

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

RICHEY L. ANDREW — PETITIONER
(Your Name)

VS.

STATE OF NEVADA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NEVADA SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RICHEY L. ANDREW # 75578
(Your Name)

NORTHERN NEVADA CORR. CENTER - P.O. BOX 7000
(Address)

CARSON CITY, NV. 89702
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

I. WHETHER NEVADA REVISED STATUTE (NRS) 41A071 IS UNCONSTITUTIONAL ON ITS FACE AND AS APPLIED TO INDIGENT PERSON AND INMATES AS IT IMPEDES PETITIONER'S FIRST AMENDMENT RIGHT TO REDRESS HIS GRIEVANCES.

LIST OF PARTIES

- ☐ All parties appear in the caption of the case on the cover page.
- ☒ 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:

SHARON COSTER
NEVADA DEPARTMENT OF CORRECTIONS
STATE OF NEVADA

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JUNE 29, 2016*

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STATUTES AND RULES

NRS 41.031
NRS 41A.071

8
THROUGHOUT

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals 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☐ is unpublished.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 United States district 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☐ is unpublished.

☐ For cases from **state courts**:

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

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the FIRST JUDICIAL DISTRICT court appears at Appendix B to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (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 Dec. 22, 2017.
A copy of that decision appears at Appendix A.

☐ 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

*FIRST AMENDMENT RIGHT OF ACCESS
TO THE COURTS TO REDRESS GRIEVANCES*

STATEMENT OF THE CASE

PETITIONER IS AN INMATE OF THE ALBERTA
 DEPARTMENT OF CORRECTIONS ("ALDOC"), AND AT ALL
 TIMES RELEVANT TO THE INSTANT ACTION HAS BEEN
 HOUSED AT ALBERTA ALDOC CORRECTIONAL CENTER
 ("ALDOC")

ON OR ABOUT JANUARY 26, 2015 PETITIONER
 UNDERWENT SURGERY BY A MEDICAL PROVIDER TO

ALDOC, DR. CURRIE, CAROL WOLODZINSKI, AT
 WHICH TIME A REVISE CATHEETER WAS INSERTED
 INTO PETITIONER. DR. CURRIE HAD ISSUED

WRITTEN INSTRUCTIONS THAT ALDOC PERSONNEL
 WERE TO TRANSPORT PETITIONER TO DR. CURRIE'S

BUSINESS FOR FURTHER TESTING, MEDICAL PROCEEDINGS,
 AT WHICH TIME DR. CURRIE HAD WOULD BE ABLE
 WHETHER OR NOT TO REMOVE THE CATHEETER.

ON FEBRUARY 9, 2015, SHARON GOSTER, A NURSE
 EMPLOYED BY THE ALDOC, REMOVED PETITIONER'S

CATHEETER, AGAINST DR.'S ORDERS IN A NEGLIGENCE
 MATTER, CAUSING IRREVERSIBLE DAMAGE TO
 PETITIONER'S PENIS CAUSING EXCESSIVE PAIN.

PETITIONER WAS REQUIRED TO UNDERGO NUMEROUS
 MEDICAL PROCEDURES TO ATTEMPT TO CORRECT
 THE DAMAGE DONE BY THE NEGLIGENCE REMOVAL

OF THE CATHEETER. AS OF THIS DATE, PETITIONER

CONTINUES TO EXPERIENCE DISCOMFORT AND
 PAIN AS A RESULT, ADDITIONALLY, CONTINUES

TO RECEIVE MEDICAL ATTENTION FROM PHYSICIAN

MEDICAL STAFF AS A RESULT OF SHARON COSTER'S NEGLIGENT ACTIONS.

PURSUANT TO THE PRISONER'S LITIGATION REFORM ACT ("PLRA"), PETITIONER EXHAUSTED HIS AVAILABLE ADMINISTRATIVE REMEDIES BY FILING PRISON GRIEVANCES. PETITIONER SOUGHT TO REDRESS HIS GRIEVANCES IN THE COURTS BY FILING A CIVIL ACTION IN THE FIRST JUDICIAL DISTRICT COURT OF NEVADA PRESENTING CLAIMS FOR RELIEF BASED UPON SHARON COSTER'S NEGLIGENCE.

PURSUANT TO NRS 41A.071, PETITIONER WAS REQUIRED TO SUBMIT AN AFFIDAVIT BY A MEDICAL PROFESSIONAL, CONTEMPORANEOUSLY WITH THE CIVIL COMPLAINT, OUTLINING THE BASIS FOR THE NEGLIGENT ACTIONS OF THE DEFENDANTS NAMED THEREIN.

