IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In the Matter of:	}
TERRY LEE HINDS,	}
Pro se,	} CIVIL ACTION
Plaintiff,	} FILE NUMBER: 4:17 - CV – 750 AGF
-Vs-	}
"UNITED STATES" GOVERNMENT,	}
Defendants.	}

MEMORANDUM OF LAW AND BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO RECONSIDER THE COURT'S RULING OF JULY 11, 2017 to *correct clear errors of law* and *prevent manifest injustice* under Rule 59(e), in conjunction with obtaining relief from a proceeding & Order pursuant to Fed. R. Civ. P., Rule 60(b)(1)(4)(6) OR, IN THE ALTERNATIVE, Federal Rule of Civil Procedure Rule 54(a)(b) and Rule 46- Objecting to a Ruling or Order

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Comes Now, Plaintiff TERRY LEE HINDS, appearing *Pro se* in a civil action for rights, privileges, or immunities secured by the U.S. Constitution and the Rule of Law, submits on just terms, this *Motion to Reconsider* the Court's Ruling of **July 11, 2017** (Doc. No. 55) pursuant to Fed. R. Civ. P., Rule 59(e), or under Rule 54(a)(b) and a *Motion for Relief* under Fed. R. Civ. P., Rule 60(b)(1)(4)(6) with Plaintiff objecting to a ruling or order pursuant to Fed. R. Civ. P., Rule 46 and in support of said motions submits this Memorandum of Law & Brief and states as follows:

THE COURT'S RULING OF JULY 11, 2017

Plaintiff moves the Court to reconsider, rectify its ruling, or revisit non-final orders in its discretion as well as, grant relief from a proceeding or Court order regarding (A/1): Defendant's "Motion to Strike Filings or, in the Alternative, for an Extension of Time" (Doc. No. 51), and (A/2): **"As a**

final matter" with "PLAINTIFF'S FIRST MOTION TO REVIEW, ALTER, AMEND, OR VACATE ORDERS PURSUANT TO PLAINTIFF'S FREE EXERCISE OF PURE SPEECH OF RELIGIOUS BELIEFS AND/OR, IN THE ALTERNATIVE, FOR RELIEF FROM ORDERS PURSUANT TO FED. R. CIV. P. RULE 60(b)(6) *'any other reason that justifies relief'"* (Doc. No. 38) and its Memorandum of Law and Brief in Support thereof (Doc. No. 39), and (A/3): Plaintiff's verified complaint/petition, in part, involving legal matters, issues and controversies with U.S. constitutional provisions of law, Establishment Clause challenges, Free Exercise Clause violations or rights being curtailed by the Court and Clerk Office or reduced to ***statutory levels*** of Civil Rights (42 U.S.C. §1983) with the "Nature of Suit" listed or assigned as ("440 Civil Rights: Other") advanced by governmental actors under the ***color of law***, and (A/4): "Amended Complaint" manifested by Rule 8 *conformity*, burdening substantially more speech than was necessary to achieve a compelling reason or curtails speech with Fed. R. Civ. P. Rule 8(a) and 8(d) operating as unconstitutionally vague, as applied, and (A/5): Misapplication or Mistake of Law, or a manifest error of law or fact in this ruling, and (A/6): "Defendants' motion be stricken from the record, or in the alternative, denied or such other relief as the Court deems proper" pursuant to Plaintiff requests, motions and opposition set forth in (Doc. Nos. 53, 54), and (A/7): Plaintiff's ***Religiosity of Facts*** (Doc. No. 45) existing as protected speech in notice pleadings established as **"Other Amendments"** as a message of pure speech for religious beliefs.

LAW AND ARGUMENT

I. Applicable Legal Standard for Reconsideration to rectify issues presented and for relief

A "motion to reconsider" is not explicitly contemplated by the Federal Rules of Civil Procedure. The Federal Rules of Civil Procedure "do not mention motions for reconsideration." Broadway v. Norris, 193 F.3d 987, 989 (8th Cir. 1999). Typically, courts construe a motion to reconsider as a motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e), or as a motion for relief from a final judgment, order, or proceeding under Rule 60(b). The Eighth

