No. 24-5701

IN THE

SUPREME COURT OF THE UNITED STATES

YARITZ, Harold David — PETITIONER
(Your Name)

vs.

Department of Corrections et all — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Appellate Court for the Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

YARITZ, Harold David
(Your Name)

1101 Linden Lane
(Address)

Faribault, MN 55021
(City, State, Zip Code)

n/a
(Phone Number)

QUESTION(S) PRESENTED

1) How can a legal system in "the Land of the Free" side by superficial reasoning with officials who abuse their power of authority to repress others of their Constitutional rights instead of following their ethical obligation to apply true justice? Is this not what "an attack on democarcy" is all about?

2) How can the District Court claim that the document titled "2nd Amendment of Complaint" (instead of "Second Amended Complaint") supersedes the original complaint when it is per dictionary a CORRECTION (or clarification), and not a change in the complaint in itself which Rule 8 only addresses?

3) How can the District Court and the US Appellate Court dismiss a serious complaint by instead of looking at the serious issues brought forward in the original complaint only considering the "2nd Amendment of Complaint" which
   a) is obvious to any layman only an intended clarification of Defendants, and
   b) which the District Court never accepted in the first place as it did not add the State of Minnesota as a defendant as requested in the "2nd Amendment of Complaint"?

4) How can the District Court ignore Petitioners original complaint when
   a) it advised Petitioner that an "AMENDED COMPLAINT" would supersede the original complaint, whereof
   b) Petitioner drafted a "2ND AMENDMENT OF COMPLAINT" to only clarify defendants and their role named in the original complaint?

5) How can a legal institution designed to uphold the law allow, and even participate in derogatory measures (going negative when the opponent cannot be beat by standing out has become in American politics quite the norm) to defame the complaint about a serious violation of Constitutional rights by discrediting the Petitioner by his conviction that has nothing to do with this complaint?

6) How can any legal authority (here Attoney General Corinne Wright; specifically one of the six institutions of the DOC namely Faribault; AND the District Court) treat specific convicts differently even when there is no provision in law/policy to do so, which is a trend in a Nation which sexual negativity (driven by the religious misinformation on Adam & Eve) increases not only sexual crimes in the first place?

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LIST OF PARTIES

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

[x] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

DOC Commissioner Paul Schnell, Deputy Commissioner Michelle Smith, Warden Guy Bosch, Assistent Warden Victor Wanchena, Assistent Warden Stephanie Huppert, and Assistant Warden Laura Westphal

RELATED CASES

Aiello v. Litscher, 104 F.Supp.2d 1068 (W.D. Wisc. 2000)
Amatel v. Reno, 156 F.3d 192 (D.C. Cir. 1998)
Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002)
Bahrampour v. Lampert, 356 F.3d 969 (9th Cir. 2004)
Bell Atlantic Corp v. Twombly, 550 U.S. 544 (2007)
Block v. Rutherford, 468 U.S. 544 (2007)
Broadrick v. Oklahoma, 413 U.S. 601 (1973)
Carpenter v. South Dakota, 536 F.3d 759 (8th Cir. 1976)
Cline v. Fox, 319 F.Supp.2d 685 (N.D. W. Va. 2004)
Couch v. Jabe, 737 F.Supp.2d 561 (W.D. Va.2010)
Crooks v. Lynch, 557 F.3d 846 (8th Cir. 2009)
Dean v. Bowersox, 325 Fed.Appx. 470 (8th Cir. 2009)
Dean v. Bowersox, No. 0703298, 2013 WL 11322613 (W.D. Aug. 29 2013)
Excalibur Grp., v. City of Minneapolis, 116 F.3d 1216 (8th Cir. 1997)
FCC v. Pacifica Foundation, 438 U.S. (1978)

