

20-5671

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

JUL 17 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL WARD — PETITIONER
(Your Name)

VS. MCL 600.2963(8)

MICH. SUPREME COURT, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

MICHIGAN SUPREME COURT

1/

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI
[challenging constitutionality of state statute]

MICHAEL WARD #128267

(Your Name)

Macomb Correctional Facility
34625 26 Mile Rd.

(Address)

Lenox Twp., MI 48048

(City, State, Zip Code)

Prison Control Center Ph#: (586) 749-4900
(Phone Number)

1/1 Mich. Sup. Ct: 20-0107. USSC Certiorari! Jurisdiction: 28 USC § 1257(a); USSC Rule 10(c); Burns v. Ohio, 360 U.S. 252, 256-57 (1959)(A clerks letter summarily refusing to file an indigents case due to FEE considerations is a "FINAL ORDER/JUDGMENT"). See Clerks Letters of 6/1/20 & 6/17/20 [EXHIBITS "A", "B"], invoking MCL 600.2963(8). Petitioner is challenging the VALIDITY/CONSTITUTIONALITY of 600.2963(8). The MSC Deputy Clerk has refused to allow me ACCESS to file in the Court, because I have no money to pay off outstanding fee's owed from other unrelated litigation.

QUESTION(S) PRESENTED

I. IS MICHIGAN'S STATUTE, MCL 600.2963(8) UNCONSTITUTIONAL ON ITS FACE and/or AS APPLIED TO THIS PETITIONER, AS VIOLATING THE RIGHT OF ACCESS TO COURTS AND TO PETITION FOR REDRESS; WHERE IT COMMANDS THAT MICHIGAN COURT CLERKS SHALL NOT ACCEPT FOR FILING A CIVIL ACTION OR APPEAL, IF THE PRISONER LITIGANT OWES OUTSTANDING FEES OR COSTS FROM PRIOR UNRELATED LITIGATION; NOTWITHSTANDING THE PRISONER LITIGANTS (Petitioner) HAVING CLEARLY DEMONSTRATED A FINANCIAL INABILITY TO PAY PAST, PRESENT OR FUTURE FEES/COSTS; AND WHERE THE CLERK OR A JUDGE DOES NOT EVEN REVIEW/CONSIDER A MOTION TO WAIVE/SUSPEND FEES AND COSTS; OR THE PRISONER LITIGANTS INDIGENCE AND INABILITY TO PAY "OUTSTANDING" FEES/COSTS?

Petitioner says: YES

Respondents say: Remained mute/indifferent

Other Federal Courts say: YES

II. DOES STRICT APPLICATION OF MCL 600.2963(8) ON ITS FACE and/or AS APPLIED TO THIS PETITIONER, VIOLATE THE U.S. CONSTITUTION'S DUE PROCESS AND/OR EQUAL PROTECTIONS CLAUSES, IN ITS STRICT APPLICATION, WHEN FAILING TO TAKE INTO ACCOUNT A PRISONER LITIGANTS PROVEN INABILITY TO PAY "OUTSTANDING" FEES/COSTS OWED TO PRIOR LITIGATION?

Petitioner says: YES

Respondents say: Remained mute/indifferent

Other Federal Courts say: YES

III. DOES MCL 600.2963(8) ON ITS FACE and/or AS APPLIED, UNCONSTITUTIONALLY "DISCRIMINATE" WHEN DIRECTED SOLELY AGAINST "PRISONERS," AND WHERE A RICH PRISONER, OR NON-PRISONER CAN PAY FEES/COSTS AND GAIN ACCESS TO A MICHIGAN COURT, BUT A "POOR" PRISONER CANNOT, DUE SOLELY TO FINANCIAL CONSIDERATIONS?

Petitioner says: YES

Respondents say: Remained mute/indifferent

Other Federal Courts say: YES

IV. IS MCL 600.2963(8) TO BE READ IN PARA MATERIA WITH MCL 600.2963(7), IN ORDER TO SATISFY CONSTITUTIONAL EDICTS; WHERE A PRISONER LITIGANT CAN DEMONSTRATE INABILITY TO PAY PAST, PRESENT OR FUTURE FEES/COSTS?

Petitioner says: YES

Respondents say: Remained mute/indifferent

Other Federal Courts say: YES

V. IS MCL 600.2963(8) IN CONSTITUTIONAL CONFLICT WITH MCL 600.2963(7); 600.2529(5); and Michigan Court Rule (MCR) 2.002(F), */ CONCERNING WAIVER OR SUSPENSION OF FEES?

Petitioner says: YES

Respondents say: Remained mute/indifferent

*/ Formerly MCR 2.002(D).

