Exhibit U#30

"As a final matter" ***a Standard of Moot vs. a Clear Abuse of Discretion***

STATEMENT OF THE ISSUES PRESENTED AND ASSIGNMENT OF ERRORS

ISSUE PRESENTED # I. (A/2)

Under the *free exercise clause in the right to protest and petition,* does Plaintiff's [OVC/Petition] for First Amendment rights, privileges or immunities pleading an establishment clause challenges grant Plaintiff's Quintessential Rights of ***prospective relief*** when he pursues 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.

- Free Exercise Clause of the First Amendment to the United States Constitution
- *Cantwell v. Connecticut*, 310 U.S. 296, 304 (1940)
- *Thomas v. Review Bd., Ind. Empl. Sec. Div.*, 450 U.S. 707, 714 (1981)
- *Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 163 (1803)
- Religious Freedom Restoration Act ("RFRA") (42 U.S.C. § 2000bb et seq.)

ASSIGNMENT OF ERROR # I. (A/2.1)

Did the District Court err, as a matter of law, and/or a Federal Judge abuse her discretion when the Court invalidates Plaintiff's *free exercise clause right to protest and petition* establishment clause challenges or orders the Plaintiff's incorporated exhibits be stricken from record or the use of them prohibited in Plaintiff's notice pleadings (Doc. No. 44)?

***

ASSIGNMENT OF ERROR # I. (A/2.2)

Did the District Court err, as a matter of law, and/or a Federal Judge abuse her discretion when the Court ruled Plaintiff's Motion (ECF No. 38) which has a substantial effect or outcome on core issues and fundamental rights that are not beyond the reach of the law, as "moot" thereby

manifested clear errors of law or fact, or exhibiting a work of manifest injustice or by advancing misapplication or mistake of law?

***

ASSIGNMENT OF ERROR # I. (A/2.3)

Did the District Court err, as a matter of law, and/or a Federal Judge abuse her discretion when the Court failed to grant Plaintiff's Quintessential Rights of ***prospective relief*** when he pursues 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?

****

ISSUE PRESENTED # II. (A/2)

Under the First Amendment free exercise clause to formulate a legal protest and precisely assemble an [OVC/Petition] as in the *right to petition* the government, *"showing that the pleader is entitled to relief"* does Plaintiff have the right not to have evidence excluded or the *merits dismissed without redress* when the Court failed "TO REVIEW, ALTER, AMEND, OR VACATE ORDERS" pursuant to Plaintiff's motion (Doc. No. 38)?

- Free Exercise Clause of the First Amendment to the United States Constitution
- The *due process of law* provision of the Fifth Amendment, U.S. Constitution
- Religious Freedom Restoration Act ("RFRA") (42 U.S.C. § 2000bb et seq.)
- *Cantwell v. Connecticut*, 310 U.S. 296, 303-304 (1940)
- *Cummings v. Missouri*, 71 U.S. 277, 304, 4 Wall. 277 (1866)

ASSIGNMENT OF ERROR # II. (A/2.1)

Did the District Court err, as a matter of law, and/or a Federal Judge abuse her discretion when the Court determined and decreed Plaintiff's motion (Doc. No. 38) was moot for the sole reason that Plaintiff's seven notice pleadings (Doc. No. 44) would suffice as an "amended Complaint"?

ASSIGNMENT OF ERROR # II. (A/2.2)

Did the District Court err, as a matter of law, and/or a Federal Judge abuse her discretion when the Court failed to recognize Plaintiff's free exercise right to formulate a legal protest and precisely assemble an [OVC/Petition] as in the right to petition the government, "showing that the pleader is entitled to relief"?

***

ASSIGNMENT OF ERROR # II. (A/2.3)

Did the District Court err, as a matter of law, and/or a Federal Judge abuse her discretion when the Court failed to provide a legal decision or make a ruling concerning the many legal matters and determinations set forth in Plaintiff's motion (Doc. No. 38)?

***

****

ISSUE PRESENTED # III. (A/2)

Under Fed. R. Civ. P. Rule 8 the **2006 Edition** or **2016 Edition**, does Plaintiff have the right to proceed under Fed. R. Civ. P., **Rule 8, the 2016 Edition,** to properly formulate an understanding what the law requires, when the Court's improperly decided and Ordered an "amended complaint" under or advance by Fed. R. Civ. P. **Rule 8 the 2006 Edition** for Plaintiff's guidelines.

- *Schneckloth v. Bustamonte, 412 U.S. 218, 229 (1973)*
- *Grannis v. Ordean,* 234 U.S. 385 (1914)
- *Substantive Due Process Doctrine of the U.S. Supreme Court*
- Religious Freedom Restoration Act ("RFRA") (42 U.S.C. § 2000bb et seq.)
- Fed. R. Civ. P., Rule 15(a)(3)
- Fed. R. Civ. P., Rule 8, 2006 Edition or 2016 Edition

ASSIGNMENT OF ERROR # III. (A/2.1)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court utilized Fed. R. Civ. P., **Rule 8, the 2006 Edition** to formulate a decision or an order concerning Rule 8 conformity, a legal matter that is not "moot"?

***

ASSIGNMENT OF ERROR # III. (A/2.2)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court utilized Fed. R. Civ. P., **Rule 8, the 2006 Edition in** opposition Federal Rules of Civil Procedure **Rule 8, the 2016 Edition?**

***

ASSIGNMENT OF ERROR # III. (A/2.3)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court utilized Fed. R. Civ. P., **Rule 8, the 2006 Edition** to formulate a decision or an order concerning Rule 8 conformity, a legal matter as ***misapplication of the law***, which is not of a "moot" matter?

Exhibit U#31

This Court as the adversary, not as the arbiter for justice

STATEMENT OF THE ISSUES PRESENTED AND ASSIGNMENT OF ERRORS

ISSUE PRESENTED # I. (A/3)

Under the Supremacy Clause in Article VI, Clause 2 of the U. S. Constitution, does *free exercise exist in the right to be left alone, to think, to privacy and to work per se* Constitutionally Protected Interests when governmental actors, *under the color of law*, who are engaged in constitutional evils of viewpoint-based restrictions, religious discrimination or viewpoint-driven conduct concerning [Sacred Honor] and/or [Protected Conduct] or with the *greatest sacred precincts* of [Mankind's Supreme Possessions].

- Free Exercise Clause of the First Amendment to the United States Constitution
- Supremacy Clause in Article VI, Clause 2 of the U. S. Constitution
- Cantwell v. Connecticut, 310 U.S. 296, 304 (1940)

ASSIGNMENT OF ERROR # I. (A/3.1)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when "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." manifested by clear errors of law or fact, or exhibiting a work of manifest injustice or by advancing misapplication or mistake of law?

***

ASSIGNMENT OF ERROR # I. (A/3.2)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court' decide "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" manifested by

clear errors of law or fact, or exhibiting a work of manifest injustice or by advancing misapplication or mistake of law?

***

ASSIGNMENT OF ERROR # I. (A/3.3)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court engaged in viewpoint-based restrictions, religious discrimination or viewpoint-driven conduct concerning [Sacred Honor] and/or [Protected Conduct] or with the greatest sacred precincts of [Mankind's Supreme Possessions] thereby manifested clear errors of law or fact, or exhibiting a work of manifest injustice or by advancing misapplication or mistake of law?

****

ISSUE PRESENTED # II. (A/3)

Under the ***free exercise*** of the First Amendment or *due process of law* does the right to petition the Court or protest unconstitutional activities of the "UNITED STATES" GOVERNMENT with an Original Verified Complaint for Declaratory Judgement, Injunctive and Other Appropriate Relief in a Petition for Quintessential Rights of the First Amendment; when 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 Plaintiff [OVC/Petition] (Doc. No. 1).

- Free Exercise Clause of the First Amendment to the United States Constitution
- Due Process Clause of the Fifth Amendment, U.S. Constitution
- *Cantwell v. Connecticut*, 310 U.S. 296, 303-304 (1940)

ASSIGNMENT OF ERROR # II. (A/3.1)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when Plaintiff's right to petition the Court and to protest unconstitutional activities by "UNITED STATES" GOVERNMENT was abridged or encroached upon?

***

ASSIGNMENT OF ERROR # II. (A/3.2)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when a Judge's ***sua sponte decisionmaking***, and/or the District Court acting on its own initiative, strikes the entire breath and merits of Plaintiff's [OVC/Petition] or be stricken from the record by [July 11, 2017 Ruling]?

***

ASSIGNMENT OF ERROR # II. (A/3.3)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when, the Plaintiff cannot *freely exercise* or *engaged in peaceful expressive activity* in the right to petition the Court or to legally protest activities of "UNITED STATES" GOVERNMENT with an Original Verified Complaint for Declaratory Judgement, Injunctive and Other Appropriate Relief?

Exhibit U#32

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

STATEMENT OF THE ISSUES PRESENTED AND ASSIGNMENT OF ERRORS

ISSUE PRESENTED # I. (A/4)

Under the ***free exercise clause*** of the First Amendment, does the right of protected speech of religious beliefs and conscience prevail over the ***brevity*** of Fed. R. Civ. P. RULE 8(a)(2) and in RULE 8(d)(1) or for the ***generality*** of its terms; as a compelling government interest for an "amended complaint" when it burdens substantially more speech than was necessary to achieve its legitimate goals or curtails protected speech operating as unconstitutionally vague, as applied.

- Free Exercise Clause of the First Amendment to the United States Constitution
- The *due process of law* provision of the Fifth Amendment, U.S. Constitution
- The Void for Vagueness Doctrine
- Cantwell v. Connecticut, 310 U.S. 296, 304 (1940)
- United States v. Lanier, 520 U.S. 259, 266 (1997)
- Fed. R. Civ. P. RULE 8(a)(2)
- Fed. R. Civ. P. RULE 8(d)(1)

ASSIGNMENT OF ERROR # I. (A/4.1)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court ordered an "amended complaint" based on the ***brevity*** of Fed. R. Civ. P. RULE 8(a)(2) and in RULE 8(d)(1) or for the ***generality***?

***

ASSIGNMENT OF ERROR # I. (A/4.2)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court decided and Ordered Plaintiff to file an "amended complaint" thus burdens substantially

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more speech than was necessary to achieve its legitimate goals or curtails protected speech operating as unconstitutionally vague, as applied?

***

ASSIGNMENT OF ERROR # I. (A/4.3)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court suppress Plaintiff's free exercise rights of protected speech of religious beliefs and conscience when it demand a more secular message pursuant to conformity with Rule 8?

****

ISSUE PRESENTED # II. (A/4)

Under the U.S. Supreme Court precedent in *Foman v. Davis,* 371 U.S. 178, (1962) does Rule 8 conformity with free exercise clause rights of religious belief, conscience and protected speech reject the approach that pleading is a game of skill in which one misstep by a *pro se* Plaintiff may be decisive to the outcome, when the Plaintiff accepted a U.S. Supreme Court's Doctrine of due process and the principle that the purpose of pleading is to facilitate a proper decision on the merits.

- Free Exercise Clause of the First Amendment to the United States Constitution
- Cantwell v. Connecticut, 310 U.S. 296, 304 (1940)
- *Foman v. Davis,* 371 U.S. 178, (1962)
- United States v. Lanier, 520 U.S. 259, 266 (1997)
- Religious Freedom Restoration Act ("RFRA") (42 U.S.C. § 2000bb et seq.)

ASSIGNMENT OF ERROR # II. (A/4.1)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court decided that Rule 8 conformity supplants free exercise clause rights of religious belief, conscience and protected speech?

***

ASSIGNMENT OF ERROR # II. (A/4.2)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court decided that an "amended complaint" was a more compelling government interest than upholding free exercise clause rights of religious belief, conscience and protected speech of the Plaintiff?

***

ASSIGNMENT OF ERROR # II. (A/4.3)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court decided the U.S. Supreme Court precedent in *Foman v. Davis,* 371 U.S. 178, (1962) did not apply to Plaintiff's [OVC/Petition] or pleading standards established by the U.S. Supreme Court?

