No. 20-7719

ORIGINAL

Supreme Court, U.S.
FILED
JAN 04 2021
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Robert L. Tatum — PETITIONER
(Your Name)

vs.

Thomas Trettin, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Seventh Circuit Court of Appeals of the United States
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI
[28 USC 2403(a) May Apply. Service Made]

Robert L. Tatum II
(Your Name)

PO Box 19033
(Address)

Green Bay WI 54307-9033
(City, State, Zip Code)

920-432-4877
(Phone Number)

Exhibit #2

## QUESTION(S) PRESENTED

[ The clerk is requiring I file a complete petition by refusing to accept my motion for leave to file, which would resolve all issues presented without needless procedures (in this particular case) normally attending petition filing. ]

1. Is the Prisoner Litigation Reform Act (PLRA) "3-strike rule", 28 USC 1915(g), unconstitutional, since it chills a prisoner's right to file meritorious "close call" claims without reprisal in violation of the 1st Amendment?

2. Is PLRA's "3-strike rule" unconstitutional, since strikes, resulting in loss of in forma pauperis leave, are imposed without affording "some hearing" prior to imposition as due process / the 14th Amendment requires?

3. In 2011, all claims in the underlying cases were allowed to proceed in forma pauperis as part of a single case; In 2016, 3 PLRA strikes were issued against Petitioner; And in 2019, the district ruled the single case's claims were misjoined, split them into separate cases, but denied in forma pauperis leave despite the 2011 ruling -- Did the district court err in re-screening severed claims and denying in forma pauperis leave?

4. The lower courts intentionally avoided arguments challenging the constitutionality of PLRA's 3-strike law, denying fair hearing; Does this arbitrary refusal to fairly hear my claim meet the constitutional minimums under the 1st Amendment to constitute a "redress of grievances", and meet due process requisites?

## LIST OF PARTIES

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

[X] 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:

Thomas Trettin

Decorie Smith, DeShawn McKinley

Sean Henderson, Michael Leeman, Fatrina Hale, Sarah Wronski;

all officers of Milwaukee County Jail at the time(s) relevant.

## RELATED CASES

Tatum v. Clarke [now Lucas], et al., 11-CV-1131, Eastern District of Wisconsin (EDWI)

## TABLE OF CONTENTS



## INDEX TO APPENDICES

## TABLE OF AUTHORITIES CITED

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

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A-C to the petition and is

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

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

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

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits 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 _____ 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.

## JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was 9-17-20, reconsider 10-5-20.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 11-5-2020, and a copy of the order denying rehearing appears at Appendix A.

[ ] 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).

*28 USC 2403(a) applies: None of the lower courts certified to the Atty. Gen. that the constitutionality of 28 USC 1915(g) was drawn into question.

[ ] For cases from **state courts:**

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

[ ] A timely petition for rehearing was thereafter denied 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. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1st Amendment: "Congress shall make no law... abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances."

5th Amendment: "No person shall... be deprived of life, liberty, or property, without due process of law;"

28 USC 1915(g): "In no event shall a prisoner bring a civil action or appeal of a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more occassions, while detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury."

## STATEMENT OF THE CASE

These claims in the cases on review originally arose from a single case, Tatum v. Clarke, et al., EDWI; They were screened per PLRA requirements, determined to be meritorious, and allowed to proceed in forma pauperis in 2011. In 2016, courts issued 3 strikes within weeks of each other, seeking to punish my litigiousness despite the merits of relative claims, by abuse of the PLRA '3-strikes' law. [See Blacks v. US, 630 Fed. Appx 638, strike issued on 2-3-16; Tatum v. Cimpl, ref'd @ 2016 WL 3963250, strike issued on 2-12-16; Tatum v. Fossum, 15-CV-1395. EDWI, ref'd in related case @ 2016 WL 4591903; also see Tatum v. Smith, 19-CV-1590, Okt#8 p.2-3, proving these cases' merit.] In 2019, after a 3rd summary judgment proceeding in case 11-CV-1131, the district ruled claims were misjoined, ordered them severed into their own cases, but denied in forma pauperis leave despite the 2011 ruling allowing leave to proceed in forma pauperis on the claims. [Tatum v. Lucas, 2019 WL 652854] I requested reconsideration, arguing that I was already granted in forma pauperis leave on the claims + PLRA provisions don't allow for any re-screening of claims, and PLRA is unconstitutional on 1st + 5th Amendment grounds, so I should be granted leave; The district denied reconsideration, denying re-screening as an error, ignoring the 5th Amendment argument that PLRA '3-strike' provision, as applied, violates due process requirements, and ruling litigation isn't "speech" under the 1st Am., so my argument that PLRA chills prisoners' right to advance meritorious close call claims without reprisal is invalid. [Appx. D] I posed the same arguments related to district court error in re-screening severed claims + unconstitutionality of 28 USC 1915(g) on 1st + 5th Amendment grounds on appeal, but the 7th Circuit refused to address my arguments, just ruling I had 3 strikes then ultimately dismissing my appeal after denying in forma pauperis leave. [Appx. A-C]