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- 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. STATE OF MICHIGAN;
2. MICH. STATE LEGISLATURE;
3. DANA NESSEL, Mich. Attorney General;
4. GRETCHEN WHITMER, Mich. Governor;
5. MICH. SUPREME COURT;
6. INGER Z. MEYER, MSC Deputy Clerk

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

There was no decision on the merits from the highest state court (Mich. Supreme Court). Rather, the MSC Deputy Clerk, in a LETTER dated 6/1/20 (App'x "A"), summarily rejected & returned Petitioner's Complaint for Superintending Control, and MOTION to waive/suspend fees (App'x A(1-2)). The basis for the rejection/return was the now challenged state statute, MCL 600.2963(8), (App'x "A"). On 6/17/20 the same Deputy Clerk rejected and returned to Petitioner his MOTION for RECONSIDERATION (App'x B-B(1)), which challenged the constitutionality of the rejection/return of the initial Motion to Waive/Suspend Fees. Again, the Deputy Clerk invoked the now challenged state statute, MCL 600.2963(8), for sole reason that Petitioner owes "outstanding" fees from prior litigation, even though he clearly demonstrated by affidavit and certificate of prison account, that he has no assets or money to pay off the fees from prior litigation. The initial MOTION to Waive/Suspend Fees is attached hereto as App'x "D"; and the MOTION for Reconsideration is attached as App'x "E". THE CLERK'S LETTER'S of 6/1/20 and 6/17/20 are "FINAL ORDERS," for purpose of invoking this Court's certiorari jurisdiction. Burns v Ohio, 360 U.S. 252, 256-57 (1959).

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was 6/1/20.
A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: 6/17/20, and a copy of the order denying rehearing appears at Appendix B 1.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. ___ A _____. **Petition is TIMELY without extension.**

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Mich. Sup. Ct: _____; underlying AGC#: 20-0107. USSC Certiorari Jurisdiction: 28 USC § 1257(a); USSC Rule 10(c); Burns v Ohio, 360 US 252, 256-⁵ 57 (1959)(A clerks letter summarily refusing to file an indigents case due to FEE considerations is a "FINAL ORDER/JUDGMENT"). See Clerks Letters of 6/1/20 & 6/17/20 [EXHIBITS "A", "B"], invoking MCL 600.2963(8). Petitioner is challenging the VALIDITY/CONSTITUTIONALITY of 600.2963(8). The MSC Deputy Clerk has refused to allow me ACCESS to file in the Court, because I have no money to pay off outstanding fee's owed from other unrelated litigation.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION:

Am I - "Congress shall make no law ... prohibiting the free exercise ... of ... the right ... to petition the Government for a redress of grievances."

Am XIV, § 1 - "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."

Am IX - The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Art. 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 the ordain and establish."

Art. III, § 2, cl.2 - "In all cases ... in which a State shall be Party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such exceptions, and under such regulations as the Congress shall make."

Art. VI, cl.2 - "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ... shall be the Supreme Law of the Land; and the judges in every state shall be bound thereby, any thing in the Constitution or Laws of any state to the contrary notwithstanding."

FEDERAL STATUTES:

Apply Burns v Ohio, 360 U.S. 252, 256-57 (1959)
(Clerk's letter of rejection is FINAL ORDER
JUDGMENT, from which
Certiorari can be sought)

28 U.S.C. § 1257(a) - "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by Writ of Certiorari ... where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution ... or Laws of the United States."

28 U.S.C. § 1651(a) - "The Supreme Court may issue ... all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." "(b) - An alternate writ or rule nisi may be issued by a Justice or judge of a court which has jurisdiction."

28 U.S.C. § 2403(b) - "In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that state affecting the public interest is drawn into question, the court shall certify such fact to the Attorney General of the State, and shall permit the state to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and

for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have the rights of a party and be subject to all liabilities of a party as to court costs to extent necessary for a proper presentation of the facts and law relating to the question of constitutionality."

MICHIGAN CONSTITUTION, 1963:

Art 1, § 2 - "No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or natural origin."

Art. 1, § 3 - "The People have the right peacefully ... to petition the government for redress of grievances."

Art. 1, § 17 - "No person shall be compelled in any criminal case to ... be deprived of life, liberty, or property, without due process of law. The right of all individuals ... to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed."

MICHIGAN COMPILED LAWS - STATUTES:

MCL 600.2529(5) - "The court shall order any of the fees prescribed in this section waived or suspended, in whole or in part, upon a showing by affidavit of indigency or inability to pay."