Circuit has held and determined that motions for reconsideration are "nothing more than Rule 60(b) motions when directed at non-final orders." Anderson v. Raymond Corp., 340 F.3d 520, 525 (8th Cir. 2003). Moreover, ignoring properly preserved legal errors timely brought to the district court's attention after the entry of a ruling would put the parties through the unnecessary expense and delay of having to appeal the case to get clear or reversible errors of law corrected or prevent manifest injustice. Plaintiff ***legal holds*** the [Memorandum and Order of Judge Fleissig's Ruling of July 11, 2017], ("[July 11, 2017 Ruling]") constitutes an opinion, a determination, a judgement, decree or ***"other form of decision"***. Especially when such a ruling effects the rights and obligations of the parties, the relief requested or *manifests a legal decision* involving free exercise violations or Establishment Clause challenges or other pending issues not presented in Defendants' motion. Likewise, (1) An opinion is a court's written statement of the relevant facts, the applicable points of law, the reasoning that led to the court's decision, and dicta, everything not directly germane to that reasoning, and (2) a judgment is a court's final determination of the rights and obligations of the parties (It *"includes a decree and any order from which an appeal lies."* Fed. R. Civ. P. 54(a)), and (3) decree refers more broadly to any court's grant of relief of which need not be equitable in nature. Plaintiff fully brief the Court and Defendants about such proceedings. Defendants made no response, argument or raised objection to legal matters set forth in Plaintiff's brief. (Doc. No. 54).

(A). Fed. R. Civ. P. Rule 59(e)

A motion to reconsider &/or rectify, filed within ten days following the entry of an order is governed by Fed. R. Civ. P. 59(e). The grounds for a motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e) may be made for one of three reasons: 1.) An intervening change of controlling law; 2.) Evidence not previously available has become available; or ***3.) It is necessary to correct a clear error of law or prevent manifest injustice,*** the *principal element* of this motion.

See Innovative Home Health Care v. P.T.-O. T. Assoc. of the Black Hills, 141 F.3d 1284, 1286 (8th Cir.1998). Rule 59(e) applies only to a motion "to alter or amend a judgment." Fed. R. Civ. P. 59(e). Judicial economy favors correction of mistakes as early as possible, or with assignment of errors. Since specific grounds for a motion to amend or alter are not listed in the rule, the district court enjoys considerable discretion in granting or denying the motion. However, reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly. Wright, Miller & Miller, Federal Practice and Procedure: Civil §281 0.1, p. 124 (1995). The court has consistently held that Rule 59(e) motions cannot be used to introduce new evidence, tender new legal theories, or raise arguments which could have been offered or raised prior to the entry of judgment and the Eighth Circuit Court of Appeals ("8th Circuit") will not reverse absent a clear abuse of discretion. See Garner v. Arvin Indus. Inc./Arvin North Am. Automotive, 77 F.3d 255, 258-59 (8th Cir.1996); Harris v. Ark. Dept. of Human Servo, 771 F.2d 414, 416-17 (8th Cir.1985).

Thus, a "Rule 59(e) motion to alter or amend a judgment properly may be used to ask a district court to reconsider its judgment and ***correct errors of law***." See Ray E. Friedman & Co. v. Jenkins, 824 F.2d 657, 660 (8th Cir. 1987). Also (Rule "59(e) provides a means 'to support reconsideration [by the court] of matters properly encompassed in a decision on the merits.' White v. New Hampshire Department of Employment Security, 455 U.S. 445, 451, 71 L. Ed. 2d 325, 102 S. Ct. 1162 (1982). Under Rule 59(e) the court may reconsider issues before it, *see id.*, and generally may examine the correctness of the judgment itself"). However, while a Rule 59(e) motion is a proper procedure for bringing to the court's attention legal errors in the proceedings, relief is not appropriate if the issue was not properly raised during the proceedings. In fact, the Supreme Court stated that Congress' intent in adopting Fed. R. Civ. P. 59(e) "had a clear and narrow aim." White v. N.H. Dept. of Employment Sec., 455 U.S. 445, 450, 102 S. Ct. 1162, 71 L.

Ed. 2d 325 (1982). The aim was to ***empower district courts "to rectify its own mistakes in the period immediately following the entry of judgment."*** *Id*. at 450. (Emphasis added). Most importantly "[A] Rule 59(e) motion involves the reconsideration of matters properly encompassed in a decision on the merits." 12 Moore's Federal Practice - Civil § 59.30[2][a] (3d ed. 2005).

