IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

BRYAN PHILLIP BONHAM,
Appellant(s),

vs.

THE STATE OF NEVADA; NEVADA DEPARTMENT OF CORRECTIONS; CHARLES DANIELS; TIM GARRETT; AND CARTER POTTER,
Respondent(s),

Case No: A-20-823142-C

Docket No: 86217

RECORD ON APPEAL
VOLUME
3

ATTORNEY FOR APPELLANT
BRYAN BONHAM #60575,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
AARON D. FORD,
ATTORNEY GENERAL
555 E. WASHINGTON AVE., STE. 3900
LAS VEGAS, NV 89101-1068

A-20-823142-C Bryan Bonham, Plaintiff(s) vs. Nevada State of, Defendant(s)

I N D E X

A-20-823142-C Bryan Bonham, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

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vs.
Nevada State of, Defendant(s)

I N D E X

SHERIFF'S OFFICE
CARSON CITY

Ken Furlong
Sheriff

911 E. Musser St.
Carson City, NV 89701

775-887-2500
Fax: 775-887-2026

March 11, 2021

Bryan Bonham #60575
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

Mr. Bonham #60575,

I am in receipt of your most recent letter and while I understand your frustration, I again, am in no position to defend the policies that the Nevada Department Of Corrections (NDOC) has enacted. Unfortunately, the response from NDOC for serving "T. Garrett" was the same this last go around, they are **requiring** a first name for last of Garrett.

As stated in previous responses to you, the Carson City Sheriff's Office does not retain any records, which is the reason the Informa Pauperis needs to be sent with each attempt to serve. I apologize for any inconvenience this causes you.

Enclosed, you will find the proof of service for Carter Porter, along with the Declaration Of Non-Service for last of Garrett. **Once you have acquired his first name**, we can attempt service again.

Respectfully,

Isela Uribe

Isela Uribe
Sheriff Support Specialist

IN THE CLARK COUNTY DISTRICT OF THE STATE OF NEVADA

Bryan Bonham PLAINTIFF	)	Dated: 3/11/2021
	)	Civil File Number: 21000993
Vs	)	
Carter Porter DEFENDANT	)	CASE No.: A20823142C

DECLARATION OF SERVICE

STATE OF NEVADA }
} **ss:**
CARSON CITY }

Jakob Dzyak, being first duly sworn, deposes and says: That affiant is a citizen of the United States, over 18 years of age, not a party to the within entered action, and that in Carson City, Nevada, personally served the described documents upon:

Sub-served:	**Carter Porter by serving NANCY SANDERS (AAII), Authorized Individual**
Location:	**5500 Snyder Avenue Carson City, NV 89701**
Date:	**3/10/2021** **Time:** **10:30 AM**

The document(s) served were: Summons & Complaint

I declare under penalty of perjury under the law provided of the State of Nevada that the foregoing is true and correct. No notary is required per NRS 53.045.

Ken Furlong, SHERIFF

Jakob Dzyak

By: Jakob Dzyak Badge# 9685
Sheriff's Authorized Agent

Clark County District
Las Vegas, NV

911 E. MUSSER STREET, CARSON CITY, NV 89701 (775) 887-2500

IN THE CLARK COUNTY DISTRICT OF THE STATE OF NEVADA

Bryan Bonham #60575 PLAINTIFF	)	Dated: 1/4/2021
	)	Civil File Number: 20005572
Vs	)	
State of Nevada ex rel DEFENDANT	)	CASE No.: A20823142C

DECLARATION OF NON-SERVICE

STATE OF NEVADA }
} **ss:**
CARSON CITY }

Joshua Burns, being first duly sworn, deposes and says: That affiant is a citizen of the United States, is over 18 years of age, not a party to the within entered action, and that in Carson City, Nevada, that he/she received the within stated civil process.

That after due search and diligent inquiry throughout Carson City, Nevada, was unable to affect service upon the said C. Potter within Carson City, Nevada.

Attempts of Service:
Date: 12/31/2020 @ 10:30 AM - 5500 East Snyder Avenue NDOC Carson City, NV 89701

Date: **12/31/2020** **Time:** **10:30 AM**
Service Note: **NEEDS FIRST NAME LISTED**

DOCUMENTS: Summons & Complaint

I declare under penalty of perjury under the law provided of the State of Nevada that the foregoing is true and correct. No notary is required per NRS 53.045.

Ken Furlong, SHERIFF

By: Joshua Burns Badge # 9722
Sheriff's Authorized Agent

Clark County District
Las Vegas, NV

911 E. MUSSER STREET, CARSON CITY, NV 89701 (775) 887-2500

IN THE CLARK COUNTY DISTRICT OF THE STATE OF NEVADA

Bryan Bonham #60575 PLAINTIFF	)	Dated: 1/4/2021
	)	Civil File Number: 20005572
Vs	)	
State of Nevada ex rel DEFENDANT	)	CASE No.: A20823142C

DECLARATION OF NON-SERVICE

STATE OF NEVADA }
} **ss:**
CARSON CITY }

Joshua Burns, being first duly sworn, deposes and says: That affiant is a citizen of the United States, is over 18 years of age, not a party to the within entered action, and that in Carson City, Nevada, that he/she received the within stated civil process.

That after due search and diligent inquiry throughout Carson City, Nevada, was unable to affect service upon the said T. Garrett within Carson City, Nevada.

Attempts of Service:
Date: 12/31/2020 @ 10:30 AM - 5500 Snyder Avenue Carson City, NV 89701

Date: **12/31/2020** **Time:** **10:30 AM**
Service Note: **NEEDS FIRST NAME LISTED**

DOCUMENTS: Summons & Complaint

I declare under penalty of perjury under the law provided of the State of Nevada that the foregoing is true and correct. No notary is required per NRS 53.045.

Ken Furlong, SHERIFF

By: Joshua Burns Badge # 9722
Sheriff's Authorized Agent

Clark County District
Las Vegas, NV

IN THE CLARK COUNTY DISTRICT OF THE STATE OF NEVADA

Bryan Bonham PLAINTIFF	)	Dated: 3/11/2021
	)	Civil File Number: 21000993
Vs	)	
Carter Porter DEFENDANT	)	CASE No.: A20823142C

DECLARATION OF NON-SERVICE

STATE OF NEVADA }
} **ss:**
CARSON CITY }

Jakob Dzyak, being first duly sworn, deposes and says: That affiant is a citizen of the United States, is over 18 years of age, not a party to the within entered action, and that in Carson City, Nevada, that he/she received the within stated civil process.

The Carson City Sheriff's Office was unable to serve upon the said, T. Garrett.

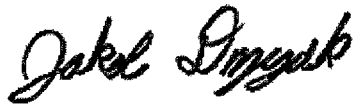
Attempts of Service:
Date: 3/10/2021 @ 10:30 AM - 5500 Snyder Avenue Carson City, NV

Date: **3/10/2021** **Time:** **10:30 AM**
Service Note: **DID NOT ACCEPT/NEED FIRST NAME**

DOCUMENTS: Summons & Complaint

I declare under penalty of perjury under the law provided of the State of Nevada that the foregoing is true and correct. No notary is required per NRS 53.045.

Ken Furlong, SHERIFF



By: Jakob Dzyak Badge # 9685
Sheriff's Authorized Agent

Clark County District
Las Vegas, NV

Bryan P Bonham 80575
PO Box 650 NDSP
Indian Springs, NEV 89070

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HIGH DESERT STATE PRISON
JUL 18 2021
UNIT

27

Bryan p Bonham 60575
po Box 650 HDSP
Indian springs, NEV

8th Judicial District court
clark county, Nevada.

Bryan p Bonham — case NO A-20-823142
plaintiff — dept. XXXII
-vs- — motion to request order
State of Nevada ex rel — from last Hearing date.
Notice of Refiling in Fed court.

comes now This plaintiff Bryan p Bonham, to Respectfully ask
This court to grant This motion.

Dated This 12th day of July, 2021
/s/
Bryan p Bonham 60575
PO Box 650 HDSP
Indian springs, NEV 89070

Bryan P Bonham 60575
PO Box 650 HDSP
Indian Springs, Nev 89070

8th Judicial District Court
clark county, Nevada

Bryan P Bonham
plaintiff
-vs-
state of Nevada exrel,

notice of motion.

Please take notice that the undersigned will bring the above motion for hearing, as soon as possible for a decision.

TO
Deputy Attorney General
Kathy m Brady
555 E washington Ave ste 3900
Las vegas, Nev 89101

Dated this 12th day of July, 2021
/s/ Bryan P Bonham 60575
PO Box 650 HDSP
Indian Springs, NV 89070

Arguement.

Plaintiff has a valid claim. over 50% was taken for debts incurred From the money deposited into his account. The NDOC's own AR says 50% for department charges. 20% to courts. 10% to saving's. I have no problem with that. my issue is going over 50%, leaving me zero. As it turns out. gov. Sisolak, sec of State Cegavske, Att Gen Aaron Ford are top 3 prison comm's, They knew nothing about the change to AR 258, upping 50% to 80-100%.

Now plaintiff contends He can ~~provide~~ produce a statement to that fact, from an outside source.

Then if not true. I ask this. if what I claim is not true. (1) why do monthly statements show over 50% was taken for debt owed to NDOC. (2) why was SB-22 passed lowering 50% to 25%. See attached exhibit 2. See highlighted portion page 6

I requested a hearing for documents This court held on July 8th. yet I was not given chance to make oral argument, I'm sure court clerk will not send me order given. I'm and indigent; pro se. cheeks ect. keep me from being able to know if case is dismissed etc. I have right to know what order court gives, and when.

So now I ask This court to order clerk to send me order given on July 8th, 2021.

Conclusion.

I should be given chance to prove, or argue my case, to be given notice of court orders. As I've argued in previous document. it does not matter if its 50 cents. 2.00, or 9.00 over the 50% They violated my due process rights, The taking clause of The

5th Amend.? basically financially raping me, my family.
This issue should move forward, without blocking me from
knowing or receiving court orders.
im refiling an amended version of complaint in U.S. DIST CRT.
unless this court can guarantee i will receive court orders, get
hearings i request. or permit me to amend complaint.
Thankyou verry much.

verification

I Bryan P Bonham declare & verify That I have read the foregoing motion
and to best of my belief & knowledge the foregoing is true & correct.
pursuant to the pains & penalties of perjury 28 USCA § 1746; 18 USCA §
1621

certificate of service.

I Bryan P Bonham certify that I am attaching The foregoing motion
with special instructions for electronic filing & service to clerk of
The court to serve all of my opponents pursuant to NEFCR 5(b) et
seq (A-E) to the following.

Deputy Attorney General
Katlyn M Brady
555 E Washington Ave Ste 3900
LV NV 89101
Dated This 12th day of July, 2021
/s/ Bryan P Bonham
Bryan P Bonham 60575
PO Box 650 HDSP
Indian Springs, NV 89070

Exhibit 1

Exhibit 1

 9 C 17 A

FROM: JLhocking24@gmail.com
TO: 0060575 BONHAM, BRYAN P
SUBJECT: June Update
DATE: 06/29/2021 11:20 AM

Good morning!

I hope this update finds you well, I have A LOT of information and only 13,000 characters so please bear with me, I am going to give you the information without explaining the back story as much as I usually do.

Legislative Updates:

SB22-Inmate Deductions: This was passed and signed by the governor and will go into effect on July 1, 2021. Return Strong worked with the ACLU on this and was able to take the bill that NDOC had written to get the deductions and the Directors power to decided what was reasonable into law and flipped it to your/our benefit. We amended the language and implemented maximum caps on the deductions. Effective July 1st there will be a maximum cap on money deposited on books of 25% and a cap for deductions from wages at 50%.

That means, that if you owe restitution, and court fees and room and board and child support, are working in PI and before they were taking every penny you had and leaving you with $1.13 (or whatever amount), now there is a cap of 50%. (That is just an example, it applies to everyone). The absolute most they can deduct is 50% from wages and 25% from money sent to your books.

SB22 also expands the package program to people in medical isolation and administrative segregation. We attempted to keep the gift program, but that would not have been approved and we could have lost the caps. Please understand, Marcy's Law was not a law, it was a constitutional amendment that gave victim's the right to full and timely restitution. Legal reviewed it and since it is a way to divert money from being garnished, it does potentially violate Marsy's Law and we could not win that. PLEASE grieve it, appeal it and file lawsuits and let the courts decide, but we could not get that passed.

Regarding returning money that was taken in September, we have one more shot at the Prison Board of Commissioners Meeting in the fall, but I believe grieving, appealing and the courts are the option for that also. (I am not a lawyer but, I don't know how far we will get with getting that money returned, I want to be honest.

We are in negotiations regarding the gift coupons that were left unspent. Purchasing new gift coupons are not going to be added but for those of you who had/have gift coupons that you had not used when they were frozen on September 1st, Return Strong is in the process of trying to get those reactivated. Again, I think grieving, appeal and lawsuit are options for that. Your loved ones purchased those in good faith, and there was no notice when they stopped allowing them. I am very hopeful we are going to get this straightened out, but I don't have a timeline.

**IF you have a gift coupon that was not honored, please write us and tell us the amount. We have no idea how much money NDOC left out there and it would help in negotiating. Remember we fight collectively, so you fight a lost $100 gift card and us collectively fighting $100.000 are two different things. **

AB241-Programming Credits during a public health emergency. This bill passed and was signed by the Governor and will go into effect on July 1, 2021 BUT the days will probably not appear on your account (idk what it is called) until August 3rd, 2021.

The bill provides 5 days A MONTH from March 2020 thru June 30th, 2021, for the programming days that were lost due to the pandemic and your inability to program. This bill applies to EVERYONE who was eligible to program during that time.

The bill was important for two reasons: first it addressed the issues of dates moving because of lack of programming during COVID, which was not your fault. Second, this bill addressed the problem retroactively AND is now in effect for any future public health emergency (should it happen) and will immediately go into effect so that you don't have to wait a year and a half to see your credits. Many of you were on the bubble of expiring and losing those credits meant you stayed in prison longer than you should have. So far, the courts have not been very positive towards these types of lawsuits, but if you grieved and appealed, you always have the option to give it a shot.

If you are on the bubble, and these days will put you near or at the door, please understand that there isn't a guarantee of when you will get your board. PnP has concerns about being able to manage the rush that implementation will cause and so that is written into the bill language, but they are hiring staff to help process everyone as quickly as possible.

AB125- This bill did not pass. While the legislature was mostly supportive of expanding good time credits to Class B (non-

violent) "offenders", the issue becomes retroactivity of this bill and the cost it would incur to the state to have 3,800 people cut their sentences and many be at the door. PLEASE do not write me to yell at me about this. I understand the implications and I think it is bullshit. I agree on all counts, it should include Class B completely, it should be retroactive, but this wasn't our bill (remember, we haven't even been in existence a year yet) and NDOC fought it hard by adding a 6-million-dollar fiscal note that given the current budget issues, NO ONE was agreeing to it. It doesn't mean the fight is over, it just means we must back up and reapproach.

Side note, one a bill is dead (as this one was) OR it is passed, like AB236 that is the end of that bill. Over 100 of you wrote and asked us to change AB236 to be retroactive. That is not possible. It requires a new bill. AB125 was the new one for 2021. There will be a new one for 2023. Personally, Return Strong is working on a plan that would potentially build a sentencing review board for anyone with felonies that the sentencing laws have changed, after a certain number of years, you could have your sentence reviewed. Still in the early stages, but my point is, it isn't over.

We won some, we lost some but we are still standing to fight another day.

International Prisoners Day of Justice:

More details to come but Return Strong is creating an event for the August 10th recognition event. As part of that event, we will be hosting and Art and Letter Exhibit with an auction of YOUR artwork, poetry, letters (written for the event, if we want to use one of your previous letters we will reach out for your permission. Letters will have your identifying information removed).

Many of you have asked how you can help. This is one way. The problem is there is a short turn around time. Your options are unlimited. Prepare and send us artwork, tattoo art, poetry, a letter about your experience with the injustice of the "justice" system...as part of our August 10th event we will be holding exhibits in both northern and southern Nevada and then holding an auction. Our idea is that you can donate your artwork that will be auctioned as a fundraiser for Return Strong and the expenses incurred to run business (we are still an unfunded group of women who are all volunteers fighting the system, while holding our own loved ones down). When you send us your art, please include a statement giving us permission to use it AND the percentage of the proceeds that you would like to donate to Return Strong. (It would be easiest if you say 25% to RS, 50% to RS, 75% to RS or 100% to RS, or 0 to RS and then we will send proceeds to your books).

If you are interested in participating, PLEASE send us a letter asap OR have your LO reach out to us, telling us you are participating and what you are working on so that we can begin planning the exhibits. WE will be communicating additional details to anyone who lets us know they are planning to participate.

Family Councils at NDOC:

After much fighting for recognition, NDOC has agreed to recognize our family councils. For those of you who do not know what that is, it is a way for families to come to the table with Administration to discuss issues in facilities that improve family connections and bonds, for instance phone concerns, visitation issues and concerns, commissary and pricing etc.... and issues that improve quality of life for incarcerated people such as programming, health and safety, nutrition, facility issues.

Your family, friends, loved ones are welcome to participate. There will be a Local Family Council Meeting each month to discuss issues and concerns and work on how we get them addressed. Then there are a group of representatives who meet with administration quarterly, so the next meeting is in September. Please have them contact us through one of the methods at the end of the email. There is a face book page specifically for the Family Councils that they can participate in and will give NDOC specific, verified information.

Some of the things we have started to work on at the first Statewide Quarterly Meeting were: COVID questions such as the continued lockdowns at HDSP, facility issues such as mice infestations, lack of hot water, food/feeding schedules, visitation inconsistencies and concerns regarding communication. This was the first meeting and much of the time was used to set up ground rules but gradually, this is an avenue to begin addressing in facility concerns. Please make sure your LO's are on the face book page.

Finally, there are some necessary changes to how we communicate. WE now have almost 600 people on our mailing list, and as I said, we are unfunded so that cost comes primarily out of my pocket with a few donations that have been super helpful and come through in a clutch every time. That is part of why you have not been getting as much information FROM us, the cost. Corrlinks raised its price for an email back to thirty cents, resulting in our cost immediately doubling. So going forward, we can't send individual emails to everyone. We are going to need volunteers who are willing to pass out the update/newsletter to people around them. I can send 10 letters in one envelope with one stamp, what I need are volunteers willing to take on that responsibility of pulling up the people around them. This actually allows us to communicate with more people, for a lower cost.

**If you are willing to be an organizer for your unit/tier...which means communication will flow through you. Please write us and give us your name, back number, unit and tier, if you work or other areas you can get the information out (programs, religious services, PI, culinary, porter. ALSO, please let me know if you have a need for letters in Spanish, as we can have them

translated and sent in Spanish also**

Upcoming:

August 6th Return Strong Families United for Justice for the Incarcerated ONE YEAR ANNIVERSARY

August 10th International Prisoners Day of Justice Statewide Events with actions, media, Art/Letter Exhibit and Auction and vigil for those lost to police violence, COVID in prison, and executions past and present.

Upcoming plain language pamphlets with instructions and guidance on writing winning grievances, appeals and lawsuits, compassionate release and the pardons board process. If you have ideas of others you would like, please let us know.

Upcoming movement work with the ACLU on nutrition/food quality, quantity, and chronic health/medical concerns and medical neglect. Surveys coming this summer!

We are still trying to ensure that each unit has a organizer (the communication person) and a jailhouse lawyer within reach of them to improve communication and service.

A few last notes, I know that we didn't win everything for everyone, and you may be in a situation where none of our wins impacted you, yet. We have a motto, "hoy por ti, manaña por mi. Today for you, tomorrow for me." We have a limited capacity and authority on what we can directly impact, when we can't do something, we try to connect with someone who can do something, and we are forever learning and growing. YOU help us when you make us aware of things that are happening and sometimes when you help us understand how it connects and what you are looking for help with. It helps when you connect the dots, and IN LETTERS.

We are struggling financially. I have asked families to donate, but they are struggling too. WE do not want to charge anyone for information, but it does cost us about $10 per person annually just for basic communication. IF you can help support our work, please consider donating, or having a family member donate. We are hoping to be funded by 2022, but since we were so new, and this wasn't really a planned endeavor, we have been just focusing on staying alive until new grant deadlines are available. Please do not feel pressured, but if you are able, we appreciate the help.
Brass Slips to Return Strong
CashApp= $ReturnStrong
Venmo=@ReturnStrong

In Solidarity,

Jodi & The Team at Return Strong FUJI
contactreturnstrong@gmail.com
PO Box 1155
Carson City, Nevada 89701

Bryan P Bonham 60575
PO Box 650 (HDSP)
Indian Springs, NV 89070

LAS VEGAS NV 890
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Attorneys for Defendants Nevada Department of Corrections (NDOC), State of Nevada, Charles Daniels, Tim Garrett, and Carter Potter

DISTRICT COURT

CLARK COUNTY, NEVADA

BRYAN BONHAM, Plaintiff, v. STATE OF NEVADA ex rel NEVADA DEPARTMENT OF CORRECTIONS, *et al.*, Defendants.	Case No. A-20-823142-C Dept. XXIX Hearing Date: May 11, 2021 Hearing Time: 9:00 a.m.

PROPOSED ORDER

Defendants, Nevada Department of Corrections (NDOC), State of Nevada, Charles Daniels, Tim Garrett, and Carter Potter, by and through counsel, Aaron D. Ford, Nevada Attorney General, and Katlyn M. Brady, Senior Deputy Attorney General, of the State of Nevada, Office of the Attorney General, submit this proposed order.

FINDINGS OF FACT

Plaintiff Bryan Bonham (Bonham) is an inmate currently incarcerated in the NDOC. Bonham filed a Complaint alleging the Defendants violated his constitutional rights by

///

deducting funds from an outside deposit to pay off debts that Bonham admittedly accrued. Complaint at 3:7-14.

On April 5, 2021, Defendants filed a motion to dismiss or, in the alternative, a motion for summary judgment. Plaintiff did not file an opposition. This Court held a hearing on May 11, 2021, and Plaintiff did not appear.[1] Despite the failure to file an opposition, or appear at the hearing, the Court conducted a full evaluation and analysis of Defendants' motion.

Specifically, Bonham alleges that on January 8, 2020, Bonham's mother deposited $150.00 into Bonham's inmate banking account. Complaint at 3:7-8. Bonham concedes that 20% of the deposit was withheld to pay for the filing fee in Bonham's federal civil case. *Id.* at 3:9-10. Another 10% was deducted and placed into Bonham's inmate savings account. *Id.* at 3:10. Finally, Bonham alleges 50% was deducted to pay for costs the NDOC incurred as a result of housing Bonham. *Id.* at 3:11-13. As a result, Bonham alleges he received only $14.00 instead of the expected $30.00. *Id.*

Bonham alleges that Director Charles Daniels is responsible for the actions of his subordinates because he failed to correct the issue after Bonham complained. *Id.* at 2:9-15. *Id.* at 2:15-28.

A. Findings Regarding The Deposit

On January 8, 2020, an individual named Linda Conry deposited $150.00 into Bonham's inmate banking account. NDOC banking records demonstrate the following deductions:

First, thirty dollars ($30.00) were deducted from the deposit to pay a portion of Bonham's filing fee for his federal litigation. This reduced the deposit to $120.00.

Second, the NDOC deducted seventy-five dollars ($75.00) to pay for the legal copies, which Bonham requested and authorized payment for. This further reduced Bonham's

///

[1] As Plaintiff is incarcerated, Plaintiff could have appeared by filing a motion for telephonic testimony or hearing. Plaintiff did not do so.

deposit to $45.00. It is undisputed that Bonham requested these copies and thus authorized payment for them.

Third, the NDOC deducted fifteen dollars ($15.00) and placed it into Bonham's inmate savings fund. Bonham was then left with $30.00.

Fourth, the NDOC deducted nine dollars ($9.00) to pay for mail that Bonham wished to send. Ultimately, Bonham was left with $21.00. Thus, the total deductions are summarized below.

TRANSACTION TITLE	AMOUNT	REMAINING BALANCE
Initial Deposit	$150.00	150.00
Filing Fee Deduction	$30.00	$120.00
Legal Copy Work Deduction	$75.00	$45.00
Savings Account Deduction	$15.00	$30.00
Postage Deduction	$9.00	$21.00

It appears to be the additional $9.00 deduction that Bonham believes violated his constitutional rights and entitles him to $85,000.00.

B. Findings Regarding NDOC Procedures

Because the deposit was made in January 2020, it is governed by Administrative Regulation (AR) 258, effective date May 15, 2018. This regulation was signed by the previous NDOC Director James Dzurenda and not the current Director Charles Daniels. Pursuant to AR 258, the NDOC may deduct up to 50% of a deposit to pay for costs incurred by the NDOC on behalf of the inmate pursuant to NRS 209.246. These costs include postage and copy work.

Inmate deductions are made by individuals assigned to the NDOC's Purchasing and Inmate Services Division. Director Daniels, Officer Potter, and Officer Garrett are not involved in the banking division, did not make or approve the identified deductions, and are otherwise uninvolved in inmate banking.

CONCLUSIONS OF LAW

Summary judgment is an important procedural tool by which "factually insufficient claims or defenses [may] be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, (1986). Summary judgment should be granted when there is no genuine issue of material facts. *Boesiger v. Desert Appraisals, LLC*, 135 Nev. 192, 194, 444 P.3d 436, 439 (2019). To survive summary judgment, the nonmoving party "must do more than simply show there is some metaphysical doubt as to the operative facts." *Id.* (internal quotation and citation omitted).

A. The State Of Nevada Is Not A Person

This Court grants summary judgment and to the State of Nevada and the NDOC. "[A] litigant complaining of a violation of a constitutional right does not have a direct cause of action under the United States Constitution but must utilize 42 U.S.C. § 1983." *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001). "[A] State is not a 'person' within the meaning of § 1983[.]" *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 65 (1989); *see also Cuzze v. Univ. & Comm. Coll. Sys. of Nevada*, 123 Nev. 598, 605 (2007).

