

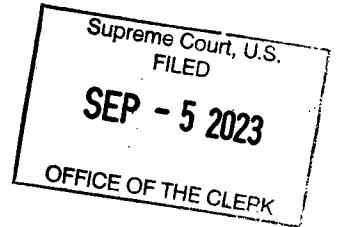
23-6548

Case No. Wyo. Sup. Ct. No. S-23-0120  
2nd Judicial District Court No. 22-168

ORIGINAL

**IN THE UNITED STATES SUPREME COURT**

Andrew Joseph Avitable,  
il Marchese di Monte Bianco,  
(aka "Larson" by coercion only),  
Petitioner,



vs.

STATE OF WYOMING,  
Respondent.

**PETITION FOR WRIT OF CERTIORARI  
FROM THE WYOMING SUPREME COURT**

**Petitioner**

Andrew J. Avitable  
c/o WDOC #23916 – WSP  
P.O. Box 400  
Rawlins, WY 82301

**Respondent's Attorney,**  
Wyoming Attorney General  
2320 Capitol Ave.  
Cheyenne, Wyoming 82002

**\*All Litigants are Contained within the Caption**

### Questions Presented

1. Can a State create policies, rules, and/or laws that contradict the State's and US Constitutions; and create a situation in which only those with the finances to fight a civil case can have access to the courts for redress of grievances (denying indigents *forma pauperis*), or MUST the courts be open to all regardless of finances?
2. Can the States ignore the Court's Rules, Standing Precedents, the US & State Constitutions, Federal Laws, and International Laws to ensure wins for the State by saying, "that does not apply to us", or making policies to justify violations; or are they bound to comply with them and required to be impartial?
3. Can a state change a contract after it was entered into to the disadvantage of the other party of that contract without their permission, or is the State bound by contract Law like everyone else, making that a breach of contract; and were Petitioner and Wyoming in a contract that was breached (copy enclosed)?
4. Can a State's Courts rely upon merely claiming evidence was not provided to them to avoid adjudicating the breaches of contract when the Petitioner personally mailed copies of the evidentiary documents to the courts and included the entire text of the contract in the body of the Complaint for Breach of Contract?
5. Can State Actors who have been pre-advised of what the law says and who deliberately violate clearly established rights of individuals be granted "Immunity," prejudicially placing them above the law, especially in light of their statements: "I don't care what the law says"; or are they bound to obey it?
6. Can a State create unconstitutional laws? (i.e., W.S. §25-1-105 & §7-14-103(a) that preclude the courts (State and Federal) from having jurisdiction to hear cases addressing the violations of the law, contracts and rights of the *pro se* litigants; W.S. §6-2-311 that changes the presumption of innocence to a presumption of guilt that is so strong no evidence can overcome it; and W.S. §6-2-602 a self-defense law that only politically connected people can use while denying its use to others.) Are W.S. §25-1-105; §7-14-103(a); W.S. §6-2-311; and W.S. §6-2-602 Constitutional?
7. Does an inmate have the right to protect himself when the State's DOC refuses to do so?
8. Can a Court prosecute an individual under an imposed unwanted alias despite knowing the defendant's legal name and the defendant's unwillingness to have the alias and then force him to change his signature to match the imposed alias?
9. Can a State Court choose to ignore the *pro se* litigant's filings and merely rubber-stamp the State Attorney General's contentions despite those contentions having nothing to do with what the *pro se* litigant raised in their initial complaint and not applying to the issues being litigated?
10. Can a Court change the Case Heading and Citation of a case without notifying the litigants prior to that change; or are they obligated to ensure that all litigants in the case are in agreement with the change prior to making that change?
11. Does a State waive its 11<sup>th</sup> Amendment Immunity by failing/refusing to include a clause addressing the maintenance of Immunity in the verbiage as a condition of the contract like the State has done in its other contracts?
12. Can State Courts rely upon the verifiably false testimony of an attorney to avoid addressing the wrongs in a Petitioner's case?
13. Is an inmate a Citizen/person with limited rights or a slave with no rights at all?
14. Are inmate laborers employees of the Department of Corrections; thereby justifying their

wages can be garnished for child support payments; or are they not employees, denying the WDOC the ability to garnish their meager (slave) wages for child support?

15. Are inmates sent to prison as punishment or to be further punished?
16. If a DOC's policies are created after an inmate has been incarcerated and those policies exacerbate the inmate's sentence while violating the Constitution, are they functioning as a regulatory body violating the *ex-post-facto* prohibition; or can the DOC justify its violations of the Constitution by changing its policy to accommodate that violation *post-facto*; or must their policies comply with the Constitution?
17. Can a State DOC deny an inmate their religious beliefs when they do not pose a security concern or create an undue hardship on the institution?
18. Is a homosexual inmate watching a heterosexual inmate shower, dress or use the toilet against the heterosexual inmate's wishes offensive to the 4<sup>th</sup> Amendment bodily privacy protection the same as different genders watching opposite genders, considering they are both premised on sexual gratification and do not serve any legitimate penological need?
19. Can a State charge its inmates a luxury and premium tax and then tax those taxes?
20. Are prisons free to gouge commissary prices in any manner they want (exorbitant) or is there a limit to how much profit they can make on the inmates, considering DOC's are supposed to be non-profit State entities?
21. Can inmates' commissary purchased and pre-approved property be taken without due process by changing the property matrix policy to serve the confiscation purpose *post facto*?
22. Is appointment of counsel required in all court cases with a mentally handicapped individuals (i.e., autistic) to ensure he/she has equal court access to those without mental handicaps as mandated by the ADA pursuant to *Ehrenberg, Kowalski and Janssen Pharmaceutica N.V.*?
23. Are State and Federal Courts obligated to correct manifest injustices presented to them?

### List of Parties

All parties to this litigation are contained within the caption of this filing.

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1. On June 30, 2022, Judge Rogers rendered a ruling on Petitioner's Motion for Breach of Contract in case #28-553 that she kept refusing to allow to be docketed. Petitioner learned the motion had finally been docketed by the denial, which did nothing more than rubber-stamp the Wyoming Attorney General's false contention that there was no contract despite Petitioner having sent a copy with his Motion and one that should have been in the record because that is where he got his copy.
2. On January 6, 2023 Judge Dawnessa Snyder for the Second Judicial District Court in Rawlins, Wyoming rendered a ruling in case #22-168 that failed to address Petitioner's claims and failed to comply with State and Federal Courts' Rules and standing precedents. It also violated State and Federal Statutory Provisions as well as both the US and Wyoming Constitutions. Judge Snyder's decision merely rubber-stamped the Wyoming AG's false contentions, showing she gave absolutely no consideration to Petitioner's Complaint and may not have even read it.
3. On June 6, 2023 Judge Fox of the Wyoming Supreme Court in Cheyenne, Wyoming chose to ignore Petitioner's claims and followed Judge Snyder's action of rubber-stamping the AG's false contention without giving any consideration to the claims Petitioner raised in Case # S-23-0120.
4. This Petition for Writ of Certiorari.

### Jurisdiction

This Court holds Jurisdiction as the decision being contested was rendered by the Wyoming Supreme Court, the highest court and court of last resort in Wyoming on June 6, 2023, less than 90 days ago. Petitioner has exhausted all State remedies available to him, leaving jurisdiction squarely within this Court's realm. This Court has jurisdiction over the immediate matter pursuant to Rule 10 (b). Pursuant to 28 U.S.C. §1257, this Court holds jurisdiction as the decision contested in this Petition was rendered by the WSCt, the Court of Last Resort in Wyoming

### Constitutional and Statutory Provisions Involved

#### Statement

This case addresses violations of the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Amendments as well as a total disregard for standing court rulings and requirements for non-discriminatory practices. It also involves the unreasonable application of principles of law and the use of unconstitutional state statutes that prevent *pro se* litigants from realizing justice. This case also addresses violations of the Freedom of Speech and Freedom of Religion as well as *ex-post facto* violations. This case demonstrates official corruption and the cover-up thereof. This case affects every person living within and passing through the United States in that the wanton waste of taxpayer money to force unconstitutional convictions pursuant to state statutes that contradict the US and State Constitutions as well as the foundational principle of the Court System of "innocent until proven guilty" by creating a **presumption of guilt that is insurmountable**. Most importantly, this case shows how the even Wyoming Officials are saying that the Justice System is no longer just and is merely a punishment system that serves politics instead of justice with no integrity. This Letter is from a Wyoming Court Officer from 7 years prior to his retirement.