(B). Fed. R. Civ. P. Rule 60(b)

The grounds for a motion to reconsider may be considered pursuant to Rule 60(b), which allows relief from a final judgement, order or proceeding due to:

(1) mistake, *inadvertence,* ***surprise,*** *or excusable neglect;* (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; ***(4) the judgment is void;*** (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or ***(6) any other reason that justifies relief.*** Fed. R. Civ. P. 60(b); see also Elder-Keep v. Aksamit, 460 F.3d 979, 984 (8th Cir. 2006).

("[W]e have determined that motions for reconsideration are 'nothing more than Rule 60(b) motions when directed at non-final orders.'"). Relief under "Rule 60(b) is an "extraordinary remedy" that is "justified only under 'exceptional circumstances.'" Prudential Ins. Co. of Am. v. Nat'l Park Med. Ctr., Inc., 413 F.3d 897, 903 (8th Cir. 2005) (quoting Watkins v. Lundell, 169 F.3d 540, 544 (8th Cir. 1999)). Further, "[r]elief is available under Rule 60(b)(6) only where exceptional circumstances have denied the moving party a full and fair opportunity to litigate his claim and have prevented the moving party from receiving adequate redress." Harley v. Zoesch, 413 F.3d 866, 871 (8th Cir. 2005). The Rule 60(b)(6) catch-all provision is not a vehicle for setting forth arguments that were made or could have been made earlier in the proceedings. See Broadway v. Norris, 193 F.3d 987, 989-90 (8th Cir. 1999). The 8th Circuit has held "We review a district court's denial of relief under Fed. R. Civ. P. 60(b) only for abuse of discretion." Arnold v. Wood, 238 F.3d 992, 998 (8th Cir. 2001).

(C). Fed. R. Civ. P. Rule 54(a)(b)

Federal Rule of Civil Procedure 54(b) provides a seemingly liberal standard allowing district courts to revisit non-final orders in their discretion. The Rule provides, in part that:

> [A]ny order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, *and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.*
>
> Rule 54(a) defining "Judgement" as (a) Definition; Form. "Judgment" ***as used in these rules includes a decree and any order from which an appeal lies.*** A judgment should not include recitals of pleadings, a master's report, or a record of prior proceedings. (Emphasis added)

(D). Rule 46. Objecting to a Ruling or Order driven or controlled by Rule 54(a)(b), *inter alia.*

Fed. R. Civ. P., Rule 46 states: "A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made."

(a). *Pure Speech of Religious Belief and the Sacred rights of Conscience as Protected Speech*

Plaintiff *exerting legal rights* filed with the Court on February 16, 2017 an "[ORIGINAL VERIFIED COMPLAINT FOR DECLARATORY JUDGEMENT, INJUNCTIVE AND OTHER APPROPRIATE RELIEF IN THIS PETITION FOR QUINTESSENTIAL RIGHTS OF THE FIRST AMENDMENT, presented with a 16 page Brief in Support, with an Exhibit List consisting of 26 pages instituting 510 Exhibits attached thereto; a case & its controversies listed on 549 pages]" ("[OVC/Petition]") (Doc. No. 1). Plaintiff is *engaged in* ***peaceful expressive activity*** pursuant to established ***fundamental free exercise rights*** of the First Amendment and the rule of law of this Nation. A message as ***pure speech*** of *religious belief*. Under the ***free exercise clause*** of the First Amendment the right of protected speech of religious beliefs and rights of conscience should prevail over abridgments, or substantial burdens manifested by a compelling government interest in crafting an *"amended complaint"* or

preclude a Judge's ***sua sponte decisionmaking***, or would allow the District Court acting on its own initiative ***to strike the entire breath and merits*** of Plaintiff's [OVC/Petition]. Plaintiff request the [OVC/Petition] be reinstated as the ruling or *decision* of excluding evidence or an order striking this pleading is unconstitutional and should be vacated, ***as manifest errors of law or fact***, to wit:

"However, the Court notes that Plaintiff's originally-filed complaint, brief in support, and exhibit list (ECF Nos. 1-3) have been stricken by the Court. ECF No. 8. As a result, Plaintiff cannot incorporate those filings into his amended complaint. Therefore, to the extent the amended complaint references Plaintiff's previously-filed complaint, brief and support, and exhibits, those provisions will be stricken." [July 11, 2017 Ruling] page 2, last paragraph.

These actions adjudicates claims and rights, ***inter alia.*** Plaintiff has addressed such issues or matters in the Statement of the Issues Presented and Assignment of Errors, being more particularly described in Exhibit U#28 attached hereto and incorporated by reference as if fully set forth herein.