As both the Nevada Supreme Court and United States Supreme Court have held that states, and their political subdivisions are not persons for the purposes of § 1983 litigation, this Court grants summary judgment on all claims as to these Defendants.

B. Bonham Failed To Demonstrate Personal Participation

"Prison officials are deliberately indifferent to a prisoner's serious medical needs when they deny, delay, or intentionally interfere with medical treatment[.]" *Hamilton v. Endell*, 981 F.2d 1062, 1066 (9th Cir. 1992). "In order for a person acting under color of state law to be liable under section 1983, there must be a showing of personal participation in the alleged rights deprivation: there is no respondeat superior liability[.]" *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002); *see also Bacon v. Williams*, No. 77135-COA, 2019 WL 4786883, at *1 (Nev. App. Sept. 27, 2019) (upholding the district court's dismissal of an inmate complaint for failing to allege how each defendant personally participated in

the alleged violation as required by §1983). The Nevada Court of Appeals further held that denying a grievance is insufficient to demonstrate personal participation. *Id.* (citing cases demonstrating the denial of a grievance is insufficient to establish personal participation).

The evidence presented demonstrates there is no genuine dispute of material fact regarding the Defendants' lack of personal participation. The uncontroverted evidence demonstrates the named Defendants do not work in the banking division, did not authorize any of the deductions, and did not participate in deducting the funds. As these Defendants are wholly unrelated to the banking division, this Court finds they are entitled to summary judgment on all claims.

C. Bonham Did Not Show A Constitutional Violation

Even assuming Bonham demonstrated personal participation, he failed to show a constitutional violation. Bonham bases his constitutional claim on his belief that Defendants violated NDOC's AR 258. However, a violation of an institutional procedure does not automatically qualify as a constitutional violation. Bonham attempts to demonstrate that this was a violation of the Fourth, Fifth, and Fourteenth Amendments. Although similar, the amendments have differing standards. The Takings Clause of the Fifth Amendment limits the government's ability to take property without paying for it.[2] *Vance v. Barrett*, 345 F.3d 1083, 1086 (9th Cir. 2003). Meanwhile, the Due Process Clause of the Fourteenth Amendment requires appropriate procedural protections when the government takes property. *Id.*

The Ninth Circuit has already held the NDOC may deduct funds to pay for expenses incurred in maintaining and operating inmate accounts. *Id.* at 1089 ("[w]e have no trouble concluding that the officials may deduct [expenses relating to inmate accounts]"). Here, Bonham does not allege the legal copy charges or the legal postage charges were incorrect or unauthorized. Instead, Bonham simply complains the NDOC deducted too large a

[2] As a threshold matter, there was no seizure or taking as the money was not taken for the government but was instead applied to pay debt Bonham admittedly incurred and authorized. This would be tantamount to a government entity deducting funds to pay for the payee's child support. The government does not keep the funds but instead applies it to an accrued debt.

percentage to pay these debts. As Bonham has not alleged or demonstrated that he did not authorize these charges, the Defendants are entitled to summary judgment on the Fifth Amendment claim.

Likewise, the Defendants are entitled to summary judgment on the Fourteenth Amendment clause. The Due Process Clause requires prison officials to create adequate procedurals governing inmate bank accounts. *Id.* at 1090-91 (discussing that prison administrators must create procedural safeguards, in compliance with statutory authority authorizing the deduction). Here, there is no dispute that NDOC has statutory authority to deduct money from inmate deposits. Specifically, NRS 209.246 states the NDOC Director, with approval from the Board of Prison Commissioners, may establish regulations authorizing the deduction of a "reasonable amount" of money from inmate deposits.[3]

As NDOC has statutory authorization to deduct money to pay for legal postage and copies, the next inquiry is whether there are competent procedural safeguards. Here, the uncontested evidence demonstrates NDOC's AR's are competent procedural safeguards because they provide both pre and post deprivation guidelines and reviews.

A Court recently found that AR 258, when combined with AR 740's grievance procedures, "provide adequate procedural protections" and thus does not violate the Due Process Clause. *Antonetti v. McDaniels*, No. 3:16-cv-00396-MMD-WGC, 2021 WL 624241, at * 21 (D. Nev. Jan. 25, 2021); *see also Beraha v. Nevada*, 3:17-cv-00366-RCJ-CLB, 2020 WL 3949223, at *5 (D. Nev. Apr. 27, 2020).

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[3] The Director shall, with the approval of the Board, establish by regulation criteria for a reasonable deduction from money credited to the account of an offender to:
2. Defray, as determined by the Director, a portion of the costs paid by the Department for medical care for the offender, including, but not limited to:
(a) Except as otherwise provided in paragraph (b) of subsection 1, expenses for medical or dental care, prosthetic devices and pharmaceutical items; and
(b) Expenses for prescribed medicine and supplies.
3. Repay the costs incurred by the Department on behalf of the offender for:
(a) Postage for personal items and items related to litigation;
(b) Photocopying of personal documents and legal documents, for which the offender must be charged a reasonable fee not to exceed the actual costs incurred by the Department;
(c) Legal supplies;

As a threshold matter, NDOC's alleged violation of its own policy does not create a Due Process violation. The Supreme Court has rejected the argument that prison regulations create a liberty interest and therefore violations of policy violate the Due Process Clause. *See Sandin v. Conner*, 515 U.S. 472, 482-84 (1995) (rejecting the argument that a prison regulation creates a liberty interest protected by the Due Process Clause); *see also Machlan v. Neven*, No. 3:13-cv-00337-MMD, 2015 WL 1412748, at * 12 (D. Nev. Mar. 27, 2015) (*aff'd*, 656 F. App'x 365 (9th Cir. 2016)) ("Stated differently, prison officials do not offend the Constitution by ignoring prison [regulations]). Thus, the question is not whether NDOC violated its own regulations, but whether NDOC has appropriate safeguards to govern deductions.[4] Multiple courts have already answered in the affirmative.

Administrative Regulation 258 provides the first safeguard concerning inmate accounting issues. Inmates with concerns regarding deductions or other banking issues can submit a fiscal inquiry regarding the issue. The inmate's caseworker first attempts to address the issue, and if they are unable to, the issue is escalated to Inmate Services Banking Services (ISBS). Thus, AR 258 creates at least two safeguards for inmate deductions.

Additionally, AR 740, the grievance process, creates yet another safeguard for inmate deductions. Inmates who believe the banking division made an error may submit a grievance challenging the action. Grievances go through at least three different levels of review. **First**, the informal grievance is reviewed by the assigned caseworker. **Second**, the inmate may appeal and grievance denial to the Warden's office for review. **Third**, the inmate may appeal the Warden's decision to a Deputy Director for review. The Deputy Director of Support Services reviews second level grievances concerning banking issues.

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[4] *See also Brewster v. Dretke*, 587 F.3d 764, 768 (5th Cir. 2009) (noting a prison official's failure to follow regulations does not violate the Due Process clause so long as the constitutional minima is met).

Because there is statutory authority authorizing the Director to determine the appropriate deduction percentage, and there are appropriate procedural safeguards, Defendants are entitled to summary judgment on all claims.

D. Defendants Are Entitled To Qualified Immunity

Even assuming Defendants violated Plaintiff's constitutional rights, this Court finds the Defendants are entitled to Qualified Immunity.

It is a long-standing principle that governmental officials are shielded from civil liability under the doctrine of Qualified Immunity. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

> The defense of qualified immunity protects "government officials . . . from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." The rule of qualified immunity "'provides ample support to all but the plainly incompetent or those who knowingly violate the law.'" "Therefore, *regardless of whether the constitutional violation occurred,* the officer should prevail if the right asserted by the plaintiff was not 'clearly established' or the officer could have reasonably believed that his particular conduct was lawful." Furthermore, "[t]he entitlement is an immunity from suit rather than a mere defense to liability; ... it is effectively lost if a case is erroneously permitted to go to trial."

Shroeder v. McDonald, 55 F.3d 454, 461 (9th Cir. 1995) (emphasis in original; internal citations omitted).

When conducting the Qualified Immunity Analysis, courts "ask (1) whether the official violated a constitutional right and (2) whether the constitutional right was clearly established." *C.B v. City of Sorona*, 769 F.3d 1005, 1022 (9th Cir. 2014) (internal citation omitted).

The second inquiry, whether the Constitutional right in question was clearly established, is an objective inquiry that turns on whether a reasonable official in the position of the defendant knew or should have known at the time of the events in question that his or her conduct was Constitutionally infirm. *Anderson v. Creighton*, 483 U.S. 635, 639-40 (1987); *Lacey v. Maricopa Cty.*, 693 F.3d 896, 915 (9th Cir. 2012). Only where a governmental official's belief as to the constitutionality of his or her conduct is "plainly

incompetent" is Qualified Immunity unavailable. *Stanton v. Sims*, 134 S.Ct. 3, 5 (2013) (per curiam). Governmental officials are entitled to high deference when making this determination (*Anderson*, 483 U.S. at 640), requiring the Court to assess whether Qualified Immunity is appropriate "in light of the specific context of the case." *Tarabochia v. Adkins*, 766 F.3d 1115, 1121 (9th Cir. 2014) (*quoting Robinson v. York*, 566 F.3d 817, 821 (9th Cir. 2009)). The Ninth Circuit recently clarified that Qualified Immunity applies when "their conduct does not violate clearly established Statutory or Constitutional rights of which a reasonable person would have known[.]" *Emmons v. City of Escondido*, 921 F.3d 1172, 1174 (9th Cir. 2019).

In determining "whether a [constitutional] right was clearly established," this Court is to survey the law within this Circuit and under Supreme Court precedent "at the time of the alleged act." *Perez v. United States*, 103 F.Supp. 3d 1180, 1208 (S. D. Cal. 2015) (quoting *Cmty. House, Inc. v. City of Boise*, 623 F.3d 945, 967 (2010) (citing *Bryan v. MacPherson*, 630 F.3d 805, 933 (9th Cir. 2010)). As such, "liability will not attach unless there exists a case where an officer acting under similar circumstances . . . was held to have violated the [Eighth Amendment.]" *Emmons*, 921 F.3d at 1174 (*citing White v. Pauly*, 137 U.S. 548, 551-52 (2017) (per curiam).[5] Although there need not be an identical case, "existing precedent must have placed the . . . question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).

The question presented for this Court's review is whether there is a clearly established constitutional right prohibiting prison officials from deducting more than 50% of an inmate's deposit to pay for an inmate's debt. Defendants contend there is not any authority that clearly establishes the maximum percentage that can be deducted. *See Loard v. Sorenson*, 561 F. App'x 703, 705 (10th Cir. 2014) (noting Utah deducts 60% of an inmate's wages to pay restitution).

[5] As recently as September 2020, the Ninth Circuit affirmed the importance of qualified immunity in the prison context. *See Cates v. Stroud*, 2020 WL 5742058 (9th Cir. 2020) (holding prison officials were entitled to qualified immunity for conducting a strip search of a prison visitor).

This Court agrees. There is no constitutionally established right preventing prison officials from deducting more than 50% of an inmate's deposit to pay for an inmate's debt. Accordingly, Defendants are entitled to qualified immunity.

IT IS SO ORDERED: Defendants' Motion for Summary Judgment is **GRANTED**.

DATED this 1st day of July, 2021.

DISTRICT JUDGE

SUBMITTED BY:

AARON D. FORD
Attorney General

By /s/ Katlyn M. Brady
KATLYN M. BRADY (Bar No. 14173)
Senior Deputy Attorney General
Attorneys for Defendants

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Attorneys for Defendants Nevada Department of Corrections (NDOC), State of Nevada, Charles Daniels, Tim Garrett, and Carter Potter

DISTRICT COURT

CLARK COUNTY, NEVADA

BRYAN BONHAM, Plaintiff, v. STATE OF NEVADA ex rel NEVADA DEPARTMENT OF CORRECTIONS, *et al.*, Defendants.	Case No. A-20-823142-C Dept. XXIX

NOTICE OF ENTRY OF PROPOSED ORDER

TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that the **PROPOSED ORDER** was entered in the above-entitled action on the 5th day of August, 2021, a copy of which is attached hereto.

DATED this 6th day of August, 2021.

AARON D. FORD
Attorney General

By: /s/ Katlyn M. Brady
KATLYN M. BRADY (Bar No. 14173)
Senior Deputy Attorney General

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on August 5, 2021, I electronically filed the foregoing **NOTICE OF ENTRY OF PROPOSED ORDER** via this Court's electronic filing system. Parties who are registered with this Court's electronic filing system will be served electronically. For those parties not registered, service was made by emailing a copy at Las Vegas, Nevada, addressed to the following:

Bryan Bonham, #60575
High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070
Email: HDSP_LawLibrary@doc.nv.gov
Plaintiff, Pro Se

/s/ Carol A. Knight
CAROL A. KNIGHT, an employee of the
Office of the Nevada Attorney General

ORDR
AARON D. FORD
Attorney General
KATLYN M. BRADY (Bar No. 14173)
Senior Deputy Attorney General
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Attorneys for Defendants Nevada Department of Corrections (NDOC), State of Nevada, Charles Daniels, Tim Garrett, and Carter Potter

DISTRICT COURT

CLARK COUNTY, NEVADA

BRYAN BONHAM, Plaintiff, v. STATE OF NEVADA ex rel NEVADA DEPARTMENT OF CORRECTIONS, *et al.*, Defendants.	Case No. A-20-823142-C Dept. XXIX Hearing Date: May 11, 2021 Hearing Time: 9:00 a.m.

PROPOSED ORDER

Defendants, Nevada Department of Corrections (NDOC), State of Nevada, Charles Daniels, Tim Garrett, and Carter Potter, by and through counsel, Aaron D. Ford, Nevada Attorney General, and Katlyn M. Brady, Senior Deputy Attorney General, of the State of Nevada, Office of the Attorney General, submit this proposed order.

FINDINGS OF FACT

Plaintiff Bryan Bonham (Bonham) is an inmate currently incarcerated in the NDOC. Bonham filed a Complaint alleging the Defendants violated his constitutional rights by

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deducting funds from an outside deposit to pay off debts that Bonham admittedly accrued. Complaint at 3:7-14.

On April 5, 2021, Defendants filed a motion to dismiss or, in the alternative, a motion for summary judgment. Plaintiff did not file an opposition. This Court held a hearing on May 11, 2021, and Plaintiff did not appear.[1] Despite the failure to file an opposition, or appear at the hearing, the Court conducted a full evaluation and analysis of Defendants' motion.

Specifically, Bonham alleges that on January 8, 2020, Bonham's mother deposited $150.00 into Bonham's inmate banking account. Complaint at 3:7-8. Bonham concedes that 20% of the deposit was withheld to pay for the filing fee in Bonham's federal civil case. *Id.* at 3:9-10. Another 10% was deducted and placed into Bonham's inmate savings account. *Id.* at 3:10. Finally, Bonham alleges 50% was deducted to pay for costs the NDOC incurred as a result of housing Bonham. *Id.* at 3:11-13. As a result, Bonham alleges he received only $14.00 instead of the expected $30.00. *Id.*

Bonham alleges that Director Charles Daniels is responsible for the actions of his subordinates because he failed to correct the issue after Bonham complained. *Id.* at 2:9-15. *Id.* at 2:15-28.

A. Findings Regarding The Deposit

On January 8, 2020, an individual named Linda Conry deposited $150.00 into Bonham's inmate banking account. NDOC banking records demonstrate the following deductions:

First, thirty dollars ($30.00) were deducted from the deposit to pay a portion of Bonham's filing fee for his federal litigation. This reduced the deposit to $120.00.

Second, the NDOC deducted seventy-five dollars ($75.00) to pay for the legal copies, which Bonham requested and authorized payment for. This further reduced Bonham's

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[1] As Plaintiff is incarcerated, Plaintiff could have appeared by filing a motion for telephonic testimony or hearing. Plaintiff did not do so.

deposit to $45.00. It is undisputed that Bonham requested these copies and thus authorized payment for them.

Third, the NDOC deducted fifteen dollars ($15.00) and placed it into Bonham's inmate savings fund. Bonham was then left with $30.00.

Fourth, the NDOC deducted nine dollars ($9.00) to pay for mail that Bonham wished to send. Ultimately, Bonham was left with $21.00. Thus, the total deductions are summarized below.

TRANSACTION TITLE	AMOUNT	REMAINING BALANCE
Initial Deposit	$150.00	150.00
Filing Fee Deduction	$30.00	$120.00
Legal Copy Work Deduction	$75.00	$45.00
Savings Account Deduction	$15.00	$30.00
Postage Deduction	$9.00	$21.00

It appears to be the additional $9.00 deduction that Bonham believes violated his constitutional rights and entitles him to $85,000.00.

B. Findings Regarding NDOC Procedures

Because the deposit was made in January 2020, it is governed by Administrative Regulation (AR) 258, effective date May 15, 2018. This regulation was signed by the previous NDOC Director James Dzurenda and not the current Director Charles Daniels. Pursuant to AR 258, the NDOC may deduct up to 50% of a deposit to pay for costs incurred by the NDOC on behalf of the inmate pursuant to NRS 209.246. These costs include postage and copy work.

Inmate deductions are made by individuals assigned to the NDOC's Purchasing and Inmate Services Division. Director Daniels, Officer Potter, and Officer Garrett are not involved in the banking division, did not make or approve the identified deductions, and are otherwise uninvolved in inmate banking.

CONCLUSIONS OF LAW

Summary judgment is an important procedural tool by which "factually insufficient claims or defenses [may] be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, (1986). Summary judgment should be granted when there is no genuine issue of material facts. *Boesiger v. Desert Appraisals, LLC*, 135 Nev. 192, 194, 444 P.3d 436, 439 (2019). To survive summary judgment, the nonmoving party "must do more than simply show there is some metaphysical doubt as to the operative facts." *Id.* (internal quotation and citation omitted).

A. The State Of Nevada Is Not A Person

This Court grants summary judgment and to the State of Nevada and the NDOC. "[A] litigant complaining of a violation of a constitutional right does not have a direct cause of action under the United States Constitution but must utilize 42 U.S.C. § 1983." *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001). "[A] State is not a 'person' within the meaning of § 1983[.]" *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 65 (1989); *see also Cuzze v. Univ. & Comm. Coll. Sys. of Nevada*, 123 Nev. 598, 605 (2007).

As both the Nevada Supreme Court and United States Supreme Court have held that states, and their political subdivisions are not persons for the purposes of § 1983 litigation, this Court grants summary judgment on all claims as to these Defendants.

B. Bonham Failed To Demonstrate Personal Participation

"Prison officials are deliberately indifferent to a prisoner's serious medical needs when they deny, delay, or intentionally interfere with medical treatment[.]" *Hamilton v. Endell*, 981 F.2d 1062, 1066 (9th Cir. 1992). "In order for a person acting under color of state law to be liable under section 1983, there must be a showing of personal participation in the alleged rights deprivation: there is no respondeat superior liability[.]" *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002); *see also Bacon v. Williams*, No. 77135-COA, 2019 WL 4786883, at *1 (Nev. App. Sept. 27, 2019) (upholding the district court's dismissal of an inmate complaint for failing to allege how each defendant personally participated in

the alleged violation as required by §1983). The Nevada Court of Appeals further held that denying a grievance is insufficient to demonstrate personal participation. *Id.* (citing cases demonstrating the denial of a grievance is insufficient to establish personal participation).

The evidence presented demonstrates there is no genuine dispute of material fact regarding the Defendants' lack of personal participation. The uncontroverted evidence demonstrates the named Defendants do not work in the banking division, did not authorize any of the deductions, and did not participate in deducting the funds. As these Defendants are wholly unrelated to the banking division, this Court finds they are entitled to summary judgment on all claims.

C. Bonham Did Not Show A Constitutional Violation

Even assuming Bonham demonstrated personal participation, he failed to show a constitutional violation. Bonham bases his constitutional claim on his belief that Defendants violated NDOC's AR 258. However, a violation of an institutional procedure does not automatically qualify as a constitutional violation. Bonham attempts to demonstrate that this was a violation of the Fourth, Fifth, and Fourteenth Amendments. Although similar, the amendments have differing standards. The Takings Clause of the Fifth Amendment limits the government's ability to take property without paying for it.[2] *Vance v. Barrett*, 345 F.3d 1083, 1086 (9th Cir. 2003). Meanwhile, the Due Process Clause of the Fourteenth Amendment requires appropriate procedural protections when the government takes property. *Id.*

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As NDOC has statutory authorization to deduct money to pay for legal postage and copies, the next inquiry is whether there are competent procedural safeguards. Here, the uncontested evidence demonstrates NDOC's AR's are competent procedural safeguards because they provide both pre and post deprivation guidelines and reviews.

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Because there is statutory authority authorizing the Director to determine the appropriate deduction percentage, and there are appropriate procedural safeguards, Defendants are entitled to summary judgment on all claims.

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Even assuming Defendants violated Plaintiff's constitutional rights, this Court finds the Defendants are entitled to Qualified Immunity.

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incompetent" is Qualified Immunity unavailable. *Stanton v. Sims*, 134 S.Ct. 3, 5 (2013) (per curiam). Governmental officials are entitled to high deference when making this determination (*Anderson*, 483 U.S. at 640), requiring the Court to assess whether Qualified Immunity is appropriate "in light of the specific context of the case." *Tarabochia v. Adkins*, 766 F.3d 1115, 1121 (9th Cir. 2014) (*quoting Robinson v. York*, 566 F.3d 817, 821 (9th Cir. 2009)). The Ninth Circuit recently clarified that Qualified Immunity applies when "their conduct does not violate clearly established Statutory or Constitutional rights of which a reasonable person would have known[.]" *Emmons v. City of Escondido*, 921 F.3d 1172, 1174 (9th Cir. 2019).

In determining "whether a [constitutional] right was clearly established," this Court is to survey the law within this Circuit and under Supreme Court precedent "at the time of the alleged act." *Perez v. United States*, 103 F.Supp. 3d 1180, 1208 (S. D. Cal. 2015) (quoting *Cmty. House, Inc. v. City of Boise*, 623 F.3d 945, 967 (2010) (citing *Bryan v. MacPherson*, 630 F.3d 805, 933 (9th Cir. 2010)). As such, "liability will not attach unless there exists a case where an officer acting under similar circumstances . . . was held to have violated the [Eighth Amendment.]" *Emmons*, 921 F.3d at 1174 (*citing White v. Pauly*, 137 U.S. 548, 551-52 (2017) (per curiam).[5] Although there need not be an identical case, "existing precedent must have placed the . . . question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).

The question presented for this Court's review is whether there is a clearly established constitutional right prohibiting prison officials from deducting more than 50% of an inmate's deposit to pay for an inmate's debt. Defendants contend there is not any authority that clearly establishes the maximum percentage that can be deducted. *See Loard v. Sorenson*, 561 F. App'x 703, 705 (10th Cir. 2014) (noting Utah deducts 60% of an inmate's wages to pay restitution).

[5] As recently as September 2020, the Ninth Circuit affirmed the importance of qualified immunity in the prison context. *See Cates v. Stroud*, 2020 WL 5742058 (9th Cir. 2020) (holding prison officials were entitled to qualified immunity for conducting a strip search of a prison visitor).

This Court agrees. There is no constitutionally established right preventing prison officials from deducting more than 50% of an inmate's deposit to pay for an inmate's debt. Accordingly, Defendants are entitled to qualified immunity.

IT IS SO ORDERED: Defendants' Motion for Summary Judgment is **GRANTED**.

DATED this 1st day of July, 2021.

DISTRICT JUDGE

SUBMITTED BY:

AARON D. FORD
Attorney General

By /s/ Katlyn M. Brady
KATLYN M. BRADY (Bar No. 14173)
Senior Deputy Attorney General
Attorneys for Defendants

Bryan P. Borham
P.O. Box 650 (HDSP)
Indian Springs, NEV 89070

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

Bryan P Borham — CASE NO. A-20-823142-C

-VS-

STATE OF NEVADA ex rel — NOTICE OF APPEAL

TO:

Deputy Attorney General
Kathryn M. Brady
555 E. Washington Ave Ste 3400
LV. NV 89101

Please take notice that the undersigned in the above action gives His Notice of Appeal of order ~~giving~~ given on August 4, 2021 Granting Summary Judgment to Defendants.

/s/ ~~Bryan P Borham~~

Bryan P Borham 60575
PO Box 650 HDSP
Indian Springs, NEV 89070

Bryan Branham 60575
PO Box 650 NDSP
Indian Springs, NV 89070

LAS VEGAS NV 890
26 AUG 2021PM 3 L

Clerk of the Court
Regional Justice Center
200 Lewis Ave 3rd floor
LV NV 89155

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mailed via Brass slip # 2414384

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HIGH DESERT STATE PRISON
AUG 16 2021
UNIT 9

520

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IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

BRYAN BONHAM,

Plaintiff(s),

vs.

STATE OF NEVADA; NEVADA DEPT OF CORRECTIONS; CHARLES DANIELS; T. GARRETT; C. POTTER,

Defendant(s),

Case No: A-20-823142-C

Dept No: XXIX

CASE APPEAL STATEMENT

1. Appellant(s): Bryan Bonham

2. Judge: David Barker

3. Appellant(s): Bryan Bonham

Counsel:

Bryan Bonham #60575
P.O. Box 650
Indian Springs, NV 89070

4. Respondent (s): State of Nevada; Nevada Dept of Corrections; Charles Daniels; T. Garrett; C. Potter

Counsel:

Aaron D. Ford, Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101-1068

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis**: Yes, October 20, 2020
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: Yes,
Date Application(s) filed: December 8,2020

9. Date Commenced in District Court: October 15, 2020

10. Brief Description of the Nature of the Action: Unknown

Type of Judgment or Order Being Appealed: Summary Judgment

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 82800, 83033

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 1 day of September 2021.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton
Amanda Hampton, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Bryan Bonham

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN PHILLIP BONHAM,
Appellant,
vs.
THE STATE OF NEVADA; THE STATE OF NEVADA DEPARTMENT OF CORRECTIONS; CHARLES DANIELS; TIM GARRETT; AND CARTER POTTER,
Respondents.