### Concise Statement of Case

Your mentally handicapped (autistic and numerous head injuries resulting in Traumatic Brain Damage) Petitioner entered into a contract with Wyoming by and through an unwanted plea contract that was coerced through the Wyoming Public Defender's Office by the appointed defense attorney and investigator stating that if Petitioner did not accept the plea contract she had arranged for him, he would be left to fend for himself without the assistance of an attorney at trial and would receive the worst possible sentence because of his autism. That plea contract was signed on October 12, 2005, 2 days prior to the Change of Plea Hearing, by Petitioner and by Mark Goldberg (a Wyoming State Official), making it a valid contract. That contract was breached in numerous ways, initially by the trial judge and defense counsel; and continuing to this date by and through the Wyoming Department of Corrections. That contract had no provision to protect Wyoming's Sovereignty the way the other contracts Wyoming enters into have had. The Doctrine of Immunity does not attach as the violations occurred while both parties were (and still are) in a contractual agreement in which immunity was not a provision of that contract (plus the Petitioner's High Ranking European Royal Peerage Title of "Marchese di Monte Bianco" which mandated the case be transferred to the Federal Court System due to want of jurisdiction); thus, the State's immunity was waived when the contract was signed regardless of the fact that Petitioner did not want to accept the contract.

Petitioner has attempted many times to correct the breaches and avoid litigation, but the Wyoming Officials refuse to even consider any type of corrections, leaving Petitioner to initiate a Complaint in the Wyoming Second Judicial District Court. Judge Dawnessa Snyder failed and refused to address any of the claims Petitioner raised and merely rubber-stamped the Wyoming Attorney General's contention despite that contention being a fraudulent fabrication of Petitioner's claims and not contesting any of the claims he did raise. As a result, Judge Snyder failed to provide a ruling that actually related to the case. Politics trumped justice.

Petitioner filed an appeal in the Wyoming Supreme Court, the court of last resort in Wyoming. The Wyoming Supreme Court refused this indigent litigant forma pauperis status based upon the fact that incarceration alone does not infer forma pauperis. The court chose to ignore the fact that Petitioner was indigent and therefore qualified for forma pauperis status. In denying Petitioner from having access to the courts until he borrowed the filing fees, the Wyoming courts created a precedent that people who are financially challenged do not and will not have access to the courts in Wyoming, contrary to Article 1, §8 of the Wyoming Constitution. Again, politics trumped justice.

That court refused to give any consideration to the claims Petitioner raised without so much as a discussion about his claims. Unfortunately, this was not a surprise because of Wyoming Public Defender's Office Senior Appellate Counsel Eric Alden's letter chastising the corruption in the Wyoming Court system. In fact, if this Court takes a moment to read the January 19, 2011 letter from Eric Alden to Inmate Donald Daves #26524, it will see that the arbitrary denial of appeals is business as usual for the Wyoming Supreme Court. In that letter Mr. Eric Alden gives a scathing report of the Wyoming Court System (appended).

Petitioner now looks to this Court to provide justice where Wyoming has refused to follow its own rules, the law or previous court ruling from Wyoming, the Federal Courts and even this Court to serve politics instead of justice and appease the Wyoming Attorney General's desire to see all convictions remain standing. Petitioner is asking that Wyoming be held accountable to comply with its own contract laws (laws in general unless they violate the Constitutions) and provide him with the appropriate relief as Wyoming law mandates despite the

Wyoming Court System abandoning its laws and rules to provide arbitrary rulings in favor of the State. This would render a ruling that the contract was breached and that Petitioner is entitled to declaratory relief and reimbursement of his expenses for having to litigate this case as asked for.

### **Reasons for Granting the Petition**

A ruling from this Court will solidify the Wyoming Contract Law by eliminating the arbitrary interpretation used to decide winners of cases by politics; and enforce the State of Wyoming's mandate to abide by the Supremacy Clause. This case will set precedents and reinforce standing precedents as well as allow the Court to correct both conflicting rulings and a State's failure to comply with federal decisions. A decision from this Court will also cause unconstitutional laws to be either repealed or modified to ensure constitutional compliance. Furthermore, it will confirm that the individual States MUST comply with Federal Law as it does apply to them (i.e. the Constitution). Finally, it will make the States realize that they cannot just choose to ignore Federal Court Rulings to circumvent justice in order to get their desired results. This case will serve a large number of people and affect everyone in, and passing through Wyoming. A ruling from this Court will stop the wanton waste of US taxpayers' money in Wyoming through the frivolous conviction of innocent people who have had fraudulent charges levied against them for personal and political agendas. A ruling from this Court will ensure that the American System of Juris Prudence is available to everyone, regardless of financial status. Most importantly, a ruling from the Court in this case will stop the abusive tactics of the Wyoming Court Officers who's actions are deteriorating the public's faith in the judiciary as a whole; **politics has no place in the courts.**

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### **Opinions Below**

The Second Judicial District Court in Wyoming denied the case on January 6, 2023, with a decision that violates due process and the right to court access for redress of grievance, as well, the District Court appeared to be assisting the Wyoming Department of Corrections in covering up the wrongs done in Wyoming.

The Wyoming Supreme Court denied the case on June 6, 2023, with a decision that

violates due process and the right to court access for redress of grievance, and the Wyoming Supreme Court appeared to be assisting the District Court in covering-up the wrongs done in Wyoming.

### Conclusion

This case needs to be addressed because the public's faith in the Wyoming Court System had become severely eroded as Wyoming Public Defender's Office Senior Assistant Appellate Counsel Eric Alden stated about the Wyoming Supreme Court and the whole Justice System in the closing of his January 19, 2011 Letter to Inmate Donald Daves #26524, "I just have no faith that the Court has the moral courage or intellectual integrity to do the right thing." The Wyoming Supreme Court's flip-flop rulings that are designed to help specific litigants while attempting to hide the bias against others has caused the public to believe that the courts are only available for those with money and not those who are indigent. This is a deliberate violation of the clearly established right to redress of grievance. This offends the US Constitution as well as the previous Federal Court Rulings including those of this Court and even the Wyoming Constitution which states in Article 1, §8: "Courts open to all; suits against state. All courts shall be open and every person for an injury done to person, reputation or property shall have justice administered without sale, denial or delay. Suits may be brought against the state in such manner and in such courts as the legislature may by law direct." A decision by this Court will protect the citizens of the United States as a whole, those who reside in Wyoming and those who travel through Wyoming of all caliber, from abuses like those currently occurring in Wyoming. This will also protect the innocent defendants who have been unjustly extradited and convicted by Wyoming. It will set the precedents that States cannot arbitrarily provide the rulings that are convenient for that day instead of abiding by the established law and agencies of the States MUST comply with the law instead of operating rogue and then merely modifying their policies to fit the needs of the violations they have committed. Finally, it will stop the cover-ups going on in Wyoming.

**OPENING**

COMES NOW, mentally handicapped Petitioner, Andrew Joseph Avitable (Petitioner), il Marchese di Monte Bianco, *Pro Se* in the above captioned case, and petitions this Court for a Writ of Certiorari to correct the erroneous decision of the Wyoming Supreme Court (WSCt) that failed to comply with the U.S. and Wyoming Constitutions, Federal and State Laws, Wyoming Courts' Rules as well as Standing Precedents. Petitioner provides an Affidavit in support of this Petition that provides an explanation of the claims contained herein. Petitioner states as follows:

1. The decision contested herein is a reiteration ("Rubber-Stamping") of the Wyoming Attorney General's (AG) fictitious contentions that failed to address any of the claims Petitioner raised. The Wyoming Courts didn't look at Petitioner's filing as a "Complaint for Breach of Contract" (Complaint) as captioned. The lower courts NEVER looked at how the State's actions violated the plea contract and falsely stated there was no written contract<sup>1</sup>.
2. The WSCt's decision allowed the Wyoming Department of Corrections (DOC) to obstruct Petitioner's Court Access by financial discrimination, making civil actions in Wyoming only available to those capable of paying the filing and docketing fees; and parents fighting for parental rights. All other indigent civil litigants (or only Petitioner) are discriminated against.
3. The Wyoming Courts changed the caption to "Andrew J. Larson v. State of Wyoming" without consulting Petitioner or gaining his agreement, contrary to court rules and rulings.

