

22-7294

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

MAR 29 2023

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Robert L. Tatum — PETITIONER
(Your Name)

vs.

Earnell Lucas, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Seventh Circuit US Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert L. Tatum
(Your Name)

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Statement of the Issues / Questions Presented:

1. To deal with its burgeoning caseload, the Fed. Courts have resorted to providing "selective justice" (and injustice) in its cases to manage its docket(s); And now the systemic discrimination against 'D-classed' litigants has "so far departed from the accepted" it calls for SCOTUS' supervisory power to remedy.
2. 28 USC 1915 (g), PLRA's '3-strike' rule, is unconstitutional against prisoners' 1st Am. rights, for threat + issuing "Failure to state a claim" strikes when a novel, non-frivolous "close call" claim is ruled against it stating a claim ("chilling" our right to file such claims in good faith without punitive reprisals); 5th Am. equal protection rights, as Rule 11(b)(2), F.R.C.P. protects lawyers from sanction for filing the EXACT same "close call" claim + being ruled against--a higher pleading standard for legally untrained prisoners than for trained lawyers; 5th Am. due process rights, as "some hearing" is not afforded prior to strike imposition and gov't deprivation of substantial privilege--in forma pauperis leave. SCOTUS review of this issue is warranted.
3. The rules of agency normally require the admissions of an agent related to his employ to have binding effect on his principal; But whether these rules apply to Rule 36 admissions is an unsettled question, which SCOTUS should resolve here.
4. Liteky v. US [510 US 540, 555-56 (1994)]'s "deep-seated favoritism + antagonism" standard of judicial bias is undefined as to what constitutes sufficient proof, has proven impossible to meet (no one has met it in 30 yrs*), SCOTUS has never re-visited or clarified the matter, and lower courts have widely disregarded the "almost never" (can rulings alone prove bias) "unless" holding of Liteky and interpreted it as simply "never" regardless of proof, all warranting SCOTUS to bring clarity by review + decision of the issue.
5. So as to avoid giving indigents a "sham" trial, re. waiving filing fees to allow case filing, only to impose witness fees for the subpoena'ing of necessary witnesses that they cannot pay, thereby denying access to the proof necessary to actually win the case, some lower courts interpret 28 USC 1915 as allowing diversion of those fees the same as filing fees to avoid that absurd result; Some hold 1915 doesn't allow it. Which side is correct is an important Fed. issue SCOTUS should resolve by a decision here.
6. Whether construction principles require non-movant summary judgment be considered + granted when no genuine issue of material fact exists + law warrants is an important Fed. issue for SCOTUS resolve, considering the consequences for failing to.
7. 7th Circuit local rules now locking 3 US States' prose prisoners out of the appeal process warrants SCOTUS intervention.

Parties

Robert L. Tatum, Petitioner

Earnell Lucas, Respondent (current Milwaukee County Sheriff, official capacity defendant, party)

Tricia Carlson, Respondent (former jail officer, hearing CO)

Melissa Elliot, Respondent (former jail officer, hearing CO)

Related Cases

11-CV-1131, Eastern District of WI (EDWI)

19-CV-1588, 19-CV-1590, 19-CV-1591, EDWI -- [Severed claims from 11-CV-1131]

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

Opinions Below

The opinion of the 7th Circuit court of appeals appears at Appendix D of the petition, and is unpublished.

The judgment of the Eastern District of WI appears at Appendix E of the petition, and is unpublished.

Jurisdiction

SCOTUS has jurisdiction under 28 USC 1254(1); The 7th Circuit decided my case on 11-10-22; a timely (construed) filed petition for en banc rehearing, file date 12-2-22, was denied on 12-29-22, order appearing at Appendix B.

Constitution + Statutory Provisions Involved

1st Amendment - "Congress shall make no law... abridging the freedom of speech, or... 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 1367(a) - "in any civil action of which the districts have original jurisdiction, the district court shall have supplemental jurisdiction over all claims that are so related... that they form part of the same case or controversy"

28 USC 1915(d) - "The officers of the court shall issue and serve all process, and perform all duties in such cases."

Statement of the Case + Facts:

This case has a long history, beginning in 2010-11 in the Eastern Dist. of WI as a §1983 complaint related to--in a phrase-- a campaign of harassment + abuse occurring in Milwaukee County Jail [MCJ] under the auspices of then-sheriff David A. Clark Jr. at the hands of his subordinates. ^{#11-cv-1131 EOWI} [OKT #1] Upon screening + reconsideration, the current Petitioner--Robert L. Tatum--was allowed to proceed in forma pauperis on all claims in a single suit, the assigned US Dist. Judge R.T. Randa recognizing all claims stemmed from the initial requests + insistence on religious accommodation. [8, 9, 14]

Discovery ensued; In response to Rule 36s, Hearing Cos. def. Carlson + Elliot admitted that a policy of denying all witness testimony at due process hearings existed + was enforced, and in response to Rule 30 depositions, subordinates were deposed but protective order in was filed to prevent def. Clarke's deposition. [142, 149, 127, 139] The judge denied the PO eventually, but the discovery deadline had already expired and summary judgment motions filed [53, 160], so the judge ruled it would determine time to depose Clarke if + when after the motions are decided + the case survives. [159]

Judgment was denied on a majority of claims: Tatum's partial SJ based on due process violations (punishment prior to guilt) was denied--the judge reasoned the rules alleged to be punishment should've been each proposed as its own fact instead of def. own punishment/rule list being submitted + alleged to be fact, as cause for denial. [159] Clarke (now Lucas)'s motion was denied on all claims except access to courts + retaliation claims--the judge reasoned in response to Lucas' claim that the entire case fails to state claims that, on access to courts claims Tatum had a criminal def. attorney so no access was denied, and Tatum admitted to

acts that violated rules + so he wasn't retaliated against; But on a majority of claims the judge ruled Lucas failed to create a genuine dispute in facts on, and invited a 2nd SJ motion filing from Lucas. [192] Tatum's response brief recognized the lack of genuine dispute in material fact + non-movant judgment was requested thereby, but wasn't considered by the judge. [176, 177]

