPLOYEE BUT WAIVE EXCLUSIVE SUBJECT-MATTER OF THE OHIO COURT OF CLAIMS: AND
- c) IGNORE THE STATE's CONSTITUTION AND STATUTORY MANDATE REQUIREMENTS FOR FINAL JUDGMENTS AND ORDERS

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APPENDIX B - Howard v. Mgt. & Training Corp., et al., 2016-Ohio-0519;

APPENDIX C - Howard v. Mgt. & Training Corp., et al.,  
2020 Ohio Lexis 435, 158 Ohio St.3d 1410;

APPENDIX D - Howard v. Mgt. & Training Corp., et al.,  
2020 Ohio Lexis 757, 158 Ohio St.3d 1445;

APPENDIX E -

OPINIONS BELOW:

For cases from State Court:

The Opinion of the highest State Court to review the merits appears at Appendix "A" to the petition and is,

reported at Howard v. Management & Training Corporation(MTC), 2019-Ohio-4408;

\*\* Petitioner cannot provide copies at this time, North Central Corr. Inst.(NCCI/MTC) has completely shut down all access to a photocopy machine because of COVID-19; and

\*\* Petitioner has had multiple incidents of NCCI/MTC intentionally destroying his legal documents, so if Petitioner cannot be present while his legal documents are being photocopied, Petitioner is high reluctant to give prison officials his legal documents,

\*\* Petitioner has an Ohio Civ.R.P. 37/Complaint for Declaratory Judgment pending against prison officials for the intentional destruction/spoliation of evidence. Tr. Crt. CASE NO. 2018-cv-0075 App.Crt.9-19-0083.

There was no opinion of the Supreme Court of Ohio issued, Jurisdiction declined. See announcement at 2020-Ohio-518. Appendix "C"

\*\* Additionally the NCCI/MTC librarian has a cavalier attitude towards prisoner's legal matters, and takes 11-14 days to deliver needed journal entries from the LEXIS NEXIS legal computers.

JURISDICTION

For cases from State Court:

The date on which the highest State Court decided my case was 10/28/2019. A copy of that decision appears at Appendix "A"

A timely petition for rehearing/reconsideration was thereafter denied on the following date: 3/26/2020, and a copy of the order denying rehearing appears at Appendix "D"

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) and United States Supreme Court 13.3.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### 1) U.S. Constitution, First Amendment,

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

### 2) U.S. Constitution, Fourteenth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens, of the United States and the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### 3) Ohio Constitution, Article 1, Section 16

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

### 4) Ohio Constitution, Article 1, Section 11,

Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

### 5) Ohio Constitution, Article 1, Section 7,

Rights of conscience; education; necessity of religion and knowledge.

### 6) Ohio Constitution, Article 1, Section 2,

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary, and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED cont'd - 2

- 7) Ohio Constitution, Article IV, Section 3(B)(2),  
Court of appeals shall have such jurisdiction as may be provided by law to review, and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district,..
- 8) Ohio Constitution, Article IV, Section 2(B)(2),  
The supreme court shall have appellate jurisdiction as follows:
  - (B)(2)(e) In cases of public or great general interest, the supreme court may direct any court of appeals to certify its record to the supreme court, and may review and affirm, modify, or reverse the judgment of the court of appeals.
- 9) Ohio Revised Code(ORC) 2969.25(A),  
If an inmate commences a civil action or appeal against a government entity or employee
- 10) Ohio Revised Code(ORC) 2969.25(A),  
At the time an inmate commences a civil action or appeal against a government entity or employee
- 11) Ohio Revised Code(ORC) 2505.02(A)(1),  
"Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.
- 12) Ohio Revised Code(ORC) 2505.02(B)(1),  
An order that affects a substantial right in an action that in effect determines the action and prevents a judgment
- 13) Ohio Revised Code(ORC) 2505.02(B)(2)  
An order that effects a substantial right made in a special proceeding or upon summary application in an action after judgment
- 14) Ohio Revised Code(ORC) 2721.02(A),  
Subject to division (B) of this section, courts of record may declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding is open to objection on the ground that a declaratory judgment or decree is prayed for under this chapter. The declaration may be either affirmative or negative in form and effect. The declaration has the effect of a final judgment or decree.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED cont'd - 3

- 15) Ohio Revised Code(ORC) 2743.03(A)1),  
There is hereby created a court of claims. The court of claims is a court of record and has exclusive, original jurisdiction of all civil actions against the state permitted by the waiver of immunity contained in section 2743.02 of the Revised Code
- 16) Ohio Revised Code(ORC) 2743.02(E),  
The only defendant in original actions in the court of claims is the state.
- 17) Ohio Revised Code(ORC) 2743.02(F),  
A civil action against an officer or employee, as defined in section 109.36 of the Revised Code, that alleges that the officer's or employee's conduct was manifestly outside the scope of the officer's or employee's employment or official responsibilities, or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner shall first be filed against the state in the court of claims that has exclusive, original jurisdiction to determine, initially, whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code and whether the courts of common pleas have jurisdiction over the civil action.
- 18) Ohio Revised Code(ORC) 2743.01(A),  
"State" means the state of Ohio, including, but not limited to, the general assembly, the supreme court, the offices of all elected state officers, and all departments, board, offices, commissions, agencies, institutions, and other instrumentalities of the state.
- 19) Ohio Administrative Code(OAC) 5120-9-31(M), now (L),  
Grievances against the warden or inspector of institutional services must be filed directly to the office of the chief inspector within thirty calendar days of the event giving rise to the complaint.
- 20) Ohio Revised Code(ORC) 5120.131(A),  
Industrial and Entertainment fund created and maintained for the entertainment and welfare of the inmates of the institutions under the jurisdiction of the department. The director shall establish rules and regulations for the operation of the industrial and entertainment fund.

## LIST OF PARTIES

✓ 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:

- 1) Management & Training Corporation(MTC) et al.,
- 2) Neil Turner - Warden North Central Corr. Inst.(NCCI/MTC)
- 3) Blaire Smith - Chaplain North Central Corr. Inst.(NCCI/MTC)
- 4) Becky Joyce - Deputy Warden Programs North Central Corr. Inst.(NCCI/MTC)
- 5) Lorri Shuler - Inspector of Institutional Services(IIS) North Central Corr. Inst.(NCCI/MTC)
- 6) Ed Goodwin - Chaplain North Central Corr. Inst.(NCCI/MTC)

## RELATED CASES

Jeffery L. Howard v. Management & Training Corp(MTC) et al.,  
Federal Court CASE NO. 3:17-cv-01180 AFTER REMAND State Court  
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STATEMENT of the CASE

1) Petitioner-Jeffery L. Howard filed a Complaint for Declaratory Judgment Judgment and Injunctive Relief, pursuant to Ohio Revised Code(ORC) 2721.01 et seq., Ohio Civil Rule 57; and O.R.C.2727.02 et seq., on or about September 19, 2016, in the Ohio Marion County Common Pleas Court. And Amended it April 19, 2017.

2) Petitioner-Jeffery L. Howard could not comply with the Ohio Revised Code-ORC 2969.26(A)(2) because the Respondents had continually denied Petitioner the required PAPER Notification of Grievance-NoG forms from 2012/13 through 2017, thereby making it impossible for Petitioner to exhaust administrative remedies.