## REASONS FOR GRANTING THE PETITION

I. The unconstitutionality of PLRA's 3-strike law on 1st + 5th Amendment grounds presents a novel + important question of law that can only be resolved by this Court, and the 7th Circuit's mishandling the issue grossly calls for SCOTUS' supervisory power.

PLRA's constitutionality has been challenged before, but most cases alleged denial of court access, e.g. Thomas v. Holder, 750 F3d 899, 908 (DC Cir. 2014)(cited/collected cases). However, these constitutional challenges haven't been raised prior--even the district court stated as much.

A law may be challenged as unconstitutional if the facts show A. applying the law is illegal, and B. that injury is sustained or will result from its enforcement. Mass v. Mellon, 262 US 447, 487 (1923) PLRA's 3-strike law, 28 USC 1915(g), is illegal on 1st + 5th Amendment grounds plus causes injury, and as such is unconstitutional; The law should be stricken by SCOTUS as far as its "failure to state a claim" reasoning for issuing strikes.

28 USC 1915(g) chills + threatens to chill prisoners' protected speech, and their right to seek gov. redress of grievances, by its punishing their filing of meritorious, novel, "close call" claims in good faith with PLRA strikes. SCOTUS discussed close call claims in Neitzke v. Williams, 490 US 319, 323-24, 329-30 (1989), defined as legit claims seeking logical extention of law + precedent to its facts, which could reasonably be decided for or against their stating a claim; it was held that even if ultimately unsuccessful, these claims shouldn't be treated the same as a frivolous one, since the basis in law + fact was arguable. Id. Rule 11(c), F.R.Civ.P., the rule stating procedures for sanctioning non-prisoners for filing improper claims, specifically protects them (notably trained attorneys) from sanction for filing "close call" claims, but PLRA's 3-strike law, superceding Rule 11(c) for prisoners under statutory construction principles,[FN1] sanctions prisoners (largely untrained in law) with 'strikes' if the exact same "close call" claim is called against it stating a claim. This is illegal, as issuing a strike as reprisal for filing a good faith claim violates prisoners' 1st Amendment right to petition the gov. for redress, and discourages filing "close call" claims to avoid strikes, despite their good faith and basis in arguable law + facts.

Denial of a constitutional right constitutes an "injury" under law. Carey v. Piphus, 435 US 247, 264-66 (1978) So both elements are met for 28 USC 1915(g) to be stricken as unconstitutional under the 1st Amendment. The district, to refute my constitutionality challenge under the 1st Amendment, alleged litigation isn't speech, so my argument isn't valid; But that clearly contradicts SCOTUS' definition of speech stated in precedent to be "conduct.. carried out by means of language, either spoken, written, or printed." Giboney v. Empire Storage + Ice, 336 US 490, 502-03 (1949)

In Thomas v. Holder, the DC Circuit expressed similiar concerns as to the constitutionality of PLRA, on grounds that it suppresses meritorious prisoner claims. id, 750 F3d at 909. This is similiar to my 1st Amendment claim here, and shows that reasonable, highly qualified jurists (many times DC Circuit judges are tapped for SCOTUS nomination) also question whether the PLRA violates the US Constitution, as opposed to just a pro se prisoner. In my estimation, unconstitutionality is clear here, and reasonable jurists also calling PLRA's legality into question justifies SCOTUS review, this esp. since the 7th Circuit refused to rule on the issue at all by intentional avoidance.