Lucas Filed essentially the same motions as the 1st in their 2nd SJ try, again failing to oppose excessive force (+ related state law claims), religious exercise, and due process claims with ANY evidence from a witness with personal knowledge, and adding incompetent proof via an undisclosed expert, T. Gable, on medical care (+ related state law) claims. [216-227] Tatum again recognized the lack of genuine material fact disputes in the face of his proof warranting relief, + again requested judgment for the non-movant. [230-231]

The judge denied consideration of Gable's testimony, leaving med. claims unopposed in his SJ decision; religious exercise, excess use of force, and procedural due process claims also survived unopposed by competent evidence -- Substantive due process, privacy claims related to public stripings (once recording his nakedness on camcorder + in front of female staff), and procedural due process claims related to the policy of denying witnesses at hearings (on hearings wherein I didn't allege I requested a witness) were dismissed on legal grounds. [240] The judge also recognized, but refused to consider, my request for non-movant judgment, ruling it wasn't timely, no proposed facts were submitted (when there were), and fact disputes existed (when there were ~~not~~), precluding judgment. [240, p. 26]

Post-SJ, Tatum moved to re-open discovery to depose Clarke, based on the judge's own order stating it would be allowed after SJ decision(s). [243] The judge, without reasoning + against its own order, denied the request. [250] But when an attorney,

who was not even my attorney (but was interested in taking the case), wrote a simple letter stating he wanted discovery re-opened if he took the case, the judge opened discovery in response to allow depositions. [262, 266, 263] The judge entered an order, on my motion, diverting fees for subpoenaing witnesses as a court expense, on grounds it would be 'absurd' to interpret 31915 as allowing fees for filing to be waived for indigents only to impose witness fees they can't pay + which prevents success in the indigents' lawsuits. [332, 333, 384] The judge ruled subpoena for prisoner-witnesses would issue after court staff contacts them, [370], at final pretrial.

Trial was set, but prior to Judge Randa took ill + later died, and US Dist Judge L. Adelman was assigned. [399] Instead of setting the case for trial, the judge held a telephone hearing, wherein 1st he attempted to force me to accept a \$5,000 low-ball offer of settlement NOT advocated by defense counsel, who sat silent; when I stated that wouldn't properly deter or punish def., citing surviving claims, the judge ruled it wanted parties to submit materials to clarify what claims should go to trial -- which turned out later to be yet another (3rd) SS try for Lucas, this time on the eve of trial. [431, 433, 436-443] Despite no "manifest error" proven or even alleged to justify reconsideration of Randa's [240] order it was granted, resulting in the judge dismissing the exact claims cited as preventing the "low ball" settlement + severely gutting the case; Only 4 claims survived - 1. 10-21-10 excess use of force incident, 2. 2-17-11 Rie bed placement/punishment, 3. 3-5-11 "urine placement" incident, 4. due process hearing claims -- and only 1 claim could go to trial, as claims were to be severed + despite already being screened and allowed in forma pauperis leave, the judge declined to extend leave to the severed cases + I had 3 PLRA strikes (unwarranted, ALL of them). [462, 470, Ok6*9 p.1-4, App. F]

Tatum moved for reconsideration of severance, arguing the language of 28 USC 1367(c) allowed joinder, but the motion was denied.

[464, 470] 10-21-10 excess force claims were selected for trial per the judge's order [464 p. 14 & 2, 471], but the judge spontaneously picked

due process claims to go to trial, later claiming it never got [464 p. 14], it got 2 page 1s. [470, 473, 478, 514] When Tatum insisted on having

his excess force claims going to trial, Adelman threatened dismissal. [478, 514]

Trial on due process claims was prepared: Adelman reversed Rand's ruling diverting subpoena witness fees, refused to re-add as def.

Clarke & Nyklewicz despite their personal involvement in the due process claims, reversed & refused to honor both Rand's appointment

of stand-by counsel AND his commitment to contact Tatum's inmate witnesses on his behalf, and refused to establish Carlson &

Elliot's Rule 36s as stipulated fact as required -- in fact, specifically ruling they may testify contrary to them despite no motion for them

to be withdrawn being filed. [485, 505, 524, 534] Motion(s) to disqualify Adelman due to unfair, "deep-seated" bias was filed; He

stated his rulings cannot constitute proof of bias on their own, citing *Liteky v. US*, 510 US 540 (1994), and denied the motions.

[476, 478, 514-517] Pre-trial materials were resubmitted [485, 486-487], and trial commenced on 1-4-2022 (by jury). [543]

Despite Hearing COs ADMITTING to a policy of effecting the due process violations alleged, unfair bias permeated proceedings,

and the jury could not see themselves to find for Tatum; Defendants were found not guilty upon trial. [545-546, App. E.]