MCL 600.2963(7) - "... However, this section shall not prohibit a prisoner from commencing a civil action or filing an appeal in a civil action if the prisoner has no assets and no means by which to pay the initial partial filing fee. If the court, pursuant to court rule, waives or suspends the payment of fees and costs in an action described in subsection (1) because the prisoner has no assets and no means by which to pay the initial partial filing fee, the court shall order the fees and costs to be paid by the prisoner in the manner provided in this section when the reason for the waiver or suspension no longer exists."

MCL 600.2963(8) - "A prisoner who has failed to pay outstanding fees and costs as required under this section shall not commence a new civil action or appeal until the outstanding fees and costs have been paid."

MICHIGAN COURT RULE:

MCR 2.002(F), [former subsection (D)] - "If a party shows by ex parte affidavit or otherwise that he or she is unable because of indigency to pay fees and costs, the court shall order those fees and costs either waived or suspended until the conclusion of the litigation."

STATEMENT OF THE CASE

This petition IS LIMITED TO CHALLENGING ONLY THE CONSTITUTIONALITY OF A SPECIFIC STATE STATUTE, namely Mich. Compiled Law (MCL) 600.2963(8).

Petitioner asserts said statute is both unconstitutional on its face, and/or as applied to your indigent Petitioner, and all similarly situated Michigan prisoner's who are indigent, unable to pay "outstanding" fees/costs, and have attempted to clearly demonstrate indigency, but are none the less summarily rejected by Michigan court clerk's, pursuant to their ongoing practice of strictly invoking MCL 600.2963(8), as an absolute bar to accessing the court; all said and done by the Michigan clerk's without the clerk or a judge of a court having even reviewed and considered a motion to waive/suspend fees/costs, with affidavit of indigency and certificate of prisoner account.

Such is arbitrary, capricious, discriminatory, and a clear violation of Michigan prisoner's (Petitioner's) constitutional rights of access to courts, to petition for redress, due process, and equal protection under the law.

Petitioner DOES NOT CHALLENGE OR LITIGATE his claim against the Mich. Attorney Grievance Commission (AGC), that was attempted to be filed and decided by the Michigan Supreme Court, on Complaint for Superintending Control. Michael Ward v AGC, et al., MSC: _____; AGC# 20-0107.

Because the MSC Clerk never assigned a case number; and never filed his motion to waive/suspend fees, or the accompanying complaint for superintending control, that was authorized under

Mich. Court Rule (MCR) 9.122(A)(2), there was no decision on the merits of the motion or complaint. However, the MSC Deputy Clerk Inger Z. Mayer's LETTER OF REJECTION, due to owing outstanding fee's, invoking the challenged statute, MCL 600.2963(8), is to be considered a FINAL JUDGMENT, for jurisdictional purpose in being able to contest the statute on Petition for a Writ of Certiorari. See, Burns v Ohio, 360 U.S. 252, 256-57 (1959).

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The cause of action commenced when Asst Attorney's General employed by the Mich. Attorney General's Office, committed perjury and suborned perjury, when filing with the U.S. District Court, known to be falsified affidavits, the contents of which directly concerned material issues of fact, in the federal habeas corpus action of Ward v Wolfenbarger, #2:03-cv-72701 (AJT), which concerned Petitioner's legitimate "liberty interests". Petitioner filed a grievance against said attorney's with the AGC. The AGC refused to open a file and investigate. Petitioner's only recourse under Michigan law, was to file a complaint for superintending control, against the AGC, pursuant to MCR 9.122(A)(2); and he rightly attempted to do so.

Because the complaint for superintending control is not at issue here, Petitioner does not provide this Court with a copy. However, Petitioner believes the MSC Clerk has retained a copy. Also, should this Court require a copy, on instruction or order, he will promptly provide.

On 5/21/20 Petitioner did mail to the MSC Clerk for processing, an original of his MOTION to waive or suspend 100% of

filings/entry/motion fees, w/affidavit of indigency, and certificate of prison account, App'x "D"; together with his complaint for superintending control, brief in support, appendix, and notice of hearing; all of which met the Court's requirements. See, cover letter, w/Certificate/Proof of Service thereon, App'x "C".

The motion and complaint were received by the MSC Deputy Clerk in a timely manner, on 5/28/20 (App'x "A(1),(2)"); however, the MSC Deputy Clerk summarily rejected the attempted filing, invoking the now challenged state statute, MCL 600.2963(8), in a form letter, dated 6/1/20 (App'x "A").