**CASE HISTORY**

**Illegitimate Change of Name & Conflict**

4. Andrew Joseph Avitable is, was and will always be petitioner's **LEGAL NAME**. Petitioner never legally changed his name in any jurisdiction. Petitioner was coerced in Wyoming to use the unwanted alias of "Larson." When he complained to his defense attorney (McMurtry), she falsely told him he could not make corrections until after the case was over. McMurtry worked against Petitioner due to multiple "conflicts of interest." McMurtry acted

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<sup>1</sup> A copy of the Plea Contract is attached.

more as a second prosecutor than the prosecutor was acting as a primary prosecutor.

**Coerced Plea**

5. Petitioner was coerced to sign a written guilty plea contract (Contract) on October 12, 2005, in Case #28-553, 2 days prior to the October 14, 2005 change of plea hearing (appended) despite the evidence showing actual innocence; and did so with "Andrew J. Avitable". McMurtry lied multiple times on the record to increase his sentence. In his original complaint, Petitioner claimed Wyoming materially breached the contract repetitively. His complaint provided supporting information and evidence clearly embodying a breach of contract.

**Illegitimate Change of Case Caption**

6. Petitioner initially filed the case as "Andrew J. Avitable v. State of Wyoming". The case was docketed the same way and the AG initially responded to the same caption. After the case was underway, suddenly the caption changed without any communication with Petitioner. The caption was illegitimately changed to "Andrew J. Larson v. State of Wyoming" without consulting with and gaining approval of all parties involved as is required.

**Fraudulent Ruling Of No Contract**

7. The AG falsely stated the complaint had to be dismissed due to no justiciable arguments based on the false premise that there was no contract pursuant to defense counsel's lies despite Petitioner sending a copy of that contract with the complaint. The Wyoming District Courts (DC) "rubber-stamped" the AG's false contentions. Either the DC never looked at Petitioner's filing and evidence or chose to ignore them. In either event, THERE WAS A CONTRACT.

**ORIGINAL CLAIMS**

8. The Wyoming courts refused to address Petitioner's claims because he was locked into a contract, so he had to fight the breaches of that contract. The Breach of Contract claims Petitioner presented the lower courts were: "Counsel deliberately breached the Constitutional Contract by committing perjury in his hearing (items #49 to #51); obstructed his court access (items #52 to #59); and helped force the change of his name from "Avitable" to "Larson" by

falsely stating he could not contest the change of his surname until after the case was over (items #60 to #68). Petitioner further provided claims of "Judge Arnold's Breaches" enumerating a "Sentencing Breach" (item #69), a "Bar Of Review Breach" (Items #70 to #73) and a "Financial Penalty Breach" (Item #74). The next section was the "DOC's Deliberate Breaches" enumerating Americans with Disabilities Act Breaches" (items #76 to #85), "Length of Sentence Served Breach" (item #86), "Threat Of Further Sentence Enhancement Breach" (items #87 to #88), "Actual Sentence Enhancement Breach" (items #89), "Equal Protection Under The Law Breaches" (due process breaches) with the two subsections of "Equal Protection – Disciplinary and Grievances" (items #90) and "Equal Protection – Good Time" (items #91 to #94), "Safety And Security Breaches" (items #95 to #98), "Deliberate PREA Breaches" (items #100 to #102), and "Additional Court Access Breach" (items #103). The next section addressed "Deliberate Ex-Post-Facto Breaches" (items #104 to #126) addressing "Signature Breach," which is an ex-post-facto breach and a 1<sup>st</sup> Amendment Violation of Censorship. Petitioner's closing encompassed item #'s 127 to 139. Since Petitioner presented his appeal to the Wyoming Supreme Court (WSCt), there has been a third PREA event, showing the problems within the DOC continue<sup>2</sup>."

**PETITION FOR WRIT OF CERTIORARI CLAIMS**  
**Court Access Obstruction & Discrimination by Judiciary**

9. The DC and WSCt required Petitioner pay the filing fees first despite his verification of indigence because it was a civil matter, unlike other litigants in similar situations; thereby discriminating against all indigent litigants who have civil grievances (or just your Petitioner). After Petitioner made the payments, the court did not address the merits of Petitioner's claims that provided both justiciable claims and evidence confirming his deserving of relief. They merely rubber-stamped the AG's contentions. Despite being *pro se*, your Petitioner has been

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<sup>2</sup> The third PREA occurred in January of 2023 in the Wyoming State Penitentiary (WSP) in which his shower was again encroached upon. This time the WSP staff actually took action against the perpetrator without punishing Petitioner as of the date of this filing.

made to provide filings that are held to a higher standard than those submitted by the AG and after meeting this unfair hurdle for someone not trained in the law, everything contained within his filings has been ignored or not read. No amount of evidence appears to be enough to overcome the bias in favor of providing the State with arbitrary rulings.

**Prejudicial Violations of Wyoming Contract Law**

10. The federal courts have consistently ruled that the contract law of the state in which the contract was signed is ruling in matters relating to that contract. Wyoming contract law is very rigid in the construction of contracts, which is why Wyoming keeps winning disputes relating to breaches of contract with independent contractors. Now, in the immediate case, Wyoming suddenly wants to abandon the rigidity of its contract law to provide an arbitrary ruling in favor of the State and falsely claim the contract does not exist to avoid culpability for their violations.

**Plea Contract Law**

11. This Plea Contract is between Petitioner and Wyoming. Breaches are analyzed under Wyoming contract Law based on defendant's reasonable understanding of what the contract represented regarding ambiguities, which must be interpreted in favor of the defendant. The contract MUST be taken as a whole without interpretation in all other areas. To avoid the State being held culpable for the breaches, the DC falsely ruled there was no precedent for the Plea Contract being reviewed under a breach of contract complaint and ruled there was no contract despite having a copy. Since the courts MUST BE FAIR and IMPARTIAL, they MUST also allow a wronged defendant whose plea contract was violated to gain redress in the same manner.

12. Wyoming, by and through its appointed defense counsel, insisted on a contract over a trial and MUST be obligated to adhere to that contract because a trial would have revealed the evidence showing the crime never happened and that Petitioner was actually innocent. The material breaches of that contract need to be rectified pursuant to Wyoming Contract Law. The

State Courts MUST comply with the Constitutions as well as standing precedents.

13. The WSCt allowed the State to avoid its obligation under the plea contract by helping Wyoming defeat the claims by obstructing Petitioner's court access through the refusal to allow this indigent Petitioner proceed *in forma pauperis* (IFP); and then allowed the DOC's obstruction to his obtaining finances to be the excuse to dismiss the case without hampering their ability to use the contract laws to their advantage without holding Wyoming accountable to them. This action has rendered the Wyoming courts available only to litigants who have the finances to file.

14. In addition to the "Safety And Security Breaches" addressed in the original Breach of Contract Complaint, Petitioner experienced new breaches after he began this process. Those breaches include an inmate kitchen worker "salting" Petitioner's food with soy because he wanted to prove Petitioner was not allergic to soy, which resulted in numerous reactions, with one being so severe that an Epinephrine Pen had to be administered. On 12/8/23, after the revision of this filing was started, to meet the 40 page mandate, the DOC decided to place a known problem inmate back in the cell with Petitioner. Petitioner was moved out of the cell with inmate Applegate previously because Applegate was placing Jalapeño juice (contains garlic) in Petitioner's grape jelly and laundry detergent in Petitioner's salt shaker. When Petitioner confronted CTL Burling about his being placed back in the room, Burling stated "You should have found someone to move in with you"; and chuckled as Petitioner left. Petitioner did have another inmate who wanted to move in with him named Martinez, but Burling refused to allow it and falsely stated Martinez didn't want to move in despite Martinez contradicting that and still wanting to move in with Petitioner because he knows he would be safe. Petitioner attempted to correct the problem with Housing Manager K. Holmes. In the end, Applegate's trying to "flip the script" by complaining about Petitioner being upset with him for standing on Petitioner's bed

resulted in the security staff intervening, which effectuated the move. It is obvious the DOC is trying to make Petitioner's remaining stay as difficult as possible if not dangerous.