Supreme Court No. 83458
District Court Case No. A823142

FILED
APR 12 2022
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"We must reverse this matter in part and remand this case for the district court to address this issue in the first instance."

Judgment, as quoted above, entered this 17th day of March, 2022.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this April 11, 2022.

Elizabeth A. Brown, Supreme Court Clerk

By: Andrew Lococo
Deputy Clerk

A-20-823142-C
CCJAR
NV Supreme Court Clerks Certificate/Judgr
4988766

10

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRYAN PHILLIP BONHAM,
Appellant,
vs.
THE STATE OF NEVADA; THE STATE OF NEVADA DEPARTMENT OF CORRECTIONS; CHARLES DANIELS; TIM GARRETT; AND CARTER POTTER,
Respondents.

No. 83458-COA

FILED

MAR 17 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Bryan Phillip Bonham appeals from a district court order granting summary judgment in a civil rights action. Eighth Judicial District Court, Clark County; David Barker, Senior Judge.

Bonham is an inmate in the Nevada Department of Corrections (NDOC). On January 8, 2020, Bonham's mother deposited $150 into his inmate account. The same day, NDOC made several deductions from Bonham's inmate account for costs it incurred on his behalf for preparing photocopies and providing postage in connection with his litigation activities. Bonham then sued respondents the State of Nevada, NDOC, Charles Daniels, Tim Garrett, and Carter Potter, the last three of whom are NDOC officials and employees. In his complaint, Bonham alleged that the total amount that NDOC deducted from his inmate account for the

photocopying and postage costs—$84—exceeded the amount that it was authorized to deduct based on the $150 deposit that his mother made. In particular, Bonham alleged that the combined $84 deduction violated NRS 209.246 and AR 258 because it exceeded 50 percent of the $150 deposit. Moreover, insofar as a portion of the deduction was unauthorized, Bonham asserted that respondents deprived him of his constitutionally protected property interest in the funds in his inmate account and were therefore liable under 42 U.S.C. § 1983. Based on these allegations, Bonham sought, among other things, compensatory and punitive damages and an injunction requiring NDOC to return the funds that were deducted from his inmate account.

Respondents eventually filed a motion for summary judgment, which construed Bonham's complaint as presenting only claims under § 1983 for violation of the Fourth Amendment, the Takings Clause of the Fifth Amendment, and the Due Process Clause of the Fourteenth Amendment of the United States Constitution. In their motion, respondents maintained that they were entitled to summary judgment for several reasons, including that they were not proper parties to his § 1983 claims. In particular, respondents argued that the State of Nevada and NDOC were not persons for purposes of § 1983 and that Daniels, Garrett, and Potter did not personally participate in deducting funds from Bonham's inmate account. Over Bonham's opposition, the district court agreed with respondents and granted summary judgment. This appeal followed.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026,

1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine dispute of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine disputes of fact. *Id.* at 731, 121 P.3d at 1030-31.

On appeal, Bonham challenges the summary judgment on his § 1983 claims by arguing that the unauthorized portion of the deduction from his inmate account deprived him of a constitutionally protected property interest in the funds in his account. We need not reach this issue, however, as the district court correctly concluded that respondents are not proper parties for purposes of Bonham's § 1983 claims. Indeed, the State of Nevada and NDOC are not persons for purposes of a § 1983 claim. *See* § 1983 (allowing a plaintiff to bring a civil rights claim against any person who deprives the plaintiff of rights, privileges, or immunities secured by the United States Constitution); *see also Craig v. Donnelly*, 135 Nev. 37, 40, 439 P.3d 413, 415-16 (Ct. App. 2019) (recognizing, based on established precedent, that states and state agencies are not "persons" within the meaning of § 1983).

Moreover, the affidavits submitted with respondents' motion for summary judgment demonstrated that Daniels, Garrett, and Potter were not involved in managing the funds in Bonham's inmate account. *See Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002) (stating that, "to be liable under section 1983 there must be a showing of personal participation in the

alleged rights deprivation"). And to the extent Bonham's informal brief can be read to challenge the district court's rejection of his argument that Daniels, Garrett, and Potter personally participated in the alleged violation of his constitutional rights by denying his grievances or otherwise failing to act despite being aware of the allegedly unauthorized deduction, this type of conduct is insufficient by itself to establish personal participation, *see Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999) (stating the same), and Bonham did not otherwise present any evidence to show how these respondents caused the alleged constitutional violations through their own individual actions. *See Gates v. Legrand*, No. 316-cv-00321-MMD-CLB, 2020 WL 3867200, at *5 (D. Nev. March 27, 2020) (surveying caselaw involving § 1983 claims based on the denial of a grievance and identifying the circumstances that must exist for personal participation to be established). Thus, because respondents were not proper parties for purposes of § 1983, Bonham's § 1983 claims fail as a matter of law, and the district court did not err in granting respondents summary judgment on those claims. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we affirm the district court's summary judgment on Bonham's § 1983 claims.

This does not end our analysis, however, because federal due process jurisprudence regarding unauthorized deprivations of inmate property suggests that Bonham could arguably seek relief by bringing state-law-based claims against respondents. In the federal due process context, the core question is typically whether an inmate has a meaningful postdeprivation remedy for an unauthorized deprivation of property. *Compare Hudson v. Palmer*, 468 U.S. 517, 531-33 (1984) (explaining that a

negligent or intentional unauthorized deprivation of property does not offend the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy is available since predeprivation process is impracticable in the context of random unauthorized conduct), *with Piatt v. MacDougall*, 773 F.2d 1032, 1036-37 (9th Cir. 1985) (declining to treat a postdeprivation remedy as adequate where a deprivation in violation of a statute was nevertheless the result of deliberate and considered conduct, which had routinely occurred in the prison system, such that it could not be said to be random). And on that point, courts routinely conclude that a meaningful postdeprivation remedy exists for the unauthorized deprivation of inmate property in the form of state civil actions. *See, e.g., Hawes v. Stephens*, 964 F.3d 412, 418 (5th Cir. 2020) ("We have long acknowledged that Texas provides inmates challenging the appropriation of monies in their inmate trust fund account with meaningful postdeprivation remedies, either through statute or through the tort of conversion." (internal quotation marks omitted)); *Wright v. Riveland*, 219 F.3d 905, 917-18 (9th Cir.) (reasoning that, if a deduction from an inmate account exceeds the statutorily authorized amount, an inmate has an adequate postdeprivation remedy through established prison grievance procedures or a state tort claim).

As in the cases discussed above, state law claims against respondents were arguably available to allow Bonham to challenge the purportedly unauthorized deductions from his account, given that Nevada has waived its sovereign immunity, *see* NRS 41.031(1), and authorized inmates who have exhausted their administrative remedies to brings claims

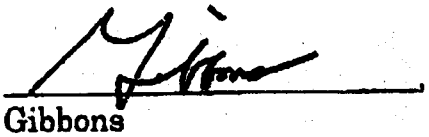
against NDOC and "its agents, former officers, employees or contractors to recover for the loss of . . . personal property," NRS 41.0322(1). While we recognize that Bonham's complaint was largely couched in terms of his constitutional claims, it nevertheless seemingly implicated state law.

Indeed, in his complaint, Bonham provided factual allegations concerning his mother's $150 deposit and the deductions that followed, asserted that a portion of the deductions exceeded the amount that could properly be deducted from his account under AR 258 based on the deposit, indicated that the money was not returned to him after he exhausted his administrative remedies,[1] and requested an order directing that certain funds be returned to his account. However, based on the order granting respondents' motion for summary judgment, it does not appear that the district court considered whether the foregoing was sufficient to present state law claims under Nevada's notice pleading standard, *see Droge v. AAAA Two Star Towing, Inc.*, 136 Nev. 291, 308-09, 468 P.3d 862, 878 (Ct. App. 2020) (recognizing that a complaint satisfies Nevada's notice pleading standard if it sets forth facts that support a claim even if the plaintiff does not "use the precise legalese in describing his grievance" (internal quotation marks omitted)), much less whether there was evidence in the record to support such claims. As a result, we must reverse this matter in part and

[1]Respondents did not dispute Bonham's allegation that he exhausted his administrative remedies or otherwise seek dismissal based on an assertion that this allegation was not correct.

remand this case for the district court to address this issue in the first instance.[2]

It is so ORDERED.[3]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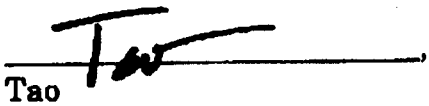
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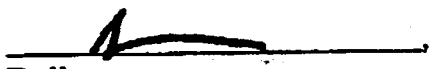
_____, J.
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[2]While this court generally will not grant a pro se appellant relief without providing the respondent an opportunity to respond, NRAP 46A(c), a response here would be futile since it does not appear that the district court considered whether Bonham's complaint presented a state law claim, and respondents did not address the issues during the underlying proceeding.

[3]In light of our disposition of this appeal, we take no action with respect to the "notice to the court," which was filed on March 7, 2022. Nevertheless, nothing in our disposition of this appeal prevents Bonham from raising the issues presented in the notice on remand.

Insofar as Bonham raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Chief Judge, Eighth Judicial District Court
Hon. David Barker, Senior Judge
Bryan Phillip Bonham
Attorney General/Carson City
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN PHILLIP BONHAM,
Appellant,
vs.
THE STATE OF NEVADA; THE STATE OF NEVADA DEPARTMENT OF CORRECTIONS; CHARLES DANIELS; TIM GARRETT; AND CARTER POTTER,
Respondents.

Supreme Court No. 83458
District Court Case No. A823142

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: April 11, 2022

Elizabeth A. Brown, Clerk of Court

By: Andrew Lococo
Deputy Clerk

cc (without enclosures):
Bryan Phillip Bonham
Aaron D. Ford (Attorney General/Carson City)
Hon. David Barker, Senior Judge

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on APR 12 2022.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED
APPEALS
APR 12 2022
CLERK OF THE COURT

Electronically Filed
4/13/2022 9:08 AM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Bryan Bonham, Plaintiff(s) vs. Nevada State of, Defendant(s)	CASE NO.: A-20-823142-C Department 29 Hearing Date: May 03, 2022 Hearing Time: 9:00 a.m.

ORDER SCHEDULING STATUS CHECK: REMAND

YOU ARE HEREBY ORDERED TO APPEAR in District Court, 200 Lewis Avenue, Department 29, on May 03, 2022, at 9:00 a.m., to give status regarding this matter.

DATED this 13th day of April, 2022.

David M Jones
DISTRICT COURT JUDGE

///

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///

///

David M Jones
DISTRICT JUDGE
Department 29
LAS VEGAS, NV 89155

CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed, a copy of this Order was electronically served to all registered parties in the Eighth Judicial District Court Electronic Filing Program per the attached Service Contacts list and/or placed in the attorney's folder maintained by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties as follows:

Aaron D. Ford
State of Nevada - Attorney General
Attn: Aaron D. Ford
100 N. Carson Street
Carson City, NV 89701-4717

Bryan Bonham
HDSP # 60575
Po Box 650
Indian Springs, NV 89070

C Potter

Charles Daniels

Nevada Depatment of Corrections

T Garrett

/s/ Melissa Delgado-Murphy

Melissa Delgado-Murphy
Judicial Executive Assistant

ORDR

AARON D. FORD
Attorney General
DAWN R. JENSEN (Bar No. 10933)
Senior Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
(702) 486-3195 (phone)
(702) 486-3773 (fax)
Email: drjensen@ag.nv.gov

Attorneys for Defendants Nevada Department of Corrections (NDOC), State of Nevada, Charles Daniels, Tim Garrett, and Carter Potter

DISTRICT COURT

CLARK COUNTY, NEVADA

BRYAN BONHAM, Plaintiff, v. STATE OF NEVADA ex rel. NEVADA DEPARTMENT OF CORRECTIONS, *et al.*, Defendants.	Case No. A-20-823142-C Dept. XXIX Hearing date: May 3, 2022

ORDER

Defendants, Nevada Department of Corrections (NDOC), State of Nevada, Charles Daniels, Tim Garrett, and Carter Potter, by and through counsel, Aaron D. Ford, Nevada Attorney General, and Dawn R. Jensen, Deputy Attorney General, of the State of Nevada, Office of the Attorney General, submit this order.

On May 3, 2022, the Court held a status check hearing. Having reviewed the Nevada Court of Appeals Order affirming in part and reversing in part and remanding, the Court finds that Plaintiff has 60 days, or until July 5, 2022 to file supplemental briefing on the Defendants' motion to dismiss. Upon receipt of service of Plaintiff's supplemental brief, Defendants will have 60 days, or until September 3, 2022, to file a reply. The matter is continued to November 8, 2022.

IT IS SO ORDERED: Plaintiff has 60 days, or until July 5, 2022, to file supplemental briefing on Defendants' motion to dismiss. Upon receipt of service of Plaintiff's supplemental brief, Defendants will have 60 days, or until September 3, 2022, to file a reply. The matter is continued to November 8, 2022.

DATED this ____ day of May, 2022.

Dated this 13th day of May, 2022

DISTRICT COURT JUDGE

4AA AAB 2BCE E49E
David M Jones
District Court Judge

SUBMITTED BY:

AARON D. FORD
Attorney General

By /s/ Dawn R. Jensen
DAWN R. JENSEN (Bar No. 10933)
Deputy Attorney General
Attorneys for Defendants

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Bryan Bonham, Plaintiff(s)	CASE NO: A-20-823142-C
vs.	DEPT. NO. Department 29
Nevada State of, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 5/13/2022

Steven Wolfson	motions@clarkcountyda.com
Carol Knight	cknight@ag.nv.gov
Katlyn Brady	katlynbrady@ag.nv.gov

NEOJ
AARON D. FORD
Attorney General
DAWN R. JENSEN (Bar No. 10933)
Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
(702) 486-3195 (phone)
(702) 486-3773 (fax)
Email: drjensen@ag.nv.gov

Attorneys for Defendants Nevada Department of Corrections (NDOC), State of Nevada, Charles Daniels, Tim Garrett, and Carter Potter

DISTRICT COURT

CLARK COUNTY, NEVADA

BRYAN BONHAM,

Plaintiff,

v.

STATE OF NEVADA ex rel NEVADA DEPARTMENT OF CORRECTIONS, *et al.*,

Defendants.

Case No. A-20-823142-C
Dept. XXIX

NOTICE OF ENTRY OF ORDER

TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that an **ORDER** was entered in the above-entitled action on the 13th day of May, 2022, a copy of which is attached hereto.

DATED this 17th day of May, 2022.

AARON D. FORD
Attorney General

By: /s/ Dawn R. Jensen
DAWN R. JENSEN (Bar No. 10933)
Deputy Attorney General
Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on May 17, 2022, I electronically filed the foregoing **NOTICE OF ENTRY OF ORDER** via this Court's electronic filing system. Parties who are registered with this Court's electronic filing system will be served electronically. For those parties not registered, service was made by mailing a copy at Las Vegas, Nevada, addressed to the following:

Bryan Bonham, #60575
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070
Plaintiff, Pro Se

/s/ Diane Resch
Diane Resch, an employee of the
Office of the Nevada Attorney General

ELECTRONICALLY SERVED
5/13/2022 4:25 PM

Electronically Filed
05/13/2022 4:24 PM
CLERK OF THE COURT

ORDR
AARON D. FORD
Attorney General
DAWN R. JENSEN (Bar No. 10933)
Senior Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
(702) 486-3195 (phone)
(702) 486-3773 (fax)
Email: drjensen@ag.nv.gov

Attorneys for Defendants Nevada Department of Corrections (NDOC), State of Nevada, Charles Daniels, Tim Garrett, and Carter Potter

DISTRICT COURT

CLARK COUNTY, NEVADA

BRYAN BONHAM,

Plaintiff,

v.

STATE OF NEVADA ex rel. NEVADA DEPARTMENT OF CORRECTIONS, *et al.*,

Defendants.

Case No. A-20-823142-C

Dept. XXIX

Hearing date: May 3, 2022

ORDER

Defendants, Nevada Department of Corrections (NDOC), State of Nevada, Charles Daniels, Tim Garrett, and Carter Potter, by and through counsel, Aaron D. Ford, Nevada Attorney General, and Dawn R. Jensen, Deputy Attorney General, of the State of Nevada, Office of the Attorney General, submit this order.

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IT IS SO ORDERED: Plaintiff has 60 days, or until July 5, 2022, to file supplemental briefing on Defendants' motion to dismiss. Upon receipt of service of Plaintiff's supplemental brief, Defendants will have 60 days, or until September 3, 2022, to file a reply. The matter is continued to November 8, 2022.

DATED this ____ day of May, 2022.

Dated this 13th day of May, 2022

DISTRICT COURT JUDGE

4AA AAB 2BCE E49E
David M Jones
District Court Judge

SUBMITTED BY:

AARON D. FORD
Attorney General

By /s/ Dawn R. Jensen
DAWN R. JENSEN (Bar No. 10933)
Deputy Attorney General
Attorneys for Defendants

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Bryan Bonham, Plaintiff(s)	CASE NO: A-20-823142-C
vs.	DEPT. NO. Department 29
Nevada State of, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 5/13/2022

Steven Wolfson	motions@clarkcountyda.com
Carol Knight	cknight@ag.nv.gov
Katlyn Brady	katlynbrady@ag.nv.gov

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Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
****

Bryan Bonham, Plaintiff(s) vs. Nevada State of, Defendant(s)	Case No.: A-20-823142-C Department 29

NOTICE OF HEARING

Please be advised that the Plaintiff's Motion for Discovery/ Motion for Evidentiary Hearing & Order to Show Cause in the above-entitled matter is set for hearing as follows:

Date: August 02, 2022

Time: 9:00 AM

Location: RJC Courtroom 15A
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

Bryan p Bonham 60575
po Box 650 (HDSP)
Indian Springs, NEV 89070

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

Bryan p Bonham
plaintiff

v

steve Sisolak exrel, et al/
defendants

CASE NO A20 823M2

DEPT NO XXXII

"IN PERSON HEARING REQUESTED"

MOTION FOR DISCOVERY / MOTION FOR EVIDENTIARY HEARING & ORDER TO SHOW CAUSE

comes now plaintiff, Bryan p Bonham by and through his proper person & hereby submits for filing the foregoing motion for Discovery / motion for Evidentiary Hearing & ~~motion~~ order to show cause. (motion), for this court's review and consideration

This motion is made and based upon all documents, papers and pleadings on file herein, as well as the attached points & Authorities, argument made in support of the ~~foregoing~~ motion, & those arguments made in second (2nd) Amended complaint & supplemental Brief in support of second amended complaint

plaintiff does respectfully request that this Honorable court will grant oral argument, and issue an order to show cause, TO show why plaintiff should not be granted Summary Judgment simarily & why court should not find that AR258 is invalid, as well as NRS PUBLICATIONS cited in complaint (2nd Amend) complaint, as well as in supplemental Brief being unconstitutional

Bryan p Bonham 60575

po Box 650(HDsp)

Indian springs, NEV 89070

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

Bryan p Bonham — CASE NO

plaintiff — DEPT NO

v

steve Sisolak exrel etal — NOTICE OF MOTION

defendants.

TO

DEPUTY ATTORNEY GENERAL
Dawn R Jensen.
~~Kathlyn M Brady~~

555 E washington ave ste 3900

Las vegas, nevada 89101

Please take notice that the undersigned will bring the above motion for hearing as soon as courts docket availability will allow.

Dated: This day of June, 2022

~~Bryan p Bonham~~

Bryan p Bonham 60575

Po Box 650 (HDSP)

Indian springs, NEV 89070

MEMORANDUM of LAW

POINTS AND AUTHORITIES

This Honorable court should not allow it to have the wool pulled over its eyes by the defendants counsel creating a false narative as counsel did in their previous motion to dismiss.

FIRST, the NDOC & or its staff do not have legal Authority to take what ever amount from plaintiffs money they see fit.

Second, The "NEVADA SUPREME COURT has interpreted ART 4 § 23's unambiguous Language within the CONST OF NEV (1864) to mean that an enacting clause must be included in EVERY LAW 'created by the legislature' and must express on the face 'the Authority by which they were enacted.'" citing STATE V Rogers, 10 NEV 250, 261 (1875)

The Nevada Supreme court in STATE V Rogers, 10 NEV @ 261 opined as follows: "our constitution expressly provides that the enacting clause of every Law shall be 'The people of the state of Nevada, represented in senate and assembly, do enact as follows.' This language is susceptible of but one interpretation. There is no doubtful meaning as to the intentions of ART 4 § 23, (ART 4 § 17; ART 4 § 18, ART 3 § 1) (and other Articles discused in second (2nd) Amended complaint.) It is, in our judgment, an imparative mandate of the people in their sovereign capacity to the legislature, requiring that ALL LAWS to be binding upon them shall, upon their face express the Authority by which they were enacted, ..." (emphasis added.)

I.

Discovery and an order to show cause, And An Evidentiary hearing should be granted.

1) plaintiff seeks an order from this court directing defendants through counsel to produce CERTIFIED COPIES OF SB: NO 2 1957, 48TH SESSION of the Nevada

Legislature (Legis of Nev.), as well as the record of the reading of S.B. No 2 three (3), times on three (3), separate days. Nevada constitution (NevConst); ARTICLE 43 18.

The plaintiff does further request Discovery as to the Assembly History from 1957 to 1969, these requested Documents must come from the Secretary of state's office, pursuant to NEVCONST ART 5 §20, To be utilized that this court can adjudicate a full, fair, JUST decision, or to decree, issue Judgment, as concerns the Legality, validity, Lawfulness, constitutionality, Authority of the NRS STATUTES/LAWS contested in second (2nd) Amended Complaint.

plaintiff Respectfully informs this Honorable court that the production of the 48th session Legislative History has been sought, from the office of the secretary of state, only to learn/Discover that the office of the secretary of state no longer has custody, control, and/or care of said Documents, Likewise the plaintiff has sought to Discover the following:

(1) who is the Nevada Archives?

(2) How was the Nevada Archives established?

(3) when was the Nevada Archives established?

(4) where was the Nevada Archives established?

(5) whom is appointed to head the Nevada Archives?

(6) whom appointed/hired said person to head the Nevada Archives?; when?

(7) How is the Nevada Archives funded?

(8) who at the Nevada Archives is paid and for what service?

(9) How does the Nevada Archives derive their income?

(10) Are there "any costs, fees etc.," charged to the citizens of Nevada?

(11) where are the complete Assembly Histories for the following years? 1951; 1953; 1955; 1957; 1961; and 1969? including all session Laws; Bills; and Statutes at large passed and their rosters.

(12) where are the ballots of the citizens of Nevada Authorizing the change to

the NEVCONST ART 4§23 allowing for the omission of the enacting clause from "EVERY LAW;" that, the NEVADA REVISED STATUTES would "constitute the official codified versions of the STATUTES OF NEVADA and may be cited as prima facie evidence of the Law." (As cited in NRS 220.170(3)).?

(13) How much are the NRS sold for?

(14) where is the ~~by ballot~~ proof of by ballot vote of the people/citizens of Nevada giving/vesting the NEV LEGIS with the Authority to establish the the non-Legislative Group i.e THE STATUTE REVISION COMMISSION formed in 1951; and the NEV LEGIS transferring power, and Authority of the NEV LEGIS to the quasi STATUTE REVISION COMMISSION, to undertake a comprehensive revision of the Laws; compiling; restating etc.?

(15) ~~pro~~ where is document/evidence Authorizing the NEV Legis to extend the survivorship of the abolished statute REVISION COMMISSION, to the Legislative Counsel Bureau?

(16) By what, and/or who's Authority are the NRS copy righted?; and the sale of these NRS as codified; Annotated, and indicia into NRS publication books; again further allowing these NRS contested in this Action to be published/Republished without the constitutionally mandated enacting clause(s) upon their face?

(17) By what, and/or who's Authority did the secretary of state's office Lose and/or relenquishe Legal custody; care; and control of SENATE & ASSEMBLY History commencing from/in 1951, 1953; 1957, 1961, 1969, to the present ~~&~~ in violation of PARAMOUNT LAW NEV CONST ART 5§20?

(18) Is there a price difference for the General public, than there is for any cost, or price for any branch of the government for the NRS?

(19) Should there be a cost, price difference, by what; or who's authority is the cost, price difference permitted/Allowed.?

(20) who is the person in charge of the legislative Counsel Bureau?

(21) what other position(s) do the non-Judicial, non legislative Group (legislative Counsel Bureau hold in Nevada government, or private?
(22) How did the person in charge of the legislative counsel Bureau achieve this position?
(23) How many people/individuals work for the legislative counsel Bureau?
(24) Has any Deputy District Attorney, or Deputy Attorney General ever cited to an unpublished opinion of the NEVADA SUPREME COURT (NEV.SUP.CRT.), in their opposition to the motion to or in response to a challenge of the Legality to or of the NRS STATUTES and yet argued that "... the Nevada Revised Statutes do not have the same requirement, as they are not Laws enacted by the legislature?
(25) what Laws are the Nevada Revised Laws suposed to be prima facie evidence of?
(26) who wrote, ~~wrote~~ SB NO 22 for the NRS209.247 That deals with marcy's Law, The deductions from plaintiffs ppf/inmate trust Account?
(27) who within the NDOC at inmate banking services is Authorizing funds to be deducted above; over what NRS 209.246 allows?
(28) who is the individual(s) who by electronic means Deducted/withdrew funds that were over the amount permitted by statute/Nevada Law NRS 209.246?
(29) Has NDOC Financial Services/inmate Banking Services ever refunded funds that were taken over and beyond what was permitted by statute/Nevada Law?
(30) who is in charge of &or supervises inmate Banking Services.?
(31) which one of the NDOC Associat Directors oversees/supervices the Dept for inmate Banking services?