II. Seven Primary Arguments as Issues Presented for Reconsideration, to Rectify and Relief

Plaintiff raises the arguments in matters pursuant to Rule 59(e), (rectify clear errors of law, reversible or manifested errors of law or fact and prevent manifest injustice) and Fed. R. Civ. P. Rule 60(b)(1)(4)(6) as (1) mistake, surprise, or excusable neglect; or (4) the judgment is void, or (6) any other reason that justifies relief. Plaintiff argues the Court has a legal duty to uphold Fed. R. Civ. P. Rule 54(a)(b) as it pertains to [July 11, 2017 Ruling] and Plaintiff's (Doc. Nos. 53, 54). Plaintiff argues [July 11, 2017 Ruling] has erroneous judgements, decrees, or decisions, as a matter of law that, if not corrected will result in a manifest injustice or create a clear or reversible errors.

(A/1): *The Bad faith in Crafty Bespeaks Defenses for Extension of time, inter alia*

It is self-evident Defendants' "Motion to Strike Filings or, in the Alternative, for an Extension of Time" (Doc. No. 51) is upholding the bad faith and Defendants' *doctrines of deception*. The Court is one, of three branches of the "United States" Government, unfairly acting as a *de facto* hybrid defendant. The Court, *in this free exercise/establishment clause case**, against the government***;

should not allow Judges to act as its lead counsel. Defendants' motion was granted with *"favored son status"* with the Court failing to address *improper actions* or the lack of legal foundation raised by Plaintiff's motion and opposition in (Doc. Nos. 53, 54). This constitutes ***bad faith*** advancing crafty bespeaks defenses for extension of time, to respond to the corresponding statements made in [OVC/Petition]. Plaintiff's motion and detailed brief, was clear, Defendant's motion and request in (Doc. No. 51) ***"is improper, or without legal foundation utilizing inapposite cases and should be stricken, or in the alternative, denied."*** Moreover, surprise, "In the Eyes of Carrie Costantin, '**Respectfully submitted**,'" a motion without proper notice of entry or her name represented on the docket sheet. Accompany with an ***orphan brief*** and ***clear prejudice*** to manifest a *"responsive pleading within sixty (60) days of this order"*. Defendants were silent, but now allowed to response to the same statements professed in [OVC/Petition] of which Fed. R. Civ. P., Rule 12 (Defenses and Objections) governs such legal procedures. The Defendants manifested no answer, defense or objections to the [OVC/Petition] within 60 days of its filing. *The Defendants did not seek or ask leave of the Court concerning any legal rights under Rule 12 or Rule 8*. Plaintiff has addressed this issue or matter in the Statement of the Issues Presented and Assignment of Errors, being more particularly described in Exhibit U#29 attached hereto and incorporated by reference as if fully set forth herein. Plaintiff seeks relief under Rule 60(b)(1) mistake of law, or surprise; Rule 60(b)(4) the judgment is void as a matter of law, and Rule 60(b)(6) any other reason that justifies relief.

(A/2): "As a final matter" ***a Standard of Moot vs. a Clear Abuse of Discretion***

Plaintiff's Motion (ECF No. 38) has a substantial effect or outcome on core issues and fundamental rights that are not beyond the reach of the law. The *abuse of discretion* conducted by Judges in this case is a common factor. Judge Fleissig's [July 11, 2017 Ruling] insipid decision decreed, in part: "***As a final matter***, Plaintiff, in his Motion to Review, Alter, Amend or Vacate Orders (ECF No. 38), sought relief from the Court's previous orders requiring him to file an amended complaint

(ECF Nos. 8, 18, and 29). The Court has interpreted ECF No. 44 as an amended complaint. Therefore, the relief sought in Plaintiff's Motion to Review, Alter, Amend or Vacate Orders will ***be denied as moot***." (Emphasis added)

And

"IT IS FURTHER ORDERED that "Plaintiff's First Motion to Review, Alter, Amend, or Vacate Orders Pursuant to Plaintiff's Free Exercise of Pure Speech of Religious Beliefs and/or, in the Alternative, For Relief from Orders Pursuant to Fed. R. Civ. P. Rule 60(b)(6)" (ECF No. 38) is **DENIED as moot**."