**Defaulted Claims and Inappropriate Summary Judgment**

15. The AG never filed a responsive pleading or contested Petitioner's claims, conceding all Petitioner's claims as true. Instead, the AG filed a "Motion to Dismiss" under the inaccurate and un-docketed caption of "Andrew Larson v. State of Wyoming" that did not address any of the claims Petitioner raised; conversely it argued the invalidity of issues Petitioner never raised. Four issues about this blatantly offend justice: **1)** Since the AG never contested any of the claims in Petitioner's original complaint, they were conceded and a default judgment was appropriate when Petitioner filed his Motion for Default Judgment with supporting affidavit, which was denied by the DC contrary to the court's Rules; **2)** The DC adopted the inaccurate caption without hesitation or notification to Petitioner of their considering this action until they mailed him their decision, in violation the court's rules; **3)** The AG filed its Motion to Dismiss under the wrong caption, so the DC had no jurisdiction to grant the motion as it was not a docketed case; and **4)** Pursuant to Wyoming Law a "Motion for Dismissal" is the same as a Motion for Summary Judgment, which is inappropriate for complaints where declaratory judgment is all that is being sued for. Petitioner asked for no damages or compensation other than the appropriate expense reimbursement per the Wyoming Declaratory Judgments Act. The judge failed to follow the court's rules or standing precedents, to provide an undeserved win for the State, clearly showing an unconstitutional judicial bias and never provided Petitioner the requisite 10 days to respond, which would have allowed him to address the false statements in the AG's filing.

16. In Wyoming, it seems the *pro se* litigants and inmates are the only ones required to follow the rules. The rules do not apply to the State's Attorney. This is a systemic problem in Wyoming.

17. When the motion was finally docketed, the Clerk for the 1<sup>st</sup> DC wrote to Petitioner: "you

should be aware that you are required to comply with the Wyoming Rules of Appellate Procedure” to falsely justify her denial despite his Motion addressing breaches of the contract of the original conviction in case #28-553. Judge Rogers stated, “there was no written plea agreement at the time of sentencing. See Change of Plea Tr. 2:14-20.”, despite Petitioner sending a copy to her; verifying the defense attorney lied on the record to the detriment of Petitioner.

18. Petitioner’s response shows the AG argued irrelevant authorities and claims. The AG’s failure to contest petitioner’s claims denies his ability to contest the defaulted claims at any time in the future of the case; and the AG “shall not be heard.” See W.R.A.P. Rule #7.11; W.R.C.P. Rule 55 (a); W.R.A.P. Rule 203; and Wyoming Uniform Rules of the District Court Rule 203. The AG’s false information claiming there was no contract went uncorrected by the court despite the evidence and arguments verifying the deliberate inaccuracy of the AG’s statements.

19. Wyoming’s choice to ignore their rules in this case, like so many other cases against the State, shows the rules in Wyoming really do not have any purpose other than to unfairly bias the courts against anyone suing the State. The courts may not discriminate; but MUST administer justice fairly and impartially, see the 5<sup>th</sup> & 14<sup>th</sup> Amendments and Article 1, §8, Wyoming Constitution (§8). **The courts are servants of justice and justice alone; not politics;** yet in Wyoming, politics trumps everything including justice. A court that serves politics is nothing more than part of the prosecution and not a court of justice; and it destroys the public’s faith in the court system. In the immediate case, the Wyoming judges chose to show preferential treatment and bias in favor of the AG instead of pursuing justice. Petitioner had a right to have his grievances heard by an unbiased tribunal to ensure justice was served.

**ADA**

20. Petitioner is mentally handicapped due to autism, numerous documented serious head injuries and one heatstroke. The autism alone has been ruled to disable a litigant sufficiently that

they NEED the assistance of counsel in litigious matters. The State of Wyoming as a whole (WDOC and courts) have refused to provide Petitioner with assistance to ensure he has the benefit of the programs and services thereto attached, in direct violation of the ADA, which requires the insurance of equal access to those with mental handicaps. This has prevented due process and has prevented Petitioner from realizing justice in the grievances he has presented to the courts as well as the Conduct Violation Report (CVR) hearings he has attended. Conversely, the CVR's have resulted in MANY unconstitutional convictions, especially in relation to Petitioner's signature (1<sup>st</sup> Amendment Violations). Petitioner has experienced a pattern of ignoring what has been presented and the provision of arbitrary rulings against him despite any amount of evidence he presents that supports and in many cases definitively proves his claims.

21. The DOC has endeavored to further obstruct access by increased handicaps of removing his legal files, the obstruction to his computer access, mail delays of his filings, and obstruction of access to finances to print, copy and mail filings. Furthermore, by and through the illegal and unconstitutional requirement that Petitioner change his signature to match the unwanted alias forced upon him (fraud and 1<sup>st</sup> Amendment violation) in Wyoming, the DOC denied Petitioner notary services for a very long time and only recently allowed him these services.

**Courts Not Open To All**

22. §8, mandates court access to indigents to prevent the "sale" of justice. Therefore, Wyoming **MUST** legislate a method of indigents suing the State if officials violate the law and/or rights of people. The refusal to docket Petitioner's filings until after he paid the filing fees when he was indigent and had to borrow the money **is** blocking court access to an indigent; **justice sold**. Thus, the denial of Petitioner's filings violated §8. Petitioner filed his Complaint in the 2<sup>nd</sup> DC. Judge Snyder denied Petitioner's IFP based upon Wyoming Rule 2.09(b), while ignoring Petitioner's verification of indigence and inability to pay the filing fees with a supporting affidavit as

required under §1915. The WSCt committed the same offense.

23. The Wyoming courts based their violation of the Wyoming Constitution on an inaccurate interpretation of this Court's ruling in *M.L.B. v. S.L.J.*, 519 U.S. 102, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996). In light of the Wyoming courts' using this Court's ruling to justify a total denial of access to indigent civil litigants, Petitioner MUST ask "is this Court instructing the lower courts to deny access to the courts to indigents or are the courts accessible to all **without** sale as the Wyoming Constitution mandates and is *due process* available to all as the US Constitution mandates?" The courts made blanket statements that *IFP* **WILL NOT** be granted in civil cases referencing this Court's ruling in *M.L.B.* as the foundation for W.R.A.P. Rule 2.09 (b), prohibiting *IFP* in non-parental rights civil cases. Initially *IFP* was designed to allow indigents to gain redress of civil claims and later expanded to include criminal cases, making it odd that a blanket rule would be created to prevent indigent redress of grievance under *IFP*.

**Wrong Caption**

24. Cases #22-168 & #22-169, were the protagonists for WSCt cases #S-23-0119 & #S-23-0120 were docketed as "*Andrew J. Avitable v. State of Wyoming*." A subtext of "(Larson under coercion only)" was written under "Andrew J. Avitable." Every filing Petitioner submitted was captioned in this manner as were the court's original documents to Petitioner and the AG's original waiver of service. There never was a motion to change the captions and Petitioner was not contacted prior to changing the captions as required under Wyoming's Court Rules. These Rules indicate a caption can only be changed if all parties of the case are in agreement.

25. The AG only referenced irrelevant arguments in his "Motion to Dismiss" with the erroneous captions of "*Andrew J. Larson v. State of Wyoming*". The DC adopted the AG's inaccurate captions and the WSCt perpetuated the problem despite all Petitioner's filings having the original captions and his notification of the errors in the captions. These cases were changed

to appease the AG instead of the AG complying with what was docketed. Technically, everything occurring after the AG changed the captions, invalidated those actions because they did not reference the cases that were filed and originally docketed at bar. The WSCt refused to address this matter and dismissed the cases after 1) Petitioner paid the docketing fees and 2) the cases were docketed as WSCt Case #S-20-0119 & #S-23-0120 without addressing the merits.

