

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

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

**PLAINTIFF’S FOURTH CONSTRUCTIVE NOTICE IN OPPOSITION TO U.S. SUPREME
COURT PRECEDENTS AS TO FIRST AMENDMENT CHALLENGES/VIOLATIONS
OR, IN THE ALTERNATIVE,
OF PLAINTIFF’S ACTUAL NOTICE HAVING A BASIS IN LAW & FACT**

TO THE HONORABLE JUDGE OF SAID COURT AND DEFENDANTS:

PLEASE TAKE NOTICE, that the undersigned, Plaintiff TERRY LEE HINDS, (“Plaintiff”) appearing *Pro se* in support of his *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*; providing formal Notice to all interested parties, whereby submits PLAINTIFF’S FOURTH CONSTRUCTIVE NOTICE IN OPPOSITION TO U.S. SUPREME COURT PRECEDENTS AS TO FIRST AMENDMENT CHALLENGES/VIOLATIONS. Furthermore, or in the alternative of Plaintiff’s Actual Notice having a basis in law and fact and in support of this Constructive Notice vs. Actual Notice, Plaintiff states or show the Court as follows:

I. CONSTRUCTIVE NOTICE & LEGAL FICTION

1). ***Constructive notice*** is the ***legal fiction*** that signifies that a person or entity should have known

as a reasonable person would have, of a legal action taken or to be taken, even if they have no actual knowledge of it.

2). What is **LEGAL FICTION**? (Black's Law Dictionary Online Legal Dictionary 2nd Ed.)

“Believing or assuming something not true is true. Used in judicial reasoning for avoiding issues where a new situation comes up against the law, changing how the law is applied, but not changing the text of the law.” See <http://thelawdictionary.org/legal-fiction/>

3). It is a fact, Magistrate Judge Bodenhausen, and District Judge Ross and District Judge Fleissig have embraced and advanced a *legal fiction* in this First Amendment case and its controversies. A *legal fiction* is a fact assumed or created by courts which is then used in order to apply a legal rule which was not necessarily designed to be used in that way. Such is the case here, in a First Amendment case and its controversies, **Rule 8 conformity** becomes a *legal fiction*. A legal fiction is often used to get around the lawful provisions of constitutions and legal codes.

4). The Court’s February 23rd, 2017 Ruling, March 10th, 2017 Ruling, April 11th, 2017 Ruling, May 5th, 2017 Ruling, May 12th, 2017 Ruling, May 26th, 2017 Ruling and the July 11th, 2017 Ruling all have a legal pretense; not sufficient to overcome the presumption in favor of judicial candor. *Legal fiction* has never been regarded as a source of law. It is an *ad hoc* remedy to meet a harsh or unforeseen situation, but, here commonly used to create a *legal fiction* and introduce an artificial conception. Plaintiff avers First Amendment protections are not subject any *legal fiction*.

5). ***Rely on false factual suppositions in the service of other goals*** - February 23rd, 2017 Ruling:

“The Court finds that filing a responsive pleading to the instant Complaint would not only be difficult but costly in terms of time and money especially in light of the numerous legal theories advanced in the case. Accordingly, finding the Complaint violates Rule 8(a) and (e) to the extent that a great deal of judicial energy and resources would have to be devoted to restructuring the pleading and streamlining the unnecessary matter, the Court will strike the Complaint.”

6). This above stated demarcation was for all intents and purposes a legal fiction. Magistrate Judge

Bodenhausem relies in crafting a legal rule on a factual premise that is false or inaccurate. In construing the scope of this legal fiction, it would be proper and even necessary to assume all those facts or *false factual suppositions* on which such *legal fiction* could operate; cannot prevail against First Amendment challenge(s), or violation(s) or free exercise right(s) claimed. A **legal fiction** is a proposition about the substance or procedure of the legal system, however has no breath or grounds in First Amendment cases.

7). The Court's February 23rd, 2017 Ruling, March 10th, 2017 Ruling, April 11th, 2017 Ruling, May 5th, 2017 Ruling, May 12th, 2017 Ruling, May 26th, 2017 Ruling and the July 11th, 2017 are nothing more than the *constructive notices and legal fiction* evoked in Plaintiff's **establishment & free exercise clauses' case** and its constitutional controversies.

II. U.S. SUPREME COURT PRECEDENTS, DOCTRINES AND DECISIONS

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."

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)

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).”