RELATED CASES continued

Flagner v. Wilkinson, 241 F.3d 475 (6th Cir. 2001)
Haines v. Kerner, 404 U.S. 519 (1972)
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Kelly v. City of Omaha, 813 F.3d 1070 (8th Cir. 2016)
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Mayday v. Dooley, No. 4:17-CV-04168, 2019 WL 4747058 (D.S.D. Sept. 30, 2019)
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Murchison v. Rogers, 779 F.3d 882 (8th Cir. 2015)
New York v. Ferber, 458 U.S. 747 (1982)
Owen v. Willie, 117 F.3d 1235 (11th Cir. 1997)
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Police Dept. of Chicago v. Mosley, 408 U.S. 92 (1972)
Procunier v. Martinez, 416 U.S. 396 (1974)
Reno v. Civil Liberties Union, 521 U.S. 844 (1997)
Sable v. Comm. of Cal., Inc. v. FCC, 492 U.S. 115 (1989)
Salaam v. Lockhart, 905 F.2d 1168 (8th Cir. 1990)
Erikson v. Pardus, 551 U.S. 89 (2007)
Shaw v. Murphy, 532 U.S. 223 (2001)
Sisney v. Keamingh, 15 F.4th 1181 (8th Cir. 2021)
Sisney v. Kaemingh, 886 F.3d 692 (8th Cir. 2018)
Sisney v. Kaemingk, No. 4:15-CV-04069-LLP, 2016 WL 11408434 (D.S.D. May 25, 2016)
Taylor v. Jones, 2013 WL 5203568 (D.S.C. Sep. 12, 2013)
Thornburgh v. Abbott, 490 U.S. 401 (1989)
Turner v. Safley, 482 U.S. 78 (1987)
Wash. State Grange v. Wash State Republican Party, 552 U.S. 442 (2008)
Williams v. Brimeyer, 116 F.3d 351 (8th Cir. 1997)
Williams v. Pryor, 240 F.3d 944 (11th Cir. 2001)

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Estelle v. Gamble, 429 U.S. 97 (1976)	Reasons for granting the Petition p 1
Sisney v. Kaemingk, 469 F. Supp. 3d 903 (D.S.D. 2020)	Reasons for granting the Petition p 1 & Statement of the case p 6
Dawson v. Scurr, 986 F.2d 257 (8th Cir. 1993)	Reasons for granting the Petition p 2

STATUTES AND RULES

28 U.S.C. §§ 1291

28 U.S.C. § 1331

28 U.S.C. §§ 1343(a)(3)

42 U.S.C. § 1983

Fed. R. Civ. P.8

Federal Rule of Civil Proceedure 12(b)(6)

OTHER

COLLINS DICTIONARY,
https://www.collinsdictionary.com/dictionary/english
MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary
Photophobia, CLEVELAND CLINIC,
https://my.clevelandclinik.org/health/symptoms/photophobia

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

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

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

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

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

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

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

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

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

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

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was June 28, 2024.

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

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 12, 2024, and a copy of the order denying rehearing appears at Appendix G.

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

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

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

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

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1) Petitioner has sufficiently asserted that the DOC's "Nudity policy" violates prisoners civil rights of free speech, including what a prisoner can see and hear, protected by the 1st Amendment of the Constitution.

2) Petitioner has sufficiently pleaded that the DOC's nudity policy is Facially Unconstitutional.

3) The DOC has failed to show a rational explanation that the nudity policy serves a legitimate government interest.

4) The nudity policy contains in Minnesota no alternatives as ruled in other States.

5) The DOC fails to show psychological proof that the nudity policy has educational and rehabilitational value, especially as DOC employs therapists instead of psychologists who would oppose the claims of DOC policy makers that allowing prisoners access to nude images would have a negative impact.

6) Psychological proof exists that there is rather a benefit for prisoners behavior to allow access to nude images instead of the claims that it would have a negative impact for institutional interests.

7) The District Court erred to use Rule 8 to dismiss Petitioners Complaint by only considering the 2nd AMENDMENT OF COMPLAINT that only specified defendants on the Magistrates recommendation. Thereof the District Court erred in its analysis of the as applied factors by considering an improper approach and irrelavant factor of Petitioners underlying conviction.
   a) There is no provision in policy to treat specific prisoners different from others.
   b) The District Courts decision is contrary to precedent, which Turner as applied analysis refers to the materials banned, not the prisoner.

c) The District Court is aware that Petitioners complaint has merit, otherwise it would not have felt the need to elaborate on all other factors brought forward in the complaint (as an applied security to make something stick if the Rule 8 argument fails) when it used the Rule 8 violation to dismiss the complaint, which represents a contradiction in reasoning!

8) The District Court used the argument set forth by the defendant and their counsel to dismiss the complaint by unethical means and obstruct justice!