The Court's denial of *prospective relief* is a ***clear abuse of discretion*** and ***it is necessary to correct errors of law or fact and prevent manifest injustice, when Plaintiff was denied*** a full and fair opportunity to litigate his claims and thereby preventing the Plaintiff from receiving adequate redress. Plaintiff's Motion & Brief, protects his free exercise right to protest/petition and presented the Court with no moot matters or "moot points" within (Doc. No. 38 and 39).The type of matters presented to the Court have absolute effects on the debated controversies. Further, the Defendants raised no objections or defense or answered Plaintiff's Motion to Review, Alter, Amend or Vacate Orders. In the legal system of the United States, a matter is moot if further legal proceedings with regard to it can have no effect, or events have placed it beyond the reach of the law. Motion #38 addressed a large definably host of legal determinations to be made, that effect, Plaintiff right not to have evidence excluded or the ***merits dismissed without redress***. Plaintiff's *constitutional right issues are not moot*, nor is his pursuit of a constitutional right to exist as *'I Am'* versus a legal duty or personal stake as defined, designed, driven, devalued, degraded, deprived, or fearful to be destroyed by law respecting an establishment of religion in a matrix of religious dealings. The Court *de facto* judgement or as a non-final order decreed **(As a final matter)**, manifested injustice or abuse for an *unmerited period* of eight weeks; only ***to produce the right moment*** for a Judge to validate ***"prejudicial error"***. Thereby a ruling, and not a motion ***manifests applied insignificance*** or rendered it oddly moot. Plaintiff entered U. S. District Court to decide legal matters and not into a surreal realm or an exercise of a moot court's rulings, in which frivolous fears, fictional cases or

moot points argued as a part of one's legal education. In any event, a court has the ***power to revisit its prior decisions*** when ***"the initial decision was 'clearly erroneous and would work a manifest injustice'."*** Starks v. Rent-A-Center, 58 F.3d 358, 364 (8th Cir.1995); (quoting Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 817, 108 S. Ct. 2166, 100 L.Ed.2d 811 (1988)). Plaintiff has addressed such issues or matters in the Statement of the Issues Presented and Assignment of Errors, being more particularly described in Exhibit U#30 attached hereto and incorporated by reference as if fully set forth herein. Plaintiff seeks relief under Rule 60(b)(1) mistake of law, or surprise; Rule 60(b)(4) the judgment is void as a matter of law, and Rule 60(b)(6) any other reason that justifies relief. Plaintiff is surprised by the instant ruling on Plaintiff's motion (Doc. No. 38).

(A/3): ***This Court as the adversary, not as the arbiter for justice***

This argument and issues proceeds under, the United States Constitution and the Supreme Court's doctrine of the separation of powers, and Plaintiff's free exercise of the First Amendment. Plaintiff argues [July 11, 2017 Ruling] *manifest injustice* when advancing a doctrine of deception asserting "Although Plaintiff's Hybrid Pleading does not comply with the Court's orders to file a short, plain statement". Plaintiff *constitutional holds* the Court or a Judge can be or exist as ***"one's advocate"*** however, not as one's adversary, manifesting itself as the Devil's Advocate, especially when the Defendants have not raised any objections, answers or defenses to this First Amendment case and its controversies. Plaintiff's [OVC/Petition] concerns Constitutionally Protected Interests of U. S. constitutional provisions of law, Establishment Clause challenges, Free Exercise Clause violations and rights. However, reduced by the Court and Clerk Office to a ***statutory level*** known as Civil Rights (i.e. 42 U.S.C. 1983) with the "Nature of Suit" listed or assigned as ("440 Civil Rights: Other") advanced by governmental actors under the ***color of law*** or serving as a Devil's Advocate. Judge Fleissig is acting as Plaintiff's adversary and not as the arbiter for justice by proclaiming:

"The Court has also reviewed Plaintiff's requests to change the 'Cause' on the Court's docket sheet because '42:1981 Civil Rights' is an inaccurate representation of his case. The Court will order the clerk of the court to update the 'Cause' to reflect that this matter asserts violations of Plaintiff's constitutional (i.e. civil) rights, which may be brought under 42 U.S.C. § 1983."

"As to Plaintiff's objections to the 'Nature of Suit,' the Court finds that '440 Civil Rights: Other' most accurately represents the claims brought by Plaintiff. However, the Court will instruct the Clerk of the Court to mail to Plaintiff documents listing the 'Nature of Suit' codes and their descriptions. If Plaintiff wishes to assign a different code to his case, he may file such a request, including the proper code, with the Court."