Standards of Review for Motion to Dismiss For Failure to State a Claim

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (alteration in original) (citations omitted). Whether a complaint states a claim is a question of law. *Morton v. Becker*, 793 F.2d 185, 187 (8th Cir. 1986). “[T]he complaint must contain facts which state a claim as a matter of law and must not be conclusory.” *Briehl v. General Motors Corp.*, 172 F.3d 623, 627 (8th Cir. 1999). Further, “Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of a dispositive issue of law.” *Neitzke v. Williams*, 409 U.S. 319, 326 (1989). In construing the sufficiency of a complaint, courts consider materials attached to the complaint as exhibits. *Morton*, 793 F.2d at 187. “When ruling on a motion to dismiss, the district court must accept the allegations contained in the complaint as true and all reasonable inferences

from the complaint must be drawn in favor of the nonmoving party.” *Young v. City of St. Charles*, 244 F.3d 623, 627 (8th Cir. 2001).

III. ACTUAL NOTICE HAVING A BASIS IN LAW OR FACT

1). Conveying facts to a person with the intention to apprise that person of a proceeding in which his or her interests are involved, or informing a person of some fact that he or she has a right to know and which the informer has a legal duty to communicate. This is known as actual notice.

2). Conversely, PLAINTIFF’S ACTUAL NOTICE HAVING A BASIS IN LAW & FACT has or maintains the *legal fiction* that Plaintiff’s original verified complaint/petition failed to comply with Rule 8 conformity of which entails a "short and plain statement of the claim(s)" and that "[e]ach averment of a pleading shall be simple, concise, and direct" never existed or was a valid exercise of legal discretion. The SEVENTH DECLARATION OF TERRY LEE HINDS, in part, is evidence of Rule 8 conformity and are facts in support of First Amendment challenges and violations in this case.

3). The *Evolution of Evil*, in no small measure is found in... our beliefs, practices and personal or legal judgements... and is advanced by law respecting an establishment of religion. The evidence in this case will show that Defendants cannot administer a wicked law impartially. You can only destroy, you can only punish and Plaintiff rightfully warns this Court; that a wicked law, like cholera, destroys everyone it touches, its upholders as well as its defiers. Because fanaticism and ignorance is forever busy and needs feeding. Actual notice given in Plaintiff’s Exhibit K#47.

4). This Court’s legal practice with Federal Rule of Civil Procedure, Rule 8 conformity in this case are in practical effect, a quarantine on established constitutional or legal rights, invading the safe harbors of personal thoughts, as well as, depriving a natural person of the legal shelters found in a Nation’s constitutional design or within the rule of law.

5). To advance the legal grounds, evidence and the merits of Plaintiff's civil action and the legal activities in this case, Plaintiff submits the SEVENTH DECLARATION OF TERRY LEE HINDS in support of this Notice and in opposition to this Court's *legal fiction*. Plaintiff actual notice of "short and plain statement of the claim(s)" and that "[e]ach averment of a pleading shall be simple, concise, and direct" was a status existing within the Plaintiff's original verified complaint/petition.

6). Plaintiff's SEVENTH DECLARATION OF TERRY LEE HINDS is set forth and attached hereto and incorporated by reference as if fully set forth herein. This Declaration is an actual notice having a basis in law and fact and is evidence, which is, or also establish in support of Plaintiff's Hybrid Pleading Making a Conscientious Effort to Comply with Court's Orders Manifesting an Amended Complaint and labelled (Revelation #1 to #7) (ECF No. 44) and Plaintiff's Conscientious Effort to Comply with Court's Orders to Manifest an Amended Complaint within a Religiosity of Facts' and labelled (Religiosity of Facts 1 to 7). (ECF No. 45.).

7.) Plaintiff provides this [Constructive Notice vs. Actual Notice] with the hope he can preserve his legal rights and that this Court has the power to correct an abuse of discretion, prevent manifested injustice or allow relief from an order due to: (1) mistake, inadvertence, surprise, or excusable neglect; (2) the judgment is void, as a matter of law, (3) any other reason that justifies relief, or worst the *nature driven prejudices* with *Pro se* complaints.

8). **For the record**, this is not the form of a motion, rather [Constructive Notice vs. Actual Notice].

9). U.S. Supreme Court precedent as long held and this Court, as well as, the Defendants shall be reminded in this case or in *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.”

Respectfully Submitted,

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

Dated this 24st day of August, 2017

CERTIFICATE OF SERVICE AND DELIVERY

I hereby certify that the foregoing was filed this 24st day of August, 2017 and served upon Defendants and its U.S. Attorney, by First class postage prepaid, U.S. Certified mail # 7009-0960-0000-0249-7139 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

TERRY LEE HINDS, *Pro se, Plaintiff*