

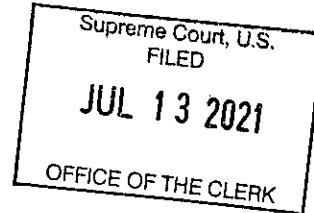
21-5187

ORIGINAL

No.

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IN THE  
SUPREME COURT OF THE UNITED STATES



PATRICIA A. MCCOLM, *Petitioner*,

v.

TRINITY COUNTY; et. al., *Respondent*.

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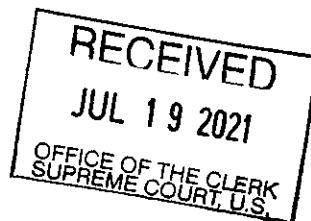
ON PETITION FOR A WRIT OF CERTIORARI TO  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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ON PETITION FOR WRIT OF CERTIORARI

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PATRICIA A. MCCOLM  
P.O. Box 113  
Lewiston, California 96052  
(415) 333-8000



## QUESTIONS PRESENTED

1. To avoid erroneous deprivation of constitutional rights, including right of access to the court; should this Court determine that pro se plaintiff's with severe limitations of disability and/or stigma of self representation prejudicing compliance with court processes, receive accommodations appropriate to his/her limitations of disability and/or appointment of counsel to assist in addressing the demands of court processes rather than suffer a dismissal with prejudice to avoid such accommodations/leave to amend and/or to avoid indicia of discriminatory bias.
2. Should the Ninth Circuit have decided the motion for appointment of counsel timely filed by petitioner with severe acute medical conditions and permanent limitations of disability seeking assistance with the pre-filing process and appeal, *prior* to issue of an Order dismissing the appeal for allegedly stating “insubstantial” issues on appeal.
3. Whether a review of petitioner’s submission of district court orders on appeal and statement of facts or law which are relied upon for purposes of the appeal are in good faith, “merit further review,” and should have been filed pursuant to 28 U.S.C. 1915.
4. Did the Ninth Circuit err in alleging pursuant to a 20 year old pre-filing order, that the issues on appeal are “*insubstantial*” denying further review; thereby, sustaining a wrongful dismissal with prejudice without leave to amend where the facts/law on the merits of any cause in the FIRST amended complaint were NOT considered, where petitioner’s motion for

appointment of counsel to accommodate limitations of disability for timely compliance with medically impossible demands of the court was denied, where the complaint stated a claim upon which relief could be granted and/or amended to state a claim was denied and where a dismissal with prejudice without leave to amend was not proper pursuant to 28 U.S.C. 1915.

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## INDEX TO APPENDICES

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APPENDIX B: **DENIED: Motion for Appointment of Counsel re PERMISSION to Appeal and APPEAL with referenced Medical Verification 8/23/18.**

APPENDIX C: **JUDGEMENT IN A CIVIL CASE**

APPENDIX D: **ORDER** adopting U.S. Magistrate Judge Findings and Recommendations  
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APPENDIX E: (1) U.S. Magistrate Judge **FINDINGS AND RECOMMENDATIONS**  
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RECOMMENDATIONS AND TO ORDER RE EXTENSION OF TIME.***”

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OF COUNSEL, PERMISSION & APPEAL.** (Presented without  
redundant exhibits above and others by request for Judicial Notice.)

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:**

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

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

ORDER  
The ~~opinion~~ of the United States district court appears at Appendix B 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:**

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

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was FEBRUARY 16, 2021.

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 JULY 16, 2021 (date) on March 19, 2020 (date) in Application No. A General Order 589U.S.

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 \_\_\_\_\_. 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**

United States Constitution, Amendment I

United States Constitution, Amendment XIV

28 U.S.C. 1915

Americans With Disability Act (ADA)

P.L. 101-336, 104 Stat. 327 (1990), 42 USC sec. 12101 et seq

## **STATEMENT OF THE CASE**

### **Factual Background of Civil Rights Complaint:**

Petitioner went to Trinity County to process her father's probate estate as his executor in 2008. The Trinity County Superior Court building in its entirety was found to be inaccessible for persons with disability. Bathroom facilities required electric mobility devices to remain outside the entry door, which recoiled rapidly hitting persons with disability who had slowed mobility. The court services offices were uninformed about ADA requirements and resistant with hostility to expression by petitioner of concerns about the lack of access. Court clerks were verbally abusive denigrating petitioner's disabilities in response to requests for accommodations in court services/processes failing to timely file accommodation requests and other time sensitive probate claim and other critical documents necessary to avoid prejudice to claimants and the Estate. Petitioner's requests for timely filing and compliance with probate rules of court were ignored, prompting complaint to judicial officers. Petitioner learned about an open position as the court administrative officer, to which Petitioner sought to apply; only to be put off by age and

financial unavailability of the position; months later learning, that without notice and required job search for the most qualified applicant, a judge appointed a reputed “girlfriend” to the position.