Petitioner sought a timely reconsideration, and on 6/9/20, mailed his MOTION for RECONSIDERATION directed to the MSC CHIEF JUSTICE, seeking superintending control over the rejecting Deputy Clerk, Inger Z. Meyer. That motion was received by the MSC Clerk's Office on 6/15/20 (App'x "B(1)"). The motion for reconsideration was never presented to the Chief Justice; rather the same Deputy Clerk (Inger Z. Meyer), again circumvented judicial review, and summarily rejected and returned to Petitioner his motion for reconsideration, with another form letter dated 6/17/20 (App'x "B"), invoking MCL 600.2963(8), again asserting "outstanding" fees owed.

Petitioner has attached a copy of his MOTION for RECONSIDERATION hereto, as App'x "E".

REASONS FOR GRANTING THE PETITION

The Michigan Supreme Court, through actions/omissions of its Deputy Clerk, have decided an important question of federal law, that has not been, but should be, settled by this Court; and, has decided an important federal question in a way that conflicts with relevant decisions of this Court. USSC Rule 10(c).

Pursuant to USSC Rule 29.4(c), Petitioner recites that 28 U.S.C. § 2403(b) may apply. As stated in the Proof of Service, the Michigan Attorney General has been served.

Petitioner is specifically challenging the constitutionality (facially and as applied), of Michigan's statute, MCL 600.2963(8), that, on its face prohibits all court clerk's in the State of Michigan, from accepting for filing, any prisoner civil complaint, pleading, petition, or appeal, if (as your Petitioner does here), there are outstanding fee's owed from other previous litigation in any court in the State of Michigan; even if the prisoner (Petitioner) has clearly demonstrated by motion, affidavit, and certificate of prison account, that he is indigent/destitute, having absolutely no financial means or ability, to pay any past, current, or future fee, in his attempt to exercise his constitutional right of "access" and to "petition". The automatic bar is discriminatory, when a rich prisoner or non-prisoner can access Michigan's courts, but a poor prisoner cannot. Such violates fundamental rights, embodied within the U.S. Const., Am 1 (access to court, to petition), Am 14 (due process, equal protection); Art. 6, cl.2 (supremacy clause);

Mich. Const., Art. I, §§ 2 (discrimination, equal protection), 3 (access to court, to petition for redress), 17 (due process, fair & equal treatment); and several holdings of this Supreme Court, such as, but not limited to, Burns v Ohio, 360 U.S. 252 (1959); Boddie v Connecticut, 401 U.S. 371 (1971). See additional case law, infra.

At least one federal judge has opined that this constitutional challenge is RIPE FOR THIS SUPREME COURT'S SCRUTINY. Judge Richard Enslen indicated that he was "troubled" by Michigan's practice. Bridges v Collette, 2008 U.S. Dist. LEXIS 58, at *7 n.3; 2008 WL 53771, at *3 n.3 (WD Mich., 1/2/2008):

"... the court is nevertheless troubled that this prisoner, and others like him, appear to be indigent and appear to have lawsuits dismissed due to FEE BALANCES which they cannot cure given their indigency. Should this pattern persist, then eventually the U.S. Supreme Court would be OBLIGED to address why defendant judge's are not providing EQUAL ACCESS TO THE COURTS TO INDIGENT PRISONERS."

See also, Coleman v Granholm, 2008 U.S. Dist. LEXIS 89060, at *6 (ED Mich.)(citing positively Judge Enslen's comment in Bridges).

Despite the obvious that MCL 600.2963(8) conflicts with the "spirit and intent" of MCL 600.2529(5); MCL 600.2963(7); and Mich. Court Rule (MCR) 2.002(f), all level's of Michigan court's, including the Mich. Supreme Court consistently and strictly adhere to the automatic bar of MCL 600.2963(8), without question, without consideration or application of MCL 600.2963(7), and/or MCR 2.002(f), or a prisoners (Petitioner's) inability to pay (indigence).

1) Here, Petitioner's motion to waive or suspend entry/filing and outstanding fee's, are not even reviewed by any judge of any court, or their clerk. In Michigan, the practice of the clerk's is to initially check the computer to see if "outstanding" fee's are owed; and if so, the complaint, petition, or appeal, together with the motion to waive/suspend fees, is returned.

to the prisoner (Petitioner) with the clerk's rejection letter. See, the rejection letters of MSC Deputy Clerk, Inger Z. Meyer, attached hereto, as App'x "A", "B". And see, motion to waive/suspend fees, with attachments, App'x "C", attempted to be filed, considered and ruled upon in the Mich. Supreme Court, but was summarily rejected by the MSC Deputy Clerk, Inger Z. Meyer, without consideration, pursuant to the challenged MCL 600.2963(8).