28 USC 1915(g)'s imposition of strikes, resulting in the loss of the right or privelege to in forma pauperis status, without affording "some hearing" prior to imposition is also illegal; This violates due process/5th Amendment requirements that prevent arbitrary deprivation of any substantial right or privelege without a reasonable opportunity to challenge the deprivation prior to effect, see e.g. Wolff v. McDonnell, 418 US 539, 557-58 (1974) (due process requires "some hearing" prior to gov. depriving substantial liberties) A pre-deprivation due process hearing prior to PLRA strike imposition is both feasible + required: Rule 11(c), F.R.Civ.P., affords a pre-deprivation hearing, in the form of a "show-cause" process, if non-prisoners are alleged to have filed improper claims -- The accused is given notice of alleged impropriety via the accuser's motion, 21 days to correct misconduct before the motion can be filed in court, and after filing the court orders the accused to "show cause" why sanction shouldn't issue, allowing a

refutation of alleged improper filing prior to any sanction. If non-prisoners are afforded such pre-deprivation procedures, it's feasible to afford it to prisoners (+ violates equal protection to not), yet PLRA is devoid of such due process protections; and it's clearly required by due process to afford pre-deprivation procedures before sanctioning alleged improper filing of claims, else it wouldn't be afforded to non-prisoners per Rule 11(c) either.

II. The proper handling of severed PLRA claims, whether they should be re-PLRA screened, is a novel question SCOTUS should address by a final opinion on the matter.

In this case, the district screened claims under PLRA, granted in forma pauperis status, severed claims 9 yrs later, re-screened the severed claims + denied in forma pauperis status; But PLRA provisions don't allow for re-screening, + they weren't new claims. The purpose of PLRA is to ensure the quality of prisoner litigation. Porter v. Nussle, 534 US 516, 525 (2002) This purpose wasn't met by the re-screening + denial, quality was assured in the first screening; The lower courts' position is an oppressive disposition against prisoners to stop meritorious claims, not keep out unqualified based on merit, when courts are required to have an impulse towards entertaining actions. see United Mine Workers of Am. v. Gibbs, 383 US 715, 724-25 (1966)

The proper handling of severed PLRA claims hasn't been addressed by SCOTUS, and a decision will impact PLRA/prison cases nationwide.

III. Determining the constitutional minimums for Fed. court rulings to meet 1st + 5th Amendment requisites is a fundamental question going to the core of judicial administration, warranting SCOTUS' exercise of its supervisory authority to address the issue.

In this case, despite my being properly before the 7th Circuit + advancing meritorious arguments challenging the constitutionality of 28 USC 1915(g), that tribunal arbitrarily refused to provide fair hearing by a relative ruling on the merits. It was clearly wrong to purposely deny me fair hearing, possibly even constituting a crime (e.g. 18 USC 241), but their actions raise a critical issue -- What are the constitutionally minimum criteria for a ruling to constitute a "redress of grievances" under the 1st Amendment, and "due process" under the 5th? SCOTUS has never addressed the question, and the lack of clarity has fostered abuses of judicial

discretion via deficient rulings. Several hold that an arbitrary court decision constitutes an abuse of discretion, e.g. Sherrod v. Lingle, 223 F3d 605, 610 (7th Cir. 2000), and that a ruling is arbitrary if there is no reasoning in the record to support it, e.g. Hackett v. Xerox Corp. LTD, 315 F3d 771, 774-75 (7th Cir. 2003). There are even court local rules that require reasoning in court decisions. e.g. US v. George, 403 F3d 470, 473-74 (7th Cir. 2005) (7th Circuit Rule 50 requires explanation of reasons for all appealable orders) But what constitutes "reasoning", + are reasons enough to pass constitutional muster? The 7th Circuit gave "reasoning" for denying me in forma pauperis leave, that I had 3 PLRA strikes, but did NOT redress my grievances, that PLRA's 3 strike law isn't constitutional plus none of the strikes were warranted, and so shouldn't apply. The 7th Circuit can argue that it gave "reasoning", complying with current precedent, while violating my rights to redress of my grievances + fair hearing under the 1st + 5th Amendments. A conflict exists, and harmony + clarity must be brought by a SCOTUS ruling, to move abuse of discretion precedent regarding infirm rulings and constitutional requisites into alignment. The minimum constitutional requisites of what constitutes "reasoning" + fair hearing has been decided by Scotus for tribunals in prison hearings, see Wolff, 418 US at 563-66, so why not a critical look at the minimum constitutional requisites for court rulings, where so much more is at stake?