Notice of appeal to the 7th Circuit followed on 1-18-22 [548, App. 1-2], and in response to the 7th Circuit's immediately

denying in forma pauperis leave due to 3-strikes, Tatum both moved for leave on grounds of '3-strike rule' unconstitutionality

on 1-28-22, but obtained a 3rd party benefactor to pay the appeal filing fee to avoid the (1-18-22) threatened dismissal on

2-1-22, [557, ²²⁻¹⁰⁶⁹ OK#4] in response, the circuit refused to hear the 28 USC 1915(c) 13-strike rule constitutionality challenge,

1st claiming the challenge was "moot"; when reconsideration was filed, citing SCOTUS precedent proving relief was still available

+ application of § 1915(c)'s unconstitutional provisions to deny Tatum in forma pauperis leave was likely to recur, so challenge wasn't

moot, 2nd the circuit claimed § 1915(c) was never applied in the case + appeal for it to be challenged; when reconsideration of

that order was filed, citing the 1-18-22 order invoking § 1915(c) as grounds for in forma leave denial, 3rd the circuit denied the

reconsideration motion without reasoning + threatened to return any further reconsider motions back to me unfiled, []

That constituted arbitrary + unfair decision-making, and "made fair judgment impossible", so motion to disqualify

the motions judge was filed by Tatum, []. The motion was denied, but the order responding stated the circuit would hear

my § 1915(c) challenge, []. But the circuit provided a "sham" hearing that didn't hear my challenge's merit, it dismissed it

arbitrarily by claiming it posed the same arguments as those denied in Lewis v. Sullivan, 279 F.3d 526 (7th Cir. 2001), when they didn't

AND the lower court expressly stated my claims were NOT the same as those in Lewis in ruling on them (that court denied my claims

based on its holding litigation isn't "speech" under 1st Am. precedent, and ignored my due process + equal protection claims entirely),

[][App F-3]

Principal appellate brief + petition for en banc hearing was filed by Tatum, advancing several issues: 1. The district

erred in not considering non-movant SJ; 2. The district erred, violating law of the case, by 2nd judge Adelman reversing 1st judge Randa's

1. SJ E2401 order; 2. SJ review standards were violated in granting Lucas judgment on the 3rd SJ try; 3. The district erred in severing remaining claims + refusing to extend in forma pauperis leave based on initial screening, as 28 USC 1367(c) allowed joinder, and the cause for in forma denial--28 USC 1915(c) 3-strike rule--is unconstitutional; 4. The district erred in forcing due process claims to trial when excess use of force claims were selected by Tatum; 5. Law of the case was violated by the 2nd judge reversing the 1st's witness fee diversion order; 6. The district erred in not giving Elliot + Carlson's Rule 36's preclusive effect, + ruling the admissions could not bind the principal; 7. The district erred in dismissing Clarke + Nyklewicz from due process claims despite their personal involvement; 8. The district erred in disallowing Tatum's calling Lucas as a witness at trial despite his relevance; 9. The district erred in disallowing evidence of damages to be presented at trial, only allowing liability evidence; 10. The district erred in denying jury instructions that a. defined "due process" as SCOTUS outlined, and b. defined factors for "damages" specific to prison denial of due process claims as 7th Circuit case Smith v. Rowe outlined; 11. Adelman erred in not recusing by misinterpreting Litky v. US holding as stating rulings alone can "never" prove bias.

On 11-10-22 a panel usurped control + decided the appeal in favor of Lucas -- the en banc hearing petition was never decided -- by affirming all decisions below, intentionally misapplying legal standards in order to do so, as well as ignoring key issues raised: Law of the case issues were justified by referencing the 2nd judge's rulings when precedent requires referencing the 1st judge's ruling for error; the panel cited "no authority" requires consideration of non-movant SJ requests and courts can reconsider rulings for whatever reason they want before final judgment, so no SJ errors; §1367(c) only applies to state (pendent) claims; the district rightly forced trial on due process

claims to avoid delay; The district rightly reversed witness fee diversion, Randa didn't have authority to do so on grounds he stated;

Clarke + Mykiewicz were properly dismissed since Tatum didn't state how they were liable for due process claims (!... definitely stated this);

Trial issues were going to be addressed since Tatum didn't order (couldn't afford) transcripts, and ERAP 10 cc-d Record Supplemental.

[563] was denied approval by both the district + circuit; and Liteky (mis-) interpretation was re-affirmed as the district alleged;

rulings alone "never" constitutes proof of bias, disregarding the "unless" they prove deep-seated bias

Reconsideration was requested, citing the manifest errors exhibited by the ruling, and exposing that the petition for initial

hearing of the appeal 'en banc' was not decided prior to the panel decision, so the panel didn't have authority to usurp case control

prior to that petition's distribution + decision. [] On 12-29-22, the panel issued a decision, construing my reconsideration

request as a petition for en banc re-hearing + denying it. [App. B] A further reconsideration, explaining the construction

was error + did substantial injustice, as the motion did not meet en banc petition requisites + so was almost guaranteed to

not be granted for that reason, was filed, requesting the original en banc petition which did meet requisites be distributed

but the motion was denied on 1-11-23 without stated reasoning. [App. A] This Certiorari petition Follows.

Reasons for Granting the Writ:

I. Lower Courts' Systematic Discrimination Against + Denial of Fair Hearing of "D-Classed" Litigants' Claims Has "So Far Departed From the Accepted + Usual Course of Judicial Proceedings," it Calls for SCOTUS' Supervisory Power to Remedy. Rule 10(c).

Since the 1970s + 80s, legal experts -- including some of our most prominent judges + attorneys -- have been warning of a dystopian future for our US courts, wherein under the pressure of burgeoning caseloads our courts would develop into court bureaucracies managing court politics, at the sacrifice of justice, due process, and quality rulings, in the cases before it. More + more, cases of certain classes of litigant are managed by rules that don't apply to others, and delegated to court adjuncts (e.g. clerks, staff attorneys) for decision-making as opposed to the oath-sworn judge assigned, ultimately denying fair hearings. See Judge Posner's *Theology + the Temples of the Law -- The Fed. Courts: Crisis + Reform*, 1985 WL LR 1183; *Do the Ends of Expediency Justify the Means of Secrecy?*, 50 SCLR 235 (1998), *ide* 243-46; *Un-Published Decisions: Denial of Equal Justice*, 61 ABAS 1224 (1975).