3) Petitioner-Jeffery L. Howard attached the affidavit of "prior civil filings," Ex. A, and "Sixth(6) Month Financial Statement," Ex. B, required by Ohio Revised Code(ORC) 2969.25(A) and (C).

4) Petitioner-Jeffery L. Howard attached the Ohio Dept. of Rehab. & Corr.(ODRC) Chief Inspector's decision on grievance appeals NCCI-12-13-000145 requiring Christian religious participation, as required by Ohio Revised Code(ORC) 2969.26(A)(1 & 2). Ex. C

5) One of the dispositive "justiciable controversies" in the Notarized Amended Cmpl., Pg.6(¶¶ G, 1-4), federal Doc.#:1-4, PageID #:25, that required speedy relief is as follows:

G) IS THE INSTITUTION INSPECTOR's DELAY OR REFUSAL TO PROVIDE NOTIFICATION OF GRIEVANCE-NoG FORMS A CIVIL RIGHTS VIOLATION, AND RETALIATION, AND A VIOLATION OF HOWARD's FIRST AMENDMENT RIGHTS?

G-1) On or about June 30, 2014, Howard submitted a grievance to the ODR&C Chief Inspector against the North Central Corr. Inst.-NCCI Inspector for denying Howard a Notification of Grievance-NoG form pursuant to Ohio Administrative Code-OAC 5120-9-31(M). The ODR&C Chief Inspector refused to address the issues. Exhaustion was impeded by the Inst. Inspector Lorri Shuler. Ex. D, letter, 8-15-2014.

G-2) Plaintiff-Howard submitted another kite, on or about 5-21-2016 to the Inst. Inspector requesting the required Notification of Grievance-NoG form when filing a grievance against the inspector of institutional services-IIS, as the Ohio Administrative Code-OAC 5120-9-31(M) directs. This is denial of access to courts.

G-3) On or 6-6-2016 Howard submitted another grievance to the Chief Inspector describing the behavior of NCCI's Inst. Inspector-Lorri Shuler. The Chief Inspector has not responded to Howard's typed grievance on the 8½ x 11½ paper. Both NCCI's Inst. Inspector and the Chief Inspector has denied Howard access to the courts, violated Howard's Civil rights and has infringed on Howard's First Amendment rights, and Ohio Const., Art. 1, Section 11, rights.

6) The Supreme Court of Ohio in Wymsylo v. Bartec, Inc., stated that, the three essential elements for declaratory relief are that

- a) a real controversy exists between the parties,
- b) the controversy is justiciable in character, and
- c) speedy relief is necessary to preserve the rights of the parties.

*Id.* Wymsylo, 132 Ohio St.3d 167, [\*176], para ¶¶[\*\*P31](2012); *infra*.

Pg.\_\_\_\_, para. ¶¶\_\_\_\_, Arnott v. Arnott, 132 Ohio St.3d 401, para. ¶ 10(2012)

7) Petitioner informed the Marion Ohio Common Pleas, the Third Judicial Appellate District that "Civil" and "First Amendment" rights are being violated because the Respondents continually refused to provide(the then required PAPER) Notification of Grievance-NoG forms.

8) The remaining justiciable controversies are in the Notarized Complaint for Declaratory Judgment and Injunctive Relief, Tr. Crt. CASE NO. 2016-cv-0519, at (D 1-4) & (E 1-6) & (K 1-3),

D) DOES PLAINTIFF-HOWARD HAVE A LIBERTY INTEREST IN TRUST FUND CREATED BY O.R.C. 5120.131 & 5120.132 AND O.A.C. 5120-5-04 & 05?

Pg. 2, paragraph (D 1-4).

E) DOES ODRC AND NCCI/MTC STAFF VIOLATE THE ESTABLISHMENT CLAUSE BY REQUIRING HOWARD's PARTICIPATION IN CHRISTIAN RELIGIOUS CLASSES IN ORDER TO BE TRAINED ON THE CHAPEL MUSIC SOUNDBOARD?

E-6) The soundboard is used for many non-religious events and functions. To require Howard to attend weekly Christian classes and services is violative of the U.S. Constitution Establishment Clause of the First Amendment, and the Ohio Constitution, Art. 1, Section 7, rights of conscience;..

Pg. 3-4, paragraph (E 1-6).

K) IS MANAGEMENT & TRAINING CORP(MTC) LIABLE FOR NEGLIGENCE HIRING RETENTION AND SUPERVISION AND DISCIPLINE OF ITS EMPLOYEES?

Pg. 9, paragraph (K 1-3).

9) Petitioner filed this Complaint in 2013/2014, in the Amended Complaint named MANAGEMENT & TRAINING CORP(MTC) as a party Tr. Crt. CASE NO. 2014-cv-0508 Ex. "E"; Notice of Appearance Martha Van Hoy Assef, Tr. Crt. CASE NO. 2014-cv-0508 Ex. "F"; Defendant's Motion to Dismiss Plaintiff's Complaint for Declaratory Judgement and Injunctive Relief, Tr. Crt. CASE NO. 2014-cv-0508, Ex. "G"; and Defendant's First Set of Requests For Admission, Interrogatories, and Requests for Production of Documents Tr. Crt. CASE NO. 2014-cv-0508.

10) Petitioner voluntarily dismissed the Complaint, CASE NO. 2014-cv-0508 in September 2015, and timely RE-FILED the Complaint in September 19, 2016. So, for the Ohio Third Judicial Appellate District to disposed of the negligent hiring, supervision and retention and discipline claim in stating,

Even assuming Howard complied with the statutory mandates previously discussed, he failed to allege in his complaint any operative facts to substantiate his claim that the Chief Inspector and MTC has negligently hired, supervised, retained, and disciplined NCCC personnel. Specifically, Howard has failed to plead sufficient facts to demonstrate incompetence of the employee, actual or constructive knowledge of the incompetence on behalf of the employer, and an act of omission by the employee.

Howard v. MTC, 2019-Ohio-4408, paragraph 15(3 Dist). The documents in Paragraphs 389 above supports the constructive and actual

knowledge, and Respondents argument that Ohio Administrative Code-OAC 5120-9-31(J)(1) & (J)(2) & (J)(3) applies, Id. Howard paragraph ¶11, when filing a grievance the warden and the inspector of institutional services-IIS is direct evidence of the employees incompetence. O.A.C. 5120-9-31(M), now (L) applied. infra. Pg. 13, paragraphs 41-44

11) The Complaints filed by Petitioner against Management & Training Corp(MTC) has peculiarly had the affidavit pursuant to O.R.C. 2969.25(A) & (C) removed(after almost 9-months and a Removal to the Northern District CASE NO. 3:17-cv-01180), the ODRC Chief Inspector's decision in NCCI-12-13-600145 was attached but the Marion Ohio courts disregarded the Establishment of Religion issue based on the Ohio State Constitution and Statutory law. See Notarized Compl., Pg.2-3, (¶¶ D 1-4), Pg.3-4(¶¶ E 1-6); Code of Judicial Conduct, 1.1, 1.2 et seq.; State v. Bayer, 102 Ohio App.3d 172, 656 N.E.2d 1314, at 1315(11 Ohio Dist. 1995).