I would argue that to be constitutionally firm, a ruling must give reasoning that redresses the particular grievances posed to the decision maker, with "reasoning" to include the facts related to the decision, legal precedent relied on, how it's applied to the facts, + why it's applied to the facts. The result should be some amalgam of "In response to "such-such" party positions + facts, I reach "xyz" conclusion or ruling, because "abc" legal precedent applies to "def" facts in "so+so" way, for "123" reasons." And failure of a ruling to include any of these elements should warrant reconsideration, constitute abuse of discretion, as well as a due process and/or 1st Amendment violation for denial of redress of grievances.

CF[U] Nitro-Lift Tech. LLC v. Howard, 586 US 17, 22 (2012) (a law for a specific reason or group controls over a general one when a conflict exists)

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert L. Tatum, Petitioner

Date: 2-9-2021

Case no.

Supreme Court of the United States

Robert L. Tatum,
Petitioner,

-v-

Thomas Trettin, DeCorie Smith, et al., Sean Henderson, et al.,
Respondents.

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# Petition for Writ of Certiocaci

On Writ(s) of Certiorari to the United States Court of Appeals for the Seventh Circuit, in regards to the consolidated appeals of 20-2219, 20-2220, 20-2222

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Robert L. Tatum
Petitioner - Pro Se
2833 Riverside Drive, PO Box 19033
Green Bay WI 54307-9033
(920) 432-4877

Questions Presented for Review (3) -- see 'In Forma Pauperis' Motion for this information

Parties -- Petitioner, Robert Tatum, was an inmate in Milwaukee County Jail at times relevant, who sued Respondents, Thomas Trettin, Decorie Smith, DeShawn McKinley, Sean Henderson, Michael Leeman, Fatrena Hale, Sarah Wronski, all MCJ officers, for constitutional rights violations. Resp. never appeared for these cases, and the issues for resolve warrant ex parte decision.

Table of Authority + Contents -- not applicable (5 pgs or less)

Opinions Below -- 7th Cir. Decisions: 11-5-20 Final Order of Dismissal + En Banc Deny, App. A; 10-5-20 Reconsider denied, App. B; 9-17-20 In Forma Pauperis denied, App. C; District: EDWI Decisions: In Forma Pauperis denied, App. D (6-8-20 Opinion)

Jurisdiction -- 28 USC 1254(1) gives this Court jurisdiction over this controversy.

Statutory + Constitutional Provisions -- 1st Amendment: "Congress shall make no law... abridging the freedom of speech, or of the press; or the right of the people peacably to assemble, and to petition the Government for a redress of grievances."

5th Amendment: "No person shall... be deprived of life, liberty, or property, without due process of law;"

28 USC 1915(g): see In Forma Pauperis Motion for this information

Statement -- see In Forma Pauperis Motion for this information

Reasons for Granting this Petition -- see In Forma Pauperis Motion for the argument + facts in support; see also Supreme Court Rule 10(a), (c). An important question of law, whether 28 USC 1915(g) is violative of 1st, 5th Amendments, has not been, but should be settled by this Court; and the handling of in forma pauperis leave below is far outside of norms.

Conclusions -- The attached 'in forma pauperis' motion should be granted, resulting in 28 USC 1915(g) being stricken as unconstitutional; And this petition decided ex parte + in summary fashion, in Petitioner's favor.

Dated this 31st of December, 2020. Signed: RT

Robert Tatum, GBCI, PO Box 19033, Green Bay WI 54307-9033
(920) 432-4877

# Supreme Court of the United States

Robert L. Tatum, Petitioner

-v-

Case no.

Thomas Trettin,
Deecrie Smith et al.,
Sean Henderson, et al., Respondents.



Motion for Leave to File + Proceed 'In Forma Pauperis' on Petition For Certiorari, On the Basis of Challenging 28 USC 1915(g)'s "3-strike rule" Application + Constitutionality

Pursuant to Supreme Court Rules) 21.1(b) [12.2, 39], Tatum as pro se-prisoner seeks leave to file a petition for Certiorari "in forma pauperis", on grounds that Prisoner Litigation Reform Act (PLRA) "3-strike rule", 28 USC 1915(g), is unconstitutional--violating the 1st Amendment in chilling protected speech in meritorious "close call" cases, and the 5th, 14th Amend

5th, 14th Amendments in strike imposition resulting in loss of right or privelege without "some hearing" prior to--and/or was misapplied in a fashion suitable to be resolved by decision by this Court; The petition will largely be blank, because resolving this motion on whether I can proceed pro se "in forma pauperis" here will answer all of the issues to be presented, all related to disputed "in forma pauperis" rulings below, + being as follows:

1. In 2011, all claims in the underlying cases were allowed to proceed in forma pauperis" as part of a single case; In 2016 3 PLRA strikes were issued against Petitioner; In 2019 the district ruled the claims were misjoined + split them into their own cases, but denied in forma pauperis" leave--Did the district err in re-screening + denying in forma pauperis leave?