The requested Discovery/information is vital to the plaintiff in order to "further" establish (1) that theft of the funds in his account did accure/happen. (2) That the (NDOC) Nevada dept of corrections has not, is not following its own Rules & Regulations i.e. AR 258. (3) That the (NDOC) Nevada dept of corrections is not & will not follow Nevada Law i.e. NRS 209.246, 209.247 (4) that those who work for inmate account services have committed theft. (5) that oppression under color of Authority has accured which is a crime. (6) that NDOC staff who work at inmate Banking services have chosen to act in an Arbitrary & capricious manner in violation of NEV Law; in ~~violation~~ violation of plaintiffs constitutional rights to U.S. CONST Amend 14 & 5th as well as multiple Articles of the Nevada constitution; which will & does show this court lacks the subject matter Authority to enforce the NRS STATUTES/LAWS contested in second (2nd) Amended complaint & in supplemental/brief in support of second Amended complaint. AS these NRS STATUTES/LAWS are in Fact "NOT VALID LAWS" These contested NRS PUBLICATIONS adopted and enacted during the 48th session of the NEV. Legis are infact nothing more than a Resolution!, Resolutions are not Laws. see: NEVADA Highway patrol Ass'n v. STATE, 107 NEV. 547, 549, 815 p.2d 1608, 610 (NEV 1991)

Therefore, the requested Discovery/information is vital to this case in order for the court to determine issues, and facts pertinent to the claims, and/or Allegations set forth by this plaintiff.

This plaintiff contends that the NEV CONST (1864) being PARAMOUNT LAW ~~as~~: King v Board of Regents, 65 NEV 553, 200 p.2d 221 (1948), and setting forth via the NEVADA CONSTITUTION, the structure of the NRS via ART 4 §17 & ART 4 §23; & ARTICLE 4 §18 that Requires a Bill be read chapter by chapter in each house three (3) times over three (3) days; where ART 5 §20 requires that ALL Legislative Records "ORIGINAL/ENROLLED BILL" are to be kept

in the STATE Repository opperated by the office of the secretary of state, the defendants, by and through counsel should produce any and all documents, information, and Records as listed in this motion on pages 4 through 6, which will aid this Honorable court in determining (1) whether court should allow defendants to take any money from plaintiff for anything other than what He has approved. or to allow defendants to withdrawl funds pursuant to an invalid Law/ statute(2) whether or not defendants have capriciously & Arbitrarily chosen to disregard NDOC Rules & Regulations, whether this court has the subject matter Jurisdiction to allow defendants to utilize a statute/Law that is unlawfull, unconstitutional, invalid to withdraw funds from His account,(3) whether inmate Account Services / NDOC employs heve committed theft on behalf of NDOC, (4) whether Top three (3) prison commissioners have allowed this criminal act to happen.

That, with the [redacted] of plaintiff alleging and supporting the allegations, issues via exhibits with points & Authorities, that there is Just cause for this court ~~eff~~ to err on the side of causin, being for legitimate Government Stevenson v Tufly, 19 nev 391, 393, 394-95, 12 p. 835, 837-38 (1887); Nevada v Swift, 10 nev 182, 183 (1875)

plaintiff has attempted through due dilligence to obtain certified copies of the Documents, papers, Acts of the nev Legis from within the confines of prison gates pursuant to Freedom of information ACT. (FOIA) to no avail, as office of secretary of state says They do not have said Records, Documents etc.

This court should Grant Discover, issue order to show cause, to the defendants through counsel as to why this case should not move foreward, or why summary Judgment should not be given/granted to plaintiff

This, to substantiate the alleged Lawfullness of the NRS STATUTES contested. as "prima facie evidence of the Law" as alleged under NRS 220.170 (3)

~~It is the b~~

The Burden is upon the Defendants to provide evidence to refute the plaintiffs claims, allegations

CAUSE FOR EVIDENTIARY

HEARING

This plaintiff has made a "PREMAFACIE SHOWING", which should be understood to simply be, a sufficient showing of possible merit to "warrant a fuller exploration by the district court" in light of the documents submitted (via exhibits) with the pleadings, should appear, demonstrate reasonable Likely hood that the pleadings befor this court will saticfy any stringent requirement for filing the foreyoing pleadings.

see The CONSTITUTION OF NEVADA (CONST OF NEV), ARTICLE (ART), 138

Wherefore, Due process demands That This Honorable court conduct such a hearing, and to allow the plaintiff to "ESTABLISH 'ANY' 'FACT', which protects the plaintiff. see cleburne v cleburne Living center, inc, 473 U.S. 432, 439 (1989), Rochin v california 342 U.S. 165, 169 (1952) and CONST OF NEV ART 138

Additionally, The plaintiff specifically Articulates That, where The CONST. OF. NEV. provides a greater protection of the Accused rights as to the UNITED STATES CONSTITUTION and its Amendments the plaintiff does seek, and respectfully request that he be so protected see & compare Wilson v State, 123 NEV 587, 595 (NEV 2007); Rubio v STATE 194 P.3d 1224, 1233 NEV 2008

CONCLUSION

plaintiff Respectfully Requests That this court issue an order on This issue granting plaintiffs request for evidentiary Hearing.

VERIFICATION

I Bryan p Bonham declare and verify that I have read the foregoing motion and to the best of my belief and knowledge that the foregoing is true & correct under the pains & penalties of perjury pursuant to 28 U.S.C.A. § 1746 & 18 U.S.C.A. § 1621

CERTIFICATE OF SERVICE

I Bryan p Bonham certify that I have read the foregoing motion and that I am attaching special instructions for electronic filing & service to the clerk of the court to serve all my opponents pursuant to N.E.F.C.R. 5(b), et seq (A-E) etc, to the following

Deputy Attorney General
Dawn R Jerson
555 E Washington Ave Ste 3900
Las vegas, nev 89101

Dated this 12th day of June 2022

/s/ Bryan p Bonham 60575
PO Box 650 HDSP
Indian springs, nev 89070

Bryan p Bonham 60575
po Box 650 (HDSP)
Indian Springs, Nev. 89070

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

Bryan p Bonham
plaintiff
v
steve sisolak
Barbara k cegavske
Aaron D Ford
charles daniels
John Borrowman
Venus fajota
T. Garrett
C. potter
J. Jones
Defendants

CASE NO. A-20-823142-C
DEPT NO. XXXII
IN PERSON HEARING REQUESTED

PLAINTIFFS SUPPLEMENTAL BRIEF IN SUPPORT OF SECOND AMENDED COMPLAINT & TORT ACTION.

comes now plaintiff, Bryan p Bonham in prose, moves this Honorable court to enter an order allowing this plaintiff opposition to Defendants motion to dismiss

This motion is further made & based upon all points & Authorities & attached exhibits herein.

Bryan p Bonham 60575
po Box 650 HDSP
Indian springs, NEV 89070

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

Bryan p Bonham — CASE NO A-20-8231-42-C

plaintiff — DEPT XXIX

v

steve sisolak exrel. etal — NOTICE OF MOTION

Defendants

TO:

DEPUTY ATTORNEY GENERAL

Dawn R Jensen

555 E Washington Ave Ste 3900

Las vegas, NEV 89101

Please take notice that the undersigned will bring the above motion for hearing as soon as courts docket will allow.

Dated this 10th day of June, 2022

/s/ Bryan p Bonham 60575

PO Box 650 HDSP

Indian springs, NEV 89070

MEMORANDUM OF LAW

POINTS & AUTHORITIES

I SURVIVING MOTION TO DISMISS

"Dismissal for failure to state a claim is improper unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief" see pratt v Rowland 769 F. Supp 1128, 1133 (N.D. CA 1991) quoting Conley v Gibson 355 U.S. 41, 45-46 (1975)

"For purpose of ruling on a motion to dismiss, this court must accept as true all material allegations of the complaint, must liberally construe the complaint in favor of the complaining party" see Jenkins v McKeithen 395 U.S. , 421 (1969); Turner v NV Bd of Prison Comm's 624 F. Supp 318, 320 (D. Nev 1985)

"A complaint need not identify the statutory or constitutional source of the claim raised in order to survive a motion to dismiss" see Alvarez v Hill 518 F.3d 1152, 1157 (9th Cir 2008)

II LESS STRINGANT STANDARD

"Pro se pleadings are to be ~~not~~ considered without regard to technicality, pro se litigants pleadings are not to be held to the same High standards of perfection as Lawyers" see Jenkins v McKeithen 395 U.S. 411, 421 (1959); Picking v Pennsylvania R Co. 151 Fed 2nd 240; Puckett v Cox 456 2nd 233

"Allegations such as those asserted by petitioner, however in artfully pleaded are sufficient which we held to less stringent standards than a formal pleading drafted by Lawyers." Haines v Kerner 404 U.S. 519 (1972)

"The fourteenth amendment provides that no state shall "deprive any person of life, liberty or property without due process of Law" Hewitt v Helms 459 U.S. at 466 see also U.S. CONST Amend XIV § 2

The due process clause of the fourteenth (14th) Amendment to the united states constitution, contains a substantive component, sometimes referred to as "SUBSTANTIVE DUE PROCESS", which bars certain arbitrary government actions "regardless of the fairness of the procedures used to implement them" It is also a guarantee of fair procedure, sometimes referred to as "procedural due process." see Daniels v Williams, 474 U.S. 327, 337 (1986); Cleburne v Cleburne Living center, Inc 473 U.S 432, 439 (1985); Carey v Piphus, 435 U.S. 247, 259 (1978) and Rochin v California, 342 U.S. 165, 208 (1952)

As concerns the proceeding before this court the plaintiff respectfully request that, This court protect His 14th Amend right to the united states constitution, and the right to be protected by the NEVADA CONSTITUTION ARTICLE 1§8 and guard against any stealthy encroachments there on Coolidge v New Hampshire, 403 U.S 443, 454 (1971)

Due process is not a rigid concept. Due process is flexible and calls for such procedural protections as particular situations demand. Watson v Housing Authority, 97 nev. 240, 242, 627 p.2d 405, 407, (1981) cited in Molnar v STATE Bd of Medical Examiners, 105 nev. 213, 216, 773 p.2d 726, (1989)

III CODE OF ETHICS

NRS 239.300 through NRS 239.330 primarily NRS 239.310-330 see NRS 281A. 105; 281A.115 through 281A.400 "code of Ethics for corrections personel which is in line with AR 339.01; AR 339.02 seen in AR 339 "INTRO" which states "All staff has the responsibility to have knowledge of and comply with this procedure AR 339.01; AR 339.02; AR 339.07 section 8 refers to Honesty, integrity, impartiality and dishonesty.

NRS 209.246 (3)

The director shall with the approval of the board, establish by regulation criteria for a reasonable deduction from money credited to the account of an offender to: (3) Repay the costs incurred by the department on behalf of the offender for: (a) postage for personal items and items related to litigation (b) photo copying of personal documents and legal documents, for which the offender must be charged a REASONABLE fee not to exceed the actual cost incurred by the department. (c) legal supplies and even medical co-pays.

ADMINISTRATIVE REGULATION 258 INMATE DEDUCTIONS FROM ANY SOURCE OTHER THAN WAGES

AR258.05 states the following:

The director/designee may make the following deductions, in the following order of priority, as set forth in NRS 209.247, from any money deposited in an inmate's individual account in the ppf from any source other than wages:
(1) 50% for costs incurred by the department on behalf of the inmate Per NRS 209.246
(2) 10% for credit to the inmate's savings Account.
(3) 20% towards a court ordered filing fee.

NRS 205.0824 (DEPRIVE DEFINED.) "Deprive" means to withhold a property interest of another person permanently or for so long a time that a substantial portion of its value, usefulness or enjoyment is lost, or to withhold it with the intent to restore it only upon the payment of a reward or other compensation, or to transfer or dispose of it so that it is unlikely to be recovered.

NRS 205.0823 "CONTROLE" means to act so as to prevent a person from using his or her own property on the actors terms.

IV OPPRESSION UNDER COLOR OF OFFICE

NRS 197.200 An officer under pretence of color of Authority does any act where by the person property, or right of another person are injured commits oppression

V LEGAL STANDARD TITLE 42 U.S.C. § 1983

42 U.S.C. § 1983 aims to deter state actors from using the badge of their Authority to deprive individuals of their federally guaranteed rights Anderson v Warner 451 F.3d 1063 @ 1067 (9th cir 2006); McDade v West 223 F.3d 1135 @ 1139 (9th cir 2000) The statute provides a federal cause of action against any person who, acting under color of state Law, deprives another of His federal rights. Conn v Gabbert 526 U.S. 286 @ 290 (1999); and thus, serves as the procedural tool to enforce substantive provisions of claims brought under the united states constitution and federal CIVIL RIGHTS statutes Crampton v Gates 947 F.2d 1418 @ 1420 (9th cir 1991)

Therefore, claims brought under section 1983 require plaintiff to allege (1) the violation of a federally protected right - by - (2) a person or official acting under the color of (state) Law. Warner 451 F.3d @ 1067

The Eleventh amendment bars plaintiff seeking damages under § 1983 from a defendant in their official capacity. Brown v OR. Dept. of Corr 751 F.3d 983 @ 988-989 (9th cir 2014)

A suit involving a supervisor in their official capacity is permitted where a plaintiff seeks injunctive relief, plaintiff need only name the official, the policy or wide spread custom that offends the constitution and the requested relief. Colwell v Bannister 763 F.3d 1060 @ 1070 (9th cir 2014); Hartman v Cal Dept of Corr & Rehab 707 F.3d 1114 @ 1127 (9th cir 2013)

A supervisor/Administrator can be held personally culpable by their action or omission Starr v Baca 652 F.3d 1202 @ 1206-07 (9th cir 2011), or when a supervisor/ Administrator reviews a Grievance, sufficiently stating constitutional violation, and fails to take reasonable action to cure/eliminate the constitutional defeciencies Jett v penner 439 F.3d 1091 @ 1098 (9th cir 2006)

in some circumstances, a ~~person~~ prison official can violate an inmate's rights by failing to intervene if that failure suggests that the official actually wanted the prisoner to suffer. Robbins v Meecham 60 F.3d 1436 @ 1442 (9th cir 1995) similarly, The direct personal involvement required for section 1983 Liability is not rigidly controlled by officials' Job title or precise responsibilities. officials, guards, medical staff, Administrators/ supervisors have an affirmative duty to intervene _____ if the (inmates) conditions of confinement violate the constitution _____ but this is not to say that a merely fleeting presence could satisfy the personal involvement requirement. Holmes v Kinston 2008 U.S. Dist /exis 1211 (ED WIS 2008)

plaintiff contends that Defendants named in second amended complaint filed on 4/26/2022 are liable. Furthermore plaintiff submitts that on 02/13/22 His mother deposited $125.00 on to His BOOKS. The old AR 258 states upto 50% may be taken to repay department for Legal copy work, Legal postage, even medical co pays. 20% to pay U.S. DIST CRT for filing fee. & 10% TO HIS Savings. all of which plaintiff is not contesting. plaintiff is contesting that going back to 2019 the Defendants and or WDOC have not been following their own unconstitutional Laws, and or ARS. after the $125.00 was deposited on 02/13/2022 plaintiff filed Doc 544 Accounting inquiry see exhibit "1" There response is the following: SB-22 went into effect 01/01/2021 All deposits made prior to 7/1/21 are not subject to the deduction cap.

which begs, requires the following questions to be asked.
(1) prior to the Amendment of AR258 was the cap at 50%?
(2) what is cap at after the Amendment was done that the top three (3) Defendants in 2nd Amend complaint knew nothing about?
(3) if their is a cap which from what plaintiff is told is 25% to NDOC, then why is NDOC not following its own Rules & Regulations. This has been a problem plaintiff has been dealing with sence 04/01/2019. see exhibit "2" (monthly statement 6 pages)
(4) why was plaintiff having over 50% deducted from his account in 2019, 2020 if SB-22 didn't go into effect until July 1, 2021?

III DUE PROCESS

The plaintiff was never given a valid reason as to why this was happening. Due process is created by NRS 209.246, or more simply put. plaintiff has a due process liberty interest in the funds deposited into His Account pursuant to NRS 209.246
in Greenholtz v Inmates of Nebraska penal and correctional complex 442 U.S. 1, 8-11 and Wolff v McDonnell 418 U.S. 539 (1974) which provides to wit;..., an inmate has a due process liberty interest in "good time credits". where state law creates such an interest. In this instant case. The statute cited above, which gives AR258 it's authority created a Liberty interest.
The NDOC is, it appears for a while now has been; still is financially Raping plaintiff "inmates have a property interest in money recieved from outside sources" (holding that inmates have a property interest in there money) see Jensen v Klecker 648 F.2d 1179, 1183 (8th cir 1981) "the concept of substantive due process semantically awkward as it may be, forbids the government from depriving a person of life, liberty, or property in such a way that it shocks the conscience "or" interferes with rights implicit in the concept or ordered liberty" Board of Regents v Roth 408 U.S. 564 (1972); write v Enomoto,

462 E. Supp 397, 401-02 (N D cal 1976)

plaintiff further questions whether this action by NDOC officials & their supervisors is a retaliatory action due to plaintiff filing civil actions He feels are of merit, questions the possibility of a conspiracy.

VII CONSPIRACY

To state a claim for conspiracy to violate ones constitutional rights under section 1983 the plaintiff must state specific acts to support the existance of the claimed conspiracy. Aygbon v Filson 3:17-CV-00393 2019 U.S. Dist ct lexis NEXIS 78495

why is it that all other inmates effected by the illegally Amended AR258 & befor the cap was applied were given back the funds that was way over what was supposed to be taken. (for restitution) and yet the plaintiff who was never required to pay restitution is still being required to have 80% - 90% or more taken from deposits into HIS TRUST one account from family.

~~EQUAL STANDARD~~

~~RETALIATION~~

plaintiff contends that of the $125.00 that was deposited into His TRUST one Account He was only able to spend $19.05 see exhibit 3 when His intention was to purchase a new fan & maybe a nerelco shaver. However He did not have funds to do so

$125.00 minus 19.05 is at about 84.8% that was taken. when if you go by the old AR 258 at 50% to NDOC they would have left plaintiff with $45.00 from what plaintiff has been told. cap is now 25% which would leave Him with $67.50 with the $.06 left in His account at this moment. these NDOC defendants, & permitted to do

so by their supervisors took. #105.45

This action and also inaction on part of all named defendants in the 2nd Amended complaint

~~VIII~~ ADMINISTRATIVE REGULATIONS

"An Administrative agency has no discretion to make a decision that is contrary to Law" Singh v Clinton 618 F.3d 1085 (9th Cir 2010)

"internal agency regulations cannot legitimate the violation of constitutional or statutory rights" U.S. v Marolf 173 F3d 1213 (9th Cir 1999)

"If An Administrative Regulation conflicts with statute(s), then statute controles. Dremeons v City of Montgomery, 602 F.3d 1224 (11th Cir 2010)

The new Revised/Amended AR 258 says/states nothing about a cap on the amount that can be/may be deducted from funds deposited from this plaintiff's family. others plaintiff has spoken to have said ~~they~~ They only have 25% deducted for what is owed to department, which begs the question why is plaintiff still having 80% or Higher/more taken from His Account.

The illegal, invalid, unlawful, unconstitutional NRS 209.246 is the statute / alleged Law that gives AR 258 its Authority. at least its one of the Laws. it states the Director will establish a Reasonable amount. 80% or more is not reasonable.

Further more a look at plaintiffs (Doc) Judgment of conviction shows that plaintiff does not have restitution, so why is NDOC financial services / inmate Accounting committing oppression under color of Authority and violating their own Rules & Regulations and State Law.

U.S. v minor, 228 F.3d 352, 355 (4th Cir 2000) prisoner's challenge to forfeiture for which he recieved inadequate notice could not be pursued under the TUCKER ACT but was an equitable claim for the return of personal property improperly seized under the fourth Amendment and Fifth Amendment; Higgins v. Beyer 293 F3d 683, 693 3d Cir 2002; Wright v Rushland, 219 F.3d 905, 913 (9th Cir 2000) inmates have a protectable property interest in funds recieved from outside sources. Vance v Barrett, 345 F.3d @ 1089-91 (9th Cir 2003) "holding that prisoners' interest in their property; deprivations pursuant to statute present Takings clause issues and deprivations without statutory authorization present due process questions." see also Blaisdell v Dept of public safety, 119 Hawai'i 275, 285-86, 196 P.3d 277 (2008)

This is a claim plaintiff brought up in original complaint as well as in recently filed second Amended complaint

In mahers v Hulford 76 F.3d 951, 954-55 (8th Cir 1996) state Law applying 20% of all money recieved to restitution obligations did not deny due process, because the plaintiff had already had due process in the criminal proceeding that led to the restitution order; statute did not deprive prisoners of the benefit of their money, because it lessened their debts. Abney v Alameida 334 F. Supp 2d 1221, 1229 (S.D Cal. 2004) state Law allowing deduction of 20% of funds recieved from outside prison to pay restitution orders did not violate the takings clause; restitution orders are civil Judgments and the Law merely provided a way to enforce them; it did not deny due process, since the deduction was authorized by state Law as a result of [redacted] his criminal conviction. see mahers v Hulford, supra, the Federal Appeals court held that no individualized pre-deprivation hearing was needed to take money pursuant to state statute at issue. mahers, 76 F.3d at 955 The Iowa supreme court disagreed walters v Grossheim, 554 N.W. 2d 530, 531 & n.1 (Iowa 1996) (rejecting mahers holding); walters v Grossheim 525 N.W 2d 830, 832 (Iowa 1994)

(hearing could be "an informal, nonadversarial review of [plaintiffs] written objections to the proposed withdrawl of funds").

IX DUE PROCESS CONTINUED

~~The due process~~ clause of ~~the~~ fourteenth (14th) Amendment to the UNITED STATES CONSTITUTION, contains a substantive component, sometimes referred to as "SUBSTANTIVE DUE PROCESS", which bars certain arbitrary government actions "regardless of the fairness of the procedures used to implement them". Its also a guarantee of fair procedure, sometimes referred to as "PROCEDURAL DUE PROCESS." See Daniels v Williams, 474 U.S. 327 337 (1986) see also Cleburne v Cleburne living center inc. 473 U.S. 432, 439 (1985); Carey v Piph US, 435 U.S. 247, 259 1978); and Rochin v California, 342 U.S. 165, 208 (1952)

plaintiff contends he has made via second (2nd) Amended complaint; foregoing supplemental brief in support of second amended complaint & tort action a "PRIMAFACIE SHOWING", which should be understood to simply be, a sufficient showing of possible merit to "WARRANT A FULLER EXPLORATION BY THIS COURT." That, in light of the documents/papers submitted with the plaintiffs second (2nd) Amended complaint, should appear, demonstrate a reasonably likelyhood that the pleadings satisfies any stringent requirements for filing the foregoing pleadings. see CONSTITUTION OF NEVADA (CONST OF NEV) ARTICLE (ART) 138

due process is not a rigid concept. Due process is flexible and calls for such procedural protections as particular situations demand. watson v Housing Authority, 97 nev 240, 242, 627 p.2d 405, 407 (1981) cited in molnar v STATE Bd of medical examiners 105 NEV 213, 216, 773 p.2d 726, (1989)

wherefore, due process demands that this court conduct such a hearing, to allow the plaintiff to "ESTABLISH 'ANY' 'FACT', which protects the plaintiff." cleburn v cleburne living center Inc 473 U.S. 432, 439 (1989); Rochin v California, 342 U.S. 165, 169 (1952), and NEV CONST ART 1 §8

Again the plaintiff has submitted "PRIMA FACIE EVIDENCE", exhibits that "does present claims, issues, Allegations" That (1) NRS's involved within this case are invalid, unlawful, unconstitutional as well as evidence that over 50% of funds deposited in HIS ACCOUNT was taken. to which the plaintiff MUST be permitted to establish as a fact. AS TO NRS's not CONSTITUTIONALLY VALID the defendants have not in any manner presented contradictory evidence thereto. CONST OF NEV ART 1 §8

The pleadings and exhibits submitted and filed with this court, require that a "FACT FINDING" hearing be conducted, as the SUPREME COURT OF NEVADA (SUP CT of NEV), is not a fact finding tribunal. see Zugel v miller, 99 nev 100, 659 p. 2d 296, 297 nev (1983); and Zobrist v Sheriff, 96 nev 625, 614 p. 2d 538 (1980)

That, without an adequate, full, and fair presentation of the "FACTS", it is wholly impossible for the SUP CRT OF NEV to be in a position, to render a full, fair, and adequate appellate review as to "FACTS" not fully developed in the DISTRICT COURT, due to the Appellate court not being a "FACT FINDING TRIBUNAL" Zugel, 99 nev @ , 659 p.2d @ 297 Additionally the sup ct of nev cannot review, or presume facts etc from a SILENT record. compare Boykin v Alabama, 395 U.S. 238, 242 (1969)

X WHAT DEFENDANTS CANNOT PRODUCE

The defendants "CANNOT" produce any DOCUMENT or LAW (NEV LAW) or Federal Law that allowes them to financialy rape plaintiff & HIS family by taking 80% or more from funds deposited into HIS TRUST ONE

ACCOUNT.

The defendants "CANNOT" produce from the secretary of State's office a certified copy of S.B. NO.2 "THE REVISION BILL", to validate that the mandates of the CONST OF NEV set forth in second(2nd) Amended complaint have been met to properly enact the NRS STATUTES, LAWS at ISSUE IN THIS ACTION, citeed in complaint(2nd Amend) or herein in this supplemental pleading.