***

****

ISSUE PRESENTED # III. (A/4)

Under Federal Rule of Civil Procedure, Rule 59(e), in conjunction with obtaining relief from a proceeding & Order pursuant to Fed. R. Civ. P., Rule 60(b)(1)(4)(6) does the Defendants' complacent policy of indifference to constitutional evils prevail over Plaintiff's *free exercise* of QUINTESSENTIAL RIGHTS OF THE FIRST AMENDMENT seeking relief through [OVC/Petition] when the District Court decided that Plaintiff's motion (Doc. No. 38) was "moot" based on a policy or custom of an "amended complaint".

- Free Exercise Clause of the First Amendment to the United States Constitution
- The *due process of law* provision of the Fifth Amendment, U.S. Constitution
- Religious Freedom Restoration Act ("RFRA") (42 U.S.C. § 2000bb et seq.)
- *Cantwell v. Connecticut*, 310 U.S. 296, 303-304 (1940)
- *Thomas v. Review Bd., Ind. Empl. Sec. Div.*, 450 U.S. 707, 714 (1981)
- *Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 163 (1803)

- Fed. R. Civ. P., Rule 60(b)(1)(4)(6)
- Fed. R. Civ. P., Rule 59(e)

ASSIGNMENT OF ERROR # III. (A/4.1)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court decided the policy or custom of an "amended complaint" would be a valid compelling government interest superseding Constitutionally Protected Interests of the First Amendment?

***

ASSIGNMENT OF ERROR # III. (A/4.2)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court decided and ruled that Plaintiff's notice pleadings (Doc. No. 44) would suffice as an "amended complaint"?

***

ASSIGNMENT OF ERROR # III. (A/4.3)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court decided the chief principle that the purpose of pleading is to facilitate a proper decision on the merits as being moot or frivolous concerning Plaintiff's pleadings?

ASSIGNMENT OF ERROR # I. (A/5.2)

Did the District Court err, as a matter of law, and/or District Judge(s) abuse their discretion when the Court failed to uphold, protect or guarantee Plaintiff's right of sincerely held religious beliefs, established as content expressed, published and religiously proclaimed by the Plaintiff in an [OVC/Petition] existing as a particular belief in a religion or the plausibility of a religious claim?

***

ASSIGNMENT OF ERROR # I. (A/5.3)

Did the District Court err, as a matter of law, and/or District Judge(s) abuse their discretion when the Court degraded Plaintiff's establishment clause challenges as presented for the Court's policy of indifference to constitutional evils through misapplication, mistake of law or a manifest error of law or fact?

***

****

ISSUE PRESENTED # II. (A/5)

Under Rule 59(e) of the Federal Rules of Civil Procedure which allows a court "to rectify its own mistakes in the period immediately following entry of judgment." does the Plaintiff's right to petition the government (i.e. Defendants or the Court) concerning protected speech of religious beliefs prevail when the Court is adjudicating Plaintiff's motions, notice pleadings or [OVC/ Petition] not in furtherance of a compelling governmental interest; or using the least restrictive means of furthering of a compelling governmental interest.

- Free Exercise Clause of the First Amendment to the United States Constitution
- The *due process of law* provision of the Fifth Amendment, U.S. Constitution
- Religious Freedom Restoration Act ("RFRA") (42 U.S.C. § 2000bb et seq.)
- *Cantwell v. Connecticut*, 310 U.S. 296, 303-304 (1940)
- *White v. New Hampshire Dept. of Employment Sec.*, 455 U.S. 445, 450 (1982).

ASSIGNMENT OF ERROR # II. (A/5.1)

Did the District Court err, as a matter of law, and/or District Judge(s) abuse their discretion when the Court is adjudicating Plaintiff's motions, notice pleadings or [OVC/ Petition] not in furtherance of a compelling governmental interest; or using the least restrictive means of furthering of a compelling governmental interest?

***

ASSIGNMENT OF ERROR # II. (A/5.2)

Did the District Court err, as a matter of law, and/or District Judge(s) abuse their discretion when the Court when it failed to administer the strict scrutiny test of a compelling governmental interest prior to striking the entire breath and merits of Plaintiff's [OVC/Petition]?

***

ASSIGNMENT OF ERROR # II. (A/5.3)

Did the District Court err, as a matter of law, and/or District Judge(s) abuse their discretion when the Court ordered an "amended complaint" to be manifested by the Plaintiff under the threat of dismissing his civil action, without a federal statute that authorizes an "amended complaint"?

Exhibit U#34

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

STATEMENT OF THE ISSUES PRESENTED AND ASSIGNMENT OF ERRORS

ISSUE PRESENTED # I. (A/6)

Under due process of law in the Fifth Amendment that *"No person shall be deprived of life, liberty, or property, without due process of law"* which embraces protected activity; 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] when Plaintiff is claiming the protection of the laws when he receives an injury, while embracing those fundamental rights that are "implicit in the concept of ordered liberty" or "deeply rooted in the Nation's history or traditions".

- Free Exercise Clause of the First Amendment to the United States Constitution
- Due Process Clause of the Fifth Amendment, U.S. Constitution
- Cantwell v. Connecticut, 310 U.S. 296, 303-304 (1940)
- Cummings v. Missouri, 71 U.S. 277, 4 Wall. 277 (1866)

ASSIGNMENT OF ERROR # I. (A/6.1)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court it violated due process of law in the Fifth Amendment in favor of unbridle power of a Judge's ***sua sponte decisionmaking,*** *when* striking the entire breath and merits of Plaintiff's [OVC/Petition]?

***

ASSIGNMENT OF ERROR # I. (A/6.2)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court when the merits of Plaintiff's case were dismissed without affording him a hearing or prior notice of an adverse action or due process of law?

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ASSIGNMENT OF ERROR # I. (A/6.3)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court disregarded Plaintiff claim for the protection of the laws when he receives an injury, while he embraced those fundamental rights that are "implicit in the concept of ordered liberty" or "deeply rooted in the Nation's history or traditions"?

****

ISSUE PRESENTED # II. (A/6)

Under due process of law in the Fifth Amendment that *"No person shall be deprived of life, liberty, or property, without due process of law"* which embraces an express legal process, filings and procedures with Plaintiff's case; which upholds or precludes a Judge's decision "that Plaintiff cannot incorporate those filings into his amended complaint" when "those filings" exist as his protected pure speech of religious beliefs or exercised as the *natural "rights of conscience are scared rights".*

- Free Exercise Clause of the First Amendment to the United States Constitution
- Due Process Clause of the Fifth Amendment, U.S. Constitution
- Cantwell v. Connecticut, 310 U.S. 296, 303-304 (1940)
- Cummings v. Missouri, 71 U.S. 277, 4 Wall. 277 (1866)

ASSIGNMENT OF ERROR # II. (A/6.1)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court denied Plaintiff due process of law when it failed strike Defendants' motion and brief (Doc. No. 53 & 54), or in the alternative, deny Defendants' motion?

***

ASSIGNMENT OF ERROR # II. (A/6.2)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court failed to prevent a Judge's decision "that Plaintiff cannot incorporate those filings into

his amended complaint" when "those filings" exist as his protected pure speech of religious beliefs or exercised as the *natural "rights of conscience are scared rights"*?

***

ASSIGNMENT OF ERROR # II. (A/6.3)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court took a period of over 8 weeks to make a ruling on Plaintiff's motion (Doc. No. 38)?

***

****

ISSUE PRESENTED # III. (A/6)

Under due process of law in the Fifth Amendment that *"No person shall be deprived of life, liberty, or property, without due process of law"* which embraces an express legal process, filings and established procedure a civil action; which upholds or precludes a Judge's decision as to *"Plaintiff's previously-filed complaint, brief and support, and exhibits, those provisions will be stricken"* when such pleading, petition, filings and as legal process for relief (Doc. Nos. 1-3) were seeking DECLARATORY JUDGEMENT, INJUNCTIVE AND OTHER APPROPRIATE RELIEF for First Amendment free exercise claims and Establishment clause challenges.

- Free Exercise Clause of the First Amendment to the United States Constitution
- Due Process Clause of the Fifth Amendment, U.S. Constitution
- Cantwell v. Connecticut, 310 U.S. 296, 303-304 (1940)
- Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202
- Rule 57 of the Federal Rules of Civil Procedure.
- Preliminary and Permanent injunctive relief under Federal Rule of Civil Procedure 65

ASSIGNMENT OF ERROR # III. (A/6.1)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court failed to grant the Plaintiff the opportunity for seeking DECLARATORY JUDGEMENT, INJUNCTIVE AND OTHER APPROPRIATE RELIEF?

ASSIGNMENT OF ERROR # III. (A/6.2)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court failed to prevent a Judge's decision as to *"Plaintiff's previously-filed complaint, brief and support, and exhibits, those provisions will be stricken"* when such pleading, petition, filings and as legal process for relief (Doc. Nos. 1-3) concerns the elements of due process?

***

ASSIGNMENT OF ERROR # III. (A/6.3)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court failed to correct or amend Clerk of the Court, operating under the color of law concerning matter addressed by notices to the Court?

Exhibit U#35

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

**STATEMENT OF THE ISSUES PRESENTED
AND ASSIGNMENT OF ERRORS**

ISSUE PRESENTED # I. (A/7)

Under unalienable rights of the Ninth Amendment, does Plaintiff's Notice Pleadings with the "Religiosity of Facts" 1 to 7. (ECF No. 45) manifest a unenumerated right to exist as 'I Am' when practicing [Commanding Heights] *per se* (Fundamental Liberty Interest or Property Interests) & [CLP] *per se* as (Controlling Legal Principles) as an artful blend; while granting full protection under the protocols of the First Amendment and as guaranteed by the Ninth Amendment; thereby to *secure, protect and defend* Plaintiff's *free exercise of unalienable rights* to *life, liberty and pursuit of happiness*,

- Ninth Amendment of the First Amendment to the United States Constitution
- Free Exercise Clause of the First Amendment to the United States Constitution
- The *due process of law* provision of the Fifth Amendment, U.S. Constitution
- Religious Freedom Restoration Act ("RFRA") (42 U.S.C. § 2000bb et seq
- Cantwell v. Connecticut, 310 U.S. 296, 304-xXX (1940)

ASSIGNMENT OF ERROR # I. (A/7.1)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court failed to acknowledge Plaintiff's Quintessential Rights of the First Amendment manifest a unenumerated right to exist as 'I Am' when practicing [Commanding Heights] per se (Fundamental Liberty Interest or Property Interests) & [CLP] per se as (Controlling Legal Principles) as an artful blend?

***

ASSIGNMENT OF ERROR # I. (A/7.2)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court failed to uphold or protect Plaintiff's *free exercise of unalienable rights* to *life, liberty and pursuit of happiness*?

***

ASSIGNMENT OF ERROR # I. (A/7.3)

Did the District Court err, as a matter of law, and/or Federal Judge(s) abuse their discretion when the Court failed to acknowledge or address Plaintiff's unalienable rights of the Ninth Amendment?

***

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ISSUE PRESENTED # II. (A/7)

Under the ***free exercise clause*** of the First Amendment or the Court's doctrine and precedent of ***due process of law*** under the 5th Amendment, does Plaintiff's Quintessential Rights of the First Amendment manifest the *religious right* to believe in ***"Religiosity of Facts"* 1 to 7 (ECF No. 45)** with the ***secular belief*** in the *due process of law*, when the Court erred, as a matter of law, or as an *abuse of discretion* and would work a manifest injustice by failing to acknowledge or address "Religiosity of Facts" *de facto* rebuffing sincerely held religious beliefs of the Plaintiff.

- Free Exercise Clause of the First Amendment to the United States Constitution
- The Establishment Clause of the First Amendment to the United States Constitution
- The *due process of law* provision of the Fifth Amendment, U.S. Constitution
- Religious Freedom Restoration Act ("RFRA") (42 U.S.C. § 2000bb et seq.)
- *Cantwell v. Connecticut*, 310 U.S. 296, 303-304 (1940)
- *Cummings v. Missouri*, 71 U.S. 277, 304, 4 Wall. 277 (1866)
- *Thomas v. Review Bd., Ind. Empl. Sec. Div.*, 450 U.S. 707, 714 (1981

ASSIGNMENT OF ERROR # II. (A/7.1)

Did the District Court err, as a matter of law, and/or a Federal Judge abuse her discretion when the Court failed to acknowledge or address Plaintiff's *Notice Pleadings with the "Religiosity of Facts"* 1 to 7 (ECF No. 45.)?