#### Unconstitutional Bias

26. Wyoming Courts showed they are unconstitutionally biased in favor of the State by: 1) rubber-stamping the AG's erroneous filings with irrelevant arguments and do not address the claims presented; 2) adopting the AG's inaccurate caption without following the court's own rules; and 3) regularly granting the AG Default Judgments even if the Petitioner is delayed due to state obstruction, while refusing to hold the AG to the same rules. Furthermore, the Wyoming Courts showed bias by refusing to allow Petitioner to contest the AG's inaccurate claims in the 10 days response time the rules gave Petitioner and arbitrarily changing the caption of the case to appease the AG without even contacting the Petitioner, after the case had been docketed in the manner as it was filed. Wyoming Courts regularly ignore the actual filings of the *pro se* litigants and inmates by rubber-stamping the AG's contention when the State is a defendant.

#### Eric Alden Quote

27. January 19, 2011, 7 years before Mr. Alden's retirement in 2018, Public Defender's Office (PDO) Senior Assistant Appellate Counsel Eric Alden (Mr. Alden) wrote the following scathing indictment about the Wyoming courts to Inmate Donald Daves (DOC #26527), (appended):

"I would like to offer you some hope but find that difficult to do with any honesty. We call this a justice system because that makes people feel good and believe that this country is something special. In fact, it is simply a punishment system. ¶ In my experience with the Wyoming Supreme Court, which is fairly extensive, they will do anything to avoid overturning even the smallest conviction. This attitude is similar to the Wyoming Legislature which will do anything possible to cause people to be convicted, incarcerated or worse. This attitude is derived from the Wyoming voters who will elect anyone who tells them

that people are evil. (They think this means *other* people until they find out, too late, that it meant them.) The motives for these three groups are fear of being voted out of office by the court, hatred and narcissism by the elected officials and stupidity by the voters." (Emphasis added).

28. Mr. Alden closed with: "I just have no faith that the Court has the moral courage or intellectual integrity to do the right thing." These are not Petitioner's words; they are the words of a high ranking Wyoming Official from the PDO that is crucifying the WSCt and State courts in general as a whole. Now, Petitioner, in compliance with his Oath to protect the United States, her people and her Constitution against all aggressors, foreign and domestic, is trying to protect other Americans (as he swore to do – military & law enforcement) from unconstitutional convictions, hoping Your Court will see and correct the appalling and reprehensible behavior .

#### **Failure to Follow the Court's Rules**

29. The DC ignored several court rules and the trial by jury request Petitioner filed, contrary to Wyoming Constitution Article 1, §9. The DC also ignored the rules by changing the caption (discussed above) without addressing it with the Petitioner prior to making the change and assuring that all parties to the action were in agreement to the change as the rules require.

30. It appears the rules only apply when they will negatively affect cases against the State and don't apply to the AG. The Wyoming Courts have been stated to be corrupt by citizens, defendants and even court officers (see Alden Letter). This is destroying the Public's confidence in the judiciary, which is being eroded by irresponsible and improper conduct by judges in Wyoming. The improprieties are undermining the legitimacy of their decisions and giving the appearance they have no integrity. The unjust decisions occurring in Wyoming are tearing-away at the foundation and integrity of the United States Court System.

#### **None Above The Law<sup>3</sup>**

31. "No man is above the law. No officer may set that law at defiance with impunity. All

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<sup>3</sup> Most of this section is from *Cooney v. Park County*, 792 P2d 1287; 1990 Wyo. Lexis 43; and *Gonzagowski v. United States*, 495 F Supp 3d 1048; 2020 US Dist Lexis 158598. (Excerpts from both are appended).

officers, from the highest to the lowest, are bound to obey it." *Harlow v. Fitzgerald*, 457 U.S. 800, 814, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982) (See also *Butz v. Economou*, 438 U.S. 478, 507, 98 S. Ct. 2894, 57 L. Ed. 2d 895 (1978)) and its progeny should be read to deny qualified immunity to officials who violate the Constitution if they knew their conduct was unconstitutional, or if a reasonable official acting in the same circumstances would have recognized the unconstitutionality of that conduct. Officials deserving protection from "insubstantial lawsuits," should be protected, but officials may not violate the US Constitution or transgresses a clearly established constitutional rule. Sin[c]e an unconstitutional act, even if authorized by statute, was viewed as not authorized in contemplation of law, there would be no immunity defense. The "law in its majesty. . . [cannot] be equally slimy." The doctrine of sovereign immunity rests on the fictional premise that the "King can do no wrong. "It is argued by scholars that the expression "the King can do no wrong" originally meant "that the king must not, was not allowed, not entitled, to do wrong[.]" "[T]his maxim was misunderstood even by Blackstone and Coke. . . The maxim meant the King was not privileged to do wrong. If his acts were against the law, they were *injuriae* (wrongs)." "[T]he king, as the fountain of justice and equity, could not refuse to redress wrongs when petitioned to do so by his subjects."

32. "The prohibitions of the 14th Amendment are directed to the States, and they are restrictions/prohibitions of state power. "No State shall make or enforce a law which shall abridge the privileges or immunities of citizens of the United States, \* \* \* \* nor deny to any person within its jurisdiction the equal protection of the laws." Wyoming's arbitrary grant of immunity to officials regardless of whether their actions abrogate immunity or not is a cancerous dehabilitation of the court system and society; bringing embarrassment upon the entire institution. As a result, our basic rights under the US and Wyoming Constitutions have sustained

a continued barrage of attack. Wyoming's view of immunity, which is more absolute than that in England at the time of the Revolutionary War is inapposite in the American legal system

33. If an action would subject a private citizen to liability, the discretionary function exception should not insulate officials for the same action. No denial of protection of state constitutions to citizens by the state judiciary can be justified under our oath and judicial responsibilities; there is no justification. Violations of "clearly established rights" should be evaluated and abrogate that immunity. Actions like this have led defendants and *pro se* litigants in Wyoming to feel the Courts have unconstitutionally placed the Officials "above-the-law" resulting in MANY improper dismissals of cases against Wyoming where the officials deliberately violated law, constitutions and rights of the citizens. The officials are unjustly granted immunity and then cases are dismissed for a failure to state a claim based upon that misappropriation of immunity, despite arguments abrogating qualified immunity. This has occurred in the State Courts and Wyoming Federal DC, with the 10<sup>th</sup> Circuit Court of Appeals refusing to correct the injustices. The "Good-Ole-Boy" State seems to own the in-"just-us" system.

#### Unconstitutional Statutes

34. "This Court has repeatedly stated . . . that absent a clearly expressed congressional intention to repeal, [a]n implied repeal will only be found where provisions in two statutes are in irreconcilable conflict, or where the latter Act covers the whole subject of the earlier one and is clearly intended as a substitute." Petitioner shows clear irreconcilable conflicts between Wyoming Statutes, the DOC's policies and actions in comparison with the U.S. & Wyoming Constitutions, Federal Law and Federal Courts' rulings, including this Court's precedents. **Nobody is "Above The Law."** However, W.S. §25-1-105 & §7-14-103(a & d) divest jurisdiction from all courts to prevent officials from being held accountable. These two laws are unconstitutional and illegal, mandating their repeal or rewriting. These statutes cause court bias

against inmates; and violate the U.S. and Wyoming Constitutions' supremacy clauses. They offend "The Law Of The Land" and violate Wyoming Constitution Article 6, §20. Supporting rulings violate judicial oaths of office to "support, obey and defend the constitution of the United States, and the constitution of the state of Wyoming."

**W.S. §25-1-105**

35. The DC used W.S. §25-1-105 to deny Petitioner's lawsuit for rights violations. This statute, in its verbiage, states it applies to inmates housed outside of Wyoming. It was never intended to apply to inmates in Wyoming. Not only is the statute facially unconstitutional, but its regular application to inmates in Wyoming is unconstitutional; needing it to be repealed.

**W.S. §7-14-103**

36. Attempts to overturn illegal convictions are usually obstructed via W.S. §7-14-103. W.S. §7-14-103(a)(i) and §7-14-103(a)(iii) prevent defendant's from being able to get their convictions overturned regardless of the circumstance. If you fail to raise the claim it can no longer be raised pursuant to §7-14-103(a)(i) and if you raise the claim and the court provides a blanket denial stating it was decided on its merits without actually addressing the merits, it can no longer be raised pursuant to §7-14-103(a)(iii). This statute makes it impossible to overcome this obstruction in violation of the 1<sup>st</sup> Amendment Right to court access, 5<sup>th</sup> Amendment Right to *due process* and Article 1, §8 right to court access of the Wyoming Constitution.