Unfortunately, this dystopian future predicted by Posner + others has not only arrived, in 2023 it has set in to the point of petrification, much to the shagrin of what I term "D-classed" (disenfranchised) litigants -- the poor, indigent, the self-represented, the prisoner-plaintiff, the minority (i.e. Black, LatinX, etc.). The lower courts use their internal bureaucracies to (mis-)handle these classes of case, assigning them to adjuncts for decision-making (e.g. "pro-se clerk #1"), and the unpublished decision + non-citation rules are exploited to issue rulings designed merely to rid the docket of the case, not fairly hear its merits + do substantial justice -- a bureaucratic decision + aim has supplanted the US Constitution + judicial oath in these cases.

That D-classed litigants are being systematically discriminated against in this fashion there can be no doubt; I am a D-

classed litigant, being a Black pro se-prisoner plaintiff, and this case serves as a prime example of blatant application of

the system in question, wherein the lower courts did all of: a. Blatant + knowing invitation of defendants to commit perjury at trial.

Hearing COs def. Carlson + Elliot admitted via Rule 36s [F.R.C.P.] that they had + enforced a policy of denying all witness testimony at

due process hearings; When I moved to have the Rule 36s established as fact + for these agent admissions to bind the principal Sheriff,

see Barreda v. Silsbee, 62 US 146, 164-65 (1858) ("[agent] representations, declarations, and admissions, respecting the subject matter, will also

bind [the principal]"), the court(s) refused, and explicitly ruled it would allow Carlson + Elliot to testify contrary to their Rule 36s at trial,

despite them not being withdrawn or even indica of unreliability, i.e. PERJURY. b. Forced me to trial on due process claims over more

lucrative + meritorious claims 'sua sponte' based on an alleged clerical error, then threaten dismissal when I insisted on correction. After the

3rd summary judgment try, the court ruled I must select which of the 4 surviving claims would go to trial; I filed Dkt #464, selecting

an excessive force claim occurring 10-21-10 for trial on page 14 fn2, but the court(s) selected due process claims for trial 'sua sponte', later

claiming at a hearing it never got the page, it got 2 'page 7s' -- a clerical error, as I ~~didn't~~ write or submit 2 page 7s for e-file prison staff

to file. When I insisted at the hearing for my excessive force claim to go to trial, the error wasn't my fault, dismissal was threatened.

c. Advocating as defense counsel at a hearing, by trying to force a 'low-ball' case settlement favorable to the defense. Self-explanatory;

A 2nd judge was assigned after the passing of the 1st, and instead of setting the case for trial, he set a hearing, wherein defense counsel

said nothing after stating their appearance, and the judge proceeded to advocate for me to settle the case for \$5000.00. When I explained that this would not sufficiently punish or deter defendants' illegal conduct at the jail, the policies + practices in question had actually killed detainees + could've resulted in my death as well, the judge later allowed def. Lucas a 3rd summary judgment try and dismissed the claims. I cited as precluding my accepting the 'low-ball' [by disregarding key facts + summary judgment review standards].

d. Gave def. Lucas THREE summary judgment hearings, 2 after the dispositive motions deadline + 1 on the eve of trial, on the exact same claims + defense theories, yet refused to even consider, much less grant, judgment for me as non-movant. Self-explanatory; Despite def. Lucas submitting deficient motions, based on inadmissible evidence that the court admitted failed to create material disputes in fact (meaning my proof was undisputed, since it was admissible), the court(s) gave them try after try after try + refused to consider even one of my requests to consider judgment for the non-movant per Rule 56(F)(D), even though MY interests + rights were at stake, along with the proof burden I had to meet. This indulgence of Lucas' summary judgment tries inserted SIX YEARS of delay in case resolve, staling evidence, fading memories, witness deaths, etc. resulting, affecting my ability to win at trial on claims.

e. In response to my constitutionality challenge to 28 USC 1915(a), the court(s) all of refused to obey mandatory rules, Rule 5, 1 FRCiv.R + FRAP 44, requiring them to certify the §1915(a) challenge to the appropriate attorney general (for a US govt response to it), refused initially to even hear my §1915(a) challenge in the 7th Circuit, then gave me a 'sham' hearing on the issue instead of fairly hearing + deciding its merits. I have it in a recorded phone call wherein court staff admitted they don't obey the mandatory rules

for certifying challenges to Fed. statutes' constitutionality to the US Atty. General(s) for response; This failure supports systemic discrimination, as it eliminates a measure of independent oversight via a US Atty from seeing the blatant mishandling of case issues. And I was denied in forma pauperis leave due to 3-strike rule (1915c) imposition, so I challenged §1915c's constitutionality in my FRAZEE () motion for in forma pauperis leave in the 7th Circuit; But that court denied the motion without deciding the challenge, threatening to dismiss the appeal in days if I didn't pay the filing fee, so I filed reconsideration asking for the §1915c challenge to be decided while also obtaining a 3rd party benefactor's support in paying the fee to avoid dismissal. The court again (& again) refused to hear the challenge, 1st alleging the issue is "moot" contrary to this SCOTUS' precedent on mootness, e.g. Campbell-Ewald Co. v. Gomez, 577 US 153, 161 (2016) (a claim is moot "only when it is impossible for a court to grant any effectual relief to the prevailing party."), Trinity Lutheran Church of Columbia v. Comer, 137 S.Ct. 2012, 2019 nl (2017) (a claim is moot only if "subsequent events make[] it absolutely clear that the allegedly wrongful behavior could not be reasonably expected to recur."; Voluntary cessation of a challenged practice does not moot a claim vs. it), then 2nd claiming §1915c was never applied to this case so I could not challenge its constitutionality in error. When I continued to challenge the disregard of key facts & precedent, the court threatened to return my reconsideration motions unfiled. Only after I filed a motion to recuse the motions judge due to unfair bias did the court agree to decide the §1915c challenge (the recusal was, of course, denied); But I only got a "sham" hearing of the issue, my claims merits weren't heard at all; The court ruled my challenge (incorrectly) was the same as in Lewis v. Sullivan, 279 F.3d 526 (7th Cir. 2002), & thus were just as invalid, when a. my claims clearly were different,