2) On 6/1/20 the MSC Deputy Clerk summarily rejected and returned Petitioner's complaint for superintending control, and his motion to waive/suspend fees (App'x "A-A(2)"); and on 6/17/20 summarily rejected and returned to Petitioner his motion for reconsideration, alt., that the Chief Justice exercise superintending control over Deputy Clerk Inger Z. Meyer (App'x "B-B(1)"). The instant Petition for a Writ of Certiorari is made timely.

The challenged MCL 600.2983(8), provides:

"A PRISONER who has failed to pay outstanding fees and costs as required under this section shall not commence a new civil action or appeal until the outstanding fees and costs have been paid."

MCL 600.2963(7), provides:

"... However, this section shall not prohibit a prisoner from commencing a civil action or filing an appeal in a civil action if the prisoner has no assets and no means by which to pay the initial partial filing fee. If the court, pursuant to court rule, waives or suspends the payment of fees and costs in an action described in subsection (1) because the prisoner has no assets and no means by which to pay the initial partial filing fee, the court shall order the fees and costs to be paid by the prisoner in the manner provided in this section when the reason for the waiver or suspension no longer exists."

MCR 2.002(F), provides:

"If a party shows by ex parte affidavit or otherwise that he or she is unable because of indigency to pay fees and costs, the court shall order those fees and costs either waived or suspended until the conclusion of the litigation."
(former § D)

THE PROBLEM IS: That Michigan Court's and their Clerk's who screen incoming complaints, petitions and appeals, DO NOT read MCL 600.2963(8) IN PARA MATERIA with MCL 600.2963(7) as correctly pointed out by Judge Enslen in Bridges, supra., 2008 U.S. Dist. LEXIS 58, at *7:

"MCL 600.2963(7) allows state court judges to waive the rejection of suits brought by indigent prisoners with unpaid balances where such a rejection would violate their constitutional rights."

"MCL 600.2963(8) "must be read in para materia with MCL 600.2963(7) to preserve the constitutionality of the statute by permitting the state court to waive the § 600.2963(8) practice when it would result in a violation of indigent suitors constitutional rights to seek appellate and habeas review."

Further, MCL 600.2529(5), provides that "The court shall order any fees prescribed in this section waived or suspended, in whole or in part, upon a showing by affidavit of indigency or inability to pay."

There has been but a single Michigan Supreme Court Justice, who agrees with Federal Judge Enslen's troubling concern set forth in Bridges v Collette, supra. The dissenting opinion of MSC Justice Kelly, J., in Askev v DOC, 482 Mich 1040 (2008), had this to say:

"The issue in this case is whether the Court of Appeals practice of refusing to allow prisoners to commence new appeals until they have paid outstanding fees and costs is constitutional. It appears that the practice is consistent with MCL 600.2963(8), which provides that 'A prisoner who has failed to pay outstanding fees and costs as required

under this section shall not commence a new civil action or appeal until the outstanding fees and costs have been paid.' However, THIS STATUTE COULD BE UNCONSTITUTIONAL because it prevents a person from having access to the courts.

Plaintiff claims he is indigent. If indigent, he is unable to pay back fees and costs. Yet, this statute prevents him from accessing the courts until he pays back fees and costs. Hence, he is in a Catch-22. He cannot pay the outstanding fees until he acquires the necessary funds, and he cannot file a new appeal until he pays the outstanding fees.

In an unpublished opinion out of the U.S. District Court, Western District of Michigan, Judge Richard Enslen indicated that he was troubled by this practice. Bridges v Collette, 2008 U.S. Dist. LEXIS 58, at *7 n.3, 2008 WL 53771, at *3 n.3 (WD Mich., 1/2/08). I believe this Court should grant leave to appeal. We should consider whether it is unconstitutional to dismiss an appeal for failure to pay outstanding fees when a plaintiff can show that he is indigent."

It would appear the Sixth Circuit agrees with Judge Enslen in Bridges, supra.; and Justice Kelly's dissent in Askew, supra. See, Clifton v Carpenter, 775 F 3d 760, 762-63 (CA6 2014) (Tennessee could not constitutionally require an inmate to pay outstanding costs and fees before he could seek review of the revocation of his parole). Lewis v DOC, 232 Mich App 575, 579-80 (1998) affirms this position, "The procedure set forth in MCR 2.002(D) assures that a complainant will not be denied access to the courts on the basis of his indigence," citing to Wells v DOC, 447 Mich 415, 419 (1994).