12) The Marion clerk of courts, Julie M. Kagel, was forced to resign during this time also.

13) Respondents-Defendants filed a Notice of Removal to the Ohio Federal U.S. District Court, the Federal Court accepted the case. CASE NO. 3:17-cv-01180.

14) Petitioner-Jeffery L. Howard argued successfully that the Federal Court must Remand, Fed.Civ.R.P. 59 and 60, the State Law issues back to the Marion Ohio County Common Pleas Court. Tr. Crt. CASE NO. 2016-cv-0519, App. Crt. CASE NO. 9-19-040(cited as 2019-Ohio-4408), and Ohio S.Ct. CASE NO. 2019-1662(announcemnt at 2020-Ohio-518), cited as 158 Ohio St.3d 1410.

15) Respondents filed a motion to dismiss the remaining justiciable issues in controversy. The Marion Ohio County Common Pleas Court granted Respondents Ohio Civ.R.P. 12(B)(6) motion to dismiss, based on Petitioner's failure to exhaust administrative remedies. Howard v. Mgt. & Training Corp., 2019-Ohio-4408(3 Dist).

16) Petitioner timely filed a Notice of Appeal, and filed his Merit Brief. Howard v. Mgt. & Training Corp., App. Crt. 9-19-040, the Ohio Third Appellate District affirmed the Marion Ohio Common Pleas court dismissal, cited at 2019-Ohio-4408, [\*P 10] - [\*P 13](Ohio 3rd App. Dist.).

17) Petitioner-Jeffery L. Howard filed a timely "MEMORANDUM in SUPPORT of JURISDICTION," and a "CORRECTIONS and ADDITIONS to MEMORANDUM in SUPPORT of JURISDICTION of Appellant Jeffery L. Howard to the Supreme Court of Ohio, filed December 10, 2019, CASE NO. 19-1662.

18) The Ohio Supreme Court declined jurisdiction on February 18, 2020. See announcement at 2020-Ohio-518, cite 158 Ohio St.3d 1410, 139 N.E.3d 932.

19) Petitioner Jeffery L. Howard timely filed his "MOTION FOR RECONSIDERATION," filed February 27, 2020, and a "MOTION TO REMAND," filed March 11, 2020. The Motion for Reconsidration was denied on March 26, 2020, Howard v. Mgt. & Training Corp(MTC), 158 Ohio St.3d 1445.

20) The Marion Ohio Common Pleas Court totally disregarded its function and did not declare Petitioner's rights in relation to the Respondents placing a Christian Religious participation requirement onto the Industrial & Entertainment(I & E) fund in order

for Petitioner to be trained on the chapel music soundboard, Pg.3 & 4, para.¶¶ E) 1-6, Notarized Compl., Doc.#:1-4, PageID #:18

21) The Industrial & Entertainment(I & E) fund was created for the benefit and entertainment of all Ohio prisoners. O.R.C. 5120.131 and 5120.132. These issues were not addressed at the federal or state level. The Ohio Courts abdicated its responsibility to adjudge and declare the rights and obligations of all parties.

22) The Complaint for Declaratory and Injunctive Relief was a MIXED petition with State Statutory Law, and State Constitutional questions, Article 1, Section 7, 11, and 16, the federal District Court Remanded the State Law claims. Notarized Compl., Pgs.18-19, ¶¶ 75-77, citing Simmons-Harris v. Goff, which stated,

This Court has had little cause to examine the Establishment Clause of our own Constitution and has never enunciated a standard for determining whether a statute violates it.

We reserve the right to adopt a different constitutional standard pursuant to the Ohio Constitution...

*Id.* Goff, 86 Ohio St.3d 1, 711 N.E.2d 203, at 211-212(1999); O.R.C. 5120.131 & 5120.132, Ohio Const., Art. 1, Sect. 7; CORRECTION and ADDITIONS to MEMORANDUM in SUPPORT of JURISDICTION, CASE NO.19-1662 158 Ohio St.3d 1410, Pgs.14-15, ¶¶ 68-69.

REASON FOR GRANTING THE PETITION # ONE (1)

23) UNEQUAL APPLICATION OF THE STANDARD OF APPELLATE REVIEW U.S. FOURTEENTH AMENDMENT and OHIO CONSTITUTION ART. 1, SECT. 2

24) The Ohio Third Appellate District, in Howard v. Management & Training Corp., 2019-Ohio-4408 at paragraph [\*P9](3 Dist) totally disregarded the standard of review for a Ohio Civil Rule 12(B)(6),

A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted tests only the legal sufficiency of the complaint.

*Id.* Howard, 2019-Ohio-4408, ¶9(3 Dist), citing State ex rel. Hanson

v. Guernsey Cty. Bd. of Commrs., 65 Ohio St.3d 545, 548(1992).

25) For a court to dismiss on this basis,

"it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery.

the court must accept [\*\*4] the factual allegations contained in the complaint as true and draw all reasonable inferences from these facts in favor of the plaintiff.

*Id.* Howard at ¶9, citing O'Brien v. Univ. Community Tenants Union, Inc., 42 Ohio St.2d 242(1975); Mitchell v. Lawson Milk Co., 40 Ohio St.3d 190(1988).

26) Petitioner asserts that there are a set of facts consistent with the complaint that would allow for recovery, therefore the Marion Ohio Common Pleas court should NOT have dismissed the Complaint, nor should the Ohio Third Appellate District court affirmed the dismissal. York v. Ohio State Hwy. Patrol, 60 Ohio St.3d 143, 144(1991). This is an Equal Protection violation under the Fourteenth Amendment, and under the Ohio Constitution, Article 1, Section 2, State v. Mole, 149 Ohio St.3d 215(2016); and under the Ohio Revised Code-ORC 2505.02(A)(1), which defines "Substantial right" to mean,

a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

27) The Supreme Court of Ohio and its Appellate court has made compliance with Ohio Revised Code-ORC 2969.26(A)(2) mandatory, so if prison officials thwart Petitioner from taking advantage of a grievance process through machination, misrepresentation, or intimidation, exhaustion of administrative remedies must be excused, according to this court decision in Ross v. Blake, 136 S.Ct.1850,

1859-1860(2016); State ex rel. Teamsters Local Union No. 436 v. Bd. of County Comm'rs, 132 Ohio St.3d 47, 52, ¶ 20(2012).

28) In the Petitioner's Merit Brief in the Ohio App.Crt. CASE NO. 9-19-040, Pgs. 2-3, paragraphs 5-7; and Pgs. 9-10, at paragraphs 48-55, which the Respondents admits in their motion to dismiss, at pgs. 7-8, III. C. that

"Howard alleges that he notified Defendants that he did not receive the proper Notification of Grievane forms.(Am.Compl. pg. 9). Howard, however, has failed to states how he was harmed by Defendants' alleged failure.

In fact, Howard admits that he actually did receive a Notification of Grievance form approximately two months after his request. (Am.Compl. at Pg.9, ¶ 3).