***

ASSIGNMENT OF ERROR # II. (A/7.2)

Did the District Court err, as a matter of law, and/or a Federal Judge abuse her discretion when the Court failed to declare *Notice Pleadings with the "Religiosity of Facts"* 1 to 7 (ECF No. 45) as "Other Amendments" under Federal Rules of Civil Procedure?

***

ASSIGNMENT OF ERROR # II. (A/7.3)

Did the District Court err, as a matter of law, and/or a Federal Judge abuse her discretion when the Court denied or rebuffing sincerely held religious beliefs of the Plaintiff seen as "Religiosity of Facts" 1 to 7 (ECF No. 45)?

Exhibit U#36

Authorities and Precedents

First Amendment establishment/free exercise clause of the United States Constitution proclaims, decrees and guarantees: *"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."*

Article V, United States Constitution in pertinent part provides:
No person shall be deprived of life, liberty, or property, without due process of law.

***Cantwell v. Connecticut,* 310 U.S. 296, 304 (1940)**
Freedom of conscience and freedom to adhere to such religious organization or form of worship as the *individual may choose cannot be restricted by law*. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts, ***- freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be.*** Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection. (Emphasis added)

***Cummings v. Missouri,* 71 U.S. 277, 304 4 Wall. 277 (1866)**
Whenever prosecutions arise under these provisions, there will, doubtless, be granted, in Missouri, to the accused, all these guarantees of constitutional liberty. The State cannot deny them to one of its citizens without denying them to all; and to suppose a people so lost to common sense as to deprive themselves, voluntarily, of these great and essential rights, necessary to a condition of freedom, is to suppose them incapable of self-government. But an objection is also urged which is well calculated to excite interest. ***The rights of conscience are sacred rights.*** They are too often confounded, however, with the unrestrained [304] license to corrupt, from the pulpit, the public taste or the public morals. However this may be, the American people are exceedingly sensitive on the subject of religious freedom; and whenever, the people are told, as they have been in this case, *that the indefeasible right to worship God according to the dictates of conscience is about to be invaded, the public mind at once arouses itself to repel the invasion.* The first article of the amendments to the Constitution is in these words: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.' (Emphasis added)

Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163 (1803)
"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of government is to afford that protection." (Emphasis added)

Ashcroft v. Free Speech Coalition, 535 U.S. 234,253 (2002)
"First Amendment freedoms are most in danger when the government seeks to control thought or to justify its laws for that impermissible end. The right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought."

Ashcroft v. American Civil Liberties Union, 535 U.S. 564, 573 (2002)
"[A]s a general matter, 'the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content'"

Employment Div. v. Smith, 494 U.S. 872, 888 (1990)
"As we reaffirmed only last Term, '[i]t is not within the *judicial ken* to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretation of those creeds.' Hernandez v. Commissioner, 490 U.S. at 490 U. S. 699. *Repeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim."* (Emphasis added).

Employment Div. v. Smith, 494 U.S. 872, 888 (1990)
"The *compelling interest test* effectuates the First Amendment's command that religious liberty is an independent liberty, that it occupies a preferred position, and that the Court will not permit encroachments upon this liberty, *whether direct or indirect*, unless required by clear and compelling governmental interests "of the highest order," Yoder, supra, 406 U.S. at 406 U. S. 215"

California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510-511 (1972)
The Free Petition Clause encompasses petitions to all three branches of the federal government—the Congress, the executive including administrative agencies and the judiciary.

Neitzke v. Williams, 490 U.S. 319, 328 (1989).
"There, we stated that an appeal on a matter of law is frivolous where '[none] of the legal points [are] arguable on their merits.' Id. at 386 U. S. 744. By logical extension, a complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact."

Thomas v. Review Bd., Ind. Empl. Sec. Div., 450 U.S. 707, 714 (1981)
"The determination of what is a "religious" belief or practice is more often than not a difficult and delicate task, as the division in the Indiana Supreme Court attests. [Footnote 7] However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; ***religious beliefs need not be acceptable, logical, consistent, or comprehensible to others*** in order to merit First Amendment protection." (Emphasis added)

Schneckloth v. Bustamonte, 412 U.S. 218, 229 (1973)
"It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen and against any stealthy encroachments thereon."

The ***Unconstitutional Conditions Doctrine*** is a rule which describes that the government cannot condition a person's receipt of a governmental benefit on the waiver of a constitutionally protected

right; even if the government may withhold that benefit altogether. This doctrine further hold that the government cannot force a person to choose between two constitutionally protected rights, in exchange for discretionary benefits, where the property sought has little or no relationship to the benefit conferred.

Perry v. Sindermann, 408 U.S. 593, 597 (1972)
"It may not deny a benefit to a person on a basis that infringes his constitutionally protected interest, especially his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to 'produce a result which [it] could not command directly.' Speiser v. Randall, 357 U. S. 513, 357 U. S. 526. Such interference with constitutional rights is impermissible."

Substantive Due Process Doctrine

The courts have viewed the Due Process Clause and sometimes other clauses of the Constitution as embracing those fundamental rights that are "implicit in the concept of ordered liberty. Such protections, sufficient and timely notice regarding why a party is required to appear before a court or notice provided prior to encroaching government action(s), the right to an ***impartial trier of fact*** and ***trier of law***, and the right to give testimony and present relevant evidence at hearings.

Palko v. Connecticut, 302 U.S. 319, 327, (1937)
"This is true, for illustration, of freedom of thought, and speech. Of that freedom one may say that it is the matrix, the indispensable condition, of nearly every other form of freedom. With rare aberrations, a pervasive recognition of that truth can be traced in our history, political and legal."

United States v. Lanier, 520 U.S. 259, 266 (1997)
"There are three related manifestations of the fair warning requirement. First, the vagueness doctrine bars enforcement of *'a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.'*" Connally v. General Constr. Co., 269 U. S. 385, 391 (1926); accord, Kolender v. Lawson, 461 U. S. 352, 357 (1983); Lanzetta v. New Jersey, 306 U. S. 451, 453 (1939)."

RECEIVED
JUL - 5 2017
U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST LOUIS

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

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

PLAINTIFF'S NOTICE & OPPOSITION TO DEFENDANTS' REQUEST FOR A SIXTY-DAY EXTENSION OF TIME PURSUANT TO FED. R. CIV. P. - RULE 6(b)(1) OR, IN THE ALTERNATIVE, GRANT LEAVE FOR PLAINTIFF TO FILE A COMPREHENSIVE BRIEF OF LAW & REASONS WHY THE COURT SHOULD NOT GRANT DEFENDANTS A SIXTY-DAY EXTENSION OF TIME PURSUANT TO FED. R. CIV. P. - RULE 6(b)(1)

TO THE HONORABLE JUDGE OF SAID COURT AND DEFENDANTS:

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, and pursuant to his *free exercise rights* under the First Amendment; hereby gives notice 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' instant request of a SIXTY-DAY EXTENSION OF TIME PURSUANT TO FED. R. CIV. P. - RULE 6(b)(1) as set forth within their motion (Doc. No. 51) is improper, or without legal foundation utilizing or citing no case law, or Court doctrines and should be denied.

Plaintiff respectfully request if the Court finds favor with Defendants request or before the Court make its ruling on Defendants request for an extension of time, the Plaintiff would be granted

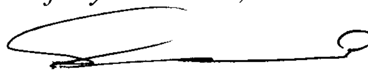
leave to FILE A COMPREHENSIVE BRIEF OF LAW & REASONS WHY THE COURT SHOULD NOT GRANT DEFENDANTS A SIXTY-DAY EXTENSION OF TIME PURSUANT TO FED. R. CIV. P. - RULE 6(b)(1).

The Defendants in this case have over 12,000 lawyers and legal personnel that could have prepared a proper response to Plaintiff's Notice Pleadings (Doc. No. 44 & 45) within the time established by Federal Rules of Civil Procedure. The Defendants have handled complex litigation cases before and have the necessary resources to meet the Plaintiff's Notice Pleadings standards in (Doc. No. 44 & 45). If the Court would grant Defendants request it would prejudice the Plaintiff, amount to an abuse of discretion and would in all legal probability manifest a reversible error.

Plaintiff makes this request in accordance with U.S. Supreme Court ***due process doctrine*** and to maintain the appearance for fundamental fairness. Plaintiff also, request the Court grant leave allowing the Plaintiff to prepare a legal brief that shall not exceed 60 pages in breath, to proper address DEFENDANTS SIXTY-DAY EXTENSION OF TIME.

Executed this 5th day of July, 2017

Respectfully submitted,

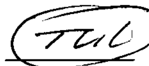


TERRY LEE HINDS, Plaintiff,
438 Leicester Square Drive
Ballwin, Missouri 63021
PH (636) 675-0028

CERTIFICATE OF SERVICE AND DELIVERY

I hereby certify that the foregoing was filed this 5th day of July, 2017 and served upon Defendants and its U.S. Attorney, by First class postage prepaid, U.S. Certified mail # 7009-0960-0000-0249-6743 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

Date: July 5th, 2017

TERRY LEE HINDS, Pro se, Plaintiff
438 Leicester Square Drive
Ballwin, Missouri 63021

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JUL - 5 2017
U.S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

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

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

PLAINTIFF'S REQUEST & OPPOSITION TO DEFENDANTS' MOTION TO STRIKE
"June 14 Filings" Pursuant to Federal Rules of Civil Procedure, Rule 12(f)

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, and pursuant to his *free exercise rights* under the First Amendment; 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.

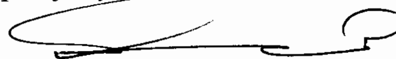
The Defendants have premised their motion to legal standards, grounds and reasons that are not in pursuant to Federal Rules of Civil Procedure, Rule 12(f); proffering requirements and actions not consistent with 8th Circuit Court of Appeals' opinions or in a motion that has no basis in law or fact. Plaintiff's asserts that Defendants' *motion* ***failed to incorporate*** a "Memorandum in Support of United States' Motion to Strike Filings or, in the Alternative, for an Extension of Time".

To advance Plaintiff's request and opposition with Defendants' motion and argument, the Plaintiff submits a "MEMORANDUM OF LAW AND BRIEF IN SUPPORT OF PLAINTIFF'S REQUEST & OPPOSITION TO DEFENDANTS' MOTION TO STRIKE 'June 14 Filings' Pursuant to Federal Rules of Civil Procedure 12(f)"; as set forth and attached hereto and incorporated by reference as if fully set forth herein.

Wherefore, premises considered and for the *germane* facts herein, the Plaintiff respectfully request legal and constitutional relief from Defendants' "Motion to Strike Filings or, in the Alternative, for an Extension of Time" (Doc. No. 51) pursuant to Federal Rules of Civil Procedure and within Plaintiff's legal and constitutional rights, with the Court issuing an Order that the Defendants' motion be stricken from the record, or in the alternative, denied or such other relief as the Court deems proper.

Executed this 5th day of July, 2017

Respectfully submitted,

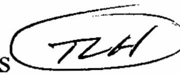


TERRY LEE HINDS, Plaintiff,
438 Leicester Square Drive
Ballwin, Missouri 63021
PH (636) 675-0028

CERTIFICATE OF SERVICE AND DELIVERY

I hereby certify that the foregoing was filed this 5th day of July, 2017 and served upon Defendants and its U.S. Attorney, by First class postage prepaid, U.S. Certified mail # 7009-0960-0000-0249-6743 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

Date: July 5th, 2017

TERRY LEE HINDS, Pro se, Plaintiff
438 Leicester Square Drive
Ballwin, Missouri 63021

RECEIVED

JUL - 5 2017

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

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

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

MEMORANDUM OF LAW AND BRIEF IN SUPPORT OF
PLAINTIFF'S REQUEST & OPPOSITION TO DEFENDANTS' MOTION TO STRIKE
"June 14 Filings" Pursuant to Federal Rules of Civil Procedure 12(f)

TO THE HONORABLE JUDGE OF SAID COURT AND DEFENDANTS:

Plaintiff respectfully files this Memorandum In Support of Plaintiff's Request and Opposition to Defendants' Motion to Strike "June 14 Filings" Pursuant to Federal Rules of Civil Procedure 12(f).