and b. the lower court in its ruling on the issue SPECIFICALLY stated my challenge "was not explicitly addressed in Lewis or the other

appellate cases [addressing §1915(c) challenges]", Appx. E3. This type of arbitrary mishandling is routine for D-classed litigants

who raise big impact issues of national importance within the current system of discrimination -- Instead of fairly deciding merit,

any excuse or way to avoid and/or deny is employed, denying D-classed litigants due process by the sham or rigged court experience.

I will not recount every instance of discrimination experienced in this system perpetrated against my rights due to being a

D-classed litigant, but I could easily go through the alphabet & beyond listing instance after instance of blatant mishandling of

D-classed litigant claims, and this is the same behavior exhibited by different Fed. judges & courts, proving a system or pattern as

I allege indeed exists -- The only reasonable alternate explanation is a myriad of incompetent judges make up the Fed. judiciary.

While a systematic approach to management of the Fed. court caseload may be required, the current system of discrimination

denying D-classed litigants fair hearing is an untenable solution to the problem. This problem has indeed "departed from

the acceptable", warranting SCOTUS' supervisory authority under Rule 10(a), to both signal to lower courts to domino effect

that this type of systemic discrimination is discouraged, and signal to Congress solutions to this, likely budgetary, are needed.

II. The PLRA 3-Strike Rule, 28 USC 1915(c), Is Un-Constitutional on 1st Am. ["Close call Strikes Chili Our Right to Lodge Novel, Non-Friv-
olous Claims"], 5th Am. ["Some Hearing" Prior to Strike Not Afforded], Equal Protection [Lawyers protected, prisoners sanctioned] Grounds. Rule 10(c).

§1915(c) is unconstitutional on several grounds, 3, 2 challenges only aimed at "failure to state a claim" strike language, 1

affecting the entire statute (1915(c)). On 1st Am. grounds, failure to state a claim strikes against prisoners who make claims.

that are novel, non-frivolous (having a reasonable basis in law + fact), and "close call" -- meaning a judge could legitimately rule for or against it stating a claim -- is violative of this Amendment. Prisoners have a right to lodge these types of claims, as it is part of typical court access under the 1st, 5th, 14th Am. Bounds v. Smith, 430 US 817 (1977) §1915(g)'s "failure to state a claim" section threatens strikes if the judge sides against the prisoner on the close call claim, chilling our right to lodge these claim types out of fear of strike imposition. Gov't regulations having a deterrent or chilling effect on speech violate the Constitution, see Laird v. Tatum, 408 US 1, 11 (1972), and the threat of sanction, such as that of §1915(g), chills speech almost as potently as sanction imposition itself, Kayishian v. Bd. of Regents, 385 US 589, 604 (1967), so the claim of §1915(g) unconstitutionality, all in all, is legitimate.

The district justifies §1915(g) effect by claiming litigation isn't speech capable of chilling under the law, see Appx. F3, and the circuit ruled this claim was lodged in Lewis v. Sullivan, see Appx. C1, both illegitimate positions -- Litigation is speech clearly by definition of the term, see Giboney v. Empire Storage & Ice, 336 US 490, 502-3 (1949) (speech defined as "conduct... carried out by means of language, either spoken, written, or printed.") Litigation fits this description. And looking at Lewis + the cases cited therein, none of them made a claim even close to this, denial of (complete) court access was alleged, id, 279 F3d at 528-31.

On 5th Am. / due process grounds, the principles of due process require "some hearing" prior to gov't deprivation of any substantial right or privilege. Wolff v. Mc Donnell, 418 US 539, 557-58 (1974) No doubt, in forma pauperis leave is a substantial privilege -- it (in ref. to prisoners) is the only avenue to vindicate rights violations in an isolated environment with lack of resource access.

many times, for the indigent. The courts are the 3rd gov't branch, yet provide no due process hearing before its imposition of

PLRA strikes resulting in deprivation of in forma pauperis leave, violating due process. The "process one is due" depends on the facts,

circumstance, and feasibility in affording pre-deprivation process. Zinermon v. Burch, 494 US 113, 125-28 (1990). It is feasible to provide

pre-deprivation process re: sanction for filing flawed claims, as Rule 11(b-c), F.R. Civ. P. provides such for lawyers, including opportunity

to defend against or explain alleged impropriety; So there isn't just cause for not giving prisoners equal pre-deprivation process w/ strikes.

The district didn't even address this ground although it was presented, and the circuit (again) alleged Lewis addressed this argument,

which of course that case did not.

On 5th Am. equal protection grounds, firstly the Fed. gov't must provide equal protection under the law the same as states must

under the 14th Am. Adarand Constructors v. Peña, 515 US 200, 217 (1995). And 1915(c) fails in this regard related to "failure to state a

claim" strikes, making it unconstitutional on this ground: As mentioned, Rule 11(b-c), F.R. Civ. P. affords pre-deprivation procedures for

lawyers accused of improper/inadequate claim filings. It also provides lawyers protection for making "close call" claims, legitimate

argument for existing law to be extended to novel circumstance, from sanctions. Yet prisoners get a PLRA strike for failing to

state a claim as sanction for filing the exact same "close call" claim, with the exact same facts + merit, if the court declines to

accept the logical extension advanced + rules against it stating a claim -- A higher sanction standard for legally untrained prisoners

than for trained lawyers for filing the EXACT SAME CLAIMS, patently unfair + unequal oppression against prisoner's litigation.