29) The Respondents admittance supports Petitioner's question at Pg.6-7, (¶¶ G 1-4), and it cannot "appear beyond doubt from the complaint that the plaintiff can prove no set of facts,..and the court(S) did not accept the factual allegations..as true..nor did it draw all reasonable inferences from these facts in favor of the Plaintiff-Petitioner;" and this admittance "creates a genuine issue of material fact," so dismissal for failure to exhaust is PLAIN ERROR, EQUAL application of the laws violation, and DUE PROCESS violations. State ex rel. Spencer v. Planning Comm., 80 Ohio St.3d 297, 685 N.E.2 1251, per curiam [2,3](1997),

Sworn pleadings constitute evidence for purposes of Civ.R. 56, and courts are not limited to affidavits in determining a summary judgment motion.

30) Petitioner's Equal Protection rights are further violated because there are still State Law and State Constitution issues that remain justiciable controversies, which the trial court must declare the rights of the parties when the complaint sets forth a viable claim for declaratory relief, One Energy Enters., LLC v.

Ohio DOT, 2019-Ohio-359, paragraph ¶66(10 Dist).

31) The Marion Ohio Common Pleas Judge strained to reach a favorable ruling for MTC, and its employees. With all the supportive evidence for petitioner that was attached to Plnt's Oppos. to Dfndt's Mot. to Dismiss, Pg. 10, paras. ¶36-38, CASE NO. 2016-cv-0519, the Marion court and the Third Judicial Appellate District was still bias against Petitioner as the U.S. Supreme stated in *Bracy v. Gramley*, 117 S.Ct. 1793, 1797,

But the floor established by the Due Process Clause clearly requires a "fair trial in a fair tribunal," *Withrow v. Larkins*, 421 U.S. 35, 46(1975), before a judge with no actual bias against the defendant or interest in the outcome of his particular case. See, e.g. *Aetna*, *supra*, at 821-822, 106 S.Ct., at 1585-1586; *Tumey*, *Supra*, at 523, 47 S.Ct., at 441.

32) Petitioner asserts that the Marion Ohio Common Peas Judge and the Third Judicial Appellate District disregarded the Code of Judicial Conduct, 2.2, at comment [4] which states,

To ensure self-represented litigants the opportunity to have their matters fairly heard, a judge may make reasonable accommodations to a self-represented litigant consistent with the law. See also Rule 2.6, Comment[1A]

*Disciplinary Counsel v. Hale*, 141 Ohio St.3d 518(2014); *Cleveland Bar Ass'n v. Cleary*, 93 Ohio St.3d 191(2001); and as in *Bracy v. Gramley*, 117 S.Ct. 1793, 1798-1799(1997), Petitoner was deprived of his right to a fair judicial review..because the discretionary rulings in this case may have been influenced by a desire on the Marion Ohio Judge, and the Ohio Appellate Judges to allay suspension of the pattern of corruption and dishonesty; and the influencial impact of MTC on the community and courts.

REASON FOR GRANTING THE PETITION # TWO (2)

33) The Ohio Courts Ignored Petitioner's Equal Protection Rights U.S. Const. Fourteenth Amendment and Ohio Const., Art. 1, Sect. 2

34) The presiding Judge FORD in the Ohio Appellate 11th District Court fittingly stated the following,

"It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit. Massachusetts Constitution of 1780, pt. 1, art. 29 in Federal and State Constitution 3:1888, 1893(Francis N. Thorpe ed. 1909)." Shapiro, Oxford Dictionary of American legal Quotations(1993), 197.

35) Clearly the Respondents denial of the required Notification of Grievance-NoG forms to be used against the warden and inspector of institutional services-IIS, O.A.C. 5120-9-31(M), now (L), is a First and Fourteenth Amendment violation, and Article 1, Section 2, of the Ohio Constitution has been violation, Teamsters, 132 Ohio St.3d 47, ¶ 20, and the Ohio Constitution, Art. IV, Sect. 2(B)(2)(a)(ii); and because the Respondents now argued failure to exhaust administrative remedies. O.R.C. 2969.26(A)(2), and the Ohio Courts granted Respondents motions. Ohio Const., Art. IV, Sect. 2(B)(2)(a)(ii) & 2(B)(2)(e).

36) During 2012 and up until October 2017, Petitioner-Jeffery L. Howard was required to used PAPER Notification of Grievance-NoG forms. O.A.C. 5120-9-31(M), now (L) to file direct grievances against the warden or inspector of institutional services(IIS).

37) During 2012 through 2017 the PAPER Notification of Grievance-NoG were in North Central Corr. Inst.(NCCI/MTC) Inspector of Institutional Services(IIS)-Lorri Shuler's possession. Ohio Const. Art. IV, Sect. 2, (B)(2)(a)(ii).

38) Lorri Shuler, as the gatekeeper, and the inmate handbooks required that Petitioner(prisoners) send a kite(internal method

of communications with prison staff) to the Inspector's office and request the PAPER Notification of Grievance-NoG form.

39) Petitioner-Jeffery L. Howard's complaints were against the North Central Corr. Inst.(NCCI/MTC) warden-Neil Turner for denying Petitioner-Jeffery L. Howard "adequate" and "Climatically Suitable" clothing/footwear, from 2012/13 through 2017 winters. Bugh v. Grafton Corr. Inst., 2006-Ohio-6641

40) There is a Common Law duty prison officials owe to its prisoners to provide them with adequate and climatically suitable clothing. The court in Franks v. Ohio Dep't of Rehab. & Corr., stated

In the regard to the custodial relationship between the state and its prisoners, the state owes a common law duty of reasonable care and protection from unreasonable risks.

*Id.* Franks, 195 Ohio App.3d 114, 958 N.E.2d 1253, [\*\*\*1257] paragraph 12(10 Dist 2011); Woods v. Ohio Dep't of Rehab. & Corr., 721 N.E.2d 143, 130 Ohio App.3d 742(Ohio App.10 Dist 1998); Motion to Alter or Amend Judgment or Order, Fed.Civ.R.P. 59(e), Pgs.6-7, paragraphs 6-11, Doc.# : 59, PageID #: \_\_\_\_\_; Bugh v. Grafton Corr. Inst., 2006-Ohio-6641, paragraph 34(10 Dist); Monroe v. ODRC, 66 Ohio App.3d 236, 583 N.E.2d 1102(10 Ohio Dist 1990); Foster v. ODRC, 2013-Ohio-912, II.C., paragraph 38(10 Ohio Dist); Ridenour v. Wilkinson,

The State has a duty to provide incarcerated inmates with adequate clothing, one of the basic human needs identified in Ohio Revised Code-ORC 2921.44.

*Id.* 2007-Ohio-596, HN 10(10 Ohio Dist), and a "Substantial Right" includes the Common Law, and the U.S./Ohio Constitution, *supra*.  
¶ 10, O.R.C.2505.02(A)(1).

41) The Ohio Administrative Code(OAC) 5120-9-31(M), now (L)

required that Petitioner file the Notification of Grievane(NoG) directly to the Ohio Department of Rehabilitation & Corrections(ODRC) Chief Inspector,

Grievances against the warden or inspector of institutional services must be filed directly to the office of the chief inspector within thirty calendar days of the event giving rise to the complaint. Such grievances must show that the warden or inspector of institutional services was personally and knowingly involved in a violation of law, rule or policy, or personally and knowingly approved or condoned such a violation.