FIRST AMENDMENT RIGHT TO PETITION AND PROTEST

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]"). 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.*

In support of Notice Pleadings (Doc. No. 44 & 45) and in opposition to a motion, Plaintiff states:

I. INTRODUCTION

The moving Defendants ask this Court to fault a well-settled precedent, with one's ***religious beliefs*** when they declared: *"Additionally, the June 14 Filings are incoherent and disorganized. Many of Plaintiff's allegations are incoherent.7"* The U.S. Supreme Court has maintained for over **35 years** in the decision of *Thomas v. Review Bd., Ind. Empl. Sec. Div.,* 450 U.S. 707, 714 (1981):

> "However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection."

Defendants' Motion to Strike "June 14 Filings" pursuant to Fed. R. Civ. P. Rule 12(f) is premised on a fundamental misunderstanding and as a clever defense ploy. Defendants seek to strike the ***entire breath and merits*** of "June 14 Filings" under Rule 12(f), of which, only allows *"The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."* Accordingly, Rule 12(f) grants no statutory authority to strike the ***entire breath and merits of a pleading,*** only to strike certain portions or a paragraph"***from a pleading".*** Defendants' Motion to Strike is in realty a ***motion to dismiss*** for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(B)(6). Plaintiff states neither proposition is persuasive for the reason set forth herein. In Defendants' Motion to Strike "June 14 Filings" are crafty bespeaks defenses that are without merit and should be denied because: (1) it is not made on statutory grounds; and (2) for reasons explained herein, Plaintiff's opposition to the Defendants' Motion to Strike, and; (3) the Court cannot conclude from the facts or statements in the notices of the "June 14 Filings" any redundant, immaterial, impertinent, or scandalous matter, and (4) the Court should not uphold the Defendants' *developing doctrines of deception*, because deception and its effects are upholding a principle, as cruel, as war itself. **For the record**, this Plaintiff is engaged in a ***war of words***, with this Court and the Defendants in a civil action for *rights,*

privileges, or immunities secured by the U.S. Constitution and the Rule of Law, thereby to secure, protect and defend Plaintiff's free exercise of *unalienable rights to life, liberty and pursuit of happiness.* Before God and County, as well as, a *'living witness'* [To LIVE as EVIL] shall not prevail *"for I have sworn upon the altar of god, eternal hostility against every form of tyranny over the mind of man."* A statement of religious belief and oath concerning the issues to be decided.

II. ISSUES TO BE DECIDED

A. *Sleight of Hand Issues*

The moving Defendants' motion to strike (Doc. No. 51) is nothing more than a feeble attempt to challenge well-settled law by asserting crafty bespeaks defenses under the smoke screen of **Rule 8**. First, Defendants signify Plaintiff's performances, bespeaks considerably, by claiming a party is *"improperly named"* to the Plaintiff *"filled the docket with numerous motions, briefs, 'notices,' and 'requests,' in addition to an unsuccessful motion for a writ of mandamus from the United States Court of Appeals for the Eighth Circuit."* (Def. Memo. Page 1.)

Second, a memo that speaks to, especially with formality; Defendants have suggested or expressed that this following statement is in some way or somehow relevant to a Rule 12(f) motion:

Five times, this Court, through three different judges, has ordered Plaintiff to file an amended complaint in compliance with Federal Rule of Civil Procedure 8 ("Rule 8"). (ECF Nos. 8, 18, 29, 36, 42.)Despite his hundreds (if not thousands) of pages of filings, Plaintiff has failed to comply with the Court's orders. He has not filed a complaint that complies with Rule 8. (Def. Memo. P 1.)

Third, improperly labeling Plaintiff's Notice Pleadings as "documents" or as "June 14 Filings" or just as "filings" bespeaks the wide departure of the civil procedures under Rule 12(f).

Lastly, the Defendants, who have not raised a single defense, objection, or made a response or denial with a docket filled with numerous motions, briefs, notices, and requests, but now seeks a *"sleight of hand"* legal remedy, by referring to Rule 8 or it ambiguous and vague requirements over **30 times** in their Memorandum of Support. Crafty bespeaks defenses are not of Rule 12(f).

B. ***The Issue at Hand***

Defendants have asked the Court, under Rule 12(f), to grant the extraordinary remedy of striking two sets of seven **notice pleadings**, being the ***entire breath and merits*** of ***amended statements*** set forth within "June 14 Filings". These so called "filings" by the Defendants, existing as "short and plain statement of the claim showing that the pleader is entitled to relief" or such statements that "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Bell Atlantic Corp. v. Twombly, 550 U.S. ___, ___, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)). Plaintiff's Hybrid Pleadings set forth as Revelation #1 through #7 (Doc. No. 44) and PLAINTIFF'S CONSCIENTIOUS EFFORT TO COMPLY WITH COURT'S ORDERS TO MANIFEST AN AMENDED COMPLAINT WITHIN A RELIGIOSITY OF FACTS (Doc. No. 45) set forth as Religiosity of Facts #1 through #7 was filed by the Plaintiff in support of Court Orders, Fed. R. Civ. P. RULE 15(a)(2), and the First Amendment; but the alleged applicable Rule 12(f) and crafty defense ploys by the Defendants, do not provide for this motion ***to strike*** in this context. The Court must decide whether the moving Defendants have satisfied the strict requirements under Rule 12(f) of the Federal Rules of Civil Procedure, thus to have stricken from the record the ***entire breath and merits*** of ***Plaintiff's notice pleadings,*** aka "June 14 Filings".

III. RELEVANT FACTS

A. BACKGROUND OF CASE

a. ***Pure Speech of Religious Belief***

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]"). 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.* ***Pure speech*** in United States law is the communication of ideas through spoken or written words or through conduct limited in form that is necessary to convey the idea. It is distinguished from symbolic speech or "speech plus," which involves conveying an idea or message through behavior. ***Pure speech*** is accorded the highest degree of protection under the First Amendment to the U.S. Constitution. Fact is Plaintiff's "June 14 Filings" are pure speech regarding ***statements of religious beliefs,*** exercised as amendments to an [OVC/Petition] of which coexist with Plaintiff's complaint.

b. *Free Exercise of Protected Speech*

The First Amendment states, in relevant part, that: "Congress shall make no law...abridging freedom of speech." While it states "Congress," the protections are also against state government and local public officials or any governmental authority or its officials at any level of government from making any law, policy, orders or rules that abridges a person's protected speech. However, simply because the governmental authority cannot make a law, policy, orders or rules of this nature does not mean that individuals are free to say anything that they want to that presents a *clear and present danger* to society or if speech constitute libel, obscenity or slander. First Amendment guarantees, as the Supreme Court has explained, *"If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." Texas v. Johnson,* 491 U.S. 397, 415 (1989). "June 14 Filings" are pure speech in exercising protected speech of religious beliefs.

c. *Viewpoint Based Restrictions & Viewpoint Discrimination*

Government suppression of otherwise legal speech can be justified only if the government can advance a compelling reason. For example, national security concerns might justify suppression

of an article describing military strategy in wartime. More often, free speech cases involve claims that government regulations are vague or overly broad, or that the government is engaging in viewpoint discrimination – trying to suppress speech because of opposition to the message it conveys. Freedom of speech and its forms of expression are protected to varying degrees, often depending on where the expression occurs, and whether the law, regulation, policy or order is formulated or applied to affect the content or viewpoint of the speech in that forum. The preceding [Court's Presiding Judge, the Honorable John M. Bodenhausen] ("[Judge]") made a review, finding, and Order (Doc. No. 8) thereby imposed unconstitutional viewpoint-based restrictions on Plaintiff's free, pure, or [Protected Speech]. The Order engaged in viewpoint-driven conduct & regulating speech based on its content, against Plaintiff's religious beliefs, being content expressed, published and religiously proclaimed by the Petitioner in [OVC/Petition]. This Order showed that the government burdened substantially more speech than was necessary to achieve its legitimate goals or curtails speech with Fed. R. Civ. P. Rule 8(a) and 8(d) operating as unconstitutionally vague as applied. The Supreme Court has held: "The First Amendment, our precedent makes plain, disfavors viewpoint-based discrimination." See Rosenberger v. Rector and Visitors of Univ. of Va., 515 U. S. 819, 828 (1995) quoting Wood v. Moss, 572 U.S. ___ (2014).

d. *Plaintiff's Other Notice Pleadings* (Doc. No. 33 & 34)

Plaintiff filed, other Notice Pleadings (Doc. No. 33 & 34), pursuant to Court' Orders, Fed. R. Civ. P. Rule 15(a)(2), his First Amendment free exercise rights and in accordance with U.S. Supreme Court decisions regarding "Notice Pleadings". Plaintiff filed on May 8, 2017 a collective set of seven Notices concerning "UNJUST BURDENS ON FREE EXERCISE PRINCIPLES AND ON PLAINTIFF'S CONSTITUTIONAL RIGHTS OF THE FIRST AMENDMENT AND, IN THE ASSESSMENT OF TRUTH FOR Rule 8(d)(1) pleading requirement that 'each allegation must be simple, concise and direct'". **(Doc. No. 33).** Plaintiff also filed on May 8, 2017 a collective set of seven distinct "NOTICE OF A SHORT

AND PLAIN STATEMENT OF THE CLAIM SHOWING THE PLAINTIFF IS ENTITLED TO RELIEF UNDER THE FIRST AMENDMENT AND, IN THE ASSESSMENT OF TRUTH FOR A fact-based pleading and Rule 8 entitlement; giving rise to plausibility of 'entitlement to relief'" **(Doc. No. 34).** These Notice Pleadings (Doc. No. 33 & 34) were properly entered into the record providing "formal Notice to all interested parties and the Court". Defendants failed to respond to such matters.

B. DISCUSSION

a. *"Notice Pleading"*

Notice pleading refers to a style of pleading in which all the technical facts aren't required to be spelled out in the document, but only those which are sufficient to put the other parties on notice, or made aware of, the claim or defense being made. Notice pleading is the dominant form in the United States today. In 1938, the Federal Rules of Civil Procedure were adopted. One goal was to relax the strict rules of code pleading. Code pleading had served four purposes: notice, issue narrowing, pleading facts with particularity and eliminating meritless claims. The Federal Rules eliminated all of those requirements except for the notice requirement (hence we call it notice pleading). The requirements that were eliminated were shifted to discovery (another goal of the FRCP). In notice pleading, plaintiffs are required to state in their initial complaint only a short and plain statement of their cause of action. The idea is that a plaintiff and their attorney who have a reasonable but not perfect case can file a complaint first, put the other side on notice of the lawsuit, and then strengthen their case by compelling defendant to produce evidence during the discovery phase. For Supreme Court standards, see Exhibit # U-27 attached hereto and incorporated herein.

b. *Conformity with the requirements of Rule 8*

Rule 8 provides no authority or mechanism to manifest the so-called "amended complaint". Rule 8 is not concern with or involves requirements regarding "redundant, immaterial, impertinent, or scandalous matter". Rule 8 expresses no direct authority for the Court to grant or manifest a new

pleading labeled as "amended complaint". With the opposing party's written consent or the court's leave, a party may add "Other Amendments" to an existing "complaint" or other pleadings in accordance with or defined in Fed. R. Civ. P. Rule 7. The Fed. R. Civ. P. Rule 15(a)(2) allows for "Other Amendments" particularity ***"a party may amend its pleading".*** For legal guidance Black's Law dictionary defines "What is AMENDMENT OF PLEADING?" "the changing of a pleading that will correct any errors and to make a more accurate presentation of all of the facts." http://thelawdictionary.org/amendment-of-pleading/. The conformity within the requirements of Rule 8 manifest ***statutory censorship*** or **viewpoint based restrictions** which, in this case, involves suppression of pure speech of religious belief as protected speech, thus raising issues of freedom of speech, which is protected by the First Amendment to the United States Constitution.

c. *Defendants failed to satisfy the strict requirements of Rule 12(f)*

Neither Fed. R. Civ. P. 12(f) nor any other part of the Federal Rules of Civil Procedure authorizes the use of a motion to strike the context of "short and plain statement of the claim showing that the pleader is entitled to relief" or such statements that "give the defendant fair notice of what the the claim is and the grounds upon which it rests." Furthermore the ***statutory grounds*** of Rule 12(f), are limited to "The court may ***strike from a pleading*** an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." There is no *unbridled power* in Rule 12(f), or any discretion, deviation or deception allowing the Court ***to strike the entire breath and merits*** of Plaintiff's "June 14 Filings". The court ***may strike from a*** pleading redundant, immaterial, impertinent, or scandalous matter, however, no authority to strike a complaint or "June 14 Filings" under Rule 12(f). ***Plaintiff' religious beliefs are not redundant, immaterial, impertinent, or scandalous matters.*** Defendants failed to cite any germane rule or other authority for their motion to strike "filings". Defendants' motion should be denied for this reason alone.