2. Is PLRA's 3-strike rule unconstitutional, since it chills prisoners' right to file meritorious "close call" claims?

3. Is PLRA's 3-strike rule unconstitutional, since strikes resulting in loss of 'in forma pauperis' leave are imposed without affording "some hearing" prior to as due process requires?

The claims in these cases arose originally from a single case, Tatum v. Clarke, et al., EDWI, 11-CV-1131, and were screened per PLRA + allowed to proceed 'in forma pauperis' in 2011. In 2016, courts issued 3 strikes within weeks of each other, seeking to punish my litigiousness in abuse of PLRA, not lack of merit. [see Blacks v. US, 630 Fed Appx 638 (2-3-16), Tatum v. Cimpl, ref. 2016 WL 3963250 (2-12-16), Tatum v. Fossum, EDWI 15-CV-1395, refiled 2016 WL 4591903; also see Tatum v. Smith, et al. (etc), 19-CV-1590, EDWI, DKt#8, p.2-3, explaining + proving merit to these cases.] In 2019, after a 3rd summary judgment proceeding, the district ruled 11-CV-1131 claims were misjoined, ordered them severed into their own cases, but denied 'in forma pauperis' leave despite the 2011 allowance upon PLRA screening. [Tatum v. Lucas, 2019 WL 652854]

PLRA strikes are to be 'de novo' reviewed to ensure they were validly imposed. e.g. Robinson v. Powell, 297 F3d 540, 541 (7th Cir. 2002), Asemeni v. US Citz. + Imm. Serv., 797 F3d 1069, 1073-77 (DC Cir. 2015) But no court did any proper 'de novo' review of these strikes, and if this Court does so it will find not even ONE is validly imposed, let alone 3. And PLRA's purpose is to ensure the quality of prisoner claims. Porter v. Nussle, 534 US 516, 525 (2002) That purpose isn't met by the lower courts' actions in denying me in forma pauperis: A 2011 screening had already granted me "in forma pauperis"

leave, meeting PLRA's aims, so a 2nd assessment + denial was improper. Impropriety is magnified by the fact that binding authority required screening + any severance due to misjoinder to occur within ONEs of filing, not 9yrs later. Wheeler v. Wexford Health Serv., 684 F3d 680, 682-83 (7th Cir. 2012) Had this authority been obeyed, severance would've occurred well prior to the 2016 strikes. So it's inequitable to punish me for the district's failure to timely sever claims -- An equitable remedy is warranted to allow me "in forma pauperis" leave in this case, to avoid injustice by the rigid obeyance to the written law. See Baggett v. Bullitt, 377 US 360, 375 (1964), Hazel-Atlas Glass v. Hartford Empire, 322 US 238, 248 (1944) 9yrs of work product, plus costs, is lost in my pursuing claims that are dismissed due to 'in forma pauperis' denial here, a serious + irreparable injury to me.

PLRA's '3-strike' law, 28 USC 1915(g), reads as: "In no event shall a prisoner bring a civil action or appeal of a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more occassions, while detained in any facility, brought an action or appeal in a court of the united states that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." But this law is unconstitutional on several grounds + should be stricken by this Court, and I be allowed to proceed 'in forma pauperis' on the basis of this law being inoperable.

A law may be challenged as unconstitutional if the facts prove a. applying the law is illegal, and b. that injury is sustained or will result from its enforcement. Mass. v. Mellon, 262 US 447, 487 (1923)