A complaint to the California Department of Fair Employment and Housing resulted in issue of a right to sue. Upon notice that petitioner had filed a DFHE complaint, Trinity County and its Superior Court employees began a course of retaliatory harassment limiting ALL communications with and access to court services, demanding an appointment be approved before she could access court services, limiting time for obtaining court service, refusing to timely file documents, alleging permission to file any and all documents was required, demanding that all requests be put in writing, among numerous other abusive limitations imposed without notice or hearing on any alleged cause for the interference with exercise of civil rights. The unlawful restrictions proved prejudicial to pending litigation; in particular, to frivolous litigation in which petitioner was a defendant.

When petitioner objected to the due process violations, petitioner was wrongfully charged with frivolous criminal offenses in contravention of first amendment rights and other constitutional rights; e.g. allegedly talking too loud in a public court building hallway allegedly disturbing the peace in contravention of rights assured by *In re Brown*. The criminal charge was used to unconstitutionally restrict access to court services as a “bail”order, which was imposed in violation of due process protections, an irrelevant and unlawful order. The case allowed petitioner to discover that its jail facility was also not accessible to persons with disability and that accommodation of disability was not available; only use of excessive force for seeking same. It also allowed petitioner to discover that the only documents relied upon produced to the

defense were media comment containing false information re “vexatious litigant” defamation from about 1995 creating the continuing prejudicial stigma therefrom. Said case was dismissed.

Petitioner filed the civil rights action in the Eastern District Court (2-12-cv-01984), seeking constitutional protection including injunction against unlawful restriction on use of court services and redress of other grievances suffered as stated in the causes of action therein; which is the subject matter of instant case for which an appeal was properly sought by petitioner.

As threatened, for filing the civil rights case, Petitioner was subjected to more retaliatory false criminal charges with appointment of incompetent counsel who failed to conduct discovery or move the court for dismissals as appropriate; in particular, for retaliatory prosecution. The second petition for writ of certiorari (20-16817) relates to the civil rights offenses arising out of the prison term questionably imposed in essentially undefended retaliatory charges filed against petitioner. The sheriff deputy taking petitioner to prison told her that the reason she was going to prison was because she “*Pissed off a lot of people by filing the civil rights complaint revealing the judge's affair with the court clerk.*” The clerk in question is the one who accused petitioner of filing a false proof of service, even though petitioner did not sign the document or know that any document was allegedly false by purported reason that it had her address thereon; instead of, the address of the person serving same by mail. The judge orchestrating the retaliatory prosecution was eventually publically admonished for misconduct by Judicial Council. He was prohibited by Judicial Council from being a judge in the future.

Petitioner was told by an Asst. District Attorney that any crime committed against her would NOT be investigated or prosecuted. Petitioner was asked why she would want to stay in Trinity County where she would be repeatedly charged with criminal offenses until she left the

County.

The wrongs committed in violation of petitioner's civil rights is appropriate for redress by the District Court with appointment of counsel.

**Procedural Background and Good Faith Cause to Appeal:**

Petitioner is limited in time and ability to start over with new argument for statement of the case; and thus, does request judicial notice of the argument presented in her Objections to Magistrate Judge's Findings and Recommendations, Appendix E(2) and in the Notice of Appeal, Appendix F under Statement of Facts and Law on Appeal as follows:

**“ABUSE OF DISCRETION / ERROR OF LAW: DENIAL OF LEAVE TO AMEND AND DISMISSAL WITH PREJUDICE BASED ON UNFOUNDED FACTS/AUTHORITY RE “FAILURE TO STATE A CLAIM” UNDER 28 U.S.C. SECTION 1915; CONSTITUTIONAL VIOLATION / DENIAL OF ACCESS TO COURT / MANIFEST INJUSTICE RE APPEARANCE OF DISCRIMINATORY BIAS AGAINST PRO SE PLAINTIFFS WITH DISABILITY AND/OR VEXATIOUS LITIGANT “STIGMA” IN CASE WITH MERITORIOUS FACTS/CAUSE(S) OF ACTION; AND, DENIAL OF MOTION TO APPOINTMENT COUNSEL.**