The CONSTITUTION being SUPREME and PARAMOUNT LAW OF STATE OF NEVADA provisions of THE NEVADA CONSTITUTION are SUPREME LAW of this STATE and must be enforced by courts in letter and spirit whether or not courts consider policy of such provisions wise. STATE V DUFFY, 6 nev. 138(1870) cited in Goldman v Bryan, 106 nev. 30, 37, 787 p.2d 372 (1990)

wherefore, Plaintiff is entitled to relief RUBIO V STATE, 194 p.3d 1224, 1233 (NEV 2008)

SUBJECT MATTER JURISDICTION

XI

The plaintiff by CONSTITUTIONAL provision ART 1 § 8 of the CONST OF NEV. "must be allowed to establish the "FACTS" by this COURT conducting a Hearing "SHOW CAUSE HEARING" a hearing evidentiary in nature, where by plaintiff being present in court is given the opportunity to "establish "ANY FACT", That would protect Him & to allow Him opportunity to establish the fact that this court does not have "SUBJECT MATTER JURISDICTION" to enforce or allow NRS 209.2 46 to be enforced as the Law that gives NDOC the Authority to take any funds that are deposited into HIS TRUST ACCOUNT. STATE V Fouquette, 67 NEV @ 514 and the fact that "SUBJECT MATTER JURISDICTION" can be "RAISED AT ANY TIME" Landreth V Malik, 127 NEV ADV Rep. 16, 251 p.3d 163, 166 (2011)

It is ~~elementary~~ elementary that the Jurisdiction of the court over the subject matter of the action is the most critical aspect of the courts authority to act. without it the court lacks any power to proceed. Galloway v

Truesdell, 83 nev. 13, 422 p.2d 237 (1967); Alikhani v United States, 200 F.3d 732 (11th Cir 2000)

It is axiomatic that any action taken by a court when it Lacked Jurisdiction is a nullity and void. see Gschwind v. Cessna Air Craft CO., 232 F.3d 1342, 1347 (10th Cir 2000); Schuler v District Court in and for city and county of Denver, 696 p.2d 264, 266 (colo 1985); and valley v Northe rn fire & marine ins. Co, 254 U.S. 348, 353-54 (1920)

An invalid Law negates subject matter Jurisdiction by the sheer fact that it fails to create a cause of action. "Subject matter is the thing in controversy is." Holmes v mason, 115 N.W 770, 80 Neb. 454 citing BLACKS LAW DICTIONARY without a valid Law, there is no issue or controversy for a court to decide upon. Thus, where a law does not exist or does not constitutionally exist, or where the law is invalid, void or unconstitutional, there is no subject matter Jurisdiction to render a decision on such a law.

~~CONCLUSION~~

XII INVALID SENATE BILL COMPARISON GOOD CAUSE TO FIND THAT NRS 209.246 ENACTED BY SENATE BILL NO 2 1957 THE REVISION BILL & SENATE BILL NO 22 REFERRED TO IN EXHIBIT 1 ARE INVALID.

(1) first and foremost, let it be acknowledged that plaintiff has set forth in second (2nd) Amended complaint that three (3) Justices Badt, Eather, and merrill, were Justices of the NEV. SUP. CRT. during what will be termed "CRITICAL OPERATING YEARS", the years of 1951, 1953, 1955, 1957, at which time they were charged under the CONST OF NEV ART 6 §4, to perform "APPELLATE JUDICIAL DUTIES AND FUNCTIONS OF THE 'NEV SUP CRT?"

(2) Second that the plaintiff has set forth that Badt, Eather, and merrill, were also appointed to, be members of the "STATUTE REVISION COMMISSION"

during the "CRITICAL OPERATIVE YEARS", 1951, 1953, 1955, 1957.
As such Badt, Eather, and Merrill, the commission was given the Authority,
charged with the power to perform Essential duties, and functions of the
LEGIS OF NEV clothed under ART 4 § 1 of the NEV CONST. to perform these
duties and functions, again, during the "CRITICAL OPERATIVE YEARS of
1951, 1953, 1955, 1957 again "WHILE JUSTICES OF THE NEV. SUP. CRT"
(3) Third, that the appointment, allowing, etc. Badt, Eather, and Merrill, to
be members on said commission, and authorizing, charging, giving them
the Authority, power to perform essential duties and functions vested in
the LEGIS OF NEV. was and remains a clear violation of the CONST OF
NEV ART 3 § 1 Separate Departments, separation of powers.
Thus, The following is "IRREFUTABLE!!" what CANNOT be REFUTED:
(1.) Badt, Eather, and Merrill, were Justices of the NEV SUP CRT in the years
1951, 1953, 1955, 1957, charged with the authority, power etc under ART 6 § 4,
of the CONST OF NEV performing appellate Judicial DUTIES.
(2) That, Badt, Eather, and Merrill, as Appellate Justices of the NEV SUP CRT
during the years 1951, 1953, 1955, and 1957, clothed with authority, to perform
appellate Judicial duties and functions, were appointed, set a part, allowed to be
on said commission; charged, given authority, power to perform essential
duties and functions of the legis of nev.
(3.) That, The LEGIS OF NEV pursuant to ART 4 § 1 of the NEV CONST IS
charged, given authority, power to Annotate Laws; classify laws; compile laws;
Amend Laws; make Laws; Draft Laws; Revise Laws; modify Laws; Redraft
Laws; codify laws etc.
(4.) That, the three aforementioned Justice's of the NEV. SUP. CRT., were clothed
with the exact same authority, power, charged etc., of the legis. of nev.,
thus, a clear undisputed, unequivocal violation of the unambiguous
Language of NEV CONST ART 3 § 1., when again the aforementioned three

(3) Justices performed essential duties and/or functions; of the LEG OF NEV i.e. Amending Laws; classify Laws; codifying Laws; Annotating Laws; Drafting Laws; compiling Laws; making Laws; modifying laws; Redrafting Laws; Revising Laws etc.

that, anything done by the commission relative to, relating to the essential duties and functions, of the LEGIS. OF. NEV., was, and is a violation of ART 3 § 1 of the CONST OF NEV.

Additionaly any act created there after is null & void as it would and does full within the range on NRS 1.010 TO 710.590 see exhibit "8" of second amended complaint & exhibit "4" herein.

The NEVADA SUPREME COURT, in January, 2013 found senate Bill (SB), 358, 72nd Leg (Nev 2003), to be invalid because it violated provisions of the CONST OF NEV ART 4 § 20, 21 and 25 see:

catherine cortez-masto, in her official capacity as Attorney General of the State of Nevada Appellant v Gypsum RESOURCES, LLC a Nevada Limited Liability Company, Respondent 129 Nev Advance opinion 4, January 31st, 2013.

The finding of S.B. 358 to be invalid, unconstitutional by the NEV. SUP. CRT was due to the Ninth (9th) circuit court of Appeals, certifying four (4) questions to the NEV. SUP. CRT as concerns S.B. 358

plaintiff here by asks the following:

1) Did S.B NO 2 "THE REVISION BILL", OF the 48TH LEGIS (NEV 1957) violate ART 3 § 1 of the CONST OF NEV separate departments, separation of powers, due to Justices of the NEV. SUP. CRT., performing essential duties and functions of the LEGIS OF NEV.?

2) was ARTICLE 4 § 1 of the CONST OF NEV violated when the 42nd Leg (1951) Created the STATUTE REVISION COMMISSION, said commission being comprised of Justices of the NEV SUP CRT currently charged under ART 6 § 4, of the CONST

of NEV (1864) for the years 1951, 1953, 1955, and 1957 and allowing said Justice's to act under ART 4 §1, performing essential legislative duties and functions from ~~1954~~ 1951 TO 1957

3) WAS ART 4 § 23, violated when NRS STATUTES at ISSUE in THIS plaintiff's second (2nd) Amended complaint were promulgated, without the mandatory enacting clause of the NEV CONST on the face of these NRS PUBLICATIONS?

4) does NRS 220.110 violate the spirit and meaning of the unambiguous Language of the CONST OF NEV ART 4 § 23 contravening the PARAMOUNT LAW, the CONSTITUTION OF THE STATE OF NEVADA

5) Has ART 5 § 20 of the NEV CONST been violated by the secretary of state, for failing to keep control of all legislative ACTS, of the LEGIS OF NEV.

XIII CONSTITUTION OF NEVADA

ARTICLE 15 § 2. (1864)

pursuant to the NEV CONST ART 15 § 2, Judges, Lawyer's, court officer's etc take an oath of office that require's protecting the federal and ~~state~~ constitution's, honoring and sustaining the same. Also, exercising honesty and ~~integ~~ integrity etc.

The plaintiff regards it as just and necessary to give "FAIR WARNING" TO this court of the consequences of its failure to follow the plain and unambiguous Language of the NEVADA CONSTITUTION (NEV CONST), and to uphold the NEV CONST PURSUANT TO and in accordance with the "OATH OF OFFICE" Taken by your Honor, TO ~~NOT~~ depart from the clear, plain, unambiguous meaning of the NEV CONST (1864), could be regarded as a blatant act of TYRANNY, TREASON, USURPATION. Any exercise of power which is done without support of Law or beyond what the law allows IS TYRANNY. It has been said, with much truth. "where the Law ends, tyranny begins." Merritt v Welsh, 104 U.S. ~~694~~ 694, 702 (1881).

THUS. The people / citizens of the state of Nevada Limited the several

Departments concerning the use of titles. (NEV.CONST. ART 4§17); and "The enacting clause of 'every law' shall be as follows:. . . ." (NEVCONST ART 4§23). It is plain, it is clear; and it is unambiguous; and therefore must be followed.

The law, The NEV CONST does not allow laws to exist without titles or enacting clause(s). To go beyond that and allow the unconstitutional, illegal unlawfull "NRS" PUBLICATION(S) 209.246; 209.131, 209.461, 209.243; 41.031; 41.0322; 41.0375 NRS chapter 120.A, 176.0915; 209.221; 209.225; 209.241; 209.247; 209.2475; 209.425; 209.459; 209.461; 209.4615; 209.463; 209.511, 353.250, chapter 353 C.; NRS

TO EXIST as "LAW" is nothing but Tyranny. Tyranny and despotism exist where the will and pleasure of those in government is followed rather than established Law. It has been repeatedly said and affirmed as a most basic principle of our government that "This is a Government of Laws and not of men; and there is no arbitrary power located in any individual or body of individuals." cotting v Kansas city stock yards Co., 183 U.S 79.84 (1901)

Attached TO second(2nd) Amended complaint court will see exhibit "5" of complaint IS a very interesting document. Its one of the many that ARE Required no mandated TO be in the possession of the secretary of state, & other Documents Argued below.

XIII NEVADA CONSTITUTION

ARTICLE 5 § 20

How do we validate, Authenticate whether the NRS STATUTES cited above are valid Laws? we cant! see following.

The mode of a statute depends on constitutional mead v Arnell, 791 p.2d 410, 117 Idaho 960 (1990) and statutory requirements. Harris v shanahan, 387

p.2d 771 192 Kan 183 (1963) The NEVADA REVISED STATUTES contested here in are alleged to have been passed into Law on January 25th, 1957 in the form of a copy of an "ENGROSSED BILL" ~ commonly known as Senate Bill NO 2 AKA [THE REVISION BILL] This Bill was, in fact, not a Bill at all. Further, there are (as plaintiff has Artfully pointed out) multiple constitutional violations that in Fact VOIDED the entire act. The passage of any Law must meet specific criteria for its "LAWFUL" passage.

The FIRST set of issues are related to "MODE, STYLE AND IDENTIFICATION" "the style of the acts" - is to establish it; to give it permanence, uniformity and certainty & to identify the act of Legislation as of the general assembly; to afford evidence of it's legislative statutory nature, & to secure uniformity of identification, and thus prevent inadvertence, possibly mistake, and fraud. STATE v patterson 4, S.E 350, 352, 98 N.C. 660 (1887); 82 CJS "STATUTE", §365. p. 104; Joiner v STATE 155 SE 2d 8, 10, 223 Ga 367 (1967)

THE REVISION BILL which embraced the passage of the NRS STATUTES contested above. (multiple subjects as Nevada Law). S.B. NO 2 violated the NEVADA CONSTITUTION. by placing all the subjects of the Laws of Nevada cited above under the penumbra, does not meet the requirement that the bill embrace only one Subject. This constitutional provision is mandatory. STATE, ex rel ~~Chase~~ Chase v Rogers, 10 nev 250 (1875); STATE v Ah Sam, 15 nev 27 (1880) compliance with this section is essential to the validity of every Law enacted by the legislature. STATE ex rel Wilson v Stone, 24 nev 308, 53 p. 497 (1898); Bell v First Judicial DIST Ct, 28 nev 280, 81 p. 875 (1905)

Any act passed in disregard of the letter and spirit of this provision is pro tanto void. STATE v Ah Sam 15 nev 27 (1880)

All Bills or Resolution shall be introduced in triplicate, and one copy of each bill or resolution shall be marked "ORIGINAL" one shall be marked

"DUPLICATE" and one shall be marked "TRIPLICATE". The copy marked "DUPLICATE" shall be sent to the state printer for the purpose of printing and the copy marked "TRIPLICATE" shall be referred to the amendment clerk.

In §3 it states that, the printer shall immediately after receipt of the copy of any bill or Resolution print, in addition to the regular number herein before authorized one copy thereof upon heavy buff paper, which copy shall be delivered to the secretary of the senate or [redacted] chief clerk of the Assembly. The Amendment clerk shall then certify to the correctness of the bound copy. In §4 it states, that, the official and engrossed copy may by resolution be used as the enrolled bill. SB-2 was passed using a Joint Resolution. The severity of the problem with the Joint Resolution used in connection with the copy of the Engrossed Bill [SB-2] is that it does not contain the MANDATORY ENACTMENT LANGUAGE

The state senate's committee on Judiciary, File NO 1. passed senate CONCURRENT RESOLUTION NO 1 attached as exhibit "5", which provides that the official engrossed copy of SB NO 2 may be used as an enrolled bill. The enacting clause is mandatory and cannot be cured by a Joint Resolution. The Joint Resolution adopted by both Houses cannot become a valid Law if it does not contain the enacting clause required by This section. ART 4 §23 CONST OF NEV (1864), see also AGO 85 (07-25-1951)

This constitutional provision is mandatory and an Act not in proper form is VOID and unenforceable. STATE, ex rel Chase v Rogers, 10 NEV 250 (1875)

The Senate concurrent Resolution NO 1 attached here in as Exhibit "5" four(4) versions of it is missing the constitutionally mandated enacting clause on it. (all four(4)) & without This STATE OF NEVADA v Rogers, 10 NEV 120, 261 (1875)

enacting clause on it, Senate Concurrent Regolution NO 1 (1957) is a void act, and with the act being void it also renders the enrolled copy of senate bill NO. 2 (1957) as non-existant, without the enrolled copy of Senate Bill NO. 2 (1957) "THE REVISION BILL" THE NEVADA REVISED STATUTES contested herein do not exist as Senate Bill No 2 created/enacted those NEVADA REVISED STATUTES This renders plaintiffs argument valid, furthermore renders the deduction/ withdrawl of any funds in HIS TRUST ACCOUNT An act of theft & maybe even Federal wire fraud.

XV SENATE BILL NO 22 (20)

NRS 209.247

ANOTHER INVALID LAW

NRS 209.247 (1) Except as otherwise provided in NRS 209.2475 and subsection 4 of section 1.1 of this act and subject to the limitation set forth in subsection 2, The Director may take the deductions discribed in subsection 3 from any money deposited in the individual account of an offender from any source other than offenders wayes. (2) The Director may NOT deduct more than 25% percent of each deposit described in subsection 1. (4) a deduction pursuant to NRS 209.246

The plaintiff reiterates that He does in fact have a liberty interest in The funds Recieved from His family, furthermore for the Director to allow HIS staff to take 80% or more from this plaintiff IS a blatant violation of both The U.S. constitution, even though it is an invalid Law. Nevada Law. both NRS 209.246 & 209.247

AS the court can see in or on Exhibit "1" All deposits prior to 07-01-21 are not subject to deduction cap. prior to that The AR said up to 50% the Director Amended it to 80% or more. Now the above NRS 209.247 says NO more Than 25% exhibit "2" shows proof of over 50% in "2019" "2020" on February 13th, 2020 plaintiffs mother depisited $ 125.00

of which was after 07/01/22

so plaintiff ~~states~~ ask's why was this money stolen from him?

"inmates have a protected property interest in funds recieved from outside sources" Higgins v Beyer 293 F.3d 683, 693 (3rd Cir 2002); Wright v Riveland 219 F.3d 905, 913 (9th Cir 2003)

Jensen v Klecker 648 F.2d 1179, 1183 (8th Cir 1981) "inmates have a property interest in money recieved from outside sources" (holding that inmates have a property interest in there money) Sell v Parratt 548 F.2d 753, 754 (8th Cir) same thus inmates are entitled to due process befor they can be deprived of these monies/funds The question to be answered is what process is due befor money recieved from outside source can be applied towards an inmates restitution obligations see also Mahers v Halford 76 F.3d 951, 954 (8th Cir 1996)(2) review case & or Const Law 251 for more Quick v Jones 754 F.2d 1521, 1523 (9th Cir 1984); Orloff v Deland 708 F.2d 372, 378 (9th Cir 1983); Hansen v May 502 F.2d 728, 730 (9th Cir 1974); Scott v Angelone 771 F. Supp 1064, 1067 (D. Nev 1991) "there is no question that an inmates interest in the funds in His prison account is a protected property interest."

AS plaintiff has stated befor counsel will argue, has argued due process was Afforded to plaintiff throug Grievance process. Again this would be Through AR 740 gets its Authority from NRS 209.131, NRS 209.243; NRS 41.031, NRS 41.0322, NRS 41.0325 These statutes/Laws allegedly give AR740 its authority. These statutes were in fact passed as Laws of Nevada, Through the use of a Concurrent Resolution. see exhibit "5" four versions of Concurrent Resolution NO 1

so lets discuss Senate Concurrent Resolution NO 1 1957

while it has been well decided that the passage of a bill in the legislature without an enacting clause on the bill renders it void as a Law, we need to consider the result of not using an enacting clause after it leaves the legislature. This is the important question today in light of the fact that the state "CODES" and "REVISED STATUTES" and the "U.S. CODE" are publications which purport to be Law, but which use no enacting clause, is a publication of a Law without an enacting clause a valid and Lawful Law?

If Laws are only required to have an enacting clause while in the legislative system, only to be thereafter removed, Then what is their value and purpose to the public? If they are to serve as evidence of Law's legislative nature, and as identification of its source and authority as a Law, what good does that function do only for the legislatures? The vast majority of the public never see the bill under consideration until it passes and is printed in public records or statute books. They generally only see the finished "LAW"

When we read the provisions which require an enacting clause, they say that "all Laws shall...", or "The Laws of this state shall..." They do not say "all bills shall..." The terms "bill" and "law" are clearly distinguished from one another in

STATE v Burlington & M.R.R. Co. 84, N.W 254, 255, 60 Neb 741 (1900)

most constitutions In prescribing the procedure of the legislative process, such as:

> "No Law shall be passed except by bill"
>
> "No bill shall become a Law except by a vote of a majority"
>
> "Every bill which shall pass both houses shall be presented to the governor of The state; and every bill he approves shall become a Law"

A Bill is a form or draft of a Law presented to a legislature "A Bill does not become a Law until the constitutional prerequisits have been met" Thus a bill is something that becomes a Law. Laws do not exist in the legislature, rather only bills do. Laws exist only when the legislature process is followed and completed as prescribed in the constitution.

> clearly the legislature cannot enact a Law
> it merely has the power to pass bills which
> may become Laws when signed by the presiding
> officer of each House and are approved and
> signed by the Governor

since all constitutional provisions place the requirement of an enacting clause on "LAWS" it includes the statute as it exists outside the legislative process, that is, as it is published in statute books. we have to also regard the fundamental maxim which states "A law is not obligatory unless it be promulgated" An act is not even regarded as a Law, or enforceable as a Law, unless it be made publicly known. This is usually done through a publication by the proper public Authority such as the secretary of state. But a law is not properly or lawfully promulgated without an enacting clause, or title published with the Law.

STATE V Naftalin, 74 N.W 2nd 249, 261, 246 MN 181 (1956); Vaughn & Ragsdale Co v. STATE Bd of Eqz, 96 P 2Nd 420, 423 (1939)

since the constitution requires "ALL LAWS" to have an enacting clause, it makes it a requirement on published Laws as well as any bills in the legislature. "IF" the constitution said "All Bills" shall have an enacting clause, then their use in publications would not be required.

that published laws are to have an enacting clause is made clear by the statement commonly used by legal Authorities that an enacting clause

of a Law is to be "ON IT'S FACE". To be on its face means to be same plain of view.

> Face has been defined as the surface of anything; especially the front upper, or outer part of ~~surface~~ surface; that which particularly offers itself to the view of a spectator.

> The face of an instrument is that which is shown by the language employed without any explanation, modification or addition from extrinsic facts or evidence.

for the enacting clause to be of any use it MUST appear with a

Black's Law Dictionary 2nd edition, p. 826

Cunningham v Great southern life Ins. Co., 66 SW 2nd 765, 773 (Tex Civ App)

In re Stoneman, 146 N.Y.S. 172, 174

Law, that is, on its face, so that all who look at the law know that it came from the legislative Authority designated by the constitution. The enacting clause would not serve its intended purpose if not printed in the statute book, on the face of the Law.

> The purpose of an enacting clause in legislation is to express on the face of the legislation itself the authority behind the act and identify it as an act of legislation.

> The purpose of provisions of this character [enacting clauses] is that all statutes may bear upon their face a declaration of the

Sovereign authority by which they are enacted and declared to be the Law, and to promote and preserve uniformity in legislation. such clauses also import a command and obedience and cloth the statute with a certain dignity, believed in all times to command respect and aid in the eforcement of Laws.

It is necessary that every law should show on its face the authority by which it is adopted and promulgated, and that it should clearly appear that it is intended by the legislative power that enacts it that it should take effect as a Law.

Precsel v Byrne, 243 N.W 823, 826, 62 N. D. 356 (1932)
STATE V Burrow, 104 S.W. 526, 529, 119 tenn 376 (1907)
people v Dettenthaler, 77 N.W 450, 451, 118 mich 596 (1898) citing
Swan v Buck, 40 miss 268 (1866)

The enacting clause, sometimes refered to as the commencement or style of the act, is used to indicate the authority from which the statute emanates. Indeed, it is a custom of long standing to cause legislative enactments to express on their face the authority by which they were enacted or promulgated.

A law is "PROMULGATED" by its being printed and published and made available or accessible by a public document such as an official statute book. when this promulgation occurs, the enacting clause is to appear "ON THE FACE" of that Law, thus being printed in that statute book along with the law.

The enacting clause must be readily visible on the face of the statute so that citizens don't have to search through the legislative Journals or other records or books to see if one exists.

Thus a statute book without the enacting clause is not a valid publication of Laws. In regards to the validity of a law that was found in their statute books without an enacting clause, the Supreme court of Nevada held:

> our constitution expressly provided that the enacting clause of every Law shall be, "The people of the state of Nevada, represented in Senate and Assembly, do enact as follows" This language is susceptible of but one interpretation. There is no doubtfull meaning as to the Intention. It is, in our Judgement, an imperative mandate of the people, in their sovereign capacity, to

Earl T Crawford, the construction of statutes, St louis 1940 §89, p.125

The legislature, requiring that all laws, to be binding upon them, shall, upon their face, express the Authority by which they were enacted; and since this act comes to us without such Authority appearing upon its face "It is not a Law"

The manner in which which the Law came to the court was by the way it was found in the statute book, cited by the court as "STAT. 1875, 66 and that is how they Judge the validity of the Law, since They saw that ~~on~~ the Act, as it was printed in the statute book, had an insufficient enacting clause on its face, it was deemed to be "not a Law" It is only by inspecting the publicly printed statute book that the people can determine the source, authority & Authenticity of the Law they are expected to follow.

The common mode by which a Law is "PROMULGATED" is by it being printed and published in some authorized public statute book. Thus that mode of promulgation must show the enacting clause of each Law therein on it's face, That is, on the face of the Law as it is printed in the statute book, this ~~the~~ is the only way that the "courts of Justice and the public are to Judge of its Authority and validity" thus whatever is published without an enacting clause is void, as it lacks the required evidence or statement of Authority.