"IT IS FURTHER ORDERED that the Clerk of the Court will change the 'Cause' listed on the docket sheet to reflect that the matter is brought pursuant to § 1983."

"IT IS FINALLY ORDERED that the Clerk of Court will mail a blank civil cover sheet and civil nature of suit code descriptions sheet to Plaintiff."

These matters were not addressed in Defendants' motion or its ***orphan brief*** in support thereof or presented as an issue by the Plaintiff to be of the framework of [July 11, 2017 Ruling]. Plaintiff is surprise any Federal Judge be**lie**ves that constitutional rights or claims are somehow reduced as a statute ***"to reflect that the matter is brought pursuant to § 1983".*** Plaintiff's case and its "Cause" on the docket is for a preliminary and permanent injunctive relief pursuant to Federal Rule of Civil Procedure 65 and by the inherent equitable powers of this Court. "The Court may grant declaratory relief under Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202 implemented through Rule 57 of the Federal Rules of Civil Procedure." ¶ 40. [OVC/Petition]. Plaintiff made it perfectly clear: "This action arises under the Establishment/Free Exercise Clause of the First Amendment to the United States Constitution and presents federal questions within this Court's jurisdiction under Article III of the Constitution, with federal claims and the jurisdiction of this Court invoked pursuant to 28 U.S.C. § 1331." ¶ 37. [OVC/Petition]. <u>This is not a civil rights case</u>. Plaintiff has addressed such matters or issue in a Statement of the Issues Presented and Assignment of Errors, more particularly described in Exhibit U#31 attached hereto and incorporated by reference as if fully set forth herein. Plaintiff seeks relief under Rule 60(b)(1) mistake of law, or "surprise"; Rule 60(b)(4) the judgment

is void as a matter of law, and Rule 60(b)(6) any other reason that justifies relief.

(A/4): *'Amended Complaint' is* [To LIVE as EVIL]

The legal theory of an *'Amended Complaint'* is a policy and custom of the Court. Consequently in this First Amendment case this policy and practice ***is not a valid exercise of discretion***. Plaintiff's case is seeking "DECLARATORY JUDGEMENT, INJUNCTIVE AND OTHER APPROPRIATE RELIEF", but this practiced custom as developed into a forum with a *designed result*, advancing [A Complacent Policy of Indifference to Evil] *per se* ("[To LIVE as EVIL]"). Plaintiff assert that the legal standard applied by this District Court, misinterpreted Rule 15(a)(2) and the precedent established in *Foman v. Davis*, 371 U.S. 178, (1962). The U.S. Supreme Court has constantly held for over 50 years:

It is too late in the day, and entirely contrary to the spirit of the Federal Rules of Civil Procedure, for decisions on the merits to be avoided on the basis of such mere technicalities.
"The Federal Rules reject the approach that pleading is a game of skill in which one misstep by [182]
counsel may be decisive to the outcome, and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."
Conley v. Gibson, 355 U. S. 41, 48. The Rules themselves provide that they are to be construed "to secure the just, speedy, and inexpensive determination of every action." Rule 1.

This Court so called "***amended complaint"*** is not created by any Federal Statute or even within Fed. R. Civ. P. Rule 8. An ***"amended complaint***" established by Court order or interpreted as Rule 8 conformity; has burden substantially more speech than was necessary to achieve a compelling reason or curtails speech with Fed. R. Civ. P. Rule 8(a) and 8(d) operating as unconstitutionally vague, as applied. [To LIVE as EVIL] becomes self-evident when the Court decided that Plaintiff's motion (Doc. No. 38) was "moot" because the Court erred in its decision that (Doc. No. 44) would suffice as an "amended complaint" or ***"does not comply with the Court's orders to file a short, plain statement"***. However, even in cases where one of the several issues presented becomes moot, the remaining live issues fulfill the constitutional requirement of a case or controversy. See Powell v. McCormack, 395 U.S. 486, 497 (1969). Plaintiff addressed such

matters or issue in the Statement of the Issues Presented and Assignment of Errors, being more particularly described in Exhibit U#32 attached hereto and incorporated by reference as if fully set forth herein. Plaintiff seeks relief under Rule 60(b)(1) mistake of facts, or surprise; Rule 60(b)(4) the judgment is void as a matter of law, and Rule 60(b)(6) any other reason that justifies relief.