The only provision of the Federal Rules of Civil Procedure that specifically authorizes motions to strike is Rule 12(f), which applies solely to ***"pleadings,"*** a term that is defined in Rule 7(a) to include only complaints, answers, cross-claims, and counterclaims. However, the Plaintiff's Revelation #1 through #7 (Doc. No. 44) and PLAINTIFF'S CONSCIENTIOUS EFFORT TO COMPLY WITH COURT'S ORDERS TO MANIFEST AN AMENDED COMPLAINT WITHIN A RELIGIOSITY OF FACTS (Doc. No. 44) set forth as Religiosity of Facts #1 through #7 (Doc. No. 45), arise, in part, under Fed. R. Civ. P. RULE 15(a)(2). **"*Other Amendments.*"** Consequently, "June 14 Filings" are not a *per se* "pleading" as defined in Rule 7(a) and therefore not subject to Rule 12(f) requirements. Furthermore the "June 14 Filings" also arises under the First Amendment guarantees of religious beliefs, protected speech, the right to petition and protest government unconstitutional activities.

IV. LAW AND ARGUMENT

A. DEFENDANT'S MOTION TO STRIKE HAS NO MERITS

Defendants argue initially that: **"The Court Should Strike Plaintiff's June 14 Filings."** "Because Plaintiff's June 14 Filings Do Not Request any Relief, the Court Should Strike them for Violating the Court's Orders." **(Def. Memo. Page 6).** Defendants then argued: "If the June 14 Filings Are Construed as an Amended Complaint, the Court Should Strike them for Violating Rule 8." **(Def. Memo. Page 7).** Finally, Defendants argued that this Court should "In the event that the Court determines both (1) that the June 14 Filings are an amended complaint and (2) that they comply with Rule 8, the United States respectfully requests a sixty-day extension of time to respond." **(Def. Memo. Page 11)** All these core arguments are meritless. Defendants failed to satisfy the requirements of Rule 12(f). Furthermore, even if the Court were inclined to entertain these core arguments at this preliminary stage, the moving Defendants premise their position on inapposite cases. To navigate the deep and murky waters of Defendants' inapposite cases, the Court should

review Plaintiff's notices, briefs and motions addressing such matters as set forth under (Doc. No. 11, 12, 14, 19, 38, 39). This case has nothing to do with civil rights or the Sherman Anti-trust Act.

1. *Rule 12(f) Motion to Strike Standard and Requirements*

Fed R. Civ. P. Rule12 (f) grants a mechanism for striking certain ***improper matters***. It provides:

(f) MOTION TO STRIKE. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

2. *Applicable Legal Standards of Rule 12(f)*

a. In the Eyes of the 8th Circuit

Rule 12(f) of the Federal Rules of Civil Procedure provides that a "court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. Rule 12(f). "Parties filing a motion to strike under Fed. R. Civ. P. 12(f) bear the burden of providing the Court any reason why this language is immaterial, impertinent, or scandalous." Simms, 2009 WL 943552 at *2 (internal citation omitted). "Although the Court enjoys 'broad discretion' in determining whether to strike a party's pleadings, such an action is 'an extreme measure.'" Airstructures Worldwide, LTD v. Air Structures Am. Techs. Inc., No. 4:09CV10, 2009 WL 792542, at *1 (E.D. Mo. Mar. 23, 2009) (quoting Stanbury Law Firm v. IRS, 221 F.3d 1059, 1063 (8th Cir. 2000)). "A motion to strike should 'be denied if the defense is sufficient as a matter of law or if it fairly presents a question of law or fact which the court ought to hear.'" Bartoe v. Mo. Barge Line Co., No. 1:07CV165, 2009 WL 1118816, at *1 (E.D.Mo. Apr. 24, 2009) (quoting Lunsford v. United States, 570 F.2d 221, 229 (8th Cir. 1977)). "'Motions to strike under Fed. R. Civ. P. 12(f) are viewed with disfavor and are infrequently granted.'" Champion Bank v. Reg'l Dev., LLC, No. 4:08CV1807, 2009 WL 1351122, at *4 (E.D. Mo. May 13, 2009) (quoting

Lunsford, 570 F.2d at 229). Because striking a party's pleadings is such an extreme measure, motions to strike are viewed with strong disfavor. Stanbury Law Firm v. IRS, 221 F.3d 1059, 1063 (8th Cir. 2000). "Rule 12(f) motions are generally disfavored because they are often used as delaying tactics, and because of the limited importance of pleadings in federal practice." Bureerong v. Uvawas, 922 F.Supp. 1450, 1478 (C.D. Cal. 1996) (citation and quotations omitted).

b. In the Eyes of Judge Ross

Under Federal Rule of Civil Procedure 12(f), "the court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Although the district court enjoys "broad discretion" in determining whether to strike a party's pleadings, such an action is an "extreme and disfavored measure." Stanbury Law Firm v. I.R.S., 221 F.3d 1059, 1063 (8th Cir. 2000); Lunsford v. United States, 570 F.2d 221, 229 (8th Cir. 1977). Motions to strike are properly directed only to material contained in pleadings. The Federal Rules of Civil Procedure define pleadings as "a complaint and an answer; a reply to a counterclaim ...; an answer to a cross claim ...; a third-party complaint ...; and a third party answer." Fed. R. Civ. P. 7(a). Motions, briefs, memoranda, objections or affidavits may not be attacked by a motion to strike. 2 James W. Moore, et al., Moore's Federal Practice § 12.37[2] (3rd ed.2008). See Coleman v. City of Pagedale, No. 4:06–CV–1376 ERW, 2008 WL 161897, *4 (E.D. Mo. Jan. 15, 2008) (sur-reply and memorandum were not pleadings and could not be attacked with a motion to strike). This is word for word in a Memorandum and Order, dated 31st day of October, 2016 in the case of CARLTON MILLER v. UNITED STATES, No. 4:16-CV-00488-JAR and No. 4:14-CR-00353-JAR-1.

3. ***Defendants' Surreal Legal Standards of Rule 12(f)***

a. In the Eyes of Carrie Costantin, "Respectfully submitted,"

"The United States moves, pursuant to Federal Rule of Civil Procedure 12(f), the Court to strike

Plaintiff's two sets of seven documents filed on June 14, 2017." (Def. Motion page 1, para 1.) It is fatal, to our U.S. system of justice and legal procedures that the Court would allow, endorse, or egregiously advance the Defendants' defense ploys or expand beyond the ***statutory grounds*** of Defendants' pending motion. Defendants' "Motion to Strike Filing" is pursuant to Fed R. Civ. P. Rule12 (f) exclusively; however Defendants argument is based on:

I. "The Court Should Strike Plaintiff's June 14 Filings.

A. Because Plaintiff's June 14 Filings Do Not Request any Relief, the Court Should Strike them for Violating the Court's Orders."

"The Court should strike Plaintiff's filings to enforce the Court's Orders." (Def. Memo. page 6, para 1.) The Defendants are seeking relief pursuant to the strict requirements of Rule12 (f), to which, Rule 12(f) does not authorize or remotely concern thoughts of: "Plaintiff's June 14 Filings Do Not Request any Relief" or "the Court Should Strike them for Violating the Court's Orders." It is a fact of law and for the record, Rule12 (f) makes no allowance for the Defendants or Ms. Costantin to act in the capacity of the Court or as a judge.

Rule12 (f) concerns ***"an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter"*** not within or whether the Plaintiff's "June 14 Filings" arguably violates "the Court's Orders". Furthermore, Defendant's surreal argument is further advanced on Plaintiff allegedly violating Rule 8 conformity, impudently declaring within the Rule 12(f) motion itself:

"These filings do not comply with the Court's Orders that Plaintiff file an amended complaint in compliance with Rule 8. They are not an amended complaint, as they state no claim for relief. But, even if the Court were to construe them as an amended complaint, they do not comply with Rule 8, and therefore Plaintiff has failed to satisfy the Court's Orders." Def. Mot. page 1, para 1.

It is apparent within the eyes of Carrie Costantin, Acting United States Attorney, ***who failed to make proper notice of entry into this case***; main or chief concern is with Plaintiff compliance with the ***conformity with Rule 8.*** However, the Defendants failed present any defenses, objections or

denials under the requirements of **Rule 8(b) or 8(c)**. Defendants' instant motion is not made pursuant to Rule 8 or any other Federal Rule of Civil Procedure beyond Rule 12(f) or Rule 6(b)(1). Defendants ***own conformity*** with Fed R. Civ. P. should be brought into the light justice, especially when their Memorandum in Support declares the ***strike concerns Rule 8*** and not Rule 12(f) burden of providing what is redundant, immaterial, impertinent, or scandalous. In Def. Memo. on Page 7:

> "B. If the June 14 Filings Are Construed as an Amended Complaint, the Court Should Strike them for Violating Rule 8."

"Even if the Court were to disagree and liberally construe the June 14 Filings into an amended complaint, the Court should still strike the June 14 Filings for violating the Court's Orders and failing to comply with Rule 8. Five times, the Court has ordered Plaintiff to file an amended complaint in compliance with Rule 8. To the extent Plaintiff intended the June 14 Filings to serve as an amended complaint, they are an attempt to circumvent the spirit of Rule 8 by filing extensive material across fourteen documents and incorporating over four hundred exhibits comprising thousands of pages."

Plaintiff's Notice Pleadings (Doc. No. 44 & 45) aka "June 14 Filings" cannot be stricken from the record as Rule 8 has no such mechanism nor does Rule 12(f) allow *such grounds* as declared above.

4. *The Potential Prejudice to Plaintiffs from excluding Evidence*

Plaintiff's Notice Pleadings (Doc. No. 44, 45) aka "June 14 Filings" has incorporated by reference, as if fully set forth therein certain exhibits as evidence more particularly described in Plaintiff's Exhibit List (Doc. No. 3). The exclusion of these exhibits would constitute an abuse of discretion and reversible error, as well as, manifest prejudice to the Plaintiff or a violation of *due process.*

B. OTHER MATTERS NOT SUBJECT TO DEFENDANTS' RULE 12(F) ARGUMENT

A. *A failure to respond to Plaintiff's Complaint, Notices, Motions or other legal process*

Defendants' Memorandum in Support of their Rule 12(f) motion is based on the *entire breath* of legal matters the Defendants failed to respond to regarding Plaintiff's [OVC/Petition] or other Pleading Notices, various Motions or other legal process. Defendants' Memorandum in Support, has little to do with the any requirements of a Rule 12(f) motion, however, does set out 4 pages of

a "PROCEDURAL HISTORY", of which, list documents Defendants failed to raise or establish any claims or rights under **Fed R. Civ. P., Rule 8 (a) CLAIM FOR RELIEF** OR UNDER **Fed R. Civ. P., Rule 8(b) DEFENSES; ADMISSIONS AND DENIALS** or under **Fed R. Civ. P., Rule 8(c) AFFIRMATIVE DEFENSES** or under **Fed R. Civ. P., Rule 8(d) PLEADING TO BE CONCISE AND DIRECT; ALTERNATIVE STATEMENTS; INCONSISTENCY.**

b. *Plaintiff's other 14 Notices Pleadings* (Doc. No. 33 & 34) *filed* May 8th, 2017

Defendants' are attempting to take a second or third bite at the apple, by filing a Rule 12(f) motion that does nothing more than review previously litigated matters, of which needlessly consumes this Court's time and efforts to resolve this litigation. As listed on page 4, paragraph 1 of Defendants' Memorandum in Support Defendants have made a misleading statement by declaring:

> "However, the Court also ruled that Plaintiff's seventeen other "motions or other documents" did not "appear to have any basis in law or fact." (*Id.* at 1.) Therefore, the Court denied them as frivolous and advised Plaintiff that the Court would not entertain any similar motions filed by Plaintiff. (*Id.*)"