The FIRST AMENDED COMPLAINT (FAC) (ECF 38) filed May 13, 2018 in this

substantial in forma pauperis ADA/civil rights action was denied leave to amend and **DISMISSED WITH PREJUDICE** (ECF 53) and Judgment (ECF 54) entered thereon October 15, 2019 for “**FAILURE TO STATE A CLAIM;**” at the screening stage under 28 U.S.C. 1915; in what appears to be abuse of discretion and error of law through prejudicial disregard of authority under said statute and in contravention of approximately 140 pages of FACTS supported by 19 pages of documentary evidence; INCORPORATED INTO THE COMPLAINT as authorized by law, regarding each defendant relating directly to each of the 14 causes of action set forth in the FAC upon which the action is based; which clearly show that the facts stated constitute good cause to amend and constitute at least *one* cause of action that would work against a dismissal of the action; in particular, “with prejudice.”

The facts with exhibits and each cause of action identifies with particularity the defendant(s) to which each applies. The facts and causes show acts by defendants in concert/agreement to knowingly violate plaintiff’s constitutional and civil rights in retaliation for plaintiff’s protected conduct; in particular, the noticed right to sue letter issued by the California Department of Fair Employment and Housing.

A full and complete reading of the FAC tends to indicate that the magistrate judge findings and recommendations are not based on actual fact and authority; but appear to be based on ire related to plaintiff’s request to vacate the referral (The District Judge failed to rule on the request to vacate the referral.) and/or discriminatory bias against pro se plaintiffs with disability and/or vexatious litigant “stigma” from over 20 years ago, related to this particular plaintiff with an apparent agenda designed to keep said class of persons and/or plaintiff out of the District Court; as would tend to be indicated by an apparent failure to actually read the entire complaint

and/or misconstruing “cherry-picked” sentences attributed to only one cause of action, Section 1983, to questionably precipitate the dismissal. Even the causes under 1983 are not correctly identified on the facts and grounds upon which the statute is applied. Remarkably, the magistrate judge makes reference to Section 1983 comments regarding the original complaint, which are not applicable to the FAC; in particular, as the FAC clearly shows the reference is to only to Section 1983 for the “linkage” argument without regard to the fact that the comments were essentially erroneous in other parts by reason of failure to apply the law under the ADA. Thus, even the one claim out of which each defendant arises is satisfied; in particular, as related to “series of transactions or occurrences” and there is an ADA retaliation and constitutional “question of law or fact common to all defendants.”

As set forth in the FAC under Jurisdiction on page 4, the FAC states: Plaintiff brings this action under the American's with Disability Act, 42 U.S.C. sections 12101, 12203 RETALIATION et seq. as amended (“ADA”) for discrimination based upon disability, failure to accommodate, failure to protect, and retaliation; Section 504 of the Rehabilitation Act of 1973, as amended; 42 U.S.C. section 1985 (CONSPIRACY deprivation of civil rights); 42 U.S.C. 1986; 29 U.S. C. 626(c)(1) [Age Discrimination in Employment Act of 1967 et seq.]; 42 U.S.C. section 12133 which incorporates the provisions of 29 U.S.C. section 794a, for violation of Title II of the ADA; 42 U.S.C. 1983, Constitutional violations under the First, Fourteenth, Eighth Amendments DENIAL OF DUE PROCESS, EQUAL PROTECTION, ACCESS TO THE COURT; and violations of the California State Constitution, Civil Code sections 51, 51.7, 52.1, 52.3, 54 et seq., Government Code Section 12940(h) et seq. California State claims for defamation/slander/misrepresentation, false arrest/imprisonment, assault and battery, intentional

and negligent infliction of emotional distress, negligence, invasion of privacy, violation of State and Federal Public Records Acts; Intentional Interference with Economic Advantage/Relationships and Conspiracy regarding all above stated causes.