SINCE PETITIONER IS INDIGENT AND AN INMATE, HE HAS NO ACCESS TO MEDICAL PROFESSIONALS OTHER THAN THOSE EMPLOYED BY THE NDOC. MEDICAL STAFF EMPLOYED BY THE NDOC REFUSED TO ISSUE AN AFFIDAVIT AGAINST FELLOW EMPLOYEES.

ACCORDINGLY, PETITIONER FILED A MOTION IN THE STATE DISTRICT COURT SEEKING WAIVER OF THE AFFIDAVIT REQUIREMENT OF NRS 41A.071 DUE TO HIS STATUS AS AN INDIGENT PRISONER. THE DISTRICT COURT FAILED TO GRANT PETITIONER'S MOTION AND DISMISSED THE CIVIL ACTION (APPENDIX B).

PETITIONER APPEALED THE DISMISSAL TO THE NEVADA SUPREME COURT. THE COURT APPOINTED COUNSEL, ORDERED FULL BRIEFING, AND HELD ORAL ARGUMENTS. ON DECEMBER 20, 2017 THE NEVADA SUPREME COURT ENTERED AN ORDER OF AFFIRMANCE. (APPENDIX A.)

PETITIONER BRINGS FORTH PRESENTING WHETHER FOR WRIT OF CERTIORARI. PRESENTING WHETHER THE PROVISIONS OF NRS 41A.071 HAVE DENIED HIM HIS FIRST AMENDMENT RIGHTS TO REDRESS HIS GRIEVANCES BY DENYING HIM ACCESS TO THE COURTS.

PETITIONER ASSERTS THE REQUIREMENT OF NRS 41A.071, REQUIRING AN AFFIDAVIT FROM MEDICAL PROFESSIONAL, NOT A PARTY TO CIVIL ACTION, CANNOT BE FULLFILLED BY INDIGENT PERSONS AND PRISONERS WHO DO NOT HAVE ACCESS TO MEDICAL CARE OTHER THAN THAT PROVIDED BY PRISON STAFF, WHO ARE FORBIDDEN TO ISSUE AFFIDAVITS AGAINST THEIR FELLOW EMPLOYEES.

REASONS FOR GRANTING THE PETITION

NRS 41A.071 WAS ENACTED BY THE NEVADA LEGISLATURE IN 2002 AS A REMEDY TO CURE FILINGS OF MEDICAL NEGLIGENCE CIVIL ACTIONS THAT WERE FRIVOLUS IN NATURE. THE STATUTE STATES:

IF AN ACTION FOR MEDICAL MALPRACTICE OR DENTAL MALPRACTICE IS FILED IN THE DISTRICT COURT, THE DISTRICT COURT SHALL DISMISS THE ACTION, WITHOUT PREJUDICE, IF THE ACTION IS FILED WITHOUT AN AFFIDAVIT, SUPPORTING THE ALLEGATIONS CONTAINED IN THE ACTION SUBMITTED BY A MEDICAL EXPERT WHO PRACTICES OR HAS PRACTICED IN AN AREA THAT IS SUBSTANTIALLY SIMILAR TO THE TYPE OF PRACTICE ENGAGED IN AT THE TIME OF THE ALLEGED MALPRACTICE

THE NEVADA SUPREME COURT HAS HELD THAT DISMISSAL OF A CIVIL ACTION IS MANDATORY WHEN THE REFERENCED AFFIDAVIT IS LACKING. WASHOE MEDICAL CENTER V. DIST CT., 272 P.3D 134 (2012).

PETITIONER ATTEMPTED TO SECURE THE REQUIRED AFFIDAVIT BY REQUESTING MEDICAL STAFF AT NIDOC REVIEW HIS MEDICAL FILE AND SUBSEQUENTLY PROVIDE AN AFFIDAVIT THAT WOULD MEET THE REQUIREMENTS OF NRS 41A.071. HOWEVER, NIDOC MEDICAL STAFF, THE ONLY MEDICAL PERSONNEL

AVAILABLE TO PETITIONERS AS AN INDIGENT INMATE, REFUSED TO PROVIDE THE AFFIDAVIT SINCE THEY WERE EMPLOYED BY NIDOC, A DEFENDANT LISTED IN THE CIVIL ACTION AS REQUIRED BY STATUTE. NRS 41A.031.

THIS COURT HAS RECOGNIZED THAT PRISONERS ARE WHOLLY RELIANT ON PRISON MEDICAL STAFF FOR ALL THEIR MEDICAL NEEDS. ESTELLE V. GAMBLE 429 U.S. 97, 97 S. CT 285 (1976). DUE TO PETITIONER'S STATUS AS AN INDIGENT INMATE, HE HAS NO MEANS TO ACCESS A MEDICAL PROVIDER WHO CAN PROVIDE THE AFFIDAVIT REQUIRED BY NRS 41A.071. ACCORDINGLY, PETITIONER HAS BEEN DENIED ACCESS TO THE COURT TO REDRESS HIS GRIEVANCES AS GUARANTEED BY THE FIRST AMENDMENT OF THE U.S. CONSTITUTION.