(A/5): ***Misapplication, mistake of law or a manifest error of law or fact***

It is a matter of one's decision to play by the rules or if you're the one who holds a seat of power, then just make the facts up and the words that govern us or the law as one's see fit for the present moment. A useful approach for distinguishing law and fact: "[a] fact is something perceptible by the senses, while law is an idea in the minds of men." Manifest error is an error that is obvious and indisputable, that warrants reversal on appeal. It is an indisputable error of judgment in complete disregard of the facts of the case, the applicable rule or law and credible evidence. The Court has relies on erroneous conclusions of law; or misapplies its factual or legal premises. Plaintiff assert that the legal standard applied by district court's opinion or decisions ignored Rule 15(a)(2) and ***the precedent established by the Rule of Law***, being more particularly described in Exhibit U#36 attached hereto and incorporated by reference as if fully set forth herein. An "amended complaint" practice is a misapplication, mistake of law or a manifest error of law or fact. Rule 15(a)(2) "Other Amendments" governs "notice pleadings" in furtherance of a compelling governmental interest using the least restrictive means of furthering that compelling governmental interest. But according to the Court, [OCV/Petition] does not exist. A complaint must exist before "Other Amendments" can take effect in application to the legal process. Pursuant to Fed. R. Civ. P., Rule 15(a)

"Amendments Before Trial" with Rule 15(2) endorses "Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires."

Defendants have made a claim in their *orphan brief* that "notice pleadings" ***aka other amendments***

before trial is the same as "June 14 Filings". The Court's [July 11, 2017 Ruling] manifested this:

"Plaintiff argues that Rule 8 does not authorize the Court to construe the June 14 Filings as an amended complaint. However, ***'captions do not control' a filing if the body of that filing*** presents a claim. See Estate of Snyder v. Julian, 789 F.3d 883, 886 (8th Cir. 2015)." (Emphasis added)

"IT IS HEREBY ORDERED that Plaintiff's Hybrid Pleading Making a Conscientious Effort to Comply with Court's Orders Manifesting an Amended Complaint (ECF No. 44) is construed as an amended complaint."

The misapplication or mistake of law is clear about *'captions do not control'* when understanding that "notice pleadings" *aka other amendments* ***before trial,*** is not the same as or in support of a ***"post-trial motion"*** when *"'captions do not control' if the body of the motion or memorandum* presents a claim." The Court held Estate of Snyder v. Julian, 789 F.3d 883, 886 (8th Cir. 2015):

"A ***post-trial motion*** "cannot be measured by [ ] unexpressed intention or wants," and ***a motion to set aside a verdict*** and for a new trial is not sufficient to satisfy the rule requiring a motion for judgment as a matter of law. Johnson v. New York, N.H., & H.R. Co., 344 U.S. 48, 51 (1952). At the same time, however, "[t]echnical precision is not necessary in stating grounds for the motion so long as the trial court is aware of the movant's position," Rockport Pharmacy, Inc. v. Digital Simplistics, Inc., 53 F.3d 195, 197 (8th Cir.1995) (internal quotation omitted), and ***"captions do not control" if the body of the motion or memorandum*** presents a claim. Cosgrove v. Bartolotta, 150 F.3d 729, 732 (7th Cir.1998); see Elm Ridge Exploration Co. v. Engle, 721 F.3d 1199, 1220 (10th Cir.2013)." (Emphasis added)

Plaintiff's argues notice pleadings (Doc. No. 44 and 45) are not a motion or memorandum, nor are they "June 14 Filings" rather present *establishment/exercise clause claims*. Plaintiff addressed such matters or issue in the Statement of the Issues Presented and Assignment of Errors, being more particularly described in Exhibit U#33 attached hereto and incorporated by reference as if fully set forth herein. Plaintiff seeks relief under Rule 60(b)(1) mistake of facts, or surprise; Rule 60(b)(4) the judgment is void as a matter of law, and Rule 60(b)(6) any other reason that justifies relief.