**W.S. §6-2-311**

37. Petitioner's acquiescence to the plea contract was accomplished through the false claim that he was already guilty because W.S. §6-2-311 (established in 1982) states: "Corroboration unnecessary. Corroboration of a victim's testimony is not necessary to obtain a conviction for sexual assault.", eliminating the need for a trial as a person is guilty once accused and no evidence can overcome that unconstitutional presumption of guilt, making a trial a waste of the taxpayers' money. All are guilty except the politically connected who get off on technicalities.

The foundation of the US Court System is the presumption of innocence until proven guilty.

**W.S. §6-2-602**

38. Petitioner was victimized in three PREA events while incarcerated in the DOC. In the second event, another inmate kept committing a third degree sexual assault against Petitioner while DOC staff watched and laughed. Petitioner had no choice but to try to protect himself because the DOC failed and refused to protect him from these repeated sexual assaults. After a month Petitioner lost his temper and warned the perpetrator that if he rubbed his genitals on Petitioner again or tried to touch him “like that again” (referencing petting and attempts to fondle Petitioner’s buttocks and genitals), Petitioner would knock him out. DOC staff immediately filed a CVR against Petitioner and found him guilty of “making threats.” Petitioner only warned the perpetrator of the repercussion of continued sexual assaults; the least amount of force necessary to stop the assaults (see W.S. §6-2-602(a, e, & f)) when the DOC staff refused to protect him.

39. W.S. §6-2-602 (a & e) provides no duty to retreat if the least amount of force to protect is used. It does not address sexual assault, but the 2<sup>nd</sup> Amendment allows everyone to protect themselves. Most jurisdictions allow “deadly physical force” to stop sexual assaults. Petitioner only used a verbal warning. The DOC punished Petitioner for protecting himself when they refused to do so; they did NOTHING to punish the perpetrator or to prevent further assaults. This CVR caused Petitioner to be transferred to the maximum custody facility, in a pod with an inordinate number of homosexual inmates and the third PREA event. This is an unconstitutional application as only select people can use this defense. The WSCt refused to address the issue.

**Unconstitutional Court Rules**

40. Petitioner presented unconstitutional WDOC Rules in his initial complaint, which is discussed in depth in the section regarding the WDOC trying to force changing his signature.

**Overt Judicial Bias**

41. Some Wyoming Court Rules are facially unconstitutional and others are unconstitutionally

applied. Courts are required by the Constitution to be fair and equitable, to uphold the Constitution; this is “*due process*.” A fair and equitable court must apply all the rules and laws indiscriminately. Courts MUST treat litigants equally, including the State’s Attorney, who in Wyoming, does anything he/she wants with impunity while *pro se* litigants are held to a higher standard; a bias for the State. Wyoming Courts and attorneys (defense and appellate) help the State win cases that the State would otherwise lose.

**42.** When Petitioner learned Judge Snyder was biased against him, he filed a “Motion for Recusal for Judicial Bias” quoting numerous cases, that Judge Snyder never addressed; she avoided the motion entirely. In that Motion Petitioner provided 14 claims showing how Judge Snyder was biased and quoted numerous case laws supporting his contentions. A biased judge erodes the public’s faith in the judiciary and brings shame upon the entire institution. Judge Snyder’s bias created a structural error making the Court incomplete (2 prosecutors and no unbiased trier of the facts). Structural errors deserve careful, individualized attention. This Court stated that “certain structural errors undermining the fairness of a criminal proceeding as a whole . . . require[] reversal without regard to the mistake’s effect on the proceeding.” (See *US v Dominguez Benitez*, 124 S. Ct. 2333, 2339 (2004)). In light of the inconsistent application of existing recusal standards, a new recusal approach is needed that will apply uniform rules to all areas of judicial impropriety. Protections against abuses of judicial bias are necessary safeguards (See *Id.* at 409-10 (quoting *Stockwell v. Township Bd.*, 22 Mich. 341, 350 (1871))).

**43.** On June 15, 2023, after his case ended, Petitioner sent Judge Fox a letter, not ex parte communication because the case had concluded on June 6, 2023, which the Clerk of Court responded to on June 29, 2023. Petitioner’s very blunt<sup>4</sup> letter confronted Judge Fox on her

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<sup>4</sup> Autistic people tend to be blunt due to their autism and what they say should be taken on face value because they do not comprehend metaphors or “beating around the bush.” Autistics do not have the capacity for veiled comments

“abandonment of “JUSTICE” to serve “JUST US” (POLITICS)” … “because a “Justice” would serve “JUSTICE.”” Petitioner, a person who daily placed his life in danger to protect the rights of other people and the Constitution very painfully stated: “Your actions are leading me to believe that, in Wyoming, the United States and Wyoming Constitutions have less value tha[n] toilet paper because at least toilet paper will clean you and the Constitutions have absolutely no purpose or value in Wyoming.” Petitioner stated: “I hope you DO realize that violating your oath of office is, pursuant to the law, an act of TREASON that the feds should prosecute.” Also: “THIS COURT’s choice to disregard the evidence and filings to merely “rubber stamp” the AG’s contentions nauseates me and should repulse the Nation as a whole.” He closed with: “HOW DARE YOU take financial payment from the American Taxpayers and the Wyoming Taxpayers as a salary when, as documented in these cases of mine, you are using your position as a judge to cover-up the criminal activity within the Wyoming Department of Corrections and the Wyoming Court System.” This is possibly why Mr. Alden said: “I just have no faith that the Court has the moral courage or the intellectual integrity to do the right thing.”

**44.** The WSCt had just violated its own rules, standing precedents and the law by allowing the DOC to obstruct Petitioner’s access, refusing an indigent litigant access to the courts and rejecting Petitioner’s filing without addressing the merits of any of his arguments after the case was docketed. The court sent Petitioner’s \$140.<sup>00</sup> filing fee for each of the two cases (\$280.<sup>00</sup> total) back but kept the \$100.<sup>00</sup> fee for each of the two cases (\$200.<sup>00</sup> total – Grand total of \$480.<sup>00</sup>) for preparing the case despite refusing to adjudicate the case.

**45.** If the US Constitution and Wyoming Constitutions really do not have any value, what is

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and tend to say exactly what they mean. Autistic people openly state their intent. Petitioner’s statements in his letter to Judge Fox were a statement of disgust for her abandonment of performing her duties in compliance with the law and courts’ rules. Mr. Avitable believes that ANY official who disregards the law should be removed from office and replaced with someone embracing integrity.

the purpose of them? The Constitutional Contracts are what grants the government permission to govern over the people and if the government breaches the Constitutional Contracts, what right does the government have to govern over the people? That is why the Constitutional Contracts **MUST BE PROTECTED** and why Petitioner, along with so many military and law enforcement personnel, swore an oath to protect the United States, her people and her Constitution against all aggressors, foreign and domestic; and even lay down their lives for her. If the courts refuse to protect the rights secured by them, what are all these people giving their lives for, a fairy tale? If the people cannot get someone to open their eyes to the corruption in Wyoming that is perverting the court system, this Country as a whole is already lost and Petitioner is wrong for opposing the riots that have been occurring.

46. “Andrew J. Avitable” filed Cases #22-168 & #22-169 not “Andrew J. Larson.” They were docketed, paid for, and litigated by “Andrew J. Avitable.” The DC’s improper decision had the wrong caption. All Petitioner’s filings were captioned as “Andrew J. Avitable;” thus, the case has technically never been adjudicated. The merits of his claims have not been addressed. Judge Snyder and Judge Fox showed an unconstitutional bias against Petitioner, making their decisions infirm. The US Constitution required Petitioner have an unbiased trier of the facts, which never happened. This is a primary tenet of the court system in the United States that first year law students learn. Deviating from the American System of Juris Prudence is inexcusable.

47. The Prosecutor, State’s Attorney, Attorney General, and the courts (all court officers), have the duty to preserve and serve justice over winning cases. It is a violation of their oath of office, which promises to uphold the Constitution, to abandon justice for a win (treason?). They MUST promote justice in all cases and protect the public’s perception of the courts integrity. Failure erodes the public’s confidence in the judicial system.