STATEMENT OF THE CASE

On August 08, 2022 pro se Petitioner Harold David Yaritz filed a §1983 civil complaint against the before named defendants in which he extensively laid out how defendants violated Petitioners Constitutional Right of the first Amendment of free speech, and supported the complaint by psychological, genetical and scriptural facts which show that this policy and the reviewers actions is not only unconstitutional and in every aspect illegal, but also violates the highest Court of "Gods" command!

Magistrate David T. Schultz did not only write in his following order that "the DOC is a state agency and generally immune from suit", but also that "Yaritz does not specify if defendants are sued in their official or personal capacities" thus confirming that the Court was clearly aware of the defendants.

Petitioner thereof filed on September 13, 2022 a first Amendment, in which he specified at the beginning that:

"Plaintiff hereby submits an amendment TO THE COMPLAINT upon recommendation in the Order of Judge David T. Schultz U.S. Magistrate Judge, dated Sept. 09, 2022."

which according to the literal meaning of the word "amend = to add; to make better" specifies that this was not a change of the complaint, but a supplement to clarify Plaintiff's claims!

To clarify the intension of his original motion, Plaintiff laid out a logical conclusion that (paraphrased) "if an official engages in PERSONAL BIAS, they should logically be held responsible not only in their official capacity, but in their personal capacities as well!" which Petitioner believes the original claim had indicated.

On November 06, 2022 Petitioner submitted additional exhibits that prove how the overly broad "Nudity Policy" has given defendants (and any other "official

authority") the means to act on their own personal bias, which especially in the institution Faribault under defendant AWA Laura Westphal has grown into an extreme. Petitioner wants to point out here again that the medium institution Faribault has no sex offender programming, but then restricts erotic photos at a raised extreme above the closed institution Rush City that has a sex offender programming. Faribault officials claim that this is done to support sex offender rehabilitation. However, Faribault without a sex offender programming has

a) no official/professional business to do so, and that
b) this is an opinion not based on genetical or psychological facts and thereof displays personal bias! This is a growing trend among officials as the takeover of a woman's sexual reproductive organs against her Constitutional right to a privacy over her body shows, as well that some politicians would like to remove the Constitution alltogether to replace a Democracy by a Dictatorship!

As the American concept of justice is supposed to be based on Christian values, it is dissapointing having to state that the District Court called Petitioners reasoning by scriptural facts "rambling", maybe because the description of applied symbolism does not comply with the superstitious teachings of mainstream religion, which is designed to control the masses by injecting shame over their sexual nature followed by the threat of punishment that is in opposition to the teachings of ancient scripture that is meant to set people free by teaching genetical & psychological knowledge. That the District Court called the clarification of Scripture "rambilig" furthermore suggests that the officials in question may have been influenced by their own conditioning by mainstream religion and were offended by Plaintiff's clarification, which shows that these officials had not been objective in their judgement either, which is important for an issue Petitioner will later address in the conclusion.

On November 09, 2022 Petitioner filed the 2nd AMENDMENT OF COMPLAINT with the follwing subtitle:

"Prose Plaintiif Harold Yaritz herby submits a 2nd Amendment TO THE CIVIL COMPLANT"

which indicates Petitioners understanding that an Amendment is as per dictionary meant "to add, correct, or make better"! The intended "making better" was to clarify defendants. Under closer observation, the only "change" Petitioner here motioned was to

"move the Court to add the State of Minnesota to Commissioner Schnell as a main defendant."

to replace the by immunity protected DOC. Under the second point Petitioner only repeated the codefendants outlined in the original complaint and exhibits! In his petition for rehearing to the Appellate Court, Petitioner also pointed out that the "2nd AMENDMENT OF COMPLAINT" is the result of the District Court claiming that

a) the DOC is an agent of the State that cannot be held responsible for any misconduct, and
b) to satisfy the Court with the specification of defendants

However, fact is that the District Court never accpeted the 2nd AMENDMENT OF COMPLAINT as the new original filing as the State of Minnesota was in following correspondences, orders and motions never mentioned as the new main defendant, but continued with the in the original filing of the DOC et al. As a result, the claimed Rule 8 violation used to dismiss the entire complaint has no merit either!