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Here, the Mich. Supreme Court's Deputy Clerk, Inger Z. Meyer twice summarily rejected Petitioner's attempt to access that Court. The rejections were in letter format, and invoked MCL 600.2963(8), as reason for doing so. Such form letter acts as a FINAL JUDGMENT. See, Burns v Ohio, 360 U.S. 252, 256-57 (1959) (On certiorari, the

U.S. Supreme Court in an opinion by Warren, Ch. J., expressing the views of 6 members of the Court, treated the Ohio Supreme Court CLERK'S FORM LETTER that summarily rejected the attempted appeal for reason of failure to pay a filing fee, as a FINAL JUDGMENT OF the Supreme Court of Ohio within the meaning of 28 U.S.C. § 1257, which requires a final judgment as a pre-requisite of review by the U.S. Supreme Court).

With that said, the importance of the right of access to the courts to incarcerated individuals is evident and can hardly be overstated:

"The right to file for legal redress in the courts is as valuable to a prisoner as to any other citizen. Indeed, for the prisoner it is more valuable. In as much as one convicted of a serious crime and imprisonment usually is divested of the franchise the right to file a court action stands ... as his most 'fundamental political right, because preservative of all rights.'"

Hudson v McMillian, 503 U.S. 1, 15 (1992)(Blackmon, J., concurring in the judgment).

"Within the residuum of liberty retained by prisoners are freedoms identified in the First Amendment to the Constitution ... the freedom to petition their government for a redress of grievances," e.g., Johnson v Avery, 393 U.S. 483, 485 (1969). While the exercise of these freedoms may of course be regulated and constrained by their custodians, they may not be obliterated either actively or passively ... The 'well-established' right of access to the courts ... is one of these aspects of liberty that states must affirmatively protect. See, Burns v Ohio, 360 U.S. 252, 257-58 (1959)(requiring states to waive filing fees for indigent prisoners).

Prisoner's have a fundamental right of access to the courts and the attendant right to petition for a redress of grievances. U.S. Const., Am 1; Mich. Const., Art 1, § 3; Lewis v Casey, 518 U.S. 343, 350 (1996); and see, Leveye v Metro. Pub. Defender's Office, 73 F Appx 792, 794 (CA6 2003); Ward v Dyke, 58 F 3d 271, 275 (CA6 1995); Glover v DOC, 1999 Mich App LEXIS 2504, at *9.

The court in John L. v Adams, 969 F 2d 228, 232 (CA6 1992), reaffirmed that "The Court in Bounds v Smith, 430 U.S. 817, 823 (1977) reiterated its holding in Wolff v McDonnell, 418 U.S. 539 (1974), that the right of access extends to civil rights actions." "The right of access to the courts, upon which Johnson v Avery, 393 U.S. 483 (1969) was premised, is founded in the Due Process Clause and insures that NO PERSON will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights. Wolff v McDonnell, supra., 418 U.S., at 579. Thus, the Court held that the right of access to courts extends beyond habeas corpus petitions to civil rights actions." Adams, supra., 969 F 2d, at 232. "... States may not erect barriers that impeds the right of access of incarcerated persons." Id., at 235.

In Thaddeus-X v Blatter, 175 F 3d 378, 391 (CA6 1999), the court said: "It is well established that prisoner's have a constitutional right of access to the courts. Lewis v Casey, supra., 518 U.S., at 354-55; Bounds v Smith, supra., 430 U.S., at 821-24; Berryman v Rieger, 150 F 3d 561, 567 (CA6 1998) ("It has long been recognized that the lawful resort to the courts is part of the First Amendment right to petition the government for a

redress of grievances."). See also, Christopher v Harbury, 536 U.S. 403, 415 & fn.2 (2002).

"A prisoner's right of access to the court's extends to direct appeals, habeas corpus applications, and CIVIL RIGHTS CLAIMS." Thaddeus-X v Blatter, supra., 175 F 3d, at 391.

In the oft cited to "access" case of Bounds v Smith, supra., the U.S. Supreme Court announced that prisoner's have a "fundamental constitutional right of access to the courts." Bounds, at 821. "In order to prevent 'effectively foreclosed access' INDIGENT PRISONERS MUST BE ALLOWED TO FILE appeals and habeas corpus petitions without payment of docket fees." Id., at 822, 825. "The right of access extends to CIVIL ACTIONS." Id., at 823, 825, 827, 833. "But the costs of protecting a constitutional right CANNOT JUSTIFY its total DENIAL." Id., at 825. "As this Court has 'consistently emphasized,' habeas corpus and CIVIL RIGHTS ACTIONS are of 'fundamental importance ... in our constitutional schema; because they directly protect our most valued rights. Johnson v Avery, supra., 393 U.S., at 485; Wolff v McDonnell, supra., 418 U.S., at 579."