42) Petitioner-Jeffery L. Howard, from 2012 through 2017 requested the PAPER Notification of Grievanc-NoG forms(before the grievance procedure went electronic) from Lorri Shuler each winter that Neil Turner-NCCI/MTC warden denied Petitioner "climatically suitable" and "adequate" winter clothing/footwear. Ex. 11 11  
Affidavit of Jeffery L. Howard, App. Crt. 9-19-040.

43) Petitioner's every kite request for the PAPER Notification of Grievance-NoG forms were denied, and the kite not returned at all. See Notarized "Plaintiff-Howard's Oppos. to Defendant's Motion to Dismiss Plaintiff's Complaint..", Pg.6-7, P.22-26; App.Crt. Merit Brief, Pg.2-3, P.5-7, and Pg.6-7, P.29-33; Pg.8-9, Assignment of Error # 1, P.39-47, CASE NO. 9-19-040.

44) The Supreme Court of Ohio, the Ohio Third Judicial Appellate District court, and the Marion Ohio Common Pleas court all totally ignored, and blatantly disregarded the United States Supreme Court decision in Ross v. Blake, which held,

And, finally, the same is true when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation.

*Id. Ross, 136 S.Ct. 1850, [\*1859-1860], 195 L.Ed.2d 117, [\*\*127] (2016). See CORRECTIONS and ADDITIONS to MEMORANDUM in SUPPORT of*

JURISDICTION to the Ohio Supreme Court, Pg.3, P.16.

45) And the Respondents admitted to delaying at least one of the PAPER Grievance form for 60-days in their Motion To Dismiss, Pg.7-8, III.C., see also Petitioner's Merit Brief, CASE NO. 9-19-040, Pg.9-10, Para.48-54.

46) The Supreme Court of Ohio blatantly disregarded its own precedents, and ignored the doctrine of stare decisis, thus violating the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, and the Ohio Constititon, Article 1, Section 2, as Jones v. Village of Chagrin Falls held,

"[I]f resort to administrative remedies would be wholly futile, exhaustion is not required."

Id. Jones, 77 Ohio St.3d 456, 674 N.E.2d 1388, 1391(1997); In Casey Outdoor Advertising, Inc. v. Ohio DOT, held,

"A party does not have to exhaust administrative remedies to obtain a writ of mandamus if resort to the administrative remedies would be wholly futile, a vain act or onerous or unusually expensive.

Id. Casey, 61 Ohio St.3d 429, 575 N.E.2d 181, 183(1991); In State ex rel. Teamsters Local Union No. 436 v. Bd. of County Comm'rs,

We first look to what administrative remedies were available to the union-represented Sanitary Engineering Division employees.

Thus, a "party must exhaust the available avenues of administrative relief through administrative appeal" before seeking separate judicial intervention.

Teamsters, 132 Ohio St.3d 47, 52, [\*\*P20], 969 N.E.2d 224, [230], P.19(2012), citing Noernberg v. Brook Park, 63 Ohio St.2d 26, 29, 406 N.E.2d 1095(1980).

47) The Respondents and their attorney committed fraud upon the court and mislead the Ohio Third Judicial Appellate District

that administrative remedies were available to Petitioner-Howard because the Appellate Court stated in its judgment,

It is a three-step process set [\*\*5] out in Ohio Admin. Code 5120-9-31. Step one is the filing of an informal complaint. Ohio Admin. Code 5120-9-31(J)(1)...Step two is to obtain a notification of grievance, if the inmate is unsatisfied with the resolution of the informal complaint. Ohio Admin. Code 5120-9-31(J)(2)...Step three is the filing of an appeal of the disposition of grievance to the office of the chief inspector of ODRC. Ohio Admin. Code 5120-9-31(J)(3).

Howard v. Mgt. & Training Corp., 2019-Ohio-4408, at [\*P11](3 Dist.), Milliron Waste Mgmt. v. Village of Crestline, 135 Ohio App.3d 15, 732 N.E.2d 1014, [\*\*1016], HN3(3 Dist 1999); Defendant-Respondent's Motion to Dismiss, Pg.5, with May 7, 2019 certificate services.

48) The Marion Ohio Common Pleas court, the Ohio Third Judicial Appellate District, and the Supreme Court of Ohio further blatantly disregarded the Sixth Circuit case that the defendants-Respondents cited themselves, Troche v. Crabtree, which held,

In the end, it cannot be said that an inmate did not [\*\*13] exhaust his administrative remedies because he failed to do something not specified, outlined, or required by his prison's grievance procedure.

*Id.* Troche, 814 F.3d 795[\*\*12] & [\*\*13](6 Cir 2016); Himmelreich v. Fed. Bureau of Prisons, 766 F.3d 576, 577, 1. HN1(6 Cir 2014); Gosard v. Warden Madison Corr. Inst., 2015 U.S. Dist Lexis 96918, III.(S.D. Ohio), citing Jones v. Bock, 549 U.S. 199, 216, 218-19, 127 S.Ct. 910(2007), and Brock v. Kenton Cnty. Ky., 93 F. Appx 793, 798(6 Cir 2004); Risher v. Lappin held,

When pro se inmates are required to follow agency procedures to the letter in order to preserve their federal claims, we see no reason to exempt the agency from similar compliance with its own rules.

*Id.* Risher, 639 F.3d 236, II. [\*241], HN6(6 Cir 2011), cited in Troche, [\*802], III. HN14; Ohio App. Crt. Merit Brief of Jeffery

L. Howard, Pg.14-15, para.68, CASE NO. 9-19-040, cited 2019-Ohio-4408

49) The O.A.C. 5120-9-31(M), now (L) IMPARTS NO AUTHORIZATION TO PROCEED, OR USE AN INFORMAL COMPLAINT AGAINST THE WARDEN OR INSPECTOR OF INSTITUTIONAL SERVICES(IIS), yet Petitioner still attempted to exhaust his administrative remedies against the Management & Training Corp(MTC) warden and inspector.

- a) Ex. "I" 2-page typed grievance June 25, 2014 (returned stamped June 30, 2014, and with;
- b) Ex. "D" ODRC response to June 26, 2014 grievance;
- c) Ex. "J" 2-page typed grievance, 12-18-2015;
- d) Ex. "K" 2-page informal complaint, 11-13-2016, used as grievance against Lorri Shuler, with ODRC Chief Inspector's (Nov. 17, 2016 stamp); and
- e) Ex. "L" 2-page informal complaint, 9-10-2017, with ODRC Chief Inspector's (September 15, 2017 stamp).

50) Petitioner should have been given the same opportunity to show if administrative remedies were available, as the parties in the Supreme Court of Ohio case Teamsters, 132 Ohio St.3d 47, para. ¶20(2012).

REASON FOR GRANTING THE PETITION # THREE (3)

51) PLAIN ERROR and DUE PROCESS/EQUAL PROTECTION VIOLATIONS  
OHIO COURT OF CLAIMS HAS EXCLUSIVE SUBJECT-MATTER JURISDICTION  
IF MANAGEMENT & TRAINING CORPORATION(MTC) et al.,  
IS A "GOVERNMENT ENTITY" and "EMPLOYEE"

52) The Marion Ohio Common Pleas Court, the Third Judicial Appellate District Court, and the Supreme Court of Ohio determined that Revised Code(ORC) 2969.25(A) and ORC 2969.26(A)(2) are also applicable to the private for profit corporation, Management & Training Corp(MTC). Contrary to the plain language of the statutes.