PETITIONER'S CIVIL ACTION FOR MEDICAL MALPRACTICE IS A RESULT OF HIS CONFINEMENT. THIS COURT HAS HELD THAT PRISONERS HAVE A RIGHT OF ACCESS TO THE COURTS TO REDRESS THEIR GRIEVANCES STEMMING FROM CONDITIONS OF CONFINEMENT. TURNER V. SAFFELY, 482 U.S. 78, 107 S. CT. 2254 (1987).

PERSONS IN PRISON HAVE RIGHT TO ACCESS ALLEGUATE, EFFECTIVE AND MEANINGFUL PETITION TO GOVERNMENT FOR REDRESS OF GRIEVANCES THAT IS FREELY EXERCISABLE WITHOUT HINDERANCE OR FEAR OF RETALIATION. MILHOLS V. CARLSON,

652 F.2d 371 (3rd Cir, 1981).

THIS COURT MAY INQUIRE AS TO WHY PETITIONER DID NOT FILE HIS CIVIL ACTION IN A FEDERAL COURT OF COMPETENT JURISDICTION. IT SHOULD BE NOTED THAT THE FEDERAL COURTS ALSO ADOPT THE PROVISIONS OF NRS 41A.071 AND SUBSEQUENTLY DISMISS STATE TORT CLAIMS BASED UPON MEDICAL NEGLIGENCE WHEN THE AFFIDAVIT REQUIREMENT IS NOT FULLFILLED. ACCORDINGLY, PETITIONER HAS BEEN DENIED ACCESS TO ALL COURTS, TO REDRESS HIS GRIEVANCES, BY THE REQUIREMENTS OF NRS 41A.071.

THIS COURT, WHEN FACED WITH INTERPRETING OTHER STATUTES THAT MAY UNCONSTITUTIONALLY BURDEN AN INDIGENT PERSONS ABILITY TO ACCESS THE COURTS, HAS FOUND THERE EXISTS EXCEPTIONS TO THE STATUTES AND THE PERTINENT STATUTES DID NOT HINDER THE INDIGENT INMATE FROM PRESENTING HIS CLAIM. NICHOLAS V. TUCKER, 114 F.3d 17 (2nd Cir 1997), CERT. DENIED, 523 U.S. 1126, 118 S. Ct. 1812 (1998).

HERE, NRS 41A.071 CONTAINS NO EXCEPTION TO THE AFFIDAVIT REQUIREMENT, AND THE COURTS HAVE MANDATORILY DISMISSED HIS CIVIL ACTION DO TO NON COMPLIANCE WITH THE AFFIDAVIT REQUIREMENT. PETITIONER ASSERTS HE WOULD BE ABLE TO PROVE HIS CLAIMS OF MEDICAL NEGLIGENCE, HAD HE PROCEEDED TO TRIAL, THROUGH TESTIMONY

OF THE THE TREATING PHYSICIAN, WHO WOULD HAVE TRUTHFULLY TESTIFIED AS TO THE PROPER PROCEDURE TO REMOVE THE CATHETER, THAT DEFENDANT SHARON COSTER WAS NEGLIGENT IN THE MANNER SHE REMOVED THE CATHETER THAT CAUSED DAMAGE, PAIN AND SUFFERING TO PETITIONER. THE TREATING PHYSICIAN WILL ONLY TESTIFY VIA SUMMONIS OR SUBPOENA, SINCE HE WAS CONTRACTED BY NDOC TO PROVIDE MEDICAL SERVICES TO INMATES.

PETITIONER'S CIVIL ACTION WAS MOST LIKELY MERITORIOUS, NOT FRIVOLOUS, AND HE SHOULD BE GIVEN OPPORTUNITY TO PRESENT HIS CASE IN A COURT OF LAW. HIS OPPORTUNITY WAS HINDERED BY THE REQUIREMENTS OF NRS 41A.071 AND THIS COURT SHOULD FIND IT UNCONSTITUTIONAL

CONCLUSION

THIS HONORABLE COURT SHOULD FIND THAT, MRS 41A.071 IS UNCONSTITUTIONAL AS IT DENIES INDIGENT PRISONERS THEIR FIRST AMENDMENT RIGHT TO REDRESS THEIR GRIEVANCES. ANY RULE THAT IMPEDES THE DISCOVERY OF TRUTH IN A COURT OF LAW IMPEDES AS WELL THE DOING OF JUSTICE. HAWKINS V. UNITED STATE, 358 U.S. 74, 79 S. CT. 136 (1958).

THE INSTANT PETITION SHOULD BE GRANTED,

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

RICHEY L. ANDREWS

Date: ~~JANUARY~~ 2/12/2018