In Ross v Moffit, 417 U.S. 600, 611 (1974), this Court said: "Unfairness results only if indigents are singled out by the states and denied meaningful access to the appellate system because of their POVERTY." States must "assure the indigent defendant an adequate opportunity to present his claims fairly. Id., at 616. "'[M]eaningful access' to the courts is the touchstone." Id., at 611, 612, 615.

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Petitioner is a state prisoner, currently unemployed and without funds or means of access funds with which to pay any portion of any fee. He is truly destitute; yet has a constitutional RIGHT OF ACCESS to the Court. U.S. Const., Am 1, 14; Mich. Const. 1963, art. 1, §§ 2, 3, 17. See, Petitioner's accompanying Motion for Leave to proceed IFP; and see, Motion to Waive/Suspend fee's, with affidavit and certificate of prison account, submitted, but summarily rejected by the MSC Deputy Clerk, citing MCL 600.2963(8), without consideration of Petitioner's indigency. Copy attached hereto as App'x "C".

The right of access to the courts is a "fundamental personal right," and thus a law trammeling upon that right should be examined with strict scrutiny. See, e.g., Harper v Va. State Bd. of Elections, 383 U.S. 663, 670 (1996)(holding strict scrutiny applied where the right involved was "fundamental," even though the class of persons affected was otherwise non-suspect).

The Supreme Court in Boddie v Connecticut, 401 U.S. 371 (1971) concluded that DUE PROCESS did prohibit a State from denying, solely because of inability to pay, ACCESS to its courts. Boddie was an action challenging requirements for payment of the court fees and costs for service of process that restricted their access to the courts in an effort to bring an action for divorce. Thus, the Court held that a State court not, consistent with the obligations imposed on it by the DUE PROCESS CLAUSE of the Fourteenth Amendment, pre-empt the right to dissolve this legal relationship without affording all citizens access to the means it had prescribed for doing so.

In short, the Boddie Court's majority opinion by Harlan, J., held that a State denies due process of law to INDIGENT PERSONS under the Fourteenth Amendment, by refusing to permit them to bring [civil] actions except on payment of court fees and service of process costs which they are UNABLE TO PAY. And see, Tennessee v Lane, 541 U.S. 509, 523 (2004)(The Due Process Clause also requires the States to afford certain civil litigants a "meaningful opportunity to be heard" by removing obstacles to their full participation in judicial proceedings.).

The EQUAL PROTECTION CLAUSE of the Constitution stipulates that "[n]o State shall ... deny within its jurisdiction the equal protection of the laws" and these protections apply equally against acts of State Governments and the Federal Government. U.S. Const., Am 14, § 1; Bolling v Sharpe, 347 U.S. 497, 500 (1954); U.S. v Paradise, 480 U.S. 149, 166 n.16 (1987). In Boddie, Id., Justice Brennan, J. concurred on the ground that while denying indigents access to the courts for non-payment of a fee is a denial of due process, it is also a denial of EQUAL PROTECTION of the laws, and NO DISTINCTION CAN BE DRAWN BETWEEN DIVORCE SUITS AND OTHER ACTIONS. See also, Burns v Ohio, 360 U.S. 252 (1959)(holding that a State cannot require an indigent to pay a filing fee before being allowed to appeal in one of its courts); Bullock v Carter, 405 U.S. 134 (1972); M.L.B. v S.L.J., 519 U.S. 102 (1996); Ross v Moffit, 417 U.S. 600, 611 (1974)(unfairness results if indigents are singled out by the States and denied meaningful access to the appellate system because of their POVERTY).

Under these equal protection principles, "'all persons subjected to ... legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed.'" Enquist v. Dr. Dept. of Agric., 553 U.S. 591, 602 (2008).

In Christopher v. Harbury, 536 U.S. 403, 413 (2002), this Court said "In denial-of-access cases challenging fees that POOR plaintiff's cannot afford to pay, the object is an an order requiring waiver of a fee to open the courthouse door for desired litigation ...". Finally, in Tessmer v. Granholm, 333 F 3d 683, 698 (CA6 2003), the court citing to Burns v. Ohio, *supra*, 360 U.S. at 257, reaffirmed that "Once the State chooses to establish appellate review ... it may not foreclose indigents from access to ANY PHASE of that procedure because of their POVERTY." Further, "Appellate process must be fair and may not be implemented in a manner that discriminates based on indigency." Tessmer, at 700.

Here, the State of Michigan chose to establish appellate review, from a decision of the Michigan Attorney Grievance Commission, by way of Complaint for Superintending Control, under Mich. Court Rule (MCR) 9.122(A)(2).