(A/6): ***The Merits, a Lack of Due Process and stricken from the record***

Plaintiff avers Defendants ***never filed a motion to dismiss***, nor did Plaintiff ask, argued, or moved the Court that he should be allowed to amend his [OVC/Petition] to remedy the alleged violations or shortcomings of Rule 8. But, the Court cited an **"unpublished"** opinion, manifesting error of

law or fact, for an [OVC/Petition] that was stricken from the record based on **formalities**, however "*Courts generally prefer to decide claims on their merits instead of on their pleadings*. Wisdom v. First Midwest Bank, of Poplar Bluff, 167 F.3d 402, 409 (8th Cir. 1999)." See [July 11, 2017 Ruling] page 1, 2nd para. However, initially *Plaintiff's claims were never decided on the merits*, ***rather formalities*** leaving "substantial" constitutional questions and the evidence presented to be stricken from the record by the unbridled power of discretion and decree. A ***lack of due process*** prevails again, when Plaintiff's motion was utterly ignored about matters ***stricken from the record***:

Plaintiff "hereby request and move the Court *to manifest a legal ruling and order in accordance with Federal Rules of Civil Procedure and within Plaintiff's legal and constitutional rights*, that the Defendants' 'Motion to Strike Filings or, in the Alternative, for an Extension of Time' (Doc. No. 51) ***is improper, or without legal foundation utilizing inapposite cases and should be stricken, or in the alternative, denied."*** See Plaintiff motion (Doc. No. 54) (Emphasis added)

Plaintiff is claiming the protection of the laws when he receives an injury. Plaintiff addressed such matters or issue in the Statement of the Issues Presented and Assignment of Errors, being more particularly described in Exhibit U#34 attached hereto and incorporated by reference as if fully set forth herein. Plaintiff seeks relief under Rule 60(b)(1) mistake of facts, or surprise; Rule 60(b)(4) the judgment is void as a matter of law, and Rule 60(b)(6) any other reason that justifies relief.

(A/7): *Notice Pleadings with the "Religiosity of Facts"* 1 to 7. (ECF No. 45.)

Defendants' wanting Rule 12(f) motion pursued, in part, in striking Plaintiff's notice pleadings:

"The documents in the second set are titled 'Plaintiff's Conscientious Effort to Comply with Court's Orders to Manifest an Amended Complaint within a Religiosity of Facts' and labelled 'Religiosity of Facts' 1 to 7. (ECF No. 45.)" See Defendants' Motion (Doc. No. 51) page 1.

Plaintiff's "Religiosity of Facts" are protected speech in *notice pleadings* of a message as pure speech of religious belief manifesting an ***unenumerated right*** to exist as 'I Am' when practicing [Commanding Heights] & *Controlling Legal Principles* as an artful blend. The Court, manifesting a First Amendment and *due process* violations by failing to acknowledge or address "Religiosity of Facts" *de facto* rebuffing *sincerely held religious beliefs* of the Plaintiff. Plaintiff addressed such

matters or issue in the Statement of the Issues Presented and Assignment of Errors, being more particularly described in Exhibit U#35 attached hereto and incorporated by reference as if fully set forth herein. Plaintiff seeks relief under Rule 60(b)(1) mistake of facts, or surprise; Rule 60(b)(4) the judgment is void as a matter of law, and Rule 60(b)(6) any other reason that justifies relief.

CONCLUSION AND REQUEST FOR RELIEF

For the foregoing reasons, and premises consider, Plaintiff respectfully request that this Court reconsider, rectify its ruling, or revisit non-final orders in its discretion as well as, grant relief from a proceeding or Court order regarding to correct clear errors of law, reversible errors or manifested errors of law and fact and to prevent manifest injustice under Rule 59(e), in conjunction with obtaining relief from a proceeding & Order pursuant to Fed. R. Civ. P., Rule 60(b)(1)(4)(6) OR, IN THE ALTERNATIVE, pursuant to Federal Rule of Civil Procedure Rule 54(a)(b) - Judgement on Multiple Claims and Rule 46- Objecting to a Ruling or Order, as set forth herein or in accordance with established law, precedent set forth herein or for such other relief as the Court deems proper.

Respectfully submitted,

Executed this 24th day of July, 2017

_____

TERRY LEE HINDS, Plaintiff, *Pro se*
438 Leicester Square Drive
Ballwin, Missouri 63021
PH (636) 675-0028

CERTIFICATE OF SERVICE AND DELIVERY

I hereby certify that the foregoing was filed this 24th day of July, 2017 and served upon Defendants and its U.S. Attorney, by First class postage prepaid, U.S. Certified mail # 7009-0960-0000-0249-6897 at the following address:

Gregory L. Mokodean
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 7238
Washington, D.C. 20044

Initials _____

Signatures of

_____

Attachment(s): Exhibits

TERRY LEE HINDS, *Pro se,* Plaintiff