Essentially, NONE of the above causes were actually subject to analysis by the magistrate judge on the facts and authority related thereto and even the Section 1983 causes are not stated correctly by the Magistrate Judge on the actual facts and causes to which the statute applies; as a full reading of the FAC would show and raise a viable issue for adjudication. (See pages 60-64 re Fourth Cause of Action re Conspiracy to Interfere with Rights with specified Constitutional Violations and pages 76-78 re Twelfth Cause of Action re malicious prosecution (retaliatory arrest/false charges & Fourth Amendment violations).

In instant appeal, the constitutional violations running to the merits of the civil rights complaint in this case, are not in issue; the District Court having made no factual/legal determination on the merits of any claim therein. No specific defendant was identified or stricken on ground of immunity. Under the ADA and related statutes, the claim of immunity as alleged by the Magistrate Judge under Section 1983 does NOT apply. They are arguably liable under the facts of this case. No specific cause was identified or stricken as lacking merit. Based on attorney practice manuals and authorities expressing requirements re fact and law, plaintiff is informed and believes that the facts and law support each of the claims stated. And if there is a defect, that notice thereof from the Court with leave to amend should have been granted.

The denial of leave to amend and dismissal with prejudice appears to be more likely based on bias and/or limitations of disability; than any alleged "failure to state a claim." Thus, appointment of counsel would appear to have been appropriate throughout the process of the case

to avoid a dismissal.

Although no specific finding was made that any cause or the entire complaint was "frivolous," a dismissal with prejudice gives that erroneous impression; which should not have issued in instant case.

Before a District Court may dismiss an *informa pauperis* complaint with prejudice, the District Court must find that the plaintiff has engaged in "conscious or intentional acts or omissions." *Harris v Cuyler*, C.A.3 (Pa.) 1981, 664 F2d 388. There are no such findings in instant case.

*Pro se* complaints must be liberally construed and can be dismissed only if face of complaint shows insuperable bar to relief. *Holt v Caspari*, C.A.8 (Mo.) 1992, 961 F2d 1370.

Under Section 1915 a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff could prove no set of facts in support of his/her claim which would entitle him/her to relief. *Montana v Commissioner Court*, C.A. 5(Tex) 1981, 659 F2d 19.

An *informa pauperis* complaint can only be dismissed where there is indisputable meritless legal theory or on clear baseless factual contentions. *McClelland v Turner*, W.D. Pa. 1991, 765 F.Supp 251.

*Nietzke*, 490 U.S. 319 advises that a section 1915 dismissal is only proper if the legal theory or the factual contentions lack an arguable basis indicating that the purpose of the *informa pauperis* statute is to ensure equality of consideration for all litigants. Plaintiff in instant case has not been provided with equal consideration for all litigants; having been treated differently by reason of her limitations of disability and "stigma."

The general provisions of law under Section 1915 were not afforded to plaintiff. As stated in plaintiff's motion under 59e/60b, which was NOT addressed properly as under 59e, the following was argued:

“Although 28 U.S.C. section 1915 provides for dismissal of an action that is “frivolous,” a district court may deem **an in forma pauperis complaint “frivolous” only if it lacks an arguable basis in either law or in fact**; in other words, dismissal is only appropriate for a claim based on an indisputable merit-less legal theory and the frivolousness determination cannot serve as a fact finding process for the resolution of disputed facts. *Fogle v Pierson*, CA10 (Colo.) 2006, 435 F3d 1252, *Milligan v Archuleta*, CA10(Colo.) 2011, 659 F3d 1294. Accordingly, where as in instant case, the Magistrate Judge made no determination on the facts/merits, adopting the recommendation of dismissal with prejudice is error.

A dismissal with prejudice deprives plaintiff of her constitutional right to seek redress from the court, which appears to be a biased Magistrate Judges' intention, not based on fact or law; but improper preconceived opinion, based on extrajudicial sources and/or hostile bias and stigma against persons in plaintiff's protected class; and thus, a constitutional violation.

Were there anything the Court believed was in some way improper, then notice of intent to strike some specific part is available and/or to amend. However, nothing has been specified that would give notice of any defect subject to being stricken.

Attorney practice manuals, such as California Forms of Pleading and Practice and its equivalent Federal pleading forms, regularly repeat essential element language of causes with the different facts inserted. This does NOT make the claims/complaints “frivolous.” It only helps practitioners evaluate the facts to insert them appropriately to meet the court's pleading

requirements and jury instructions. On information and belief, plaintiff's causes meet both the general form pleading requirements and have the facts necessary to prevail per jury instructions.