PLEA's goal is to improve the quality of prisoner litigation + discourage frivolous/meritless filings, Porter v. Nussle, 534 US 516, 517

(2002), and §1915(c) "failure to state a claim" strikes goes beyond that goal to the point of conflict by requiring prisoners, who are

largely untrained in law, to surpass even trained lawyers in the quality of their litigation to avoid sanction (or not file even close

to novel claims, regardless of arguable merit, for fear of "failure to state a claim" strike). Equal protection doesn't allow this type of

disparate treatment of prisoner filings, on sanctions for alleged improper filings, versus lawyers; Equality is requisite here.

The district again didn't address this ground, and the 7th Circuit claimed (again) Lewis addressed it. But Lewis argued that prisoners vs indigent non-prisoners were treated disparately by striking one + not the other generally, not that lawyers are protected from sanction for exact claim filings prisoners get strikes for as I advance, and the merits are different. The entire application of §1915(c) was challenged in Lewis, while I challenge "failure to state a claim" strikes here, and only seek equal protection of prisoners for good faith use of our courts in filing meritorious claims as lawyers have from sanction, but leaving §1915(c) strikes otherwise in place (barring or excluding other grounds that challenge application of §1915(c) entirely, i.e. due process grounds).

SCOTUS should review this issue because it has or regards matters having wide national impact, affecting not only prisoners + prisoners' staff, but the Fed. courts: First, the constitutionality of a Fed. statute is involved, and second, as this SCOTUS has noted, nearly 10,000 lawsuits are filed annually by prisoners, so the unconstitutional statute is frequently used.

Wexford Health v. Garrett, 140 S Ct 1611, 1612-13 (2020). Its importance, + the case conflicts involved, warrants review to resolve.

III. Whether the Rules of Agency, Wherein the Admissions of the Agent Bind the Principal, Apply to Rule 36 Admissions Is An Important Federal Question that Should be Settled by this SCOTUS. Rule 10(c).

It is long settled that, under the Rules of Agency, where an agent-principal relationship is established "whatever the agent does in the lawful prosecution of the business entrusted to him by the principal is the act of the principal; and his representations, declarations, and admissions, respecting the subject-matter, will also bind [the principal]." Barreda v. Silsbee, 62 US 146, 164-65 (1858). Further, facts and declarations of an agent, are admissible [vs. a principal] "upon the ground that, whatever an agent does or says is done or said by the principal, and consequently may be proved in like manner as if the evidence applied personally to the principal." id., see also Amer. Fur Co. v. US, 27 US 358, 364-65 (1829). However, the 7th Circuit has decided contrary to these cases, creating conflict, in ruling that agency rules are "beside the point," an agent's Rule 36 admissions per discovery Fed. R. Civ. P. cannot bind the principal on subject-matters related to their employ. This SCOTUS should settle this important Fed. question with finality.

The 7th Circuit cited no authority of this SCOTUS to justify its position, just an unreasoned footnote of its own case to posit that Rule 36s are not like sworn testimony or depositions under Rule 30(b)(6) in ruling on my case, which contradicts its own authority, see Banos v. City of Chi., 398 F3d 889, 892 (7th Cir. 2005) ("Admissions [via Rule 36]... are like sworn testimony, once one is made, there is no need to revisit the point.") No circuit to my knowledge has ruled as the 7th Circuit on this matter; the closest is a district decision in ruling a Rule 36 admission could not bind the principal, Westinghouse Elec. Supply (CR6) v. Nat'l Sur. Corp., 25 FRO 249, 251-52 (EOPa 1960), but that was because the principal contested the fact of an existing agency relationship, not a per se non-binding of Rule 36s.

The 8th Circuit has ruled to the converse in Stine Seed Co. v. A+W Agribusiness LLC, 862 F3d 1094, 1102-03(8th Cir 2017), holding that the admissions of the principal per Rule 36 are binding under agency rules on the agent, and vice-versa, based on state law agent admissions are binding on a principal. id.

The applicability of Fed. discovery rules, likewise Rule 36, affects all Fed. civil suits, and therefore warrants a decision from this Court to settle the matter as to the binding effects of Rule 36 admissions under the rules of agency.

IV. The Liteky v. US Standard for Proving "Deep-seated" Bias is Undefined, Has Shown to be Impossible to Meet, And the "Almost Never" [Can Rulings Alone Prove Bias] of Liteky is Interpreted as "Never" by Lower Courts, Warranting Review.

In Liteky v. US, 510 US 540, 555-56 (1994), this SCOTUS ruled judicial decisions alone "almost never" constitute a basis for proving unfair bias, "unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." id. This ruling + standard has never been refined or revisited by SCOTUS in the near 30 yrs since, resulting in a myriad of problems which this SCOTUS should review in this case to resolve:

First, since SCOTUS hasn't defined what constitutes or proves "deep-seated" bias as opposed to a typical allegation of bias, the standard has not developed by the collection of lower court cases in which it is alleged; To the contrary, the standard has proven impossible to make a case/claim on-- In 30 yrs, not a single case with precedential weight has shown it to be met, while it is not likely that in all the Fed. cases alleging bias, NONE has had that bias expressed solely via rulings in a way + manner showing bias was "deep-seated" and which bias "made fair trial impossible", in all these years. The lack of definition