XVII PLAINTIFFS PREEMPTIVE

RESPONSE TO ABOVE DEFENCE

CONTINUED

most common given response to statutes in Nevada are as follows: In part, Instead, the Nevada Revised statutes consist of PREVIOUSLY ENACTED LAWS see NRS 220.120 Thus, the reason the Nevada Revised statutes are referenced in criminal proceedings is because they "constitute the official codified version of the statutes of Nevada and may be cited as PRIMA FACIE evidence of the Law." NRS 220.170(3) BARRON'S LAW DICTIONARY SIXTH (6th) EDITION page 414 PRIMA FACIE at first view, on its face; not requiring further support to establish existence, validity, credibility, etc. see also page 412 PRESUMPTIVE EVIDENCE: PRIMA FACIE evidence or evidence that is not conclusive and that may be contradicted; evidence that must be recieved and treated as true and sufficient until and unless rebutted by other evidence i.e., evidence that a STATUTE deems to be presumptive of another fact unless rebutted. see 166. S.W. 2d 828 CONCLUSIVE EVIDENCE: page 101. Evidence which is incontrovertible, that is to say, "either not open or not able to be questioned, as where it is said

that a thing is conclusively proved, it means that such result follows from the facts shown as the only one possible." 21 So. 2d 878, 880

CORROBORATING EVIDENCE: Evidence complementary to evidence already given and tending to strengthen or confirm it; additional evidence of a different character on the same point. 501 S.W. 2d 283, 289. pg. 121

DEMONSTRATIVE EVIDENCE: Consisting of an object or thing, such as a weapon used in a crime, a stolen item, or a photograph or x-ray, that may aid the jury in understanding the crime befor it but which has no effect on the question of guilt; evidence other than a person's oral testimony but which may help to explain that testimony. Since "SEEING IS BELIEVING", and demonstrative evidence appeals directly to the senses of the trier of fact, it is today universally felt that this kind of evidence possesses an immediacy and a reality which endow it with particularly persuasive effect. McCORMICK on Evidence §§ 2 et seq (6th ed 2006)

DOCUMENTARY EVIDENCE: A document having legal effect which is offered as evidence for instance, a contract or a deed. prior to being addmitted as evidence, the Authenticity of the document must be established by testimony as to how the writting was produced or the circumstances under which it has been kept McCORMICK on Evidence §§ 218 et seq (6th ed. 2006)

plaintiff contends that All the Evidence to support His claims on not only The deduction of funds over and beyond what is allowed/ permitted by Law is attached herein as well as to Defendants motion to Dismiss or in the alternative motion for summary Judgement see monthly statement; granting said motion was in error. Second. the evidence TO support the Fact, claims, Allegations(s) that the statute(s) contested (here in) and in second (and) amended complaint are in fact invalid, unlawful, ~~illegal~~ Illegal, unconstitutional and void Laws.

now on to SENATE CONCURRENT RESOLUTION NO 1 (1957) Attached as Exhibit "S" which allowed for the "official engrossed copy of Senate Bill NO 2" to be used as the enrolled bill. The problem is that it is missing the Constitutionally mandated enacting clause on it, without this STATE v Rogers, 10 NEV 120, 261 (1875) enacting clause on it Senate Concurrent Resolution NO 1 1957 IS a void act, and with the act being void it also renders the enrolled copy of Senate bill NO 2 (1957) as non-existent, without the enrolled copy of Senate Bill NO 2 (1957) there are NO NRS STATUTES to give AR 740 & AR 258 any authority which makes it an illegal ACT by the NDOC removing any of plaintiffs money/funds AS SENATE BILL NO 2 created these NEVADA REVISED STATUTES, ~~This would~~ The NEVADA SUPREME COURT has held.

> First, by its nature, an Assembly concurrent Resolution is not intended to have the force and effect of Law. Pursuant to RULE 7 OF the Joint rules of the NEVADA SENATE and ASSEMBLY, the purpose of a concurrent resolution is TO direct the legislative commission to conduct interim studies, to request the return of a Bill from the other House, and to request an enrolled Bill from the Governor. On occassion a concurrent Resolution is also used to memorialize a former member of the legislature or other distinguished person upon death, or to congratulate or TO command any person or organization for a significant and meritorious accomplishment. second, [e]very bill which may have passed the Legislature shall, befor it becomes a Law, be

presented to the Governor .... NEV. CONST. ART IV §35. A review of the legislative History of the aforementioned Assembly Concurrent Resolution No. 29 indicates that this Resolution, like other concurrent Resolutions passed by the Legislature during the same time period, was never presented to the Governor for approval or disapproval. See generally FINAL VOLUME ASSEMBLY HISTORY, 1969 at 218-288, Accordingly, this Assembly Concurrent Resolution cannot be construed as the Law of this STATE.

Finally, [t]he enacting clause of every Law shall be as follows:

The people of the State of Nevada, represented in Senate and Assembly, do enact as follows: and no law shall be enacted except by bill. NEV CONST ART IV §23 (emphasis added)

we have previously ruled that this enacting clause is mandatory and must ~~include~~ be included in every Law created by the Legislature. See STATE V Rogers, 10 NEV 250 (1875) Since Concurrent Resolution No 29 and other similar resolutions do not contain the requisite ~~enacting~~ enactment Language, they cannot represent the Law of this state.

Nevada Highway Patrol Association v State of Nevada, DMV & PS, 107 NEV 547, 815

p.2nd 608 (1991)

This plaintiff has a right to expect an administrative Agency will follow its rules and Regulations under the Accardi Doctrine. (1) The NDOC is not following its own Rules and Regulations. and (2) with the issue of The contested NRS STATUTES The Senate failed to follow its own rules and regulations, which renders any act not in accordance with its rules and regulations void as well. this also invalidates Senate Concurrent Resolution No 1 (1957) as they failed to comply with RULE 7 of the Joint RULES OF THE NEVADA SENATE AND ASSEMBLY wherein it states the following:

RULE NO. 7 Types, usage and Approval

(1) A Joint resolution must be used to:

(a) propose an amendment to the Nevada constitution.

(b) Ratify a proposed amendment to the united states constitution

(c) Address the president of the united states, congress, either House or any committe member of congress, any department or agency of the Federal Government, or any other State of the union.

(2) A Concurrent Resolution must be used to:

(a) Amend these Joint Rules,

(b) Request the return From the Governor of an enrolled bill for further consideration.

(c) Resolve that the return of a Bill from one House to the other House is necessary

(d) Express facts, principles, opinions and purposes of the Senate and Assembly,

United States ex rel Accardi v Shaughnessy, 347 U.S. 260, 266-68 (1954)

church of Scientology of Cal v U.S., 920 F.2d 1481, 1487 (9th Cir 1990)

(e) Establish a Joint Committee of the two Houses.

(E) Direct the legislative commission to conduct an interim study.

(3.) A concurrent resolution or a resolution of one House may be used to:

(a) memorialize a former member of the legislature or other notable or distinguished person upon his death.

(b) Congratulate or commend any person or organization for a significant and meritorious accomplishment, but any request for drafting the resolution must be approved by the senate committee on legislative operations and Elections or the Assembly committee on ~~Eth~~ Elections, procedures, ethics, and constitutional Amendments befor submission to the legislative counsel.

so as this Honorable court as well as Defendants, & counsel can see **SENATE CONCURRENT RESOLUTION NO 1** (1957) Exhibit "5" all four(4) versions of this Document have two (2) issues with all of them. The first issue with them is that non of them have the **MANDATED ENACTING CLAUSE OF NEVADA CONSTITUTION ARTICLE 4 § 23**. which renders it unconstitutional and the act as **VOID**, leaving the legislative process for Senate Bill No. 2 (1957) unfinished and the **NEV. REV. STAT's** contested herein invalid. The second (2nd) issue with this resolution is that it's not used for any of the subjects that it is allowed to be used for, further invalidating the act within the resolution ~~[redacted]~~ so this further renders **SENATE BILL NO. 2 (1957) VOID** due to the legislative process being unfinished, Leaving contested **NRS's** herein **VOID AB INITO**

XVII CAVEAT

plaintiff regards it as his duty, that it is Just and necessary to give four warning to this court of the consequences of its failure to follow the constitution of Nevada and uphold its oath and duty in this matter, that it can result in this court committing acts of treason, tyranny, usurpation. such trespasses would be clearly evident to the public, especially in light

of the clear and unambiguous provisions of the constitution that are involved herein, which leave no room for construction, and in light of the numerous adjudications upon them as stated herein. The possible breaches of Law that may result by denying this plaintiff's claims herein are enumerated as follows:

1) The failure to uphold these clear and plain provisions of the NEVADA CONSTITUTION cannot be regarded as mere errors in Judgement, but an act of deliberate USURPATION "usurpation is ~~defined~~ defined as unauthorized arbitrary assumption and exercise of power" STATE v Village of Mound 234 Minn 531 543, 48 N.W. 2nd 855, 863 (1951)

while error is only voidable, such usurpation is void.

> The boundary between an error in Judgement and the usurpation of Judicial power is this: The former is reversible by an appellate court and is, therefore only voidable, which the latter is a nullity. STATE v Mundehr, 209 N.W 750, 752 (Minn 1926)

To take Jurisdiction where it clearly does not exist is usurption, and no one is bound to follow acts of usurpation, and in fact it is a duty of citizens to disregard and disobey them since they are void an unenforceable.

[N]o Authority need be cited for the proposition that, when a court lacks Jurisdiction, any Judgement rendered by it is void and unenforceable. Hooker v Boles, 346 Fed 2nd 285, 286 (1965)

The fact that the "NEVADA REVISED STATUTES contested herein have been in use for a number of years cannot be held as a Justification to continue to usurp power and set aside the constitutional provisions which

are contrary to such usurpation, as Judge cooley stated:

Acquiescence for no length of time can legalize a clear usurpation of power, where the people have plainly expressed their will in the constitution. cooley, constitutional limitations. pg. 71

2.) To assume Jurisdiction was valid in this case would result in TREASON chief Justice John marshall once stated:

> we [Judges] have no more right to decline the exercise of Jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution.
>
> cohens v Virginia, 6 wheat. 19 U.S. 264, 404 (1821)

The Judge of this court took an OATH OF OFFICE pursuant to ART 15 § 2 OF the CONST OF NEV to uphold and support and Defend the CONSTITUTION, It ~~will~~ will be regarded as a blatant act of TYRANNY, Any exercise of power which is done without the support of Law or beyond what the Law allows IS TYRANNY

It has been said with much truth "where the law ends tyranny begins" merrt v welsh 104 U.S. 694, 702 (1881)

> The Law, The constitution, does not allow laws to exist without titles or enacting clause. To go beyond that and allow the "NEVADA REVISED STATUTES" contested herein to exist as "LAW" is nothing by TYRANNY

tyranny and despotism exists where the will and pleasure of those in government is followed rather than established Law.

It has been repeatedly said and affirmed as a most basic principle of our government that "this is a government of Laws and not of men; and that there is no arbitrary power located in any individual or body of individuals".

Cotting v Kansas City Stock yards Co., 183 U.S. 79, 84 (1901)

The NEV CONST requires that all Laws have enacting clauses and titles. If these clear and unambiguous provisions of the STATE CONSTITUTION can be disregarded, then we no longer have a constitution in this state, then we no longer live under a Government of Laws but a government of men, i.e. A system that is governed by the arbitrary will of Those in office.

The creation of the "NEVADA REVISED STATUTES contested herein are a typical example of the arbitrary acts of government which have become all too prevalent in this century. It's use as Law is a nullity under our Constitution.

XVIII NEV CONST ART 4 § 18

ART 4 § 18 provides that a Bill be read by chapter three times over three days in each House. As court can see, and plaintiff appologizes that he mistakenly put wrong exhibit at "S" in second amended complaint. it will be attached herein as exhibit "8" plaintiff further asks This court to Look at Exhibit "S" of second amended complaint.

Log from senate for senate Bill NO. 2

As the court can see it was read on day one "Jan 22nd, 1957" on day one it was "declared an emergency measure under the constitution, and placed on third reading and final passage" what you will also see your honor is that it was read a third time on the same day, but you'll notice section Labled "PASSED" and "TITLE APPROVED" are not filled out. The court will also see on exhibit "S" of second amended complaint That the spot ~~Labled~~ Labeled "enrolled and delivered to secretary of state" is not stamped with a date, meaning it was never done, The same goes for The sections labled "passed" and "Title approved"

REPEAL OF PRIOR LAWS

The STATUTE REVISION COMMISSION was completely responsible for the

generation of the "NEVADA REVISED STATUTES" contested herein which is a legislative function. ~~The generation~~ The generation of the Nevada Revised statutes as well as the Legislative counsel Bureau preface state that there were actual changes in the statement of Law as they were compiled into the Nevada Revised statutes, changes were made to existing statutes, entire words were deleted as being redundant, grammar was changed sentence structures were altered, as discussed supra this can only be done by the legislature, meaning a duly appointed/elected person to the Assembly or Senate.

On January 21, 1957 the Act of the 48th session of the Nevada Legislature section 3 states in part as follows:

All laws and statutes of the State of Nevada of a general, public and permanent nature enacted prior to January 21, 1957, hereby are repealed.

by this act it makes the appointment of the statute revision commission through Senate Bill NO. 182 (1951) and Senate Bill NO. 188 (1953) & Senate Bill NO 218 (1955) as well as every thing done by the STATUTE REVISION COMMISSION void because of the repeal of prior Laws. making the contested NRS STATUTES herein are void as well.

In STATE ex rel Chase v Rogers, 10 Nev 250 (1875), The court held that where the enacting words were prescribed it was mandatory they be included in the Act, without the words required by the constitution, and without the concurrence of the Senate, the people had no power to enact any Law.

The county recorder contended that when the bill was presented to the legislature the words were in the enacting clause, The court ruled that it could only Look at the "ENROLLED BILL" in the office of the secretary of state in order to ascertain the terms of the Law.

The Defendants through counsel "CANNOT" produce from the secretary of state's office certified copies of "THE REVISION BILL", Journals of SENATE, RECORDS OF VOTE BY BALLOT to enact the NRS STATUTES contested herein by the people/ Citizens of The STATE OF NEVADA, Records of vote by yea or nays entered in the Journals of each House; etc. see STATE ex rel Cardwell v Glenn, 18 Nev. 34, 1 Pac 186 (1883); cited in STATE ex rel Sou Sutherland v Nye, 23 Nev 99, 101, 42 pac 866 (1895), STATE ex rel Osburn v Beck, 25 Nev 68, 80, 56 Pac. 1008 (1899) cited in STATE ex rel Coffin v Howell, 26 Nev 93, 100 64 Pac 466 (1901)

The CONSTITUTION being PARAMOUNT/SUPREME LAW OF The STATE OF NEVADA, provisions of the CONSTITUTION being SUPREM LAW OF STATE, must be enforced by courts in letter and spirit whether or not courts consider policy of such provisions wise. STATE v DUFFY, 6 Nev. 138 (1870), cited in Goldman v Bryan, 106 Nev. 30, 37, 787 P.2d 372 (1990)

There is great danger in looking beyond the constitution itself to ascertain its meaning and the rule for government. Looking at the constitution alone, it is not at all possible to Find support for the idea that the publication (republication) called The "NRS", is valid Law of this state

Thus, There is of course no need for construction or interpretation of the provisions set forth in this Document as they have been adjudicated upon,

especially those dealing with the use of an enacting clause. The NEV. SUP. CRT. has made it abundantly clear that ART 4 §23 of the NEV CONST "is mandatory, and that a statute without any enacting clause is void" see Caine, 131 p.2d @ 518, STATE v Rogers, 10 nev @ 260; Sjoberg, 703 minn. @ 212. Being that the statutes contested by plaintiff herein & in second (2nd) Amended complaint are devoid, & without an enacting clause(s) and titles, they are therefore void. Gschwind, 232 F.3d @ 1347; schnier, 648 p.2d @ 266; & Valley, 254 U.S. @ 353-54 which means there is no Authority of Law in these NRS STATUTES, Thus no subject matter Jurisdiction, which Deprives/Deprived plaintiff of due process.

COUNSEL FOR DEFENDANTS

XIX MOST LIKELY RESPONSE

However, while it is well established that the Laws of Nevada must include an enacting clause, The nevada Revised Statutes do not have the same requirement, as they are not Laws enacted by the legislature. Instead, The Nevada Revised statutes consist of PREVIOUSLY ENACTED LAWS. which have been classified, codified, and annotated by the Legislative counsel see NRS 220. 120. Thus, the reason the Nevada Revised Statutes are not required to contain an enacting clause is because they "constitute the official codified version of the statutes of Nevada and may be cited as PRIMA FACIE evidence of the Law." NRS 220.170(3) (emphasis added). Further, the content requirements for the Nevada Revised statutes, as laid out in NRS 220.110, do not require the enacting clause to be republished in them. see NRS 220.110 Therefore, the Lack of an enacting clause in the Nevada Revised statutes does not render them unconstitutional. citing. Ledden v STATE 686 N.W. 2d 873, 876-77 (Minn 2004), and STATE v Wittine, NO. 90747, 2008 WL 4813830 (ohio ct App. Nov 6, 2008)

[redacted] XX PLAINTIFFS PREEMPTIVE

RESPONSE TO ABOVE DEFENSE

The above argument(s) have no merit and must fail for the following Reasons:

(1) It is not set forth that the minnesota constitution, nor the ohio constitution, contain the MANDATORY Language that the NEVADA CONSTITUTION does. This is like comparing various fruits as being the same.

(2) The NEV CONST ART 4 § 23 reads as follows ENACTING CLAUSE; All Laws to be enacted by bill. The enacting clause of EVERY LAW shall be as follows: "The people of the state of Nevada represented in Senate and Assembly, do enact as follows," and no Law shall be enacted except by bill.

(3) NRS 220.110, cannot circumvent the mandatory Language of the PARAMOUNT LAW of the STATE OF NEVADA, the NEV CONST which the people enacted NEV CONST ART 132 (see preface of the formation of the NEV CONST (1864), which states in part: The Nevada constitution was framed by a convention of delegates chosen by the people., ... The constitution was approved by the vote of the people of the Territory of Nevada, ...) STATE V Rogers, 10 NEV @ 260

(4) uncertain things are held for nothing MAXIM OF LAW the law requires, not conjecture, but certainty Coffin V Ogden, 85 U.S. 120, 125

The constitution is the SUPREME and PARAMOUNT LAW. The mode by which amendments etc, are to be made under it, is clearly defined. It has been said that certain acts to be done, certain prerequisits are to be observed, befor a change can be effected STATE ex rel STEVENSON V TUELY, 19 NEV 391, 393, 94, 95, 12 P 835, 837 (1887)

(5) NRS PUBLICATION 220.110, which sets forth the required contents of The Nevada Revised STATUTES (is vague), which does not mandate that the enacting clause(s) be published, or republished in the Nevada Revised statutes publication is: (a) NOT the "SUPREME, PARAMOUNT LAW OF the STATE OF NEVADA

which "SUPREME and PARAMOUNT LAW is the NEV CONST (1864) & pursuant to the SUPREME and PARAMOUNT LAW the NEV CONST ART 4 §23", the enacting clause of "EVERY LAW shall be as follows" mandate's the enacting clause(s) is to appear on "EVERY LAW""

(6) should NRS PUBLICATION 220.110 be construed to "not mandate, require that the enacting clause(s) not be published/republished on "EVERY LAW" in the NRS PUBLICATION then NRS PUBLICATION 220.110 is in conflict with the SUPREME and PARAMOUNT LAW of the STATE OF NEVADA CONST OF NEV ART 4 §23, ART 4 §17; ART 4 §18; ART 5 §20 Cain, 131 p.2d @ 518; Porch v Patterson, 39 NEV 251, 268, 156 p. 439, 445 (1916)

The constitution is the supreme and paramount Law, where there is conflict between an act of the legislature and the constitution of the state, the statute must yield to the extent of the repugnancy. STATE ex rel MOON V STATE Bd OF EXAMINERS, 104 Idaho 640, 648, 662 p.2d 221, 229 (Idaho 1983) See also STATE V Rogers, 10 NEV @ 255; Weaver v Lapsley, 43 Ala 224 (emphasis added).

"This court must recognize that NRS 220.110 must yield to the NEV CONST ART 4 §23 which mandates an enacting clause to be on every Law" That "[N]one the less, as ... (Judges), we cannot ignore our obligation to protect and defend the paramount Law of the nation and of this state." STUMPF V LAU, 108 NEV 826, 844, 839 p.2d 120, 131 (NEV 1992)

(7) Attached is exhibit "4" page 4 Lines 10 through 17 which states in part: Defendant mistakenly claims that both NRS 171.010 and NRS 171.020 are invalid. The 48th session of the Nevada legislature enacted into Law the Nevada Revised Statutes. At this point, the Nevada Revised statutes were comprised of the Laws set out in section 9 of the same bill "The following Laws and Statutes attached hereto consisting of NRS sections 1.010 to 710.590, inclusive, constitute the Nevada Revised Statutes" Id at 3 Both NRS 171.010 and NRS 171.020 fail

with in this range and were properly enacted into Law by this bill.

(8) The NRS STATUTES contested in second (2nd) Amended complaint fall within the same range of NRS SECTIONS 1010 TO 710.590

(9) The NRS STATUTES cannot be evidence of previously enacted Laws/statutes because the previously enacted Laws/statutes were repealed on January 21, 1951. see Exhibit "4" of Second (2nd) Amended complaint page 2 Section 3 repeal of prior laws. Exhibit "1" of this motion.

~~XXIII~~ FRAUD UPON THE COURT

70 Am Jur 2nd sec 50 VII Civil Liability "Fraud destroys the validity of everything into which it enteres"

TO Refute the claims, Assertions, Allegations put forth by plaintiff in regards to the validity of the Laws/NRS STATUTES herein. counsel would need to aquire certified copy's of the original ENROLLED Bill (S.B. No 2 1957) and senate & Assembly Journals, proof of by ballot vote of the people/ citizens of Nevada, proof of yea or nay voter(s). This can only be done through the office of secretary of state, which cannot be done sence this office has given up custody, care, controle of Documents, papers, files it is mandated by NEVADA CONSTITUTION (CONST OF NEV 1864) TO have. UNITED STATES V Robbins, 785 F. Supp. 2d 552 (W.D. Va 2011) counterfeited means imitated, Simulated, feigned, or pretended. ... A counterfeit document is "an imitation of a genuine document having resemblance intended to deceive and be taken for the original." United States v Anderson, 532 F. 2d 1218, 1224 (9th Cir 1976). The common Law definition of forgery is " "the fraudulant making or alteration of a writing to the prejudice of another man's right." "Gilbert v. united States, 370 U.S. 650, 657 n.10, 82 S. Ct 1399 (1962)

~~XIV~~ EVIDENCE

Hayes v Brown 399 F. 3d 972 (CA 9 Cir 2005)

p981. [...] due process protects defendants against his knowing use of any false

evidence by the state, whether it be by document, testimony, or any other form of admissible evidence. see phillips v. woodford, 267 F.3d 966, 984-85 (9th cir 2001) "it is well settled that the presentation of false evidence violates due process."

Furthermore the Best Evidence Rule provides that "the production of the original document is required to prove the contents of a writing". FED.R.EVID.p. 1002 If a witness's testimony is based on his first hand knowledge of an event as opposed to his knowledge of the document, however, *649* then Rule 1002 does not apply. see united states v. wirzinger, 467 F.3d 649 (Ca 7 2006)

[redacted] XXII FOURTEENTH AMENDMENT

DUE PROCESS

(1340.45) DUE PROCESS CLAIMS REQUIRES SATISFACTION OF THREE ELEMENTS

Sansotta v. Town of Nags Head, 724 F.3d 533 (4th cir 2013)

p. 540 To succeed on a procedural due process claim, a plaintiff must satisfy three elements. First, he must demonstrate that he had a constitutionally cognizable life, liberty, or PROPERTY interest.

Iota Xi Chapter of Sigma Chi Fraternity v Patterson, 566 F.3d 138, 145 (4th cir 2009) Second, he must show that the deprivation of that interest was caused by "some form of state action." Id That deprivation can by physical appropriation, Loretto v Teleprompter manhattan CATV corp 458 U.S. 419, 435 102 S.Ct. 3164, (1982), or by a regulation that deprives an owner of all economic ally valuable uses of the land, Lucas v S.C. coastal council 505 U.S. 1003 1019, 112 S.Ct 2886 (1992) Third, He must prove "that the procedures employed were constitutionally inadequate." patterson, 566 F.3d @ 145

where a substantive due process attack is made on state administrative action, the scope of review by the federal courts is extremely narrow. To prevail, a plaintiff must show that the state Administrative agency has been guilty of "arbitrary and capricious action" in the strict sense, meaning "that there is no rational

basis for the ... [administrative] decision." 57

The use of the term "arbitrary and capricious" in this context causes considerable confusion, because these same terms are also used to describe the scope of review by state courts of state administrative action. 58 therefore, it must be emphasized that the state court scope of review of a decision of a state administrative agency is far broader than the federal scope of review under substantive due process. see Pearson v City of Grand Blanc, 961 F.2d 1211 (6th cir 1992) p.1222 Lane v Bonin, 772 F. Supp. 2d 678 (W.D. Pa 2011) p687 [As we have stated), "[n]on-legislative, substantive due process rights are those rights that are 'fundamental under the constitutional' and only one such right has been consistently found to be classified as such, that is ownership of real property." [omitted], citing Nicholas v Pennsylvania State University, 227 F.3d 133 (3d cir 2000) p 688. [I]t is well settled that procedural due process rights under the fourteenth Amendment Apply only deprivations of "[p]roperty interests ... [which] are created and their dimensions are ~~defended~~ defined ... from an independant source such as State Law." see Board of Regents v Roth, 408 564, 577, 92 S.Ct 2701, 33 L.Ed

plaintiff contends that his protected Liberty interest in his property i.e. funds/money, when Authority to deduct funds up to 50% for debt owed to the Department not the 80% or higher that has been taken.

The FOURTEENTH (14th) Amendment commands, no state shall make or enforce any Law which shall abridge the privileges or immunities of citizens of the united States; nor shall any state deprive any person of life, liberty, or property, without due process of Law; nor deny to any person within its Jurisdiction the equal protection of the Laws.

Plaintiff asserts that in order to be afforded Due process of Law, A valid Law must exist.

for instance counsel will most assuredly argue that AR740 affords plaintiff due process through the grievance process. However, AR740 Receives its authority from NRS 209.131, NRS 209.243, NRS 41.031, NRS 41.0322, NRS 41.0375. statutes/Laws that are derived from an unknown authority. should these statute's/Laws be invalid, unlawfull, unconstitutional Thus, A facial attack against a Law's constitutionality may proceed along four axes: (1) the Law may impermissibly burden the plaintiffs rights, (2) it may impermissibly burden the rights of third parties, (3) it may fail to provide adequate notice of what conduct is prohibited, or (4) it may lack sufficiant guidelines to prevent arbitrary and discriminatory enforcement.... the first two assail the Law as a prior restraint or an invalid time, place, or restriction.... The second additionally is an attack for over breadth, in which the plaintiff asserts the rights of third parties.... The third and fourth are challenges for vagueness. IOK, inc v. Clark county, 836 F.2d 1185 (CA 9 1988)

In reading the amended version of AR258 it is quit vague in the serce that it gives no indication of what amount may be deducted from plaintiffs trust account from monies/funds deposited into his account. The AR258 version used by Defense counsel attached to their motion to Dismiss or in the alternative Motion for Summary Judgment see 258.08 1 C. amounts from wages which was not followed, will be discussed further in this motion.