Court's are in good faith, generally believed to protect citizens from harm, not give the "green light" to further biased retaliatory abuse and prejudicial harm through "dismissal" of citizen pleas for help; in order to allow the offenders to proceed with the intended abuse and destruction intended toward one who had the courage to "stand up" to the discrimination, false and defamatory representations/media comment, infliction of physical harm and emotional distress, saying "no more!" PLEASE!

**Error re Application of "Frivolous" to Dismiss:**

As stated above, although 28 U.S.C. section 1915 provides for dismissal of an action that is "frivolous," a district court may deem an in forma pauperis complaint "frivolous" only if it lacks an arguable basis in either law or in fact; in other words, dismissal is only appropriate for a claim based on an indisputable merit-less legal theory and the frivolousness determination cannot serve as a fact finding process for the resolution of disputed facts. *Fogle v Pierson*, CA10 (Colo.) 2006, 435 F3d 1252, *Milligan v Archuleta*, CA10(Colo.) 2011, 659 F3d 1294. Accordingly, where as in instant case, the Magistrate Judge findings do not present analysis of any fact/law per cause, adopting the recommendation of dismissal is error and an apparent abuse of discretion.

Cornell Law School presents on line its Wex Legal Dictionary in which it defines "frivolous:" *In the legal context, a lawsuit, motion, or appeal that lacks any basis and is intended to harass, delay or embarrass the opposition... Judges are reluctant to find an action frivolous,*

*based on the desire not to discourage people from using the courts to resolve disputes.* It is hoped this Court agrees and does not abide discrimination/retaliation implicating persons with disability as “frivolous.” Fairness, impartiality, due process and equal protection should apply to all “persons” as the Constitution mandates.

**Error re Rendition by Magistrate Judge of Prior Complaint and Amended Complaints.**

As stated above, Judicial Notice is hereby requested of each OBJECTION raised to the false and misleading representations of issues regarding Plaintiff's prior complaints therein. The Magistrate Judge appears not to have read the Objections and ignored the medical good cause NOT to make the findings alleged. No ruling on request for judicial notice issues.

**Error/Abuse of Discretion Not to Appoint Counsel or Mention Good Cause Medical Limitations; e.g. exceptional circumstances.**

**Sua Sponte Appointment of Counsel for good cause.** Plaintiff has requested appointment of counsel in this action with good cause appearing; yet, no such issued. Sua sponte appointment is available under the circumstances in this case and plaintiff's limitations.

The Magistrate Judge appears to have essentially ignored the analysis for appointment of counsel sua sponte and/or upon renewal of prior requests. If an attorney has leave to file a second amended complaint, it is an abuse of discretion to also not give a pro se Plaintiff the right to so amend in the same case! In fact, it is unusual that a second amended complaint is not granted. THERE IS NOT EVEN THE MENTION OF THE MEDICAL VERIFICATION IN SUPPORT OF LEAVE TO AMEND OR APPOINT COUNSEL, OR EVEN TO AVOID A

DISMISSAL FOR MEDICAL CAUSE IN CONTRAVENTION OF THE ALLEGATIONS MADE FOR DISMISSAL! The medical circumstances in this case are exceptional circumstances for appointment of counsel, not for the frustration of the Court; so a dismissal must follow, where no such is even mentioned as having been filed. WHERE IT APPEARS THAT THE MEDICAL EVIDENCE FILED UNDER SEAL WAS NOT CONSIDERED BY THE MAGISTRATE JUDGE, ADOPTING THE FINDINGS IS FUNDAMENTALLY WRONG, ERROR AND A POSSIBLE INADVERTENT ABUSE OF DISCRETION.

Where there is no analysis of the case on the merits of each cause, there is no recognition of good cause not to dismiss by medical impossibility. Any one of the medical conditions or the nexus between permanent progressive disability limitations and difficulties and ability to perform timely within the requirements of the Court; should receive accommodation, NOT dismissal. If this is confusion, then that too is evidence of the limitations of disability; for which, no Plaintiff should be punished by denial of access to the court to redress serious grievances as set forth in this action. No defendant should “get away with” their misconduct because of Plaintiff’s medical detriment. Appointment of counsel to resolve any discomfort of the Court is appropriate and is renewed here.”