The record shows, Judge Fleissig Memorandum and Order **(Doc. No. 36)** *did not dismiss* Plaintiff's 14 Notices (Doc. No. 33 & 34) because the Court's Order was **limited to** *"all of Plaintiff's pending motions are DENIED as frivolous"*. These motions that were "DENIED" were filed under Judge Ross reign, who refused to make a ruling or ignored the relief sought. A First year law student knows notice are not motions. These initial 14 Notices Pleadings (Doc. No. 33 & 34) are now in the record, because the Defendants failed to raise any defenses or make any objections under any germane Federal Rules Civil Procedure. These initial 14 Notice Pleadings (Doc. No. 33 & 34) were directed "TO THE HONORABLE JUDGE OF SAID COURT AND DEFENDANTS" A point of law, Judge Fleissig Memorandum and Order (Doc. No. 36) concerned **only one matter:** "This matter is before the Court on Plaintiff's motion for extension of time (ECF No. 35)." That matter was set forth to the Court, as well as, the Defendants as:

PLAINTIFF'S NOTICE AND REQUEST FOR EXTENSION OF TIME TO BE GIVEN AN OPPORTUNITY TO PROPERLY PRESENT THE MERITS OF HIS ACTION AND/OR, IN THE ALTERNATIVE,
to make a conscientious effort to comply with the court's initial review order

Plaintiff's initial Notice Pleadings (Doc. No. 33 & 34) were not of this particular Notice and Request because Plaintiff was seeking "EXTENSION OF TIME TO BE GIVEN AN OPPORTUNITY TO PROPERLY PRESENT THE MERITS OF HIS ACTION". Judge Fleissig Memorandum and Order (Doc. No. 36) uneasiness about *"seventeen motions or other documents, none of which appear to have any basis in law or fact"* did not involve Plaintiff's Notice Pleadings (Doc. No. 33 & 34) rather Plaintiff's numerous Briefs in support of his motions as the ***"other documents".*** Plaintiff's initial Notice Pleadings (Doc. No. 33 & 34) advances Plaintiff's "civil action for rights, privileges, or immunities secured by the U.S. Constitution and the Rule of Law, thereby to secure, protect and defend Plaintiff's free exercise of unalienable rights to life, liberty and pursuit of happiness, hereby declares and submits the following notice and pursuant to Plaintiff's constitutional protected free exercise rights to petition the U.S. government and to protest U.S. government activities through this civil action and its pleadings, and in so doing providing formal Notice to all interested parties and the Court:". However, Judge Fleissig Memorandum and Order (Doc. No. 36) decreed in part:

> IT IS FURTHER ORDERED that all of Plaintiff's ***pending motions*** are **DENIED as frivolous**, and Plaintiff is advised that the Court will not entertain any ***similar motions*** filed by Plaintiff at this time. (Emphasis added)

Plaintiff's believes no Federal Judges, who has made an Oath to the U.S. Constitution, could think *notice pleadings* involving a *"civil action for rights, privileges, or immunities secured by the U.S. Constitution and the Rule of Law"* or regarding *"free exercise of unalienable rights to life, liberty and pursuit of happiness"* would produce pleadings *"none of which appear to have any basis in law or fact"* Bedside, a first year law student knows "Notice Pleadings" (Doc. No. 33 & 34) are not a "motion" and a civil action regarding constitutional rights has a viable basis in law and fact.

V. CONCLUSION

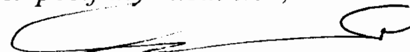
The Roberts Court's decisions about the requirements of federal pleading have engendered significant controversies in the conformity with Rule 8(a) or 8(d). The cases, Bell Atlantic Corp. v. Twombly and Ashcroft v. Iqbal, have been said by some to have destroyed the federal notice-pleading system and radically tipped the balance in favor of defendants, as well as, for plaintiffs who have to defend their pleadings or action from a zealous judge's ***sua sponte*** decisionmaking, or the Court acting on its own initiative ***striking the entire breath and merits of a pleading***, simply for the reason *"that a great deal of judicial energy and resources would have to be devoted to restructuring the pleading and streamlining the* ***unnecessary matter****"* concerning ***religious beliefs.***

VI. RELIEF REQUESTED

Defendants bear the burden of providing the Court specified reason(s) why Plaintiff's language in the "June 14 Filings" is redundant, immaterial, impertinent, or scandalous. Defendants have failed to meet this burden and because *"the Court must view the pleadings in a light most favorable to the pleading party"* Plaintiff request the Court deny their Motion to Strike Filings, or, in the Alternative, for an Extension of Time, as Defendants sudden concern is not for good cause shown.

Executed this 5th day of July, 2017

Respectfully submitted,



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

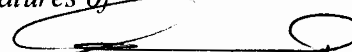
CERTIFICATE OF SERVICE AND DELIVERY

I hereby certify that the foregoing was filed this 5th day of July, 2017 and served upon Defendants and its U.S. Attorney, by First class postage prepaid, U.S. Certified mail # 7009-0960-0000-0249-6743 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



Date: July 5th, 2017

TERRY LEE HINDS, Pro se, Plaintiff
438 Leicester Square Drive
Ballwin, Missouri 63021

RECEIVED
JUL - 5 2017
U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

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

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

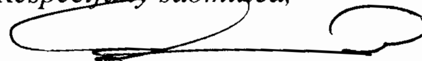
NOTICE OF FILING EXHIBIT IN SUPPORT OF
PLAINTIFF'S REQUEST & OPPOSITION TO DEFENDANTS' MOTION TO STRIKE
"June 14 Filings" Pursuant to Federal Rules of Civil Procedure 12(f)

TO THE HONORABLE JUDGE OF SAID COURT AND DEFENDANTS:

Plaintiff's Exhibit # U-27 entered in Case # 4:17 – CV – 00750 AGF, IN SUPPORT OF PLAINTIFF'S REQUEST & OPPOSITION TO DEFENDANTS' MOTION TO STRIKE "June 14 Filings" Pursuant to Federal Rules of Civil Procedure 12(f) and to advance, Plaintiff's ***free exercise right to petition*** the Defendants, and including the Court with the ***free exercise right to protests activities*** of the Defendants, and the Court This Exhibit will be filed with the Clerk's Office in paper format. I certify that within 24 hours of the filing of this Notice, I will file and serve paper copies of the document identified above to the Defendants.

Executed this 5th day of July, 2017

Respectfully submitted,



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

Attachment(s)
U.S. Supreme Court Cases validating notice pleading and its standards

CERTIFICATE OF SERVICE AND DELIVERY

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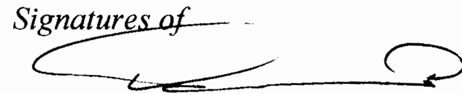

Date: July 5th, 2017

TERRY LEE HINDS, Pro se, Plaintiff
438 Leicester Square Drive
Ballwin, Missouri 63021

United States Supreme Court

CONLEY v. GIBSON, (1957)

Argued: October 21, 1957 Decided: November 18, 1957

The respondents also argue that the complaint failed to set forth specific facts to support its general allegations of discrimination and that its dismissal is therefore proper. The decisive answer to this is that the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim" 8 that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. The illustrative forms appended to the Rules plainly demonstrate this. Such simplified "notice pleading" is made possible by the liberal opportunity for discovery and the other pretrial procedures [355 U.S. 41, 48] established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues. 9 Following the simple guide of Rule 8 (f) that "all pleadings shall be so construed as to do substantial justice," we have no doubt that petitioners' complaint adequately set forth a claim and gave the respondents fair notice of its basis. The Federal Rules reject the approach that pleading is a game of skill in which one misstep by 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. Cf. Maty v. Grasselli Chemical Co., 303 U.S. 197.

The judgment is reversed and the cause is remanded to the District Court for further proceedings not inconsistent with this opinion.

It is so ordered.

[Footnote 9] See, e. g., Rule 12 (e) (motion for a more definite statement); Rule 12 (f) (motion to strike portions of the pleading); Rule 12 (c) (motion for judgment on the pleadings); Rule 16 (pre-trial procedure and formulation of issues); Rules 26-37 (depositions and discovery); Rule 56 (motion for summary judgment); Rule 15 (right to amend). [355 U.S. 41, 49]

****

United States Supreme Court

ZENITH RADIO CORP. v. HAZELTINE RESEARCH, (1971)

No. 80

Argued: November 10, 1970 Decided: February 24, 1971

The motion was thoroughly and extensively argued. With respect to the defenses of limitations and release, [401 U.S. 321, 329] the trial court's ruling, after Zenith objected to them as being "too late," was expressed as follows: "Well, the record will show that leave is given to file them at this time, after proofs are closed and after findings have been made." 3

[Footnote 3] For example: "The Court: . . . underlying what you are saying [with respect to the embargoes] is what is said so frequently in [401 U.S. 321, 352] appeals in criminal cases, that

PLAINTIFF'S EXHIBIT U-27 13 pages

they are where they are by virtue of incompetence of counsel. "Now, there a person's liberty is involved, and what do the courts say in regard to this plea of incompetency of counsel? "They say, first, was he counsel of your choice rather than appointed counsel? And if he was, the courts say, in regard to keeping men incarcerated and depriving them of their liberty, that unless the trial conducted by counsel of the prisoner's choice was such a farce, such a fraud that justice would be horrified by the result, that since you are represented by counsel of your choice, why, agreed that he might not be the greatest in the world, but he was your lawyer and you picked him out. You are going to have to remain incarcerated for the balance of your term. "Now, how do we get around that analogy in this case?" App. 140-141. Hazeltine's attorney responded in terms of his theory of surprise, whereupon the District Judge answered that federal procedure was based on notice pleading and in his opinion Hazeltine had been put on notice. App. 141-144. See also, e. g., App. 116, 121-123, 146, 155.

****

United States Supreme Court

YAZOO COUNTY INDUSTRIAL DEVELOPMENT CORPORATION v. SUTHOFF, (1982)

No. 80-1975

Argued: Decided: January 11, 1982

On petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

The petition for a writ of certiorari is denied.

Had the Court of Appeals been content to end its opinion at that point, this case would be one among hundreds where busy federal appellate courts decide whether "conclusory [454 U.S. 1157 , 1159] allegations" made under the "notice pleading" premise of the Federal Rules of Civil Procedure do or do not properly invoke federal jurisdiction. This Court in turn would be entirely correct in concluding that the petition for certiorari does not warrant plenary consideration. But, for better or for worse, the Court of Appeals did not stop there. Instead, it proceeded to step on what is, in my opinion, a legal landmine when it elaborated on the meaning of Bell v. Hood, 327 U.S. 678 (1946). The Court of Appeals obviously recognized its obligation to follow the dictates of that case as best it could, and because to me the decision in Bell is one of the most cryptic in the recent history of this Court's jurisprudence, I have nothing but sympathy for those who seek to divine its meaning.

****

United States Supreme Court

BALDWIN COUNTY WELCOME CENTER v. BROWN, (1984)

No. 83-181

Argued: Decided: April 16, 1984

I will not engage in the task of identifying the nature and source of all of the failures to observe the procedural requirements [466 U.S. 147, 163] imposed by the Legislature in this case. As to whether it is fair to say on this record that respondent failed to act diligently to preserve her claim when she was acting pro se, I think the record largely speaks for itself. I might observe that if there had been strict adherence to the Federal Rules of Civil Procedure, in all likelihood this lawsuit would have ended in January 1982 with the bench trial originally scheduled, rather than stayed indefinitely in order to litigate an issue which would seem to have more relevance to a 19th-century lawyer schooled in technical pleading requirements than a 20th-century federal judge whose first procedural rule is to achieve the just, speedy, and inexpensive termination of litigation.