In its Order dated May 30th 2023, the District Court did not dismiss Petitioners claim of defendants violating Petitioiners (and every other Prisoners) Constitutional Right of the first Amendment of free Speech, but only rendered its opinion on the entire complaint, and then dismissed it only on grounds of Petitioners 2nd AMENDMENT OF COMPLAINT. The question here arises why the Court even bothered to render an opinion over the original complaint when it claims that the 2nd AMENDMENT OF COMPLAINT supersedes the original? Nonetheless, the incorrect statement of the first sentence on the Orderes second page
"Yaritz, by his own admission, collects photographs and images that implicate the policy"
already indicates that this order is highly prejudiced against Petitioner as he

had never admitted to collect photos that implicate the nudity policy, but that reviewers deem many photos as contraband that are not, for policies overly broad institutionalized interpretation of nudity!

The falsifying of facts continues on page 2, first sentence "Yaritz Second Amended Complaint contains significant narration, but no claims". There is no "significant" narration in the 2nd AMENDMENT OF COMPLAINT! Petitioner only stated in the first paragraph why the State was added to Commissioner Schnell, which actually speaks in Mr. Schnell's favor, and confirmed in the second why Codefendants should be held responsible in both their official AND personal capacity. These statements in the District Courts Order show that the Magistrate was rather eager to find reasons to uphold the status quo by dismissing the complaint instead of prosecuting DOC officials for violating Prisoners Constitutional rights.

After petitioner filed on September 04, 2023 a motion for default judgement because the defendants counsel as well as the Appellate Court had exceeded deadlines to respond, the Appellate Court appointed Ms. Rae Brost from the Lawfirm Davenport & Evans in South Dakota to assist Petitioner in the Appeal. Since it should be in the interest of tax payers to keep costs down, it is puzzling that a Lawfirm from out of State was appointed who would have to be billing significant travel time to consult with her client, it is obvious that this was rather done to restrict communication and cover up the failure to adhere to deadlines!

While the from the Appellate Court appointed attorney Ms. Rae Brost had done a fair job to construct the Appellate Brief dated 02-05-2024, with having only one phone conversation with petitioner to clarify some timelines, due to the lack of her contacting and/or sitting down with petitioner the Brief holds many technical mistakes because of insufficient counsel. Petitioner had immediately informed counsel in a letter (a total of 11 where Petitioner also kept counsel updated on the ongoing lack of due process in regard to denied e-mail attachments) dated February 11, 2024 of these mistakes after receiving the already filed Brief. In her response, Ms. Rae Brost also informed Petitioner that the "due process issue" cannot be addressed in the appeal as it was not addressed on the District Court level. This is incorrect as this was mentioned in the original complaint as well:

"5) Prisons deliberately denying due process to electronic mail & attachments comparable to postal mail & enclosures by claiming that Jpay is a privilege and not a right (note of later clarification in the complaint: Only Jpay music & games are a privilege, mail & attachments are a right!), and even deleting attachments without proper notice and due process!"

To the prior mentioned issue to be addressed later: After having received a copy of the already submitted Appellate Brief, Petitioner expressed in a letter to Ms. Brost his dissatisfaction of her not addressing more aggressively the ridiculous claim of defendant's counsel that the by the Institution Faribault (medium facility w/o sex offender programming) under defendant AWA Laura Westphal removal of Appellants by other institutions (closed and/or with sex offender programming) prior approved photo collection had to do with the (strenious outlined) conviction of Petitioner!

While Ms. Brost had no problem to put together the Brief by using the complaint as a whole renders the District Court's argument moot that defendants and/or their counsel would have problems to understand the claims without repeating it in the 2nd AMENDMENT OF COMPLAINT, Petitioner argued in his rehearing motion to the Appellate Court that the only reason for defendant's counsel to strenuously address Plaintiff's conviction was to defame the complaint by unethical means. Either that, or Assistant Attorney General Corinne Wright is incapable of doing her job as she should have been aware that there is no provision in the "Nudity policy" to treat specific offenders differently (which was addressed by Petitioner on the District Court level, and then by his counsel in the Appellant's Brief!). Such strategy is commonly used to subconsciously influence judges and/or jurors by discriminating the Petitioner, because even when an objection is sustained, the statement cannot be unheard or unread anymore!

Assistant Attorney General Corinne Wright repeated this unethical strategy in her Appellee's Brief after having already used it on the District Court level even though she should have known that this argument has no merit as there is no provision in policy to treat specific offenders differently! That this is a strategy that works shows by the District Court picking up the same argument in its

final order and Petitioners counsel excusing herself from the case before the process was exhausted! The only suggestion possible is that this is an extension of Faribault's illegal actions under defendant AWA Laura Westphal!