258.05 Deductions from any source other than wages.

(1) 50% for costs incurred by the department on behalf of the inmate per NRS 209.246 (2) 10% for credit to inmates savings Account. (3) 20% towards a court ordered filing fee, if applicable.

Williams v. West V. University Brd. of Gov., 782 F.Supp. 2d 219 (N.D. W. Va 2011) now lets Look at NRS 209.246 all its able to indicate is to repay a debt incurred by the department on behalf of the inmate. no amounts are indicated nor any % amounts which is vague in williams

at p226 "The void-for-vagueness" doctrine finds its origin in the constitutional principle of procedural due process. The primary issue raised by the doctrine is whether the particular statute is sufficiently definit to give fair notice to one who would avoid its sanctions, and ascertainable standards to the fact finder who Just adjudicated guilty under it. [...] [I]n Connally v General Const. Co., 269 U.S. 385, 391, 46 S.Ct 126 70 L.Ed. 322 (1926) wherein the supreme court stated that '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, violates the first essential of due process of Law.' ... Impermissibly vague Laws offend this standard of fairness because they may trap an unwary individual and encourage arbitrary and capricious enforcement." Smith v Sheeter, 402 F.Supp. 624, 630 (S.D. Ohio 1975)

Due process, as this court often has said, is flexible concept that varies with the particular situation. [...] [T]he court usually has held that the constitution requires some kind of a hearing befor the state deprives a person of liberty or property. [...] see Zinermon v Burch, 494 U.S. 130, 108 L.Ed. 2d 100, 110 S.Ct 975 (1990) p.984

This plaintiff was never given a hearing for him to dispute the taking of over 50% of the funds deposited into His trust account from His family.

~~Sansotta v Town of~~

[T]he government may not take property like a thief in the night; rather, it must announce its intentions and give the property owner a chance to argue against the taking.

XXIII BREACH OF CONTRACT

"The essential elements of a cause of action for damages for a breach of contract. (1) The contract. (2) plaintiffs performance or excuse for non

performance (3) defendants breach and (4) the resulting damage to plaintiff"
see Ronald D Reichert v General ins co. et al 68 cal 2d 822, 422 p.2d 337,
69 cal Rpt 321 (1968)
ACLU etal v masto et al 670 F.3d 1046, 1065 (9th cir 2012); Plag v yonkers
S&L 307 F. Ed Supp 2d 565, 583 (2nd cir 2004); Halloway v Barrett 87 NV
385, 392, 487 p.2d 501 (1970) Fed const Art 1§10; Nev const Art 1§9
"in observing state statutes they are a 'contract' that must be observed
Here, all of the above statutes such as, NRS 209.246 have a legislative intent,
to create a private right that should they be ignored, are through civil
Litigation enforceable against the state. compare Dodge v Brd of Education
302 U.S. 74, 78, 58 S.Ct 98 (1937)

~~XXIV~~ CONCLUSION

plaintiff Respectfully moves this Honorable court to except His second (2nd)
Amended complaint to controle, to move forward, He further Requests that
the following be granted.
(1) All Defendants be held liable for their actions and/or inaction in this
matter.
(2) That He be granted an in person hearing "Evidentiary" in nature so to provide
facts to this court, so this court may consider all the facts, to be able to
render a fair decision based on those facts.
(3) After said Hearing give an order for Discovery to begin, to allow for
Admissions, interogitories, Discovery Requests.
(4) Then to move on to a Jury Trial, given the opportunity to present
all the facts raised in complaint (2nd Amend complaint)
(5) pursuant to NRS 41.0349 all Defendants in second (2nd) Amended complaint
pay & be responsible for their own individual damages.
(6) That this court recognize that NRS 220.110 MUST yield TO NEV CONST ART 4§23

This court has the jurisdiction to determine whether the NEV CONST., the will of the people/citizens mandated that "EVERY LAW" published, republished in the STATE OF NEVADA MUST contain the enacting clause, as iterated in the NEV CONST ART 4 §23 the NEV CONST ART 4 §23 as well as the clearly delineated well established cases cited herein as well as in second (2nd) Amended complaint, and especially those of the NEV SUP CRT indicate that this court must answer in the affirmative.

There may be issues, questions which this court would gladly avoid, yet the issues questions herein this court should, must not avoid them. This court must exercise and perform its duty, because of whether difficulties these issues herein present, Judges are NOT to consider the political or economic impact that might ensue from upholding the constitution of Nevada as written. NEV CONST ART 4 §23, They are to uphold it no matter what may result, as that acient maxim of Law states: "Though the Heavens may fall, let 'Justice' be done."

It may be that it is an 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~~ avoided by adhearing to the rule that constitutional provisions for the security of person... 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 (this court) to be watchful for the constitutional rights of citizens (plaintiff & His family), and to guard against any stealthy encroachments thereon. Coolidge v New Hampshire, 403 U.S. 443, 454 (1971)

The plaintiff has filed second (2nd) Amended complaint & this supplimental pleading with case Law, case citings found in "THE AUTHORITY OF LAW" by Charles A Weisman, attached hereto as exhibit "6"

An example of where legal cites come from to support plaintiffs claims. As the plaintiffs pleadings, files, claims, Argument(s) are not spurious, nor random words of a legal dictionary, or a smattering of Random court cases. It is highly intelligable and completely cognizable befor this court.

Lastly grant plaintiffs forthcoming motion for discovery & order to show cause when appropriate time comes.

VERIFICATION

I Bryan p Bonham declare & verify that i have read the foregoing ~~motion to compell~~ supplemental Brief in support of second(2nd) Amended complaint & TORT ACTION and to the best of my belief and knowledge that the foregoing is true & correct under the pains & penalties of perjury pursuant to 28 U.S.C.A. §1746 & 18 U.S.C.A. §1621

CERTIFICATE OF SERVICE

I Bryan p Bonham certify that i have read the foregoing supplemental Brief in support of second Amended complaint & tort action and i am attaching special instructions for electronic filing & service to the clerk of the court to serve all of my opponents pursuant to N.E.F.C.R. 5(k), 9 et seq (A-E) etc to

Deputy Attorney General
Dawn R Jensen
~~Kathryn M Brady~~
555 E washington Ave Ste 3900
Lasvegas, NV 89101

Dated this 10th day of June, 2022

/s/ [redacted]
Bryan p Bonham 60575
po Box 650 HDSP
Indian springs, NEV 89070

ACCOUNTING INQUIRY
INMATE SERVICES – CENTRAL ADMINISTRATION

Institution/Facility _____ Inmate Name _____ (Last, First, Middle Initial)

Inmate Number _____

Date Concern Occurred: _____ (Per AR 201, incidents older than 90 days will not be acted upon) Dollar Amount Involved $ _____

Posting (other than deposit or payroll)

Trust Acct. _____ Trust 2 _____ Dept. Charges _____ Dept. _____ Savings Acct. _____

Deposit

Deposit Receipt Date _____ Sender _____

Payroll

Pay Period in Question _____ Institution/Facility _____

Check to outside party

Brass Slip # _____ Payee _____ Ck # _____ (if known)

Other (see AR 201)

Briefly describe the concern and attach any information, which will properly identify the situation.
Use additional sheets if necessary.

Inmate Signature and Number _____ Date _____

Caseworker or Other Authorized Signature _____ Date _____
(Inquiry will be returned if not signed by caseworker or other authorized person.)

Response From Inmate Services – Central Administration

_____ SB-22 WENT INTO EFFECT
_____ 07/01/2021. ALL DEPOSITS MADE
_____ PRIOR TO 07/01/2021 ARE NOT
SUBJECT TO THE DEDUCTION CAP.

Date _____

Exhibit "1"

Original & one copy to Inmate Services, Copy to Inmate

DOC 544 (4/04)

ACCOUNTING INQUIRY
INMATE SERVICES – CENTRAL ADMINISTRATION

Institution/Facility HDSP Inmate Name [illegible] (Last, First, Middle Initial)

Inmate Number 60575

Date Concern Occurred: 2/13/22 through 3/15/22 (Per AR 201, incidents older than 90 days will not be acted upon) Dollar Amount Involved $

Posting (other than deposit or payroll)

Trust Acct. 125.00 Trust 2 ______ Dept. Charges ______ Dept. ______ Savings Acct. ______

Deposit

Deposit Receipt Date ______ Sender ______

Payroll

Pay Period in Question ______ Institution/Facility ______

Check to outside party

Brass Slip # ______ Payee ______ Ck # ______ (if known)

Other (see AR 201)

Briefly describe the concern and attach any information, which will properly identify the situation. Use additional sheets if necessary.

[illegible] 50% [illegible] 5.00 [illegible] 50% [illegible] in my savings account. why [illegible] over 50%. I have a liberty interest in funds received from my family, you are violating my rights

Inmate Signature and Number [signature] 605758 Date [illegible]

Caseworker or Other Authorized Signature [signature] Date 3.22.22

(Inquiry will be returned if not signed by caseworker or other authorized person.)

Response From Inmate Services – Central Administration

[illegible]

10-13-58

Date 5/5/

Exhibit "1"

Original & one copy to Inmate Services, Copy to Inmate

DOC 544 (4/04)

Daily Transaction Summary: January 01, 2019 - January 11, 2021

Offender Information

Offender Number 0060575
Offender Name: BONHAM, BRYAN P
Account Status: Open

Institution: HDSP
Housing Facility: U9

Living Unit: D
Cell: 19
Bed: A

Primary Trust Transactions

Date	Transaction Type	Payer / Paid To	Reference Number	Deposit# / Check#	Amount	Balance	Loc Code
01/01/2019						$0.35	
01/04/2019 07:00:25 AM	Keefe	Linda Conry		9900012574	$130.00	$130.35	LCC
01/04/2019 07:00:25 AM	Financial Certificate	USDC Nevada		9900030985	($26.00)	$104.35	LCC
01/04/2019 07:00:25 AM	Legal Copies	Inmate Welfare Fund		9900025595	($1.60)	$102.75	LCC
01/04/2019 07:00:25 AM	Medical Copay	Inmate Welfare Fund		9900025646	($8.00)	$94.75	LCC
01/04/2019 07:00:25 AM	Savings				($13.00)	$81.75	LCC
01/07/2019 07:54:59 AM	Commissary		5909;102028226		($7.73)	$74.02	LCC
01/07/2019 02:11:24 PM	Commissary Refund		5909;100016538		$6.06	$80.08	LCC
01/07/2019 02:11:24 PM	Trust 2				($6.06)	$74.02	LCC
01/08/2019 08:27:33 AM	Trust 2				$6.06	$80.08	LCC
01/08/2019 08:27:33 AM	Commissary		5909;102030089		($28.33)	$51.75	LCC
01/14/2019 07:56:52 AM	Commissary		5909;102038221		($31.57)	$20.18	LCC
01/17/2019 02:53:54 PM	Legal Copies	LCC	*	9900025392	($1.80)	$18.38	LCC
01/17/2019 02:54:54 PM	Legal Copies	LCC	*	9900025392	($0.90)	$17.48	LCC
01/18/2019 11:59:38 AM	Legal Copies	LCC	*	9900025392	($6.80)	$10.68	LCC
01/18/2019 03:04:24 PM	Legal Copies	LCC	*	9900025392	($0.80)	$9.88	LCC
01/22/2019 07:49:13 AM	Commissary		5909;102047506		($9.82)	$0.06	LCC
04/01/2019 07:00:25 AM	Keefe	tyler bonham at issue		9900013280	$160.00	$160.06	LCC
04/01/2019 07:00:25 AM	Financial Certificate	USDC Nevada		9900030985	($32.00)	$128.06	LCC
04/01/2019 07:00:25 AM	Legal Copies	Inmate Welfare Fund		9900026697	($2.80)	$125.26	LCC
04/01/2019 07:00:25 AM	Legal Copies	Inmate Welfare Fund		9900026697	($3.10)	$122.16	LCC
04/01/2019 07:00:25 AM	Legal Copies	Inmate Welfare Fund		9900026697	($3.40)	$118.76	LCC
04/01/2019 07:00:25 AM	Legal Copies	Inmate Welfare Fund		9900026697	($7.20)	$111.56	LCC
04/01/2019 07:00:25 AM	Legal Copies	Inmate Welfare Fund		9900026697	($5.20)	$106.36	LCC
04/01/2019 07:00:25 AM	Legal Copies	Inmate Welfare Fund		9900026697	($7.90)	$98.46	LCC
04/01/2019 07:00:25 AM	Legal Copies	Inmate Welfare Fund		9900026697	($8.30)	$90.16	LCC
04/01/2019 07:00:25 AM	Legal Copies	Inmate Welfare Fund		9900026697	($6.00)	$84.16	LCC
04/01/2019 07:00:25 AM	Legal Copies	Inmate Welfare Fund		9900026697	($18.80)	$65.36	LCC
04/01/2019 07:00:25 AM	Legal Copies	Inmate Welfare Fund		9900026697	($2.20)	$63.16	LCC
04/01/2019 07:00:25 AM	Legal Copies	Inmate Welfare Fund		9900026697	($5.20)	$57.96	LCC
04/01/2019 07:00:25 AM	Legal Copies	Inmate Welfare Fund		9900026697	($8.50)	$49.46	LCC

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-50% 80.00
128.48
7.280
48.00

Exhibit "2"

Should have
11 128.048

Date	Transaction Type	Payer / Paid To	Reference Number	Deposit# / Check#	Amount	Balance	Loc Code
04/01/2019 07:00:25 AM	Legal Copies	Inmate Welfare Fund		9900026697	[redacted]	$48.06	LCC
04/01/2019 07:00:25 AM	Savings				($16.00)	$32.06	LCC
04/02/2019 03:34:09 PM	Legal Postage	LCC	*	9900026508	($2.45)	$29.61	LCC
04/02/2019 03:34:47 PM	Legal Postage	LCC	*	9900026508	($0.50)	$29.11	LCC
04/05/2019 01:58:37 PM	Commissary		5909;102144552		($29.07)	$0.04	LCC
06/22/2019 07:00:11 AM	Keefe	tyler bonham at issue.		9900014012	$150.00	$150.04	LCC
06/22/2019 07:00:11 AM	Financial Certificate	USDC Nevada		9900030985	[redacted]	$120.04	LCC
06/22/2019 07:00:11 AM	Legal Copies	Inmate Welfare Fund		9900027486	($12.60)	$107.44	LCC
06/22/2019 07:00:11 AM	Legal Copies	Inmate Welfare Fund		9900027486	($16.40)	$91.04	LCC
06/22/2019 07:00:11 AM	Legal Copies	Inmate Welfare Fund	105.04	9900027486	($46.00)	$45.04	LCC
06/22/2019 07:00:11 AM	Savings				($15.00)	$30.04	LCC
06/25/2019 04:59:05 PM	Legal Postage	LCC	*	9900027292	($0.50)	$29.54	LCC
06/25/2019 04:59:13 PM	Legal Postage	LCC	*	9900027292	($0.50)	$29.04	LCC
06/25/2019 04:59:13 PM	Legal Postage	LCC	*	9900027292	($0.50)	$28.54	LCC
06/28/2019 10:46:52 AM	Commissary		5909;102254663		($28.02)	$0.52	LCC
07/02/2019 02:22:56 PM	Legal Postage	LCC	*	9900027751	($0.50)	$0.02	LCC
12/03/2019 07:00:18 AM	Keefe	Linda Conry		9900015573	$60.00 — trust 2	$60.02	LCC
12/03/2019 07:00:18 AM	Trust 2				($60.00)	$0.02	LCC
12/09/2019 11:58:33 AM	Trust 2				$7.29	$7.31	LCC
12/09/2019 11:58:33 AM	Commissary		5909;102460024	from trust 2.	($7.29)	$0.02	LCC
12/13/2019 01:37:07 PM	Trust 2		2333274		$52.71	$52.73	DOC
12/13/2019 01:37:07 PM	Check Tops	BLICK ART MATERIALS	2333274	327222	($52.73)	$0.00	DOC
12/22/2019 07:00:33 AM	Keefe	Tyler Bonham		9900015778	$198.00	$198.00	LCC
12/22/2019 07:00:33 AM	Trust 2				($198.00)	$0.00	LCC
12/30/2019 07:01:07 AM	Keefe	Linda Conry		9900015789	$220.00	$220.00	LCC
12/30/2019 07:01:07 AM	Trust 2				($220.00)	$0.00	LCC
12/30/2019 08:14:45 AM	Trust 2				$61.84	$61.84	LCC
12/30/2019 08:14:45 AM	Commissary		5909;102484584		($61.84)	$0.00	LCC
01/06/2020 09:11:44 AM	Trust 2				$44.45	$44.45	LCC
01/06/2020 09:11:44 AM	Commissary		5909;102493347		($44.45)	$0.00	LCC
01/08/2020 07:00:23 AM	Keefe	Linda Conry at issue		9900015900	$150.00	$150.00	LCC
01/08/2020 07:00:23 AM	Financial Certificate	USDC Nevada Valid.		9900034398	($30.00)	$120.00	LCC
01/08/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900031599	($10.00)	$110.00	LCC
01/08/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900031599	($6.00)	$104.00	LCC
01/08/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900031599	($1.60)	$102.40	LCC
01/08/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900031599	($6.00)	$96.40	LCC

$82.95 taken by NDOC

2.00 over

77.00 to 60

Exhibit "2"

Primary Trust Transactions

Date	Transaction Type	Payer / Paid To	Reference Number	Deposit# / Check#	Amount	Balance	Loc Code
01/08/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900031599	($2.40)	$94.00	LCC
01/08/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900031599	($3.60)	$90.40	LCC
01/08/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900031599	($3.80)	$86.60	LCC
01/08/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900031599	($0.70)	$85.90	LCC
01/08/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900031599	($21.90)	$64.00	LCC
01/08/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900031599	($1.10)	$62.90	LCC
01/08/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900031599	($6.00)	$56.90	LCC
01/08/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900031599	($0.20)	$56.70	LCC
01/08/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900031599	($1.00)	$55.70	LCC
01/08/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900031599	($10.70)	$45.00	LCC
01/08/2020 07:00:23 AM	Savings	[illegible]			($15.00)	$30.00	LCC
01/08/2020 04:19:25 PM	Legal Postage	LCC	*	9900030030	($7.85)	$22.15	LCC
01/08/2020 04:19:33 PM	Legal Postage	LCC	*	9900030030	($0.50)	$21.65	LCC
01/13/2020 04:39:59 PM	Legal Postage	LCC	*	9900030030	($0.65)	$21.00	LCC
01/24/2020 06:52:22 AM	Trust 2				$89.34	$110.34	HDSP
01/24/2020 06:52:22 AM	Commissary	Taken from trust 2 $.	6209;102513281	[redacted]	($89.34)	$21.00	HDSP
01/31/2020 04:26:12 PM	Legal Postage	LCC	*	9900030030	($0.50)	$20.50	LCC
01/31/2020 04:26:12 PM	Legal Postage	LCC	*	9900030030	($0.65)	$19.85	LCC
01/31/2020 04:26:12 PM	Legal Postage	LCC	*	9900030030	($2.20)	$17.65	LCC
02/11/2020 04:04:50 PM	Legal Postage	LCC	*	9900031058	($0.50)	$17.15	LCC
02/13/2020 03:32:05 PM	Postage	HDSP	*	9900031071	($0.55)	$16.60	HDSP
02/13/2020 03:32:05 PM	Postage	HDSP	*	9900031071	($0.55)	$16.05	HDSP
02/13/2020 03:32:05 PM	Postage	HDSP	*	9900031071	($3.30)	$12.75	HDSP
02/21/2020 06:11:43 AM	Trust 2				$81.40	$94.15	HDSP
02/21/2020 06:11:43 AM	Commissary	from trust 2. not issue.	6209;102541661		($81.40)	$12.75	HDSP
02/24/2020 03:02:32 PM	Postage	HDSP	*	9900031071	($0.70)	$12.05	HDSP
02/24/2020 03:02:32 PM	Postage	HDSP	*	9900031071	($0.70)	$11.35	HDSP
02/27/2020 04:02:10 PM	Postage	HDSP	*	9900031071	($1.10)	$10.25	HDSP
03/10/2020 11:58:03 AM	Postage	HDSP	*	9900031374	($0.55)	$9.70	HDSP
03/10/2020 11:58:03 AM	Postage	HDSP	*	9900031374	($2.80)	$6.90	HDSP
03/13/2020 04:02:06 PM	Postage	HDSP	*	9900031374	($0.55)	$6.35	HDSP
03/18/2020 03:56:37 PM	Legal Copies	HDSP	*	9900031351	($2.40)	$3.95	HDSP
03/19/2020 04:56:36 PM	Postage	HDSP	*	9900031374	($1.80)	$2.15	HDSP
03/26/2020 04:58:01 PM	Legal Copies	HDSP	*	9900031351	($0.20)	$1.95	HDSP
03/31/2020 10:56:40 AM	Trust 2				$65.23	$67.18	HDSP
03/31/2020 10:56:40 AM	Commissary		6209;102583978		($65.23)	$1.95	HDSP

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From 1-8-20 deposit taken. 102.65 NDOC Debt. over 50%!

Exhibit "2"

Date	Transaction Type	Payer / Paid To	Reference Number	Deposit# / Check#	Amount	Balance	Loc Code
04/10/2020 08:45:56 AM	Trust 2				$60.93	$62.88	HDSP
04/10/2020 08:45:56 AM	Commissary		6209;102594903		($60.93)	$1.95	HDSP
05/01/2020 07:00:23 AM	Keefe	Linda Conry		9900016647	[redacted]	$201.95	HDSP
05/01/2020 07:00:23 AM	Financial Certificate	USDC Nevada	valid	9900034398	($40.00)	$161.95	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	[redacted]	$158.25	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	($0.40)	$157.85	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	[redacted]	$157.45	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	($0.40)	$157.05	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	[redacted]	$156.55	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	($0.60)	$155.95	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	[redacted]	$155.35	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	($4.70)	$150.65	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	[redacted]	$149.65	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	($2.90)	$146.75	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	[redacted]	$146.45	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	($0.40)	$146.05	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	[redacted]	$145.85	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	($5.20)	$140.65	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	[redacted]	$138.25	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	($20.80)	$117.45	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	[redacted]	$117.25	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	($0.60)	$116.65	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	[redacted]	$116.05	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	($14.00)	$102.05	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund	[redacted]	9900033871	[redacted]	$96.05	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	($2.20)	$93.85	HDSP
05/01/2020 07:00:23 AM	Legal Copies	Inmate Welfare Fund		9900033871	[redacted]	$90.55	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($1.30)	$89.25	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	[redacted]	$88.30	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($1.15)	$87.15	HDSP
05/01/2020 07:00:23 AM	Postage	Inmate Welfare Fund		9900033939	[redacted]	$86.65	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($2.20)	$84.45	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	[redacted]	$83.30	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($0.50)	$82.80	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	[redacted]	$82.30	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($0.80)	$81.50	HDSP

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Exhibit "2"

Date	Transaction Type	Payer / Paid To	Reference Number	Deposit# / Check#	Amount	Balance	Loc Code
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($0.50)	$81.00	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($0.80)	$80.20	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($1.15)	$79.05	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($0.50)	$78.55	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($0.50)	$78.05	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($0.50)	$77.55	HDSP
05/01/2020 07:00:23 AM	Legal Supply	Inmate Welfare Fund		9900033898	[redacted]	$74.96	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($1.00)	$73.96	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($3.15)	$70.81	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($0.50)	$70.31	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($0.50)	$69.81	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($0.50)	$69.31	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($0.65)	$68.66	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($0.65)	$68.01	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($1.00)	$67.01	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($0.65)	$66.36	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($0.65)	$65.71	HDSP
05/01/2020 07:00:23 AM	Legal Postage	Inmate Welfare Fund		9900033888	($3.76) 50%	$61.95	HDSP
05/01/2020 07:00:23 AM	[redacted]	valid.			[redacted]	$59.29	HDSP
05/01/2020 08:06:12 AM	Trust 2				$14.81	$74.10	HDSP
05/01/2020 08:06:12 AM	Commissary		6209;102620300		($16.35)	$57.75	HDSP
05/07/2020 04:27:22 PM	Postage	HDSP	*	9900033693	($0.85) 50%	$56.90	HDSP
05/07/2020 04:27:32 PM	Postage	HDSP	*	9900033693	($0.85) over	$56.05	HDSP
05/08/2020 07:25:04 AM	Commissary		6209;102630105		($45.47)	$10.58	HDSP
05/11/2020 03:40:04 PM	Postage	HDSP	*	9900033693	($2.20) over	$8.38	HDSP
05/11/2020 03:57:12 PM	Legal Copies	HDSP	*	9900033672	($2.00) over	$6.38	HDSP
05/11/2020 03:57:12 PM	Legal Copies	HDSP	*	9900033672	($6.00) over	$0.38	HDSP
06/27/2020 07:00:45 AM	Keefe	Linda Conry		9900016978	$200.00	$200.38	HDSP
06/27/2020 07:00:45 AM	Trust 2		deposited into trust 2.		($200.00)	$0.38	HDSP
07/17/2020 06:22:14 AM	Trust 2				$54.92	$55.30	HDSP
07/17/2020 06:22:14 AM	Commissary		6209;102708507		($54.92)	$0.38	HDSP
07/21/2020 12:14:48 PM	Trust 2				$35.45	$35.83	HDSP
07/21/2020 12:14:48 PM	Commissary		6209;102715111		($35.45)	$0.38	HDSP
07/31/2020 10:51:24 AM	Trust 2				$6.24	$6.62	HDSP
07/31/2020 10:51:24 AM	Commissary		6209;102728476		($6.24)	$0.38	HDSP
08/14/2020 06:14:47 AM	Trust 2				$19.76	$20.14	HDSP