48. Petitioner references the *Rhodes* and *Dahl* cases to support his claims and show the systemic problems. Petitioner's writ-writer helped Mr. Bindner (See 6th DC Case #CR-009864; WSCt Case #S-22-0295.) prepare his "Motion for Strike Pursuant to W.R.A.P. Rule 7.11(b) and Failure to Object by Appellant's Counsel", addressing the unfair application of the rules and how the trial court was allowing the DA to circumvent the rules and penalties for violating those rules. The writ-writer wrote:

If a rule exists, it MUST exist for a purpose. If the State's attorney can neglect to file a timely response and then merely read it into the record, then Rule W.R.A.P. 21(a) has no value or purpose for its existence; nor does W.R.A.P. 7.11(b). We know this is impossible or the courts and authorities creating these rules would not have wasted their time and the taxpayers' money for doing so. The penalty for failing to respond in a timely manner is not being able to respond at all and defense litigants are regularly held to this standard. Failure to timely respond results in the defense litigants not being heard; therefore, since the Court must provide an equal and fair adversarial testing ground with an unbiased trier of the facts, then Rule 7.11(b) MUST have a value and purpose. Thus, the State's attorney had absolutely no right to be heard in the hearing and his verbal statements on the record in which he circumvents the penalty for a failure to timely respond MUST be stricken from the record and not considered when a decision is made.

49. The DC and WSCt showed bias and provided unreliable decisions that violate the laws, rules and standing precedents. Wyoming has been allowing politics to rule over justice. The state courts actions have been bleeding over into the federal courts. These violations of defendants' rights need to stop. Arbitrary rulings by the State Courts based upon their mood or politics cannot continue. It makes a mockery of justice and the court systems. The AG asked the courts to dismiss the cases without addressing the merits and the courts did so without a second thought. Now, Petitioner asks this Court to correct the injustices done by ruling his contract was breached and the Wyoming courts provided an unjust ruling on the matter.

**Rule 48 – Speedy Trial**

50. The State of Wyoming had 180 days from Friday, January 21, 2005 to prosecute Petitioner, making the deadline Wednesday July 20, 2005. Defense Counsel coerced Petitioner to submit a

conditional waiver of speedy trial on Tuesday, July 19, 2005 (day 179), knowing that her client was actually innocent and would have to be released with prejudice the following day. This conditional waiver of speedy trial granted Wyoming another 60 days to prosecute Petitioner, making the new deadline Saturday, September 17, 2005. Defense counsel did not succeed in coercing Petitioner to accept the unwanted guilty plea until Wednesday, October 12, 2005, 25 days after Wyoming was required to have released Petitioner with prejudice. The Change of Plea Hearing did not occur until Friday, October 14, 2005, making the State guilty of missing their new deadline by a total of 27 days; and if one acknowledges Defense Counsel's action as an act of the State violating Mr. Avitable's rights, which it is, 87 days past the deadline because Defense Counsel should have kept her client's interest at the forefront of her actions. Therefore, Defense Counsel knowingly coerced Petitioner to accept a guilty plea after the State already had to release him and could not prosecute him. The case was already won by defense and Defense Counsel successfully violated Petitioner's right to a defense counsel by acting as a second prosecutor and insuring a conviction of an innocent man for the State, divesting the trial court's jurisdiction over the case; violating his rights and offending justice.

**51. W.R.Cr.P. Rule 48 IS unconstitutional** on its face and in its application; and has effectuated MANY illegal convictions. Furthermore, when the speedy-trial clock has been violated and the defendant is finally coerced to accept an unwanted guilty plea, the WSCt says that plea eliminates the speedy-clock violation, making it unavailable for the defendant to argue to gain redress. This is also unconstitutional in that once the speedy-trial clock has expired, the State should be mandated to release the defendant and the charges dropped with prejudice so the defendant can live at peace.

**52.** Rule 48(b)(7) also states: "A dismissal for lack of a speedy trial under this rule shall not bar the state from again prosecuting the defendant for the same offense unless the defendant made a

written demand for a speedy trial or can demonstrate prejudice from the delay.” This part violates double jeopardy as the defendant is again placed in jeopardy. A look at *Rhodes*, *Ortiz*, *Mascarenas*, and *Strandlien*, (In Affidavit) shows the WSCt flip-flops its decisions at will. This Court has established the Barker analysis with its 4 parts; however, when Wyoming applies this analysis, instead of obligating the State to prove the delays were reasonable and necessary, the defendant is stuck proving they were not. The Reasonable Doubt Analysis, the Barker Analysis, the Self Defense Analysis and the Qualified Immunity Analysis are switched in whom is obligated to make a case proving they apply and the defendant is finding themselves having to prove their innocence, which is not presumed; prove the State Actors are not immune; prove the delays are not reasonable and necessary; and prove that they had no choice but to defend themselves. This not only violates the United States and Wyoming constitutions, but also the United Nations Charter the United States signed into after World War II.

**53.** Wyoming regularly restarts the speedy trial clock to retry defendants after successful appeals. This violates the speedy trial protection; the State wasted the 180 days frivolously prosecuting a case to an unconstitutional conviction and restarts the process; violating double jeopardy. The defendant is punished for the State violating the rules and laws to accomplish the unconstitutional conviction and should not be punished again by another pretrial incarceration. What stops the State from repeatedly re-prosecuting defendants until their resolve is broken and they accept an unwanted plea? What stops the State from refusing to apply the pre-trial confinement incarceration to the sentence from multiple prosecutions the way they have refused to apply the court ordered pre-trial incarceration credit to Petitioner’s sentence, increasing the sentence beyond the statute and plea contract.

**54.** In the past, grade-schools taught children the basics of their Constitutional rights. They were taught the rights existed and the bare minimum of what they were. The concept of what a

“speedy-trial” was did not get explained. This information is taught in law school. Eventually the grade-schools stopped teaching this and only mention its existence without explaining what it means. Most citizens have no idea what a “speedy-trial” is, if they know it exists at all. In Wyoming, defendants MUST DEMAND speedy-trial for the State to acknowledge the right exists. Most standards are based on a “reasonable person’s” understanding. A reasonable person would not know they have to demand a speedy-trial, so how can defendants be expected to demand a speedy-trial for that Constitutional Right to be protected? If the right is violated without the defendant demanding it, Wyoming convictions cannot be overturned for the violation. Worse yet, if a Wyoming defendant is finally coerced into accepting a guilty plea after that violation, the argument of the violation is lost. This is unreasonable; the right was intended to prevent one from being held in custody indefinitely, or until their resolve is broken and they are coerced to abandon rights through a guilty plea without knowledge of what those rights are.

**55.** Only attorneys, judges and ex-cons know what a speedy-trial means and how to protect it; Therefore, the judges, who are the custodians of the rights of the people and commissioned to protect those rights; and the attorneys, who are obligated under the Constitution to serve justice and their client’s best interests, should be the ones who have the duty to protect the rights of defendants and ensure compliance. The right to a speedy-trial is not a right that the individual states have statutorily created for defendants, **IT IS A RIGHT GUARANTEED BY THE US CONSTITUTION**; so this right should be enforced automatically.

### **Closing**

**56.** Wyoming places itself above the law with immunity from prosecution through statutes, rules and inconsistent court rulings that all violate the Constitution. Wyoming renders inconsistent rulings in its courts to allow a win or loss supported by decisions that are convenient

for them based upon what is most convenient that day. Wyoming established laws to ensure convictions of anyone who is not politically connected regardless of guilt or innocence. The Wyoming officials continue to violate the law and Constitutions with impunity.

57. Wyoming wants the contract to exist when convenient for them (during Petitioner's appeal and collateral attacks); but not when inconvenient (during his Complaint for Breach of Contract). The State "cannot have it both ways." *United States v. Rylander*, 460 U.S. 752, 758 (1983) states: "Hence the truism that a privilege cannot be used as both a shield and a sword. The non-legal equivalent of that truism is equally to the point: "You can't have it both ways." "Chameleon" like application of the law is prohibited. (See *US v. Efrain Santos and Benedicto Diaz*, 553 US 507 (2008)). Wyoming entered the contract with Petitioner and MUST be held accountable to that contract like they held Petitioner accountable to the contract when he was contesting the unconstitutional conviction. Wyoming's breaches of this contract are material and demand a ruling in Petitioner's favor to correct the violations of his rights under that contract and the law. Contract Law and plea contract entitles a defendant to the rights created by that contract.