Adding to the fact that the District Court never accepted the 2nd AMENDMENT OF COMPLAINT as the original complaint by not changing the main defendant in following correspondences/orders, Petitioner's counsel Ms Brost brought up the compelling valid reason on page 1 of Appellant's Brief that according to "Estelle v. Gamble, 429 U.S. 97, 106 (1976); Sisney v. Kaemingk, 469 F. Supp. 3d 903, 918 (D.S.D. 2020) aff'd in part, rev'd in part and remanded, 15 F.4th 1181 (8th Cir. 2021) that Yaritz's complaint must be liberally construed, even if inartfully drafted", which includes every additional evidence, correction, and/or clarification! Appellee's argument is without merit as Appellant's complaint as a whole holds specific allegations upon which relief must be granted!

On the same page Ms Brost also brought up another compelling fact that besides navigating the legal system as a pro se litigant is difficult (Sisney, 469 F. Supp. 3d at 918 "Few inmates can navigate the rigors of federal litigation pro se [.["), Petitioner was faced with additional hurdles in his attempt to navigate federal litigation by not English, but German being his native language, and that he has a documented eye condition that makes it difficult to study legal materials at length. If Ms. Brost would have done her job as can be expected from a counsel, Petitioner could have brought to her attention that because it is next to impossible to work especially on a computer and concentrate on the issue [illegible] because of his eye condition, Petitioner typed all claims in his room on a typewriter and not on a computer in the legal lab of the facility. For that it was not possible to cut and paste sections of the original complaint into the 2nd AMENDMENT OF COMPLAINT to satisfy the District Courts desire to include everything of the original complaint in any CORRECTION submitted to the Court. Petitioner also brought up this issue in his motion for rehearing to the Appellate Court.

Furthermore, Petitioner is indigent (more likely because DOC officials/ defendants want to make it more complicated for inmates to create funds for complaints brought against them, which "conflict of interest" that arises from

housing Petitioner in a facility under the authority of a defendant was brought up multiple times without success), which is why Petitioner had to file every complaint brought forward per se and In Forma Paupris. However, as included Petition to the Court/Court's Clerk for copies of this filing with attached kite as evidence, as well as a typed copy of a letter to defendant's counsel Corinne Wright as a notice for filing this Writ of Certiorari shows, the DOC makes it impossible for indigent inmates to make legal copies to serve other involved parties, or to reserve copies for him/herself, which puts an indigent per se Litigant at an even greater disadvantage. This is another reason why a liberally construed complaint must be accepted by the Courts!

In closing, it is worrisome how Americans are slowly stripped of their Constitutional rights by corrupted politics. This is a trend that has started very ealy in America's history, where those who were for their physical superiority able to bully another person, such as the fast draw of gunslingers, or the cattle baron repressing upcoming competition by lethal force etc. As this power shifted into politics, politicians were able to force their "conservative" (personal or for the reason to gain votes) opinion onto others. However, what does "being conservative" really mean? It is about preserving values decreed by religion, which many believe is righteous. The problem is that this also includes every false interpretation of scriptural symbolism by religious scholars. This is the reason why Petitioner described the true meaning of scripture in a form the District Court decreed "rambling". Religion is contradictive to the teachings of scripture: While scripture informs about genetical and psychological facts to set peoples mind free from their slavery to their genetically programmed instincts, religion represses these facts to sexually control their competition by fear and intimidation over their "genetical desires". As mainstream religion is literally "the religion of man", the competition are women and everyone who can challenge a man's position of power, where for instance in the great witch hunt women who dared to speak up against the ruling male establishment were murdered by the thousands as witches! (9 to 1 over male witches)

Presidant Regan who is considered as one of the great "conservative" leaders already violated the first Amendment of the Constitution of Free Speech (which

also includes everything we can see or hear) by declaring his "war on pornography". Without wanting to embark into greater explanations, he was originally an actor who worked in an industry that regulated nudity by the same false religiousvalues, which he then carried over into politics by calling nudity inappropriate, while deregulating the amount of time commercials could be shown in an hour. And if he did not do so to satisfy his own personal sexual bias, it was done to capture the votes from a mislead Christian America and to satisfy special interest groups who only care for the money they can steal from the common man! The question here is not about the subjective opinion if pornography is inappropriate or not, it is about repressing peoples God given "Free Will"! It is about repressing a natural condition created by "God" (or nature/evolution) while given free reign to a man made environment that conditions people by psychological means into commercial junkies, which is comparable to Lucifer challenging God for the position of power! Such regulations remove peoples Free Will to choose! While people can choose on their own if they want to or do not want to watch pornography, and parents have the right to decide what their children can see or not after they have been informed on the topic without the government intruding into their home and parental rights, people are more or less forced into watching commercials if they want to pay attention to a movie!