53) The Ohio Third Judicial Appellate District held in Watkins v. Management & Training Corp. (MTC), 2019-cv-0157 that MTC was

a government entity and institution, therefore O.R.C. 2969.25(A) and O.R.C. 2969.26(A) applies.

54) Howard v. Mgt & Training Corp(MTC), 2019-Ohio-4408 at holding:

[1]-The trial court did not err in dismissing an inmate's complaint the operator of a correctional complex because the inmate failed to comply with R.C. 2969.26(A) since nothing in his complaint nor the exhibits attached to the complaint reflected that he had pursued the inmate grievance procedure concerning his negligence claims;

[2]-The trial court's decision to dismiss the complaint for the failure to comply with R.C. 2969.25(A) was supported by the record because the inmate failed to file an affidavit in compliance with R.C. 2969.25(A) when he initiated the lawsuit by filing his complaint.

55) The Revised Code(R.C.) 2969.25(A) provides,

If an inmate commences a civil action or appeal against a "government entity" or "employee"..

56) The Revised Code(R.C.) 2969.26(A) is essentially identicle,

At the time an inmate commences a civil action or appeal against a "government entity" or "employee"..

57) The Supreme Court of Ohio has defined PLAIN ERROR in Civil case as,

- (A) a deviation from a legal rule,
- (B) that the error was obvious, and
- (C) that the error affected the [\*\*\* 793] basic fairness integrity, or public [\* 205] reputation of the judicial process and therefore challenged the legitimacy of the underlying judicial process.

State v. Morgan, 153 Ohio St.3d 196, [\*\*\* 204], 103 N.E.3d 784, paras. 39-40(2017), citing Goldfuss v. Davidson, 79 Ohio St.3d 116(1997); CORRECTIONS and ADDITIONS to MEMORANDUM in SUPPORT of JURISDICTION, Pg.6, paras. ¶¶25-26, CASE NO. 19-1662; Merit Brief of Jeffery L. Howard, Pg.23, para. 113, CASE NO. 9-19-040.

58) The Supreme Court of Ohio in *State ex rel. Dunlap v. Sarko*, Subject-matter Jurisdiction cannot be waived and is properly raised by this court *sua sponte*.

*Id.* 135 Ohio St.3d 171, 174, paragraph 13(2013), citing *State v. Davis*, 131 Ohio St.3d 1, 959 N.E.2d 516, paragraph 11(2011); and the Ohio Court of Claims has exclusive jurisdiction over civil actions against the state for money damages. *Cirino v. Ohio Bureau of Workers Comp.*, 153 Ohio St.3d 333; O.R.C. 2743.02(E) , *Measles v. Indus. Comm'n of Ohio*, 128 Ohio St.3d 458, paragraph ¶7(2011)

59) Petitioner asserts that this a lack of Equal Protection under the U.S. Constitution Fourteenth Amendment, and Article 1, Section 2 of the Ohio Constitution. The Supreme Court of Ohio is fragmented and inconsistent in its decisions concerning private for profit corporation. R.C. 9.06(15); *State ex rel. Ohio Civil Services Employees Association v. State of Ohio*, 146 Ohio St.3d 315, [\*332], 56 N.E.3d 913, at paragraph [\*\*62](2018); CORRECTIONS and ADDITIONS to MEMORANDUM in SUPPORT of JURISDICTION, Pgs.5-6, P.24-27.

60) If the Management & Training Corp(MTC) et al., is a "government entity" and "employee" the Declaratory Complaint should have been remanded to the Marion Ohio Common Pleas court by the Ohio Third Appellate District with instructions to dismiss for lack of subject-matter jurisdiction.

61) Petitioner should have been permitted to file his Complaint Declaratory and Injunctive Relief in the Ohio Court of Claims, the Supreme Court of Ohio has consistently interpreted ORC 2743.01, ORC 2743.02(E) & (F), and ORC 2743.03(A)(1) and has held that, The Court of Claims is a court of limited jurisdiction. It

has exclusive jurisdiction over civil actions against the state for money damages that sound in law.

Dunlop v. Ohio Dep't of Job & Family Servs., 2012-Ohio-1378, [\*P7](10 Dist.); Measles v. Indus. Comm'n of Ohio, 128 Ohio St.3d 458, 946 N.E.2d 204, [\*\*\*206] [\*\*P7](2011).

62) The Supreme Court of Ohio has continually held that "Subject-Matter" Jurisdiction cannot be waived and is properly raised by this court *sua sponte*." Dunlap v. Sarko, 135 Ohio st.3d 171, [\*174], [\*\*P13], 985 N.E.2d 450(2013), citing State v. Davis, 131 Ohio St.3d 1, 959 N.E.2d 516, P.11(2011), citing State v. omox, 96 Ohio St.3d 318, 774 N.E.2d 249, P.17(2002).

63) The Marion Ohio Common Pleas and the Third Judicial Appellate District Court lacked subject-matter jurisdiction and should have dismissed for lack of subject-matter jurisdiction, or remanded the Complaint to the Marion Ohio Common Pleas court, with instructions to dismiss for lack of subject-matter jurisdiction, so Petitioner could file in the Ohio Court of Claims. O.R.C. 2743.02 et seq.

64) The Marion Ohio Common Pleas Court, the Ohio Judicial Appellate District Appeals Court and the Supreme Court of Ohio all disregarded stare decisis, fairness, plain language of the statutes, and the essential question presented, Pg.6, paras. ¶¶ G) 1-4.

REASON FOR GRANTING THE PETITION # FOUR (4)  
65) EQUAL PROTECTION and DUE PROCESS VIOLATIONS  
FOURTEENTH AMENDMENT and OHIO CONSTITUTION ART. 1, SECT. 2, 16  
and OHIO REVISED CODE(ORC) 2505.02(B) and 2721.02(A)  
Non-Final Appealable Order

66) The Marion Ohio Common Pleas court failed to issue a final appealable order under 2505.02(B), and O.R.C. 2721.02 which states, "The declaration has the effect of a final judgment or decree,"

which invokes the Ohio Third Judicial Appellate District.

67) The Marion Ohio Common Pleas court judgment entry under Ohio Revised Code-ORC 2505.02(B) is not a final appealable order:

..a judgment entry that grants summary judgment in a declaratory judgment action is not a final, appealable order unless it expressly declares the respective rights and obligations of the parties.

Owner Oper. Indep. Drivers v. Stafford, 2007-Ohio-3135, [\*P10](3rd Ohio Dist); Palmer Bros. Concret, Inc. v. Ind. Comm'n, 2006-Ohio-1659, [\*P7](3rd Ohio Dist.), citing State ex rel. Keith v. McMonagle, 103 Ohio St.3d 430, 816 N.E.2d 597, at P.¶ 4; Grange Mutual Casualty Co. v. Jordan(Nov. 6, 1991), 3rd Ohio Dist. No. 5-90-4, 1991 Ohio App. Lexis 5331 at \*5-10. See also Bowers v. Craven, 2012-Ohio-332, Meeker R&D, Inc. v. Evenflo Co., 2006-Ohio-3885, Strohminger v. B & W Cartage Co., 2018-Ohio-4265, Clark v. Enchanted Hills Cmtys Ass'n, 2017-Ohio-2999, Kilroy v. Sheridan, 2014-Ohio-1873, Koprivec v. Rails-To-Trails of Wayne County, 2014-Ohio-2230.