58. Petitioner repeatedly attempted declaratory relief with NO success; making it unavailable.<sup>5</sup> Declaratory relief was frustrated by the disregard for justice in Wyoming and its contradictory rulings and laws. The Wyoming Court Rules that violate the US and Wyoming Constitutions MUST BE CHANGED and brought into compliance; and must be evenhandedly applied, not arbitrarily or capriciously."<sup>5</sup>

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<sup>5</sup> See *Beaird*, 145 F.3d at 1169; *Sanders v. Southwestern Bell Tel.*, LP, 544 F.3d 1101, 1111 (10th Cir. 2008); *Whittington*, 429 F.3d 986, 994 (10th Cir. 2005); and *Coleman*, 869 F.2d 1377, 1383 (10th Cir. 1989), cert. denied, 110 S. Ct. 1835 (1990); and *HB Fam. Ltd. P'ship*, 2020 WY 98, ¶ 33, 468 P.3d at 1091 (quoting *Tayback*, ¶ 13, 402 P.3d at 988 (Wyo. 2017). "An agency's rules and regulations "have the force and effect of law, and an administrative agency must follow its own rules and regulations or face reversal of its action." See *MB*, 933 P.2d 1126, 1130 (Wyo. 1997); see also *Tayback*, 402 P.3d 984 (Wyo. 2017); *Wilson Advisory Committee*, 292 P.3d at 862, quoting *Northfork Citizens*, 228 P.3d 838, 848 (Wyo. 2010) (other citation omitted). We interpret administrative regulations as a matter of law using our wellknown rules of statutory construction. See *U.P. R. Co.*, 67 P.3d 1176, 1183 (Wyo. 2003). An agency regulation that is legislative in nature is encompassed by the Ex Post

59. State may not avoid the strictures of the constitution. (See *ACLU of N.J.*, 84 F3d 1471, 1477-78 (3d Cir 1996)(quoting *City of Cleburne*, 473 U.S. 432, 448 (1985)). State law, rule, policy, or statute violating the Constitution and/or Federal Law is unenforceable. (See *Colo. Dep't of Pub. Health & Env't*, 693 F.3d 1214 (10th Cir 2012); *Cleburne*, *supra*.) Any inconsistently applied policy cannot be enforced. (See *Sanders* and *Whittington, Infra*.) Policy that violates the Constitution is unlawful, notwithstanding that it may promote the will of the majority and be consistent with state law." (See *Huertas*, 2006 US Dist Lexis 73157; and, 520 U.S. 397, 404-07 (1997)).

60. Wyoming Constitution Article 1, §2 states: "**Equality of All.** In their inherent right to life, liberty and the pursuit of happiness, all members of the human race are equal." The Wyoming Constitution grants the rights bestowed on the general public to the inmate population; with the exception of those compromising the proper function of correctional facilities, while the CO's say the inmates have no rights. Some rights in the Wyoming Constitution are in the US Constitution, and provide more protection than their federal counterparts, such as the freedom of speech and the freedom of religion. Yet the WSCt ignored this Court's rulings on the matter and its own rulings. The 1<sup>st</sup> Amendment of the U.S. Constitution prohibits the creation of a law abridging: the freedom to petition the government for a redress of grievances, making W.S. §25-1-105, and §7-14-103 unconstitutional, as they denied Petitioner redress of his grievances.

61. Previously, the WSCt has stated: "We review the constitutional issue de novo." *Dugan v. State*, 2019 WY 112, ¶ 52, 451 P.3d 731, 746 (Wyo. 2019) (citing *Kramer v. State*, 2012 WY 69, ¶ 18, 277 P.3d 88, 93 (Wyo. 2012)); and "Constitutional errors are presumed prejudicial, unless this Court is convinced the error was harmless beyond a reasonable doubt." *Anderson v. State*,

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Facto Prohibition because a legislative body "cannot escape the constitutional constraints on its power by delegating its lawmaking function to an agency.'" *Smith*, 223 F.3d 1191, 1193-94 (10th Cir. 2000).

2014 WY 74, ¶ 17, 327 P.3d 89, 94-95 (Wyo. 2014) (citing *West v. State*, 2013 WY 128, ¶ 12, 311 P.3d 157, 160 (Wyo. 2013)). However, in the immediate case, those were not applied.

**62.** “No more than an affidavit is necessary to make a *prima facie* case.” (See *United States v. Kis*, 658 F.2d 526, 536 (7th Cir. 1981); Cert. Denied, 455 U.S. 1018, 102 S. Ct. 1712 (1982)). “Citing federal cases should constitute a fair presentation of Constitutional claims.” (See *Prendergast*, 699 F.3d 1182 (CA 10, 2012)). “State courts must enforce federal laws and protect constitutional rights.” (See *Scarpa v. Dubois*, 38 F.3d 1 (1st Cir. 1994), cert. denied, 513 U.S. 1129, 115 S. Ct. 940, 130 L. Ed. 2d 885 (1995)).

**63.** Many anomalies<sup>6</sup> in Petitioner’s case divested the trial court of jurisdiction before the plea contract was signed, invalidating the plea contract. Petitioner remained faithful to that contract despite his displeasure with it and actual innocence. The PDO attorney knew about the anomalies and chose to coerce a guilty plea instead of defend her client. Wyoming breached the contract on MANY instances causing material breaches that leave the only remedy a ruling of Breach of Contract and compliance with Contract Law. Many of the anomalies violate the 8<sup>th</sup> Amendment.

**64.** Wyoming Constitutional Article 1, §37 states: The State of Wyoming is an inseparable part of the federal union, and the constitution of the United States is the supreme law of the land. WSCt, rulings parallel the U.S. Supreme Court’s rulings on the matter. Now, Wyoming ignores the mandates that imposes on them.

**65.** The breaches violate Petitioner’s plea contract, statutory and Constitutional provisions, breaching the Constitutional Contracts. To justify, the DOC changed its policies 7+ years post facto. State Judges closed their eyes to the violations of Petitioner’s plea contract and rights. The claims presented were justiciable for a Breach of Contract Complaint as Petitioner and Wyoming were, and still are in contract. The decisions violate Contract Law to allow the State win.

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<sup>6</sup> An inconclusive list of the anomalies and breaches in this case is appended to this Petition.

**WHEREFORE**, Petitioner prays this Court will grant his Petition for Certiorari. He also prays this Court will order the Wyoming courts to stop showing bias and provide any other appropriate relief. Petitioner would prefer this Court rule on his Complaint to avoid a further waste of the taxpayers' money, but understands this Court is very busy and may not have the time for this. Petitioner just does not believe the Wyoming Courts are capable of providing justice anymore and asks that if this Court remands the case, it do so to an un-conflicted court.

**Declaration Under Penalty Of Perjury**

I declare under penalty of perjury pursuant to W.S. 6-5-301; 28 USC 1746; 18 USC 1621 that the above information contained in the foregoing Petition is true and correct to the best of my knowledge. The use of a Notary Public is only used as a means of properly identifying me as the signatory.

I therefore place my hand as seal upon this document on the date below.



Sincerely,

Andrew J. Avitable o.s.b., tert.  
il Marchese di Monte Bianco

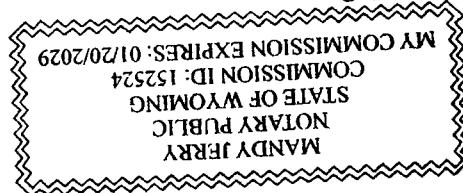


**Note:** Prepared *pro bono* under *Johnson v. Avery*, 383 US 483, 490 (1969) (prisoners may assist other prisoners with petitions to the court).

**WITNESS TO THE HAND AND SEAL**

Subscribed and sworn to as being true under the penalty of perjury pursuant to W.S. 6-5-301; 28 USC 1746; 18 USC 1621 by: Andrew Joseph Avitable (known to the WDOC as "Andrew Larson" against his wishes), before me this 28 day of December, 2023. Said individual satisfactorily demonstrated to be the individual whose signature is subscribed hereon, and solemnly affirmed that he has firsthand knowledge of the facts contained herein and that the facts are true, correct and complete to the best of his knowledge, understanding and belief.

State of Wyoming )  
 ) ss.  
County of Weston )



Mandy Jerry  
Notary Public

1/20/29  
My commission expires