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DUE PROCESS: MCL 600.2963(8) also clearly violates the constitutional right to Due Process of Law. The Fourteenth Amendment forbids a state to "... deprive any person of life, liberty, or property, without due process of law." U.S. Const., Am XIV, § 1. As such, procedural due process extends to the deprivation of interests encompassed by the Fourteenth Amendment's

protection of liberty and property. Bd. of Regents v Roth, 408 U.S. 564, 570 (1972). When protected interests are implicated, procedural due process guarantees the right to some hearing. Id., at 570-71. "Inmates are entitled to use the court process to vindicate fundamental constitutional rights ..." Lewis v Casey, supra., 518 U.S., at 355; Bounds v Smith, supra., 430 U.S., at 822-23. At least some procedure is due to inmates claiming indigence. Under MCL 600.2963, inmates not able to pay the initial fee within 21 days cannot file and have no hearing. Barring the petition of the government for redress of grievances through a filing fee statute is a deprivation of procedural due process. Petitioner retains a protected interest. See, "Statement of Case," supra., p. 9

EQUAL PROTECTION: MCL 600.2963(8) violates a prisoner's (Petitioner's) right to Equal Protection under the Law. The Equal Protection Clause of the Fourteenth Amendment dictates that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., Am XIV, § 1. The right of access to courts is a "fundamental personal right," and thus a law trammeling upon that right should be examined with strict scrutiny. See, e.g., Harper v Va. State Bd. of Elections, 383 U.S. 663, 670 (1966)(holding strict scrutiny applied where the right involved was "fundamental," even though the class of persons affected was otherwise non-suspect); Skinner v Oklahoma, 316 U.S. 535, 541-43 (1942)(same). Given access to courts is a "fundamental" right to which prisoner's enjoy, Bounds v Smith, supra; strict scrutiny of MCL 600.2963(8) is therefore warranted.

Because the statute impedes a fundamental right, and because at the very least it allows Michigan courts to refuse entry to indigent prisoner's such as your Petitioner here, it violates Equal Protection rights of these inmates. See, Harper, supra., 383 U.S., at 668 (holding that conditioning the right to vote in state elections on ability to pay is "invidious" discrimination denying Equal Protection). In addition, MCL 600.2963(8) denies a prisoner's right of access to courts. Because the state's means of achieving its interest of reducing frivolous litigation is not narrowly tailored, MCL 600.2963(8) fails the strict scrutiny test and is unconstitutional.

Even if a classification concerns a non-suspect class, the classification still must pass rational basis scrutiny to comport with the Equal Protection Clause. See, City of Cleburne v Cleburne Living Ctr., Inc., 473 U.S. 432, 440 (1985)(holding permit requirements only for group homes housing the mentally disabled failed the rational basis test). This statute does not pass even rational basis review. With access to courts, the law requires that "[w]hen an appeal is afforded, ... it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause." Lindsey v Normat, 405 U.S. 56, 77 (1972). The Lindsey Court held that a double-bond requirement only for tenants wishing to appeal eviction decisions violated Equal Protection because of the "substantial barrier" to appeal raised against only one class of litigants. Id., at 79. "For [the poor], as a practical matter, appeal is foreclosed, no matter how meritorious their case may be." Id. The Court held the discrimination against tenants was

"arbitrary and irrational," flunking even the rational basis test. See, Id. The barrier created by MCL 600.2963(8) only for inmates is even more substantial than the tenants' double appeal bond. Michigan has a large measure of control over inmates' finances. The state controls opportunities to obtain work, which, if obtained, is at prison wages, (i.e., .17¢ per day in most instances). The state also requires inmates to purchase many necessities of life at market rates. These circumstances are a legitimate incident of incarceration, but also make MCL 600.2963(8) arbitrary and irrational.

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Finally, MCL 600.2963(8) conflicts with the "spirit and intent" of MCL 600.2963(7), 600.2529(5), and MCR 2.002(F).

This Court should exercise its power to examine immediately the clear-cut issue of law presented; and appoint counsel for further proceedings and briefing, etc.

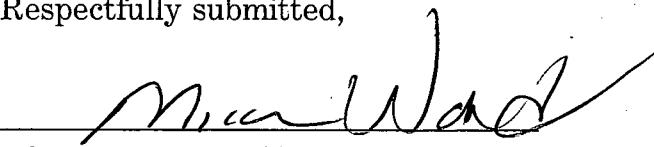
CONCLUSION

* Legal counsel should be appointed to represent this indigent prisoner in further briefing, etc.; and ...

The petition for a writ of certiorari should be granted.

Find & declare MCL 600.2963(8) unconstitutional on its face and/or as applied to Petitioner, and/or all Michigan prisoners similarly situated.

Respectfully submitted,



Michael Ward #128267

Date: 7/17/20

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