**An issue is the question of whether appointment of counsel should have and should issue in this action...Plaintiff has stated a claim sufficient to warrant consideration on appeal for reversal of the dismissal with prejudice, grant of leave to amend and appointment of counsel...**

This case presents the Ninth Circuit with an opportunity to tell its lower courts that persons deemed “vexatious litigants” and persons with disabilities, are still entitled to due

process, constitutional protections and the rights and benefits provided under the laws of the United States and its State courts.

It is the right to proceed in forma pauperis on a proper showing pursuant to 28 U.S.C. section 1915, that this court is urged to protect against pre-determined opinion bias of "frivolous" attributed to pro se complaints filed by persons with disability and from the inherent "stigma" attributed to such parties, precipitating unwarranted dismissals. It appears that instant action met the wrongful guillotine of bias and hostile opinion pertaining to plaintiff, rather than any issue of fact or law.

**THIS COURTS NEEDS TO ENSURE THAT EFFECTS OF ILLNESS AND LIMITATIONS OF DISABILITY DO NOT BECOME THE MEASURE OF DENYING ACCESS TO THE COURT AND DUE PROCESS IN THIS COUNTRY; as occurred for plaintiff in this action. Plaintiff's physicians have stated that the inability to meet court time and other expectations is not willful; but a problem related to her medical condition and that counsel should be appointed (See Medical Statements under Seal; in particular, Dr. Apperson 8/23/18). The failure to appoint counsel, is also NOT a reason to dismiss an action with prejudice. For all the harm plaintiff has suffered trying to "stand up for justice" in exercise of civil rights under the law, a denial of review is a painful manifest injustice; essentially saying, such abuse is warranted not only for plaintiff; but all similarly situated plaintiffs with disability."**

## **REASONS FOR GRANTING THE PETITION**

The petition is properly granted to avoid erroneous deprivation of constitutional rights, including right of access to the court. This Court should determine that pro se plaintiff's with severe limitations of disability and/or stigma of self representation prejudicing compliance with court processes, receive accommodations appropriate to his/her limitations of disability and/or appointment of counsel to assist in addressing the demands of court processes rather than suffer a dismissal with prejudice to avoid such accommodations/leave to amend and/or to avoid indicia of discriminatory bias.

**This Court needs to ensure that effects of acute injury/illness and permanent disability do not become the measure of denying access to the court and due process in this County, as occurred for petitioner in this action.** Petitioner's physicians have stated that the inability to meet court time and other expectations is *not willful*; but a problem related to petitioner's medical condition and that counsel should be appointed (See Appendix B, Medical Verification by M.S. specialist, Dr. Apperson, dated 8/23/18) The failure to appoint counsel is NOT a reason to dismiss an action with prejudice.

Bias precipitating erroneous reasons for dismissal under one statute in this case (42 U.S.C. 1983) without consideration of whether or NOT the argument is applicable under other statutes (Americans With Disability Act (ADA) P.L. 101-336, 104 Stat. 327 (1990), 42 U.S.C. sec. 12101 et sec.) is wrong and does not comport with the dismissal allegation that the complaint does not state a claim. Just the opposite is true. (See **Objections to Findings and Recommendations** (Appendix E(2) and **Notice of Appeal** (Appendix F, pre-filing argument

showing district court error and good faith appeal).

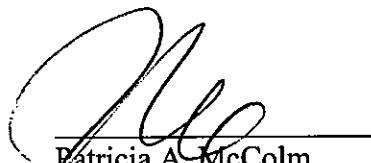
The reasons, facts and authority stated in the above cited Appendix E(2) and (F) arguments are hereby respectfully requested considered herein by reason of limited time and medical capacity to present TWO petitions within the same time period; instant 20-15646 and 20-16817; itself, a questionable decision to overburden petitioner to potentially prejudice consideration before this court of important issues of constitutional interest that must perforce affect all pro se litigants with disability suffering bias/stigma from effects of disability and self-representation.

**This case presents this Court with an opportunity to tell lower courts that persons with limitations of disability and stigma as members of an underclass subject to pre-filing orders are still entitled to reasonable accommodations in the processes of the court and are still entitled to constitutional protections due *all* citizens; in order to avoid discrimination and deprivation of rights through erroneous dismissals with prejudice denying access to the courts for redress of good faith grievances.**

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Patricia A. McColm  
*Petitioner*

Date: July 13, 2021