has likely shielded bias, by providing an impossible target. And the nature of bias claim review facilitates the problems caused by lack of definition of the "deep-seated" bias standard: The judge accused of bias is to subjectively + objectively rule on the motion to recuse, e.g. Hook v. McDade, 89 F3d 350, 356-57 (7th Cir. 1996), and determine their own bias -- in reality, highly unlikely to find bias against themselves, esp. if the bias is "deep-seated" (being effected for deeply personal reasons). And without any solid, defined standard, the reviewing court, already required to defer to the final order of the lower court by review standards, cannot say the failure to recuse under Liteky was error, even if, in reality, the rulings exhibited deep-seated bias as alleged. No set standard as to what proves or constitutes "deep-seated" bias makes proving it impossible, as evidenced by the fact that in all of the years since Liteky NO ONE has proved it. In my 7th Circuit brief, I posited that a standard for proving deep-seated bias (vs. typical claims) should be like the standard for proving punitive damages vs. a typical claim + damages, with the amount + type of error being taken into account, whether error was affirmed after reconsideration (showing intent to subvert the law + effect bias), etc. Justices have advocated a similar standard, ie. the amount + type of error being taken into account, for SCOTUS review under its Rule 10(a), see Kalamazoo Cnty. Bd. Com'n v. De Leon, 135 S Ct 783, 783-81 (2015) (Rule 10(a) review should effect when COAs sanctions error "so clearly wrong that summary reversal is warranted"). Whether or not these factors are considered in the final determined "deep-seated" bias standard, this SCOTUS needs to define some solid standard for proving it.

Second, the lower courts have widely interpreted (as in this case) Liteky as holding rulings alone can NEVER constitute

proof of bias, totally disregarding the actual holding + its exception, "unless they display a deep-seated favoritism or antagonism that 'makes fair judgment impossible', id. 555-56. This further makes proving the standard impossible, and further shows the necessity of SCOTUS review of this matter under Rule 10(c) to resolve it with clarity + finality.

Judicial bias is of the most paramount of issues; As this Court has noted, "a fair trial in a fair tribunal is a basic requirement of due process"; In re: Murchison, 349 US 133, 136 (1955), and bias is structural, affecting all aspects of a case. Neder v. US, 527 US 1, 8-9 (1999). And this matter affects all Fed (+ state) cases, civil or criminal; A matter outlying that allows or shields bias such as in this case should be taken seriously + reviewed to ensure the "basic" requisite of a fair tribunal is afforded + unfair bias can fairly be challenged, in whatever form it exists.

V. Whether 28 USC 1915(d) Requires Interpretation Allowing Diversion of Subpoena Witness Fees For Indigents, to Avoid the 'Absurd Result' of Affording Them a "Sham" Trial, is A Key Issue Warranting SCOTUS Review. Rule 10(c)

§1915 was enacted to "ensure indigent litigants have meaningful access to the federal courts", Bruce v. Samuels, 577 US 82, 85-86 (2016), and further, its goal is "equality of consideration" for all litigants. Coppedge v. US, 369 US 438, 447 (1962). But the current interpretation of §1915 at issue, wherein filing fees are waived to allow indigents to file a case, only to impose witness fees they can't pay, preventing their presentation of the proof necessary to win that case -- effectively affording a "sham" trial they can't possibly win -- subverts the legislative aims + goals as an "absurd result" interpretation, and warrants SCOTUS review here.

The lower courts are split on the issue, some diverting fees + refusing to absurdly interpret §1915, e.g. Guy v. Maio, 227 FRD 498,

501-02 (EOWI 2005), Coleman v. St. Vincent De Paul Soc., 644 F.R.D. 92, 95-96 (EOWI 1992), Marks v. Catendine, 80 F.R.D. 24, 27 (ND W.Va. 1978), and

others refusing to divert the subpoena witness fees, on grounds § 1915 doesn't explicitly authorize it, e.g. Johnson v. Hubbard, 698 F.2d

286 (6th Cir. 1983), but see id. e 292-93 (Judge Swygert dissent). This SCOTUS should resolve the conflict favorably to indigents:

Courts must read + interpret statutes so as to give effect to legislature's intent in enactment. Watt v. Alaska, 451 US 259, 266 (1981).

§ 1915(d) reads (in relevant part), "The officers of the court shall issue and serve all process, and perform all duties in such [in forma pauperis]

cases. Witnesses shall attend as in other cases..." The "all duties" court officers are required to perform could easily be interpreted

to include diversion of subpoena witness fees as a court expense (just as filing fees are diverted for indigents' benefit) to fulfill and

not subvert the legislative aims + goals of § 1915 as cited in Bruce + Coppedge, so the opposing position favoring absurd result

interpretation + "sham" trials for indigents is against the weight of precedent, common sense, and fairness, favoring indigents.

This issue affects the rights of all indigents nationwide who pursue Fed. court cases, involves a conflict in the lower courts

+ a conflict by logical extension to SCOTUS precedent on statute interpretation - Watt and § 1915's legislative aims - Bruce, Coppedge,

and the issue of § 1915(d) + witness fee diversion has never been decided by this Court, warranting SCOTUS review.

VI. Whether, In Consideration of Rule 56(a) and Summary Judgment's Purpose in Construing Rule 56(F)(1), Judgment For the Non-Movant is Requisite Upon Request When No Genuine Disputes Exist, Warrants SCOTUS Review.