28 USC 1915(g) chills + threatens to chill protected speech of prisoners to file meritorious, novel, "close call" claims, that seek logical extention of law to their claims; this is illegal since it violates the 1st Amendment, and speech suppression is an injury as denial of constitutional rights. Legal filings are protected expressions under the 1st Am., and meet the definition of "speech" stated by SCOTUS to be "conduct.. carried out by means of language, either spoken, written, or printed." Giboney v. Empire Storage + Ice, 336 US 490, 502-03 (1949) The district refuted my 1st Am. challenge to PLRA's "failure to state a claim" strikes by alleging legal filings ~~is~~ not "speech", but that contradicts both SCOTUS + commonsense. [2020 WL 3051566, pp 2] SCOTUS discussed "close call" cases in Neitzke v. Williams, 490 US 319, 323-24, 329-30 (1989); cases arguing legitimate claims seeking logical extention of law to its facts, which could reasonably be decided for or against it stating a claim; SCOTUS stated even if these claims are unsuccessful, they shouldn't be treated the same as a frivolous one since its basis was arguable. id. And although Rule 11(c), F.R.Civ.P. protects non-prisoners from sanction for filing "close call" claims, PLRA sanctions prisoners with strikes if they are unsuccessful. (This also violates equal protection of prisoners to non-, related to "close call" claims).

28 USC 1915(g) also imposes strikes, which can + does result in loss of the right or privelege to "in forma pauperis" status, without affording "some hearing" prior to imposition; this is illegal since it violates the 5th/14th Amendment(s) requisite to afford due process, or "some hearing" prior to the deprivation of any substantial loss of a right or privelege. see e.g. Wolff v. McDonnell, 418 US 539, 557-58 (1974) A pre-deprivation due process hearing is both feasible + required--

Rule 11(c), F.R.Civ.P., the rule stating procedure for sanctioning non-prisoners for filing improper claims, allows for a hearing in the form of a "show cause" process prior to sanction (if any); The accused is given notice of the particulars via the accuser's motion; 21 days to correct alleged misconduct before the motion can be filed in court; and after filing the court orders the accused to 'show cause' why sanction shouldn't issue, allowing a rebuttal to alleged improper filing or explanation. If non-prisoners are afforded such proceedures it's feasible to afford it to prisoners, yet PLRA is void of such protections, and it's obviously required process to comply with the Constitution else it wouldn't exist for non-prisoners either.

In Thomas v. Holder, 750 F3d 899, 909 (DC Cir. 2019), the D.C. Circuit expressed similiar concerns on the constitutionality of PLRA, on grounds of it suppressing meritorious prisoner claims; This is similiar to my 1st Am. challenge. Most other constitutional challenges to PLRA have alleged denial of court access, e.g. Holder, 750 F3d at 908 (cited/collected cases), but these challenges under 1st + 5th/14th Am. have not been raised prior; The district stated as much, yet the 7th Circuit refused to address my claims of unconstitutionality at all, even when the oversight was pointed out on reconsideration ask(s). In my estimation, the courts intentionally avoided my arguments, which itself is a due process violation, and even a crime is the intentional denial of my constitutional right to be heard by the courts, ie, seek redress. 18 USC 241, 242.

WHEREFORE, Tatum respectfully requests Order, striking 28 USC 1915(g) as unconstitutional and allowing in forma pauperis leave + leave to file.

Dated this 31st of December, 2020. Signed: RT

Robert Tatum, GBCI, POX 19033, Green Bay WI 54307-9033

# Supreme Court of the United States

Robert L. Tatum, Petitioner,

-v- Case no.

Thomas Trettin, DeCocie Smith et al., Sean Henderson et al., Respondents.

"Declaration of Indigency Information for Petitioner, Consistent With Form #4 Standard"

I, Robert L. Tatum, hereby declare under penalty of perjury, 28 USC 1746, that the information herein and any documentation attached are true + correct to what they're purported to be, to my best personal knowledge + belief.

For issues for certiorari review, please see Motion for Leave to File p. 1-2; I have not recieved income in the last 12 months; I have not been employed in the last 2 years; I have no cash or assets; I have no one owing me money; I have no dependents; My average monthly expenses are $4-12 for hygiene items; I don't expect any changes to monthly expenses that are major; I do not plan on spending attorney fees for this suit, and expenses will be whatever paper + postage, etc. costs that normally accompany litigation; I am incarcerated in Green Bay Correctional Institution, 2833 Riverside Drive, PO Box 19033, Green Bay WI 54307, (ph #)(920)432-4877, which is why my expenses are low -- I am additionally very frugal. I have been granted leave to proceed in forma pauperis in all my Federal cases prior to 3-strike assessment, and was appointed counsel based on my being qualified as indigent under 18 USC 3006A in Tatum v. Foster, 847 F3d 459 (7th Cir. 2017). I'm 40yo. and have a GED/HSED.

Dated this 31st day of December, 2020. Signed: [signature]

Robert Tatum, GBCI, POX 19033, Green Bay WI 54307-9033