The question initially framed ***sua sponte*** by the Magistrate and then ***sua sponte*** ruled upon by the District Court was never presented in this case. The majority seems to agree with respondent that the statute of limitations issue was not a jurisdictional question, see Mohasco Corp. v. Silver, 447 U.S., at 811 , and n. 9; cf. Zipes v. Trans World Airlines, Inc., 455 U.S. 385 (1982), and hence since petitioner never set forth the affirmative defense of the statute of limitation pursuant to Rule 8(c) (though it "reserved" the right to do so) nor moved to dismiss the Title VII claims as time-barred under Rule 12(b), the District Court erred in dismissing these claims ***sua sponte***. Even if the issue were jurisdictional, the question in the case was never whether the right-to-sue letter was a complaint - the question was whether a complaint had been timely filed. The right-to-sue letter was the first document "filed" by respondent, and was apparently treated as a complaint for all practical purposes by the District Court, with the telling exception of failing to trigger issuance of a summons. But the right-to-sue letter was not the only document filed by respondent. In March she filed a complaint. Certainly the District Court should not have declined to treat the March letter as a complaint "merely because respondent did not label" it as a complaint "for that [466 U.S. 147, 164] would exalt nomenclature over substance." Browder v. Director, Illinois Department of Corrections, 434 U.S. 257, 272 (1978) (BLACKMUN, J., joined by REHNQUIST, J., concurring); see also Schlesinger v. Councilman, 420 U.S. 738, 742 , n. 5 (1975). If only this pro se civil rights plaintiff claiming racial discrimination had been able to grasp the talismanic significance of labeling that document a "complaint," or perhaps a "petition," to use the nomenclature of Judge Varner, the Clerk's office would have mechanically issued a summons, see Fed. Rule Civ. Proc. 4(a), and then petitioner could have filed a motion for a more definite statement pursuant to Rule 12(e) if the complaint did not adequately serve the purposes of modern-day notice pleading.

But of course petitioner would not have needed a more definite statement. The Federal Rules of Civil Procedure "do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is a `short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 47 (1957) (footnote omitted). It would be absurd to suggest that petitioner would not have had fair notice of the claim against it had the documents filed pro se by respondent been served upon it. "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by 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." Id., at 48. Missteps by pro se Title VII plaintiffs, it would seem, are not so easily ignored.

Rule 8(f) provides that "[a]ll pleadings shall be so construed as to do substantial justice." We frequently have stated that pro se pleadings are to be given a liberal construction. E. g., Haines v. Kerner, 404 U.S. 519 (1972). If these pronouncements have any meaning, they must protect the pro se litigant who simply does not properly denominate her motion or pleading in the terms used in the Federal [466 U.S. 147, 165] Rules. If respondent was not pleading for relief in the District Court, one wonders what the majority thinks she was doing there.

****

United States Supreme Court

CELOTEX CORP. v. CATRETT, (1986)

No. 85-198

Argued: April 1, 1986 Decided: June 25, 1986

The Federal Rules of Civil Procedure have for almost 50 years authorized motions for summary judgment upon proper showings of the lack of a genuine, triable issue of material fact. Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed "to secure the just, speedy and inexpensive determination of every action." Fed. Rule Civ. Proc. 1; see Schwarzer, Summary Judgment Under the Federal Rules: Defining Genuine Issues of Material Fact, 99 F. R. D. 465, 467 (1984). Before the shift to "notice pleading" accomplished by the Federal Rules, motions to dismiss a complaint or to strike a defense were the principal tools by which factually insufficient claims or defenses could be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources. But with the advent of "notice pleading," the motion to dismiss seldom fulfills this function any more, and its place has been taken by the motion for summary judgment. Rule 56 must be construed with due regard not only for the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury, but also for the rights of persons opposing such claims and defenses to demonstrate in the manner provided by the Rule, prior to trial, that the claims and defenses have no factual basis. [477 U.S. 317, 328]

The judgment of the Court of Appeals is accordingly reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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United States Supreme Court

RENNE v. GEARY, (1991)

No. 90-769

Argued: April 23, 1990 Decided: June 17, 1991

JUSTICE WHITE, dissenting.

The insistence by the majority and by JUSTICE WHITE that a party expressly style his claim in his complaint as a challenge based on overbreadth is also inconsistent with the liberal "notice pleading" philosophy that informs the Federal Rules of Civil Procedure. See Conley v. Gibson, 355 U.S. 41, 47 -48 (1957); see generally Fitzgerald v. Codex Corp., 882 F.2d 586, 589 (CA1 1989) ("[U]nder Fed.R.Civ.P. 8, it is not necessary that a legal theory be pleaded in the complaint if plaintiff sets forth `sufficient factual allegations to state a claim showing that he is entitled to relief' under some [tenable] legal theory" (emphasis in original)). I am particularly perplexed by JUSTICE WHITE's determination that "[t]he courts below erred in treating respondents' challenge in this case as a facial challenge." Ante, at 328 (emphasis added). At every stage of this litigation, beginning with respondents' summary judgment motion, the parties have framed the constitutional question exclusively in terms of 6(b)'s application to party endorsements, precisely the overbreadth argument that JUSTICE WHITE declines to reach. See Points and Authorities in Support of Summary Judgment in No. C-87 1724 AJZ (ND Cal.), pp. 22-26; Memorandum of Points of Authorities in Opposition to Summary Judgment in No. C-87-4724 AJZ (ND Cal.), pp. 20-41; Brief of Appellant in No. 88-2875 (CA9), pp. 7-18; Brief of Appellees in No. 88-2875 (CA9), pp. 5-36. In such circumstances, I do not understand what authority this Court would have for reversing the decision below, sua sponte, simply because the lower courts upheld a theory of relief not expressly relied upon in the complaint. See generally 5 C. Wright and A. Miller, Federal Practice and Procedure 1219, p. 190 (2d ed. 1990) (text of Federal Rules "makes it very plain that the theory of the pleadings mentality has no place under federal practice").

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United States Supreme Court

LEATHERMAN v. TARRANT COUNTY NICU, (1993)

No. 91-1657

Argued: January 12, 1993 Decided: March 3, 1993

Held:

A federal court may not apply a "heightened pleading standard" - more stringent than the usual pleading requirements of Federal Rule of Civil Procedure 8(a) - in civil rights cases alleging municipal liability under 1983. First, the heightened standard cannot be justified on the ground that a more relaxed pleading standard would eviscerate municipalities' immunity from suit by subjecting them to expensive and time-consuming discovery in every 1983 case. Municipalities, although free from respondeat superior liability under 1983, see Monell v. New York City Dept. of Social Services, 436 U.S. 658 , do not enjoy absolute or qualified immunity from 1983 suits, id., at 701; Owen v. City of Independence, 445 U.S. 622, 650 . Second, it is not possible to square the heightened standard applied in this case with the liberal system of "notice pleading" set up by the Federal Rules. Rule 8(a)(2) requires that a complaint include only "a short and plain statement of the claim showing that the pleader is entitled to relief." And while Rule 9(b) requires greater

particularity in pleading certain actions, it does not include among the enumerated actions any reference to complaints alleging municipal liability under 1983. Pp. 165-169.

954 F.2d 1054, reversed and remanded.

We think that it is impossible to square the "heightened pleading standard" applied by the Fifth Circuit in this case with the liberal system of "notice pleading" set up by the Federal Rules. Rule 8(a)(2) requires that a complaint include only "a short and plain statement of the claim showing that the pleader is entitled to relief." In Conley v. Gibson, 355 U.S. 41 (1957), we said in effect that the Rule meant what it said:

"[T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id., at 47 (footnote omitted).

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United States Supreme Court

SWIERKIEWICZ v. SOREMA N. A., (2002)

No. 00-1853

Argued: January 15, 2002 Decided: February 26, 2002

This Court has never indicated that the requirements for establishing a prima facie case under McDonnell Douglas also apply to the pleading standard that plaintiffs must satisfy in order to survive a motion to dismiss. For instance, we have rejected the argument that a Title VII complaint requires greater "particularity," because this would "too narrowly constric[t] the role of the pleadings." McDonald v. Santa Fe Trail Transp. Co., 427 U. S. 273, 283, n. 11 (1976). Consequently, the ordinary rules for assessing the sufficiency of a complaint apply. See, e.g., Scheuer v. Rhodes, 416 U. S. 232, 236 (1974) ("When a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, its task is necessarily a limited one. The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims").

In addition, under a notice pleading system, it is not appropriate to require a plaintiff to plead facts establishing a prima facie case because the McDonnell Douglas framework does not apply in every employment discrimination case. For instance, if a plaintiff is able to produce direct evidence of discrimination, he may prevail without proving all the elements of a prima facie case. See Trans World Airlines, Inc. v. Thurston, 469 U. S. 111, 121 (1985) ("[T]he McDonnell Douglas test is inapplicable where the plaintiff presents direct evidence of discrimination"). Under the Second Circuit's heightened pleading standard, a plaintiff without direct evidence of discrimination at the time of his complaint must plead a prima facie case of discrimination, even though discovery might uncover such direct evidence. It thus seems incongruous to require a plaintiff, in order to survive a motion to dismiss, to plead more facts than he may ultimately need to prove to succeed on the merits if direct evidence of discrimination is discovered.

Furthermore, imposing the Court of Appeals' heightened pleading standard in employment discrimination cases conflicts with Federal Rule of Civil Procedure 8(a)(2), which provides that a complaint must include only "a short and plain statement of the claim showing that the pleader is entitled to relief." Such a statement must simply "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Conley v. Gibson, 355 U. S. 41, 47 (1957). This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims. See id., at 47-48; Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U. S. 163, 168-169 (1993). "The provisions for discovery are so flexible and the provisions for pretrial procedure and summary judgment so effective, that attempted surprise in federal practice is aborted very easily, synthetic issues detected, and the gravamen of the dispute brought frankly into the open for the inspection of the court." 5 C. Wright & A. Miller, Federal Practice and Procedure §1202, p. 76 (2d ed. 1990).

Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited exceptions. Rule 9(b), for example, provides for greater particularity in all averments of fraud or mistake.3 This Court, however, has declined to extend such exceptions to other contexts. In Leatherman we stated: "[T]he Federal Rules do address in Rule 9(b) the question of the need for greater particularity in pleading certain actions, but do not include among the enumerated actions any reference to complaints alleging municipal liability under §1983. Expressio unius est exclusio alterius." 507 U. S., at 168. Just as Rule 9(b) makes no mention of municipal liability under Rev. Stat. §1979, 42 U. S. C. §1983 (1994 ed., Supp. V), neither does it refer to employment discrimination. Thus, complaints in these cases, as in most others, must satisfy only the simple requirements of Rule 8(a).4

Other provisions of the Federal Rules of Civil Procedure are inextricably linked to Rule 8(a)'s simplified notice pleading standard. Rule 8(e)(1) states that "[n]o technical forms of pleading or motions are required," and Rule 8(f) provides that "[a]ll pleadings shall be so construed as to do substantial justice." Given the Federal Rules' simplified standard for pleading, "[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U. S. 69, 73 (1984). If a pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement under Rule 12(e) before responding. Moreover, claims lacking merit may be dealt with through summary judgment under Rule 56. The liberal notice pleading of Rule 8(a) is the starting point of a simplified pleading system, which was adopted to focus litigation on the merits of a claim. See Conley, supra, at 48 ("The Federal Rules reject the approach that pleading is a game of skill in which one misstep by 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").

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United States Supreme Court

CHRISTOPHER, FORMER SECRETARY OF STATE, et al. v. HARBURY, (2002)

No. 01-394

Argued: March 18, 2002 Decided: June 20, 2002

Footnote 17

Whether the Court of Appeals should have extended that opportunity is not an issue before us. We see counsel's answer as amounting to an amendment of pleadings that still fails to cure the inadequacy of the denial-of-access claim. In providing the clarification, Harbury's counsel appears to have been referring to the intentional-infliction counts against the CIA defendants alleged elsewhere in her complaint, App. 55 (counts 18-19). See infra, at 18. Whatever latitude is allowed by federal notice pleading, no one says Harbury should be allowed to construe "adequate legal redress" to mean causes of action that were not even mentioned in her complaint. As for Harbury's position here, suffice it to say that a brief to this Court, see Brief for Respondent at 22-33 (listing causes of action that Harbury could have brought in 1993), is not the place to supplement pleadings in response to a motion in the trial court to dismiss for failure to state a claim.

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United States Supreme Court

BELL ATLANTIC CORP. ET AL. v. TWOMBLY ET AL., (2007)

No. 05-1126

Argued: November 27, 2006 Decided: May 21, 2007

Rule 8(a)(2) of the Federal Rules requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." The rule did not come about by happenstance and its language is not inadvertent. The English experience with Byzantine special pleading rules--illustrated by the hypertechnical Hilary rules of 18341--made obvious the appeal of a pleading standard that was easy for the common litigant to understand and sufficed to put the defendant on notice as to the nature of the claim against him and the relief sought. Stateside, David Dudley Field developed the highly influential New York Code of 1848, which required "[a] statement of the facts constituting the cause of action, in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended." An Act to Simplify and Abridge the Practice, Pleadings and Proceedings of the Courts of this State, ch. 379, §120(2), 1848 N. Y. Laws pp. 497, 521. Substantially similar language appeared in the Federal Equity Rules adopted in 1912. See Fed. Equity Rule 25 (requiring "a short and simple statement of the ultimate facts upon which the plaintiff asks relief, omitting any mere statement of evidence").