Summary judgment is "a liberal measure, designed for arriving at the truth... it is to carefully test this out, in advance of trial

by inquiring and determining whether such evidence exists", to save judicial economy by avoiding unnecessary trials). see

Potter v. CBS, 368 US 464, 467-68 (1962), accord Whitaker v. Coleman, 115 F.2d 305, 307 (5th Cir. 1940). In Celotex Corp. v. Caltratt,
477 US 317, 322-23 (1986), this Court, in interpreting Rule 56 procedures, held "the plain language of Rule 56[] mandates entry of
summary judgment... against a party who fails to make a showing sufficient to establish the existence of an element essential to that
party's case, and on which that party will bear the burden of proof at trial". id. The question is whether this mandate also applies
when the movant fails to create a dispute in material facts in the face of a non-movant's competent evidence (which, if presented at
trial undisputed, would warrant judgment for that party), the non-movant requests judgment on the undisputed material facts in their
response brief per Rule 56(f)(1), and the movant again fails to create a dispute via their reply brief. Considering the principles
of construction -- that all of Rule 56 must be read in interpreting Rule 56(f)(1) + legislative goals considered and given effect; see
Dolan v. US Postal Serv., 546 US 481, 486 (2006), Klatt v. Alaska, 451 US 259, 266 (1981), and Manhattan Gen. Corp. v. Commissioner,
297 US 129 (1936) (stat. construction principles apply to rules) -- and the consequences for NOT applying it, the mandate should apply.
In this underlying case, the district indulged deficient Rule 56 motion after deficient Rule 56 motion by the defendants,
which the court ADMITTED failed to create a dispute in material facts in responding to the motions by order, yet refused
to even consider, let alone grant, my requests for judgment under Rule 56(f)(1) in my response brief(s); The district and
ultimately the circuit ruled that no authority required them to consider my requests, which was reason enough not to. But
it was MY case, rights, + burden of proof affected by the several indulgences, and the deficiencies worked as a delay tactic --

The motions added an entire six YEARS⁺ of delay in resolving the case, resulting in witness deaths, evidence spoiled + lost, memory fading (and "selective memory" seeming more plausible), etc., significantly harming MY case as the plaintiff.

Had my Rule 56(f)(1) requests been considered, and defendants either respond with proof of material disputes, or admit they can't + have judgment entered against them, none (or at least $\frac{2}{3}$ rd) of the delay + its harms would've occurred.

Rule 56(a), + Celotex interpreting its mandate to enter judgment when there are no material disputes + law warrants, is authority, and so is Dolan + Walt, requiring the mandate + the legislative goal of saving time + judicial economy be considered in the interpretation of Rule 56(f)(1). It would be absurd result interpreting to NOT apply the "material dispute" mandate to Rule 56(f)(1) requests, i.e. hold a trial for litigants on claims in which summary judgment proceedings exposed a party cannot materially dispute; That disregards consideration of both the Rule 56(a) mandate AND legislature's goals in enacting Rule 56 in the first place, on top of the harms resulting in this case as described above from not applying the mandate equally to both parties' evidence.

Rule 56, and likewise interpretation of (f)(1) + whether (a)'s mandate applies, affects all civil cases + litigants in Fed courts; This issue has never been decided by SCOTUS, and the confusion as to Rule 56(f)(1) propriety + granting summary judgment-- or consideration thereof-- for a non-movant in the lower courts warrants SCOTUS review: Orlowski v. Milw. County, 2016 WL 1611471 (E.D.WI 2016) (Rule 56(f)(1) invocation in response brief proper procedure for non-movant to receive judgment), cf. Natl Ex. Bank + Trust v. Petro-Chem Sys, 2013 WL 1858621 (E.D.WI 2013) (Rule 56(f)(1) cannot be invoked).

VII. The 7th Circuit's Adopting Local Rules 10 + 31(a), Which Violate FRAP 47(a)(1) in Being Inconsistent With FRAP 31(a)

And Effectively Lock Pro Se-Prisoners Out of the Appellate Process, Warrant SCOTUS Supervisory Review

SCOTUS has 'significant interest' in supervising the administration of the judicial system under its Rule 10(a), and may use

its supervisory authority to invalidate local rules of a Fed. court promulgated in violation of an Act of Congress. Hollingsworth

v. Perry, 558 US 183, 196-97 (2010). This includes violations of statutes + policies of the Judicial Conference of the US, which FRAP

qualifies as id. And this Court has held local rule-making is subject to further limitations-- SCOTUS may exercise its inherent

supervisory authority to "ensure local rules are consistent with the principles of right and justice"; Frazier v. Heebe, 482 US 641, 645-46

(1987), so holding in striking down a local rule that precluded E. D.C. attorneys with out-of-state offices from Bar admission. id.

This 'significant interest' in supervising local rule-making is warrant of being exercised in the 7th Circuit's promulgation

of its Cir. Rule 10 + 31(a), as these both violate acts of Congress AND arbitrarily lock pro-se prisoners out of fair + equal pursuit +

participation in the appellate process, which is inconsistent with the principles of right and justice": These rules change the

manner in which the record on appeal is accessed to electronic (Internet) means - Cir. Rule 10, and makes the principal

brief immediately due after notice of appeal + docketing regardless of if the record is complete - Cir. Rule 31, contradicting

FRAP 31(a) which mandates principal brief filing "within 40 days after the record is filed." Prisoners do not have access to the

Internet relectronic docket, + as such we likewise cannot access the record on appeal if we are proceeding pro se; That prevents

proper citation to the record in briefing and having issues heard + not forfeited due to improper citations (as occurred here).

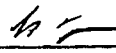
Not being able to properly cite the appeal record virtually guarantees a losing appeal, and a system allowing entry into the appellate process for a sure-fire + built-in lose is just a "sham" (twice).

This local ruling affects prisoners in 3 states; SCOTUS acted to correct improper + arbitrary exclusion of lawyers to the Bar of one district in LA, Frazier, 482 US at 642-46, which was the correct decision, and SCOTUS acting to correct THIS improper + arbitrary exclusion of pro se-prisoners from fair appellate participation in 3 states. WL IN, IL, is also the correct decision. This local rule promulgation affects the integrity of the judicial processes, and SCOTUS' interest in ensuring compliance with proper rules of judicial administration is "particularly acute" when local rules relate to judicial integrity as is the case here, Hollingsworth, 558 US at 196-97.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted this 29th day of March, 2023.

Signature: 

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