68) FEWER THAN ALL CLAIMS ADDRESSED and DECIDED  
O.R.C. 2505.02(B)

69) The Supreme Court of Ohio has held,

To qualify as final and appealable, the trial court's order must satisfy the requirement of R.C. 2505.02, and if the action involves multiple claims and/or multiple parties and the order does not enter judgment on all [\*\*5] the claims and/or as to all parties,..the order must also satisfy Civil Rule 54(B) by including express language that "there is no just reason for delay."

Int'l Brotherhood of Electrical Workers(IBEW), v. Vaughn Indus., L.L.C., 116 Ohio Ohio St.3d 335, 879 N.E.2d 187, paragraph 7(2007), citing State ex rel. Scruggs v. Sadler, 97 Ohio St.3d 78, 776 N.E.2d 101, P.5-7(2002); Chef Italiano Corp. v. Kent State Univ.(1989), 44 Ohio St.3d 86, 541 N.E.2d 64, syllabus; State ex rel. A & D Ltd.

Partnership v. Keefe(1996), 77 Ohio St.3d 50, 56; O.R.C. 2505.02(B).

70) Petitioner's "substantial right," O.R.C. 2505.02(A)(1), has been violated by the Marion Ohio Common Pleas Court, and further violated by the Ohio Third Appellate District court.

71) Petitioner Complaint included multiple claims and multiple parties, that requested a declaration of U.S. Constitutional, State Constitutional rights. The Marion Ohio Common Pleas court and the Ohio Third Appellate District failed to perform its function under O.R.C. 2721.02 et seq., and the U.S. and Ohio Constitution.

72) The Supreme Court of Ohio in Arnott v. Arnott held, . . . court . . . allow the filing of a declaratory judgment only to decide "an actual controversy, the resolution of which a confer certain rights of status upon the litigant."

.. in order [\*\*\*\*7] for a justiciable question to exit,  
": [t]he danger or dilemma of the plaintiff must be present,  
not contingent on the happening of hypothetical future  
events \* \* \* and the threat to his position must be actual  
and genuine and not merely possible or remote.

*Id.* Arnott 132 Ohio St.3d 401, P. ¶10, 972 N.E.2d 586(2012), citing Corron v. Corron, 40 Ohio St.3d 75, 79, 531 N.E.2d 708(1988)

73) The Respondents continual denial of the proper grievane forms required pursuant to O.A.C. 5120-9-31(M), now (L), has caused Petitioner's Complaint to be summarily dismissed, with cursory review ignoring the merits and Constitutional ramifications.

74) Petitioner believes that the Ohio Courts was bias and prejudice against Petitioner.

75) And are heavily influenced and corrupted by Management & Training Corp(MTC) presence in Marion County Ohio. The less than perfunctory and cursory review is evidence in the summarily dismissal of Petitioner's meritorious complaint.

REASON FOR GRANTING THE PETITION # FIVE (5)  
76) NON-FINAL APPEALABLE ORDER UNDER THE  
OHIO CONSTITUTION, ARTICLE IV, SECTION 3(B)(2)

77) Under Article IV, Section 3(B)(2) of the Ohio Constitution,

Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders..

78) The Ohio Third Judicial Appellate District court only have jurisdiction over final appealable orders. And without the Marion Ohio Common Pleas court performing its functions, the Appellate court cannot acquire jurisdiction, therefore rendering the judgment a nullity, and PLAIN ERROR. O.R.C. 2721.02

79) When it is clear on the face of the Complaint for a Declaratory Judgment and Injunctive Relief, that an actual controversy and a justiciable question exit the Marion Ohio Common

80) The Marion Ohio Common Pleas court decision, which was affirmed by the Ohio Third Judicial Appellate court, violated Petitioner-Jeffery L. Howard's DUE PROCESS, FIRST AMENDMENT, and EQUAL PROTECTION rights.

81) FEWER THAN ALL CLAIMS ADDRESSED and DECIDED Article IV, Section 3(B)(2)

82) The Marion Ohio Common Pleas Court and the Ohio Third Appellate Court corruption is further supported by the Appellate Court's conclusion that

a) Petitioner did not comply with O.R.C. 2969.25(A), at holding, Howard v. Mgt. & Training Corp(MTC), 2019-Ohio-4408(3 Dist), See Ex. "A" ORC 2969.25(A)(Prior Civil Filings); and

b) the Ohio Third Appellate reached the issue of Negligent Hiring Retention, and Supervision. See Ex. "A" Prior Filing with MTC named as party,

83) Petitioner had voluntarily dismissed this complaint in 2015, Marion Ohio Tr. Crt. CASE NO. 2014-cv-0508, and Petitioner

timely RE-FILED it in 2016. If the Ohio Third Appellate Court performs the functions of the trial court, then this undermines Petitioner's ability to offer evidence. The trial court never reached the negligent retention and supervision issue. Ex. "M" Amended Complaint, 7-8-2015, CASE NO. 2014-cv-0508; Ex. "E" Notice of Appearance attorney Martha Van Hoy Asseff, with certificate of service, 4-3-2015, CASE NO. 2014-cv-0508; Ex. "F" Defendant's Motion to Dismiss Plaintiff's Complaint for Declaratory and Injunctive Relief, CASE NO. 2014-cv-0508; Ex. "G" Defendant's First Set of Request for Admission, Interrogatories, and Request for Production of Documents Propounded to Plaintiff Jeffery L. Howard, CASE NO. 2014-cv-0508.

84) If Petitioner's Complaint was dismissed and affirmed by the Ohio Third Appellate District for failure to exhaust, and the trial court never reached the other justiciable issues in controversy, then this appears to be an equal protection violation, in which all the claims were not disposed

85) In McCarthy v. Anderson, 2018-Ohio-1994, the court held, Most, if not all, of the claims brought by appellant and the corporation in their lawsuit remained pending, but the judgment entry at issue granting appellees' request for a receiver lacked a certification that there was no just reason for delay by the trial court.

Dismissal of appeal, in part, was appropriate,..the case included multiple claims and the court's judgment did not resolve pending issues...

Cummin v. Cummin, 2017-Ohio-7877; Chase Home Fin., LLC v. Gau, 2015-Ohio-947; Miller Lakes Cmty. Serv. Ass'n v. Schmitt, 2014-Ohio-4748 Fid. Tax LLC v. Hall, 2014-Ohio-4448; Small v. Bank of N.Y.(In re Small), 2014-Ohio-3546; Aulick v. Healthcare Indus. Corp.,

2013-Ohio-3860; Trico Land Co. v. Knoil Producing, LLC, 2013-Ohio-2065; Pepin v. Hansing, 2012-Ohio-6295.

86) The Marion Ohio Common Pleas court and the Ohio Third Appellate District court assisted Management & Training Corp(MTC) et al. in the violation of Petitioner's right to access the courts and the equal application of the laws of Ohio. Warren v. City of Athens, 411 F.3d 697(6 Cir 2005); New York Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710(1964).