A difficulty arose, however, in that the Field Code and its progeny required a plaintiff to plead "facts" rather than "conclusions," a distinction that proved far easier to say than to apply. As commentators have noted,

"it is virtually impossible logically to distinguish among 'ultimate facts,' 'evidence,' and 'conclusions.' Essentially any allegation in a pleading must be an assertion that certain occurrences took place. The pleading spectrum, passing from evidence through ultimate facts to conclusions, is largely a continuum varying only in the degree of particularity with which the occurrences are described." Weinstein & Distler, Comments on Procedural Reform: Drafting Pleading Rules, 57 Colum. L. Rev. 518, 520-521 (1957).

See also Cook, Statements of Fact in Pleading Under the Codes, 21 Colum. L. Rev. 416, 417 (1921) (hereinafter Cook) ("[T]here is no logical distinction between statements which are grouped by the courts under the phrases 'statements of fact' and 'conclusions of law' "). Rule 8 was directly responsive to this difficulty. Its drafters intentionally avoided any reference to "facts" or "evidence" or "conclusions." See 5 C. Wright & A. Miller, Federal Practice and Procedure §1216, p. 207 (3d ed. 2004) (hereinafter Wright & Miller) ("The substitution of 'claim showing that the pleader is entitled to relief' for the code formulation of the 'facts' constituting a 'cause of action' was intended to avoid the distinctions drawn under the codes among 'evidentiary facts,' 'ultimate facts,' and 'conclusions' ...").

Under the relaxed pleading standards of the Federal Rules, the idea was not to keep litigants out of court but rather to keep them in. The merits of a claim would be sorted out during a flexible pretrial process and, as appropriate, through the crucible of trial. See Swierkiewicz, 534 U. S., at 514 ("The liberal notice pleading of Rule 8(a) is the starting point of a simplified pleading system, which was adopted to focus litigation on the merits of a claim"). Charles E. Clark, the "principal draftsman" of the Federal Rules,2 put it thus:

"Experience has shown ... that we cannot expect the proof of the case to be made through the pleadings, and that such proof is really not their function. We can expect a general statement distinguishing the case from all others, so that the manner and form of trial and remedy expected are clear, and so that a permanent judgment will result." The New Federal Rules of Civil Procedure: The Last Phase--Underlying Philosophy Embodied in Some of the Basic Provisions of the New Procedure, 23 A. B. A. J. 976, 977 (1937) (hereinafter Clark, New Federal Rules).

The pleading paradigm under the new Federal Rules was well illustrated by the inclusion in the appendix of Form 9, a complaint for negligence. As relevant, the Form 9 complaint states only: "On June 1, 1936, in a public highway called Boylston Street in Boston, Massachusetts, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway." Form 9, Complaint for Negligence, Forms App., Fed. Rules Civ. Proc., 28 U. S. C. App., p. 829 (hereinafter Form 9). The complaint then describes the plaintiff's injuries and demands judgment. The asserted ground for relief--namely, the defendant's negligent driving--would have been called a " 'conclusion of law' " under the code pleading of old. See, e.g., Cook 419. But that bare allegation suffices under a system that "restrict[s] the pleadings to the task of general notice-giving and invest[s] the deposition-discovery process with a vital role in the preparation for trial."3 Hickman v. Taylor, 329 U. S. 495, 501 (1947); see also Swierkiewicz, 534 U. S., at 513, n. 4 (citing Form 9 as an example of " 'the simplicity and brevity of statement which the rules contemplate' "); Thomson v. Washington, 362 F. 3d 969, 970 (CA7 2004) (Posner, J.) ("The federal rules replaced fact pleading with notice pleading").

Most recently, in Swierkiewicz, 534 U. S. 506, we were faced with a case more similar to the present one than the majority will allow. In discrimination cases, our precedents require a plaintiff at the summary judgment stage to produce either direct evidence of discrimination or, if the claim is based primarily on circumstantial evidence, to meet the shifting evidentiary burdens imposed under the framework articulated in McDonnell Douglas Corp. v. Green, 411 U. S. 792 (1973). See, e.g., Trans World Airlines, Inc. v. Thurston, 469 U. S. 111, 121 (1985). Swierkiewicz alleged that he had been terminated on account of national origin in violation of Title VII of the Civil Rights Act of 1964. The Second Circuit dismissed the suit on the pleadings because he had not pleaded a prima facie case of discrimination under the McDonnell Douglas standard.

We reversed in another unanimous opinion, holding that "under a notice pleading system, it is not appropriate to require a plaintiff to plead facts establishing a prima facie case because the McDonnell Douglas framework does not apply in every employment discrimination case." Swierkiewicz, 534 U. S., at 511. We also observed that Rule 8(a)(2) does not contemplate a court's passing on the merits of a litigant's claim at the pleading stage. Rather, the "simplified notice pleading standard" of the Federal Rules "relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims." Id., at 512; see Brief for United States et al. as Amici Curiae in Swierkiewicz v. Sorema N. A., O. T. 2001, No. 00-1853, p. 10 (stating that a Rule 12(b)(6) motion is not "an appropriate device for testing the truth of what is asserted or for determining whether a plaintiff has any evidence to back up what is in the complaint" (internal quotation marks omitted)).7

The majority circumvents this obvious obstacle to dismissal by pretending that it does not exist. The Court admits that "in form a few stray statements in the complaint speak directly of agreement," but disregards those allegations by saying that "on fair reading these are merely legal conclusions resting on the prior allegations" of parallel conduct. Ante, at 18. The Court's dichotomy between factual allegations and "legal conclusions" is the stuff of a bygone era, supra, at 5-7. That distinction was a defining feature of code pleading, see generally Clark, The Complaint in Code Pleading, 35 Yale L. J. 259 (1925-1926), but was conspicuously abolished when the Federal Rules were enacted in 1938. See United States v. Employing Plasterers Assn. of Chicago, 347 U. S. 186, 188 (1954) (holding, in an antitrust case, that the Government's allegations of effects on interstate commerce must be taken into account in deciding whether to dismiss the complaint "[w]hether these charges be called 'allegations of fact' or 'mere conclusions of the pleader' "); Brownlee v. Conine, 957 F. 2d 353, 354 (CA7 1992) ("The Federal Rules of Civil Procedure establish a system of notice pleading rather than of fact pleading, ... so the happenstance that a complaint is 'conclusory,' whatever exactly that overused lawyers' cliché means, does not automatically condemn it"); Walker Distributing Co. v. Lucky Lager Brewing Co., 323 F. 2d 1, 3-4 (CA9 1963) ("[O]ne purpose of Rule 8 was to get away from the highly technical distinction between statements of fact and conclusions of law ..."); Oil, Chemical & Atomic Workers Int'l Union v. Delta, 277 F. 2d 694, 697 (CA6 1960) ("Under the notice system of pleading established by the Rules of Civil Procedure, ... the ancient distinction between pleading 'facts' and 'conclusions' is no longer significant"); 5 Wright & Miller §1218, at 267 ("[T]he federal rules do not prohibit

the pleading of facts or legal conclusions as long as fair notice is given to the parties"). "Defendants entered into a contract" is no more a legal conclusion than "defendant negligently drove," see Form 9; supra, at 6. Indeed it is less of one.9

Footnote 8

Our decision in Dura Pharmaceuticals, Inc. v. Broudo, 544 U. S. 336 (2005), is not to the contrary. There, the plaintiffs failed adequately to allege loss causation, a required element in a private securities fraud action. Because it alleged nothing more than that the prices of the securities the plaintiffs purchased were artificially inflated, the Dura complaint failed to "provide the defendants with notice of what the relevant economic loss might be or of what the causal connection might be between that loss and the [alleged] misrepresentation." Id., at 347. Here, the failure the majority identifies is not a failure of notice--which "notice pleading" rightly condemns--but rather a failure to satisfy the Court that the agreement alleged might plausibly have occurred. That being a question not of notice but of proof, it should not be answered without first hearing from the defendants (as apart from their lawyers).

Footnote 14

Given his "background in antitrust law," ante, at 13, n. 6, Judge Easterbrook has recognized that the most effective solution to discovery abuse lies in the legislative and rulemaking arenas. He has suggested that the remedy for the ills he complains of requires a revolution in the rules of civil procedure:

"Perhaps a system in which judges pare away issues and focus on investigation is too radical to contemplate in this country--although it prevailed here before 1938, when the Federal Rules of Civil Procedure were adopted. The change could not be accomplished without abandoning notice pleading, increasing the number of judicial officers, and giving them more authority ... . If we are to rule out judge-directed discovery, however, we must be prepared to pay the piper. Part of the price is the high cost of unnecessary discovery--impositional and otherwise." Discovery as Abuse, 69 B. U. L. Rev. 635, 645 (1989).

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United States Supreme Court

UNITED STATES v. GEORGIA et al., (2006)

No. 04-1203

Argued: November 9, 2005 Decided: January 10, 2006

The District Court adopted the Magistrate Judge's recommendation that the allegations in the complaint were vague and constituted insufficient notice pleading as to Goodman's §1983 claims. It therefore dismissed the §1983 claims against all defendants without providing Goodman an opportunity to amend his complaint. The District Court also dismissed his Title II claims against all individual defendants. Later, after our decision in Garrett, the District Court granted summary

judgment to the state defendants on Goodman's Title II claims for money damages, holding that those claims were barred by state sovereign immunity.

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United States Supreme Court

SWIERKIEWICZ v. SOREMA N. A., (2002)

No. 00-1853

Argued: January 15, 2002 Decided: February 26, 2002

In addition, under a notice pleading system, it is not appropriate to require a plaintiff to plead facts establishing a prima facie case because the McDonnell Douglas framework does not apply in every employment discrimination case. For instance, if a plaintiff is able to produce direct evidence of discrimination, he may prevail without proving all the elements of a prima facie case. See Trans World Airlines, Inc. v. Thurston, 469 U. S. 111, 121 (1985) ("[T]he McDonnell Douglas test is inapplicable where the plaintiff presents direct evidence of discrimination"). Under the Second Circuit's heightened pleading standard, a plaintiff without direct evidence of discrimination at the time of his complaint must plead a prima facie case of discrimination, even though discovery might uncover such direct evidence. It thus seems incongruous to require a plaintiff, in order to survive a motion to dismiss, to plead more facts than he may ultimately need to prove to succeed on the merits if direct evidence of discrimination is discovered.

Furthermore, imposing the Court of Appeals' heightened pleading standard in employment discrimination cases conflicts with Federal Rule of Civil Procedure 8(a)(2), which provides that a complaint must include only "a short and plain statement of the claim showing that the pleader is entitled to relief." Such a statement must simply "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Conley v. Gibson, 355 U. S. 41, 47 (1957). This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims. See id., at 47-48; Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U. S. 163, 168-169 (1993). "The provisions for discovery are so flexible and the provisions for pretrial procedure and summary judgment so effective, that attempted surprise in federal practice is aborted very easily, synthetic issues detected, and the gravamen of the dispute brought frankly into the open for the inspection of the court." 5 C. Wright & A. Miller, Federal Practice and Procedure §1202, p. 76 (2d ed. 1990).

Other provisions of the Federal Rules of Civil Procedure are inextricably linked to Rule 8(a)'s simplified notice pleading standard. Rule 8(e)(1) states that "[n]o technical forms of pleading or motions are required," and Rule 8(f) provides that "[a]ll pleadings shall be so construed as to do substantial justice." Given the Federal Rules' simplified standard for pleading, "[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U. S. 69, 73 (1984). If a pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement under Rule 12(e) before responding. Moreover,

claims lacking merit may be dealt with through summary judgment under Rule 56. The liberal notice pleading of Rule 8(a) is the starting point of a simplified pleading system, which was adopted to focus litigation on the merits of a claim. See Conley, supra, at 48 ("The Federal Rules reject the approach that pleading is a game of skill in which one misstep by 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").