The founding fathers were men who were knowledgeable about the genetical design of a man and a woman and thereof safeguarded our natural rights by the Constitution. It is a fact that any man or woman who feels sexually inferior will try to choke out their competition by sexual control, which is what President Regan did. He took away the peoples right to choose in "the Land of the Free" to shape them into his (or the group of people he represented) liking, and not into "Gods" image. This is no different from this complaint about officials misusing their power of authority to apply their own personal sexual bias, and thereafter enjoy the protection of the Courts who claim a technicality to dismiss a complaint even though there is clear and present evidence of a violation of these rights the fathers of the Constitution created for especially the reason to cut down on authoritarian abuse of power!!

REASONS FOR GRANTING THE PETITION

The Minnesota Department of Corrections has a "nudity" policy in place that dictates which materials may be possessed by inmates. Petitioner Harold David Yaritz challenged this policy by filing a pro se complaint with the District Court, asserting certain 42 U.S.C. §1983 and first Amendment violations. The District Court however dismissed Petitioners complaint by concluding that Petitioner had failed to state a claim upon which relief can be granted by solely considering the 2nd AMENDMENT OF COMPLAINT filed by Petitioner as a correction/clarification of defendants to the original claim on recommendation of the District Courts Magistrate David T. Schultz. The original complaint was not altered in any way in this amendment/correction!

Petitioners by the Appellate Court appointed Counsel brought forward in the Appellate brief the compelling fact that according to Estelle v. Gamble as well as Sisney v. Kaemingk "a pro se complaint 'however inartfully pleaded' must be held to 'less stringent standards than formal pleadings drafted by lawyers' and CAN ONLY BE DISMISSED for failure to state a claim if it appears 'BEYOND DOUBT THAT THE PLAINTIFF CAN PROVE NO SET FACTS IN SUPPORT OF HIS CLAIM WHICH WOULD ENTITLE HIM TO RELIEF." Plaintiff has brought forward many facts supported by submitted evidence that show that his complaint has merit. The only conclusion that can be drawn here is that the District and Appellate Court erred greatly by dismissing the complaint and by doing so are even compliant with the American trend of sexually bullying vulnerable adults!

Both the District and Appellate Court erred by dismissing the complaint that set forth facts which show that the nudity policy violates the first Amendment rights of EVERY PRISONER both as-applied and on its face. The policy is indeed so broad that it provides a blanket prohibition against nudity and even non-nude images without regard to context and thus cannot have any legitimate penological interest.

Since the early 1990's American prisoners have been slowly stripped of their Constitutional first Amendment rights under the reason that pornography (which according to a dictionary means: "to sexually arouse" and thereof is subjective to the viewer."Standard nudity without displaying the sexual act is in the past and present actually considered art!) is contradictive to the rehabilitation of sex offenders" opposes every psychological/genealogical understanding of the human design. Animals (which the human race is part of) are for evolutionary purposes to sexually recreate under genatically programmed stimuli. If sexual relief is denied, testosterone levels and aggression continue to rise to force the issue. Violence and sexual assault are the result. Therefore there can be no penological interest in denying prisoners access to nude images as an alternative. On the contrary it should be in the penological interest to allow these materials.

Even though the denial of such materials began under the above named pretense, it has not become part of the policy. Matter of fact, there are no provisions to single out sex offenders as the District Court and defendant's counsel did in a continued effort to sexually repress inmates. Other Courts even acknowledged the importance of sexually explicit materials for men in such as Dawson v. Scurr, 986 F.2nd 257 (8th Cir. 1993) and allowed alternative means for prisoners to view such materials, which is counter to the claim of needing to deny in penological interest such materials altogether. Matter of fact, President Ronald Regan violated peoples first Amendment rights by attempting to ban pornography. However, as prisoners are considered "vulnerable adults" the Courts have the ethical duty to protect them from authoritarian sexual bullying which this is all about!

This petition should be granted and the previous orders by the District and Appellate Court vacated.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Harold David Gaj (Prose Petitioner)

Date: Sep 10, 2024