87) The existence of such a structural burden, of not holding a hearing to determine whether access to administrative remedies were available, undermines the First and Fourteenth Amendment Clause's guarantee to equal access to the tools of legal redress. Ohio Const., Art. 1, Sect. 16 and 2.

REASON FOR GRANTING THE PETITION # SIX (6)

88) RELIGIOUS PARTICIPATE PLACED ON PRISONERS TRUST FUND  
OHIO CONST., Art. 1, Sect. 7

89) The Marion Ohio Common Pleas Court disregarded the remaining State Constitutional, Article 1, Section 7, Establishment of Religion controversy; and Management & Training Corp(MTC) and its agents placing a Christian Religion Worship participation, and participation in Christian Religion Classes onto the prisoner's trust fund created by Ohio Revised Code-ORC 5120.131 & 132.

90) In the Complaint for Declaratory and Injunctive Relief, Pg.2-3, paragraphs ¶¶ D) 1-4 presented this question,

D) DOES PLAINTIFF-HOWARD HAVE A LIBERTY INTEREST IN TRUST FUND CREATED BY O.R.C. 5120.131 & 5120.132 AND O.A.C. 5120-5-04 & 05?

D-2) Can ODRC and NCCI/MTC staff place a religious requirement onto the Industrial & Entertainment-I & E Trust Fund, and force Howard to participate in protestant religious classes, or any religious class, and attend weekly Sunday worship

services, in order to train on and operate the Chapel music soundboard and camera that was purchased with I & E Funds?

91) In the Complaint for Declaratory and Injunctive Relief,

Pg.3-4, paragraphs ¶¶ E) 1-6 presented this question,

E-5) Howard do not believe the plain language and spirit of Ohio Revised Code(ORC) 5120.131, 5120.132 and Ohio Administrative Code(OAC) 5120-5-04, 5120-5-05 requires the adoption of a religious belief, practice, nor does it require forced exposure to religious doctrine in order to enjoy the equipment, supplies, or materials purchased with funds from this trust created by the above statutory authority.

E-6) The soundboard is used for many non-religious events and functions. To require Howard to attend weekly Christian classes and services is violative of the U.S. Constitution Establishment Clause of the First Amendment, and the Ohio Constitution, Art. 1, Section 7, rights of conscience.

92) These State Law Claims were remanded from the United States District Court, but never addressed by the Marion Ohio Common Pleas Court in its order of dismissal. Appendix 1(B)

93) The Supreme Court of Ohio has stated,

This Court has had little cause to examine the Establishment Clause of our own Constitution and has never enunciated a standard for determining whether a statute violates it. There is no reason to conclude that the Religion Clauses of the Ohio Constitution are coextensive with those in the United States Constitution. The language of the Ohio provisions is quite different from the federal language.

We reserve the right to adopt a different constitutional standard pursuant to the Ohio Constitution, whether because the federal constitutional standard changes or for any other relevant reason.

Simmons-Harris v. Goff, 86 Ohio St.3d 1, 711 N.E.2d 203, at 211-212, II.(1999); Ohio Const., Art. 1, Sect. 7; O.R.C. 5120.131 & 5120.132.

94) The Supreme Court of Ohio has not had the opportunity to determine its position on prison officials requiring that prisoners

Petitioner participate in Christian Religious worship and classes in order to benefit from the prisoner trust fund, O.R.C. 5120.131 & O.R.C. 5120.132. Ohio Constitution, Art. 1, Sect. 7.

95) The United States Supreme Court in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Manning*,

Out of respect for state courts, this Court has time and again declined to construe federal jurisdictional statutes more expansively than their language, most fairly read, requires.

We have reiterated the need to give "[d]ue regard [to] the rightful independence of state governments" -and more particularly, [\*\*687] to the power of the power of the States "to provide for the determination of controversies in their courts."

*Id.* 136 S.Ct. 1562, II.C., 194 L.Ed.2d 671(2016); *Orthopaedic & Spine Ctr., LLC v. Henry*, 2017 U.S. Dist. Lexis 200723(S.D. Ohio); *Howard v. Mgt Training Corp*, 3:17-cv-01180, Post Judgment Motions Ruling, 5-pages. Appendix E

96) As the Eighth Circuit Appeals Court held,

..there was no genuine independent private choice. The inmate could not direct the aid only to InnerChange..For the inmate to have a genuine choice, funding must be "available generally without regard to the sectarian-nonsectarian, or public-nonpublic nature of the institution benefited" and the inmate must "have full opportunity to expend aid on wholly secular" programs.

*Id. Americans United for Separation v. Prison Fellow*, 509 F.3d 406, 424(8 Cir 2007), citing *Witters v. Was. Dept. of Servs. for the Blind*, 474 U.S. 481, 488, 106 S.Ct. 748(1986). There were no other program available to teach the "Soundboard Tech." skills; unwelcomed exposure and rejection to the Christian indoctrination was punished. *Carter v. Schotten*, 70 Ohio St.3d 637(1994); *ACLU of Ohio Found., Inc. v. DeWeese*, 633 F.3d 424, at Discussion II.A.(6 Cir 2011)

97) The Establishment Clause, unlike the Free Exercises Clause,

does not depend upon any showing of direct government compulsion and is violated...whether those [governmental practices] operate directly to coerce none observing individuals or not." Griffin v. Coughlin, 88 N.Y.2d 674, 649 N.Y.S.2d 903(1996); Coles ex rel. Coles v. Cleveland Bd. of Educ., 171 F.3d 369(6 Cir 1999), citing Engel v. Vitale, 370 U.S. 421, 82 S.Ct. 1261(1962); Cherri v. Mueller, 951 F.Supp.2d 918, IV.C.2(E.D. Mich 2013).

98) Another reason for the acceptance of this Petition is The Supreme Court of Ohio statement in Humphrey v. Lane,

The Ohio Constitution does have an eleven-word phrase that distinguishes itself from the United State Constitution; "nor shall any interference with the rights of conscience be permitted."

We find the phrase that brooks no "interference with the rights of conscience" to be broader than that which proscribes any law prohibiting free exercise of religion. We have made it clear that this court is not bound by federal court interpretation of the federal constitution in interpreting our own Constitution.

*Id.* Humphrey, 89 Ohio St.3d 62, 728 N..2d 1039, 1044(2000).

99) The Supreme Court of the United States held in Christianson v. Colt Industries Oper. Corp., that,

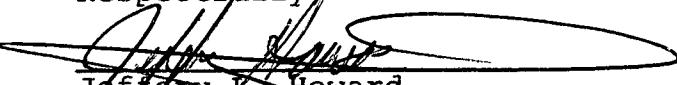
..there is no federal question jurisdiction when the complaint on its face states alternate theories supporting a state-law claim, at least one of which does not involve a federal question

*Id.* Christianson, 486 U.S. 800, 108 S.Ct. 2166(1988).

#### VERIFICATION

I, Jeffery L. Howard, pursuant to 28 U.S.C. 1746, declare and swear under penalty of perjury that the facts herein are true and accurate.

Respectfully



Jeffery L. Howard  
Human and Civil Liberties Advocate

5-28-2020  
Date