99.48 10
111.84 total taken.
21.87 over 50%

Exhibit "2"

Date	Transaction Type	Payer / Paid To	Reference Number	Deposit# / Check#	Amount	Balance	Loc Code
08/14/2020 06:14:47 AM	Commissary		6209;102744696		($19.76)	$0.38	HDSP
09/04/2020 07:00:59 AM	Keefe	Linda Conry		9900017368	$20.00	$20.38	HDSP
09/04/2020 07:00:59 AM	Financial Certificate	USDC Nevada		9900035282	[redacted]	$16.38	HDSP
09/04/2020 07:00:59 AM	Legal Copies	Inmate Welfare Fund			($0.50)	$15.88	HDSP
09/04/2020 07:00:59 AM	Legal Copies	Inmate Welfare Fund			($1.40)	$14.48	HDSP
09/04/2020 07:00:59 AM	Legal Copies	Inmate Welfare Fund			($4.80)	$9.68	HDSP
09/04/2020 07:00:59 AM	Legal Copies	Inmate Welfare Fund			[redacted]	$6.38	HDSP
09/04/2020 07:00:59 AM	Savings				[redacted]	$4.38	HDSP
09/18/2020 11:07:33 AM	Postage	HDSP	*	9900035193	($0.55)	$3.83	HDSP
09/18/2020 11:07:33 AM	Postage	HDSP	*	9900035193	($0.55)	$3.28	HDSP
09/18/2020 11:07:33 AM	Postage	HDSP	*	9900035193	($2.20)	$1.08	HDSP
09/29/2020 04:58:11 PM	Legal Copies	HDSP	*	9900035172	($0.40)	$0.68	HDSP
09/30/2020 10:34:44 AM	Postage	HDSP	*	9900035193	[redacted]	$0.13	HDSP
10/02/2020 06:37:41 AM	Trust 2				$55.77	$55.90	HDSP
10/02/2020 06:37:41 AM	Commissary		6209;102804898		($55.77)	$0.13	HDSP
10/16/2020 06:23:13 AM	Trust 2				$27.45	$27.58	HDSP
10/16/2020 06:23:13 AM	Commissary		6209;102820302		($27.45)	$0.13	HDSP
11/06/2020 02:09:35 PM	Prison Industries Payroll	7194 - Prison Industries Payroll	11/05/2020	9900017774	$20.00	$20.13	HDSP
11/06/2020 02:09:35 PM	Victim of Crime Fund	Victim of Crime Fund	11/05/2020		[redacted]	$19.13	HDSP
11/06/2020 02:09:35 PM	Financial Certificate	USDC Nevada	11/05/2020		($4.00)	$15.13	HDSP
11/06/2020 02:09:35 PM	Room and Board	Room and Board	11/05/2020	9900035404	[redacted]	$10.23	HDSP
11/06/2020 02:09:35 PM	PI Capital Improvement	Capital Improvement	11/05/2020	9900035403	($1.00)	$9.23	HDSP
11/06/2020 02:09:35 PM	Legal Copies	Inmate Welfare Fund	11/05/2020		[redacted]	$9.13	HDSP
11/06/2020 02:09:35 PM	Legal Copies	Inmate Welfare Fund	11/05/2020		($0.40)	$8.73	HDSP
11/06/2020 02:09:35 PM	Legal Copies	Inmate Welfare Fund	11/05/2020		[redacted]	$8.03	HDSP
11/06/2020 02:09:35 PM	Legal Copies	Inmate Welfare Fund	11/05/2020		($3.60)	$4.43	HDSP
11/06/2020 02:09:35 PM	Legal Copies	Inmate Welfare Fund	11/05/2020		[redacted]	$0.13	HDSP
12/04/2020 12:11:03 PM	Prison Industries Payroll	7194 - Prison Industries Payroll	12/03/2020	9900017888	$20.00	$20.13	HDSP
12/04/2020 12:11:03 PM	Victim of Crime Fund	Victim of Crime Fund	12/03/2020		($1.00)	$19.13	HDSP
12/04/2020 12:11:03 PM	Financial Certificate	USDC Nevada	12/03/2020		($4.00)	$15.13	HDSP
12/04/2020 12:11:03 PM	Room and Board	Room and Board	12/03/2020	9900035407	[redacted]	$10.23	HDSP
12/04/2020 12:11:03 PM	PI Capital Improvement	Capital Improvement	12/03/2020	9900035406	($1.00)	$9.23	HDSP
12/04/2020 12:11:03 PM	Legal Copies	Inmate Welfare Fund	12/03/2020		[redacted]	$9.13	HDSP
12/04/2020 12:11:03 PM	Legal Copies	Inmate Welfare Fund	12/03/2020		($2.10)	$7.03	HDSP
12/04/2020 12:11:03 PM	Legal Copies	Inmate Welfare Fund	12/03/2020		($4.90)	$2.13	HDSP
12/04/2020 12:11:03 PM	Legal Postage	Inmate Welfare Fund	12/03/2020		($2.00)	$0.13	HDSP

611

Exhibit "2"

Nevada Department of Corrections
Nevada Inmate Stores System
Store - 6209-HDSP
Unit: HDSP - U10

0060575 - BONHAM, BRYAN **Commissary Receipt: 103324700**

Inmate Housing Location: HDSP U10 E 14-A **Date: 3/18/2022**

Orders Processed at 6209-HDSP

Filled Items

Item	Description	Source	Qty	Price	Total
13319	PEPSI WILD CHERRY * * 20OZ BTL (K)	K	2	1.87	3.74
17110	TORTILLAS-FLOUR 7" PREM 6CT(K)	K	3	1.13	3.39
17502	REFRIED BEANS-SEVILLA SPICY(K)(H)	K	3	1.72	5.16
17520	RICE-WHITE INSTANT 8OZ (K)(H)	K	3	1.37	4.11
23252	TOP RAMEN-SPICY VEGETABLE	K	5	0.53	2.65

Rejected Items

Item	Description	Source	Qty	Price	Total	Reason
21025	CHEESE SPREAD VELV.JAL.8OZ TUB	K	2	2.40	0.00	Not Available
23231	TOP RAMEN-TEXAS BEEF	K	5	0.53	0.00	Insufficient Funds
23233	TOP RAMEN-SPICEY/SHRIMP	K	5	0.53	0.00	Insufficient Funds
29053	CHOC HONEY BUN (K)	K	5	0.98	0.00	Insufficient Funds
29065	MONSTER HONEY BUN (K)	K	4	1.20	0.00	Insufficient Funds
41049	CHEETO-FLAMIN HOT 8OZ	K	1	2.42	0.00	Insufficient Funds
41075	COOL RANCH DORITOS 8OZ	K	1	2.48	0.00	Insufficient Funds
41227	PORK RINDS - HOT/SPCY 2oz	K	2	1.07	0.00	Insufficient Funds

Receipt Totals: **19.05**

signature date

officer signature date

WMILLER

Exhibit "3"

OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Deputy District Attorney
Nevada Bar #10539
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JUSTIN LANGFORD,
#2748452

Defendant.

CASE NO: C-14-296556-1

DEPT NO: XXIII

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE

DATE OF HEARING: **SEPTEMBER 13, 2021**
TIME OF HEARING: **11:00 AM**

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through ALEXANDER CHEN, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Correct Illegal Sentence.

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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Exhibit "4"

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On March 14, 2014, JUSTIN ODELL LANGFORD (hereinafter "Defendant") was charged by way of Information with the following: COUNTS 1, 2, 6, 7, 8, 10, 11, and 12 – Lewdness With A Child Under The Age Of 14 (Category A Felony - NRS 201.230); COUNTS 3, 4, and 5 – Sexual Assault With A Minor Under Fourteen Years Of Age (Category A Felony - NRS 200.364, 200.366); and COUNT 9 – Child Abuse, Neglect, or Endangerment (Category B Felony - NRS 200.508(1)).

On March 7, 2016, a jury trial convened and lasted nine days. On March 17, 2016, the jury returned a guilty verdict as to COUNT 2, and not guilty as to all other Counts.

On May 10, 2016, Defendant was sentenced to Life with a possibility of parole after a term of 10 years have been served in the Nevada Department of Corrections ("NDOC"). Defendant received eight hundred forty-one (841) days credit for time served. The Judgment of Conviction was filed on May 17, 2016.

On June 1, 2016, Defendant filed a Notice of Appeal from his conviction. On June 27, 2017, the Nevada Supreme Court affirmed the Judgment of Conviction. Remittitur issued July 28, 2017.

Following the affirmance, Defendant filed various motions including but not limited to, a Motion to Claim and Exercise Rights Guaranteed by the Constitution for the United States of America (October 10, 2017), a Motion to Reconsider (October 10, 2017), A Motion for Ancillary Services Pursuant to 18 U..S.C. sec 3006A (November 27, 2017), a Petition for Writ of Habeas Corpus (December 29, 2017), a Request for Judicial Notice of Lack of Jurisdiction (March 30, 2018), a Motion to Amend Judgment of Conviction (September 19, 2019), a Motion to Correct Illegal Sentence (February 25, 2020), and an additional Motion to Correct Illegal Sentence (June 9, 2021). The Court denied the above motions.

On August 19, 2021, Defendant filed a Motion to Correct Illegal Sentence. The State responds as follows.

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STATEMENT OF THE FACTS

On June 21, 2014, the minor victim H.H. (DOB: 06/22/2001) disclosed that she had been sexually abused by her stepfather, Defendant. The abuse began when she was eight (8) years old. While at Defendant's residence in Searchlight, Nevada, Defendant would call H.H. into his bedroom and have H.H. take off her clothes. Defendant would make H.H. lie on the bed and he would rub baby oil on H.H's legs. Defendant then placed his private parts in between her legs and rubbed himself back and forth until he ejaculated. H.H. stated that Defendant placed a white hand towel on the bed and had the victim lie on the towel during the molestation incidents. He would then use the towel to clean up the baby oil. The abuse continued until the victim reported the abuse in January 2014.

H.H. testified of several instances of sexual abuse committed by Defendant. H.H. described instances including Defendant sucking on her breasts, putting his penis in her anus, putting his penis into her mouth more than once, touching her genital area with his hands and his penis, and fondling her buttocks and/or anal area with his penis.

On January 21, 2014, the Las Vegas Metropolitan Police Department served a search warrant on Defendant's residence in Searchlight. Officers recovered a white hand towel that matched the description given by H.H. in the exact location H.H. described. The police also recovered a bottle of baby oil found in the same drawer as the hand towel and bedding. These items were tested for DNA. Several stains on the white towel came back consistent with a mixture of two individuals. The partial major DNA profile contributor was consistent with Defendant. The partial minor DNA profile was consistent with victim H.H. The statistical significance of both partial profiles was at least one in 700 billion.

ARGUMENT

I. DEFENDANT'S SENTENCE IS LEGAL, AND THUS HE IS NOT ENTITLED TO A CORRECTED SENTENCE

Generally, a district court lacks jurisdiction to modify or vacate a sentence once the defendant starts serving it. Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992),

exhibit "4"

overruled on other grounds by Harris v. State, 130 Nev. 435, 329 P.3d 619 (2014). However, a district court possesses inherent authority to correct, vacate or modify a sentence where the defendant can demonstrate the sentence violates due process because it is based on a materially untrue assumption or mistake of fact that has worked to the defendant's extreme detriment. Edwards v. State, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996); NRS 176.555; see also Passanisi, 108 Nev. at 322, 831 P.2d at 1373. A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321,.324 (1996).

Defendant's motion fails to substantiate that the District Court lacked jurisdiction. Defendant mistakenly claims that both NRS 171.010 and NRS 171.020 are invalid. The 48th Session of the Nevada Legislature enacted into law the Nevada Revised Statutes. 1957 Nev. Stat. 2. At this point, the Nevada Revised Statutes were comprised of the laws set out in section 9 of the same bill. Id. Section 9 states that "the following laws and statutes attached hereto, consisting of NRS sections 1.010 to 710.590, inclusive, constitute the Nevada Revised Statutes." Id. at 3. Both NRS 171.010 and NRS 171.020 fall within this range and were properly enacted into law by this bill. Thus, Defendant fails to make any proper challenge to the facial legality of his sentence.

Defendant fails to set forth any additional claims that the district court lacked jurisdiction, the sentence exceeded the statutory maximum, or the Court sentenced him based on a materially untrue assumption or mistake of fact. Accordingly, this Court should deny his motion.

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exhibit "4"

CONCLUSION

Based on the foregoing reasons, Defendant's Motion to Correct Illegal Sentence should be DENIED.

DATED this 24th day of August, 2021.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #10539

BY _____
ALEX CHEN
Deputy District Attorney
Nevada Bar #10539

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 24th day of August, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

JUSTIN ODELL LANGFORD
BAC#1159546
1200 PRISON RD (LLCC)
LOVELOCK, NV 89419

BY _____
Secretary for the District Attorney's Office

14FS0001X/AC/ee/mlb/SVU

Exhibit "4"

Real copy found version 1

SUMMARY--Provides that official engrossed copy of Senate Bill No. 2 be used as the enrolled bill.

SENATE CONCURRENT RESOLUTION--Providing that the official engrossed copy of Senate Bill No. 2 may be used as the enrolled bill.

WHEREAS, The provisions of sec. 8 of chapter 3, Statutes of Nevada 1949, as amended by chapter 385, Statutes of Nevada 1955, provide that the official engrossed copy of a bill may by resolution be used as the enrolled bill; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE ASSEMBLY CONCURRING, That the official engrossed copy of Senate Bill No. 2 shall be used as the enrolled bill as provided by law.

Exhibit "5"

SENATE CONCURRENT RESOLUTION--Providing that the official engrossed copy of Senate Bill No. 2 may be used as the enrolled bill.

WHEREAS, The provisions of sec. 8 of chapter 3, Statutes of Nevada 1949, as amended by chapter 385, Statutes of Nevada 1955, provide that the official engrossed copy of a bill may by resolution be used as the enrolled bill; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE ASSEMBLY CONCURRING, That the official engrossed copy of Senate Bill No. 2 shall be used as the enrolled bill as provided by law.

Real copy found version #2

exhibit "S"

Version 3

Resolutions and Memorials

Senate Concurrent Resolution No. 1—Committee on Judiciary

FILE NO. 1

SENATE CONCURRENT RESOLUTION—Providing that the official engrossed copy of Senate Bill No. 2 may be used as the enrolled bill.

WHEREAS, The provisions of sec. 8 of chapter 3, Statutes of Nevada 1949, as amended by chapter 385, Statutes of Nevada 1955, provide that the official engrossed copy of a bill may by resolution be used as the enrolled bill; now, therefore, be it

Resolved by the Senate of the State of Nevada, the Assembly concurring, That the official engrossed copy of Senate Bill No. 2 shall be used as the enrolled bill as provided by law.

Exhibit "S"

Resolutions and Memorials

Senate Concurrent Resolution No. 1—Committee on Judiciary

FILE NO. 1

SENATE CONCURRENT RESOLUTION—Providing that the official engrossed copy of Senate Bill No. 2 may be used as the enrolled bill.

WHEREAS, The provisions of sec. 8 of chapter 3, Statutes of Nevada 1949, as amended by chapter 335, Statutes of Nevada 1955, provide that the official engrossed copy of a bill may by resolution be used as the enrolled bill; now, therefore, be it

Resolved by the Senate of the State of Nevada, the Assembly concurring, That the official engrossed copy of Senate Bill No. 2 shall be used as the enrolled bill as provided by law.

Assembly Concurrent Resolution No. 1—Committee on Judiciary

FILE NO. 2

ASSEMBLY CONCURRENT RESOLUTION—Expressing congratulations and gratitude to Russell West McDonald upon completion and enactment of Nevada Revised Statutes.

WHEREAS, The 48th session of the legislature of the State of Nevada, by unanimous vote of the members thereof, has enacted into law the Nevada Revised Statutes as the law of the State of Nevada to supersede all prior laws of a general, public and permanent nature; and

WHEREAS, Nevada Revised Statutes constitutes a complete revision and reorganization of all general statutes enacted during the 95 years that Nevada has existed as a state and territory, and is the first such revision in the history of our state; and

WHEREAS, The preparation of Nevada Revised Statutes was a monumental undertaking requiring a degree of intelligence, knowledge, technical ability and dedication possessed by few men; and

WHEREAS, The State of Nevada was fortunate that the Justices of the Supreme Court of the State of Nevada, in their capacity as the Statute Revision Commission, were able to secure as director of the commission Russell West McDonald, a native-born Nevadan, educated in the public schools of our state, a Rhodes scholar and a graduate of Stanford Law School, who was eminently qualified in all respects to perform the tremendous task imposed upon him; and

WHEREAS, The enactment of Nevada Revised Statutes marks the culmination of nearly 6 years of exceptionally devoted public service on the part of Russell West McDonald as statute reviser and legislative bill drafter; now, therefore, be it

Resolved by the Assembly of the State of Nevada, the Senate concurring, That the legislature of the State of Nevada hereby extends

Exhibit "5"

to Russell West McDonald its most hearty congratulations upon the completion and enactment of Nevada Revised Statutes and expresses to him its gratitude and that of the people of the State of Nevada for the years of selfless, dedicated and devoted effort which he has contributed in the public service to the preparation of Nevada Revised Statutes; and be it further

Resolved, That a copy of this resolution, signed by all of the members of the 48th session of the Nevada legislature, be duly certified by the secretary of state of the State of Nevada and be transmitted forthwith to Russell West McDonald.

Assembly Concurrent Resolution No. 2—Committee on Legislative Functions

FILE NO. 3

ASSEMBLY CONCURRENT RESOLUTION—Memorializing the late United States Senator and governor, Edward P. Carville.

WHEREAS, The people of our state suffered a tremendous loss on the 27th day of June, 1956, by the passing of the beloved and esteemed Edward P. Carville; and

WHEREAS, Edward P. Carville, affectionately known as "Ted," was a native of Mound Valley, the son of a pioneer Nevada family, was educated in the schools of this state, and was a graduate of Notre Dame University; and

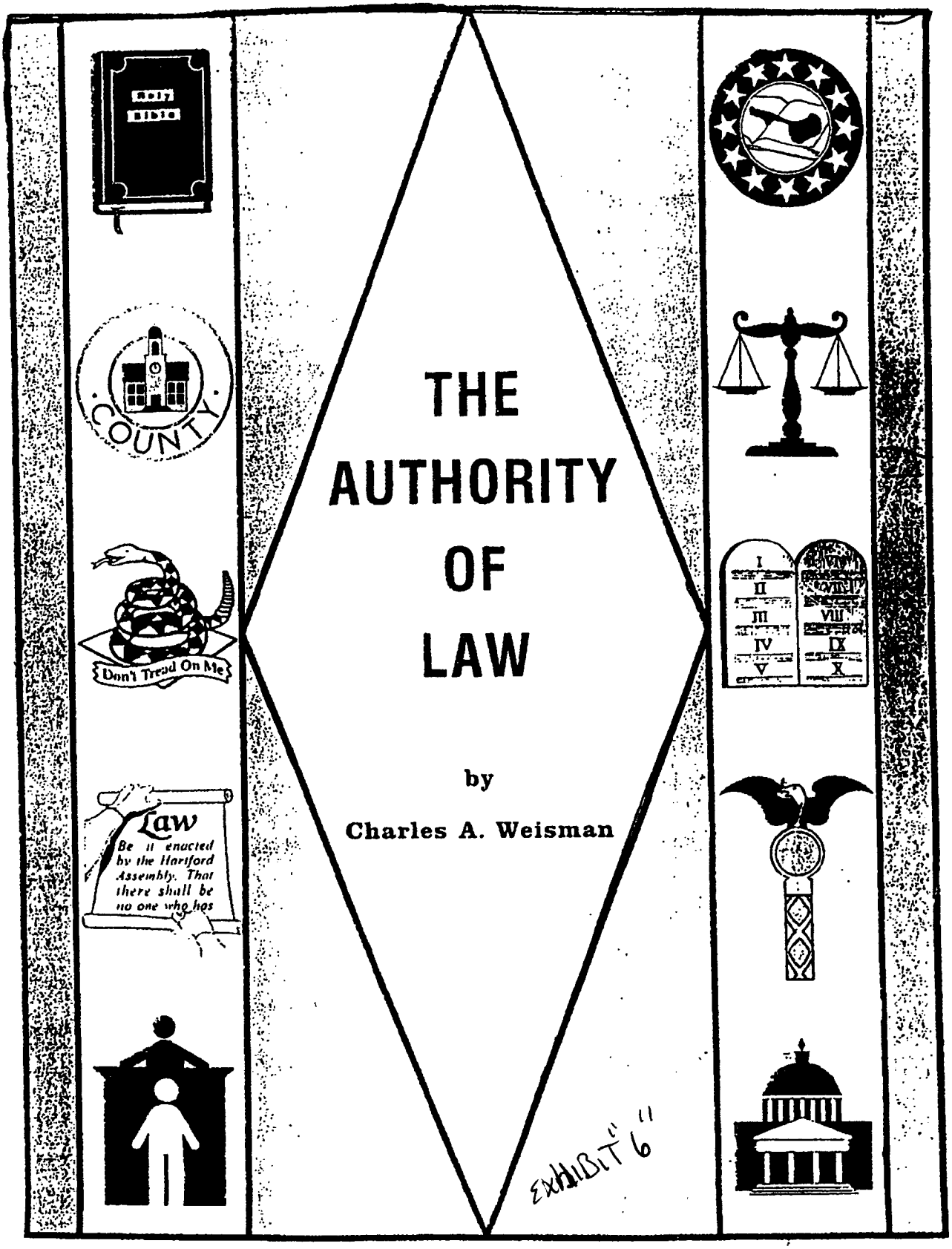
WHEREAS, Few persons have ever held so many high offices of honor and trust as the late "Ted" Carville, who, in addition to his role as a civic leader and outstanding attorney, served with distinction as district attorney, district judge, United States District Attorney, and finally as our governor and United States Senator, and his industriousness, selfless dedication and integrity were the keys to his success as a lawyer and public servant and will forever remain as a radiant example for our future statesmen; now, therefore, be it

Resolved by the Assembly of the State of Nevada, the Senate concurring, That we express this day our profound sorrow and condolences to the family of the late Senator Carville and tender them our deepest sympathy, and that we further acknowledge to them the irreparable loss which the calling of the late Senator Carville means to this state and nation; and be it further

Resolved, That the written form of this resolution be given such permanency as is possible for us to give by spreading it upon a memorial page of the journals of the assembly and the senate of this day in memory of and as a solemn tribute to Edward P. Carville; and be it further

Resolved, That a duly certified copy of this resolution be prepared by the secretary of state of the State of Nevada and be transmitted forthwith to the bereaved family of the deceased.

Exhibit "5"



THE AUTHORITY OF LAW

by

Charles A. Weisman

EXHIBIT "6"

TO: Residing Court Judge Douglas Horndel
623 Case No. C-217569 Dept III

THE AUTHORITY OF LAW

2nd Edition, November, 1996

Published by: Weisman Publications
11751 W. River Hills Dr. #107
Burnsville, Minn. 55337

PRINTED IN THE UNITED STATES OF AMERICA

— CONTENTS —

Exhibit 6

2

— 1 —

Some Facts About Law

What is Law?

Law is a concept that we are exposed to all of our lives, and which affects our lives and the things around us. Law is as essential to a well ordered universe as it is to a stable and just civil or jural society, or a properly kept family unit. That we might better understand how law relates to us we need to define what it is or should be. The following is a definition of law from *Black's Law Dictionary:*

1. That which is laid down, ordained, or established.
2. A system of principles and rules of human conduct.
3. A rule of civil conduct.
4. A law is a general rule of human action.
5. A law is a command which obliges a person or persons.[1]

Law is basically a rule that guides, directs or limits the conduct or action of something or someone, which is declared by some authority. The physical laws of nature guide, direct and limit the action of matter and energy. There thus are laws of thermodynamics, electricity, pressure, light, magnetism, gravity, chemistry and other physical laws. Our concern with law is its application to ourselves as a rule which guides and directs our action or conduct. A set of such laws establishes a jural system or order.

A law that regulates human conduct has attributes similar to physical laws. But laws regulating human conduct are distinguished from physical laws in that they are not self-executing, as are physical laws. Such laws usually need an outside force to assure they are executed. Also, a law which regulates human conduct is not always of effect or enforceable, as it is limited or controlled by other laws and conditions. Where a conflict of laws exists, the superior law prevails. Also, a law human conduct cannot be enforced where a right of a person to act differently exists. When the proper law is enforced or upheld, it is regarded as justice or doing that which is right and just.

Law then must have a binding legal force, and an appropriate means for its enforcement or execution to be of any use or importance in human affairs. This is because the concept of law implies a command, not an opinion or suggestion. Certainly no law would exist, or need to exist, if there were not those who are required to follow or obey it.

A law regulating human conduct can be of two types. It can be *negative* by prohibiting an act or declaring that it shall not be done, or it can be *affirmative* by commanding or requiring an action to be done. Most law is of a negative nature. Law can also be written or positive, such as a statute or constitution, or it can be unwritten, such as common law, natural law, or international law. We will find that what we are subject today are not constitutions or even legislative statutes directly, but a type of unwritten law.

If one is obliged or required to obey a law, there must of necessity be an authority for the law to exist.

> Law in the sense in which courts speak of it today, does not exist without some definite authority behind it.[2]

1 *Black's Law Dictionary*, 2nd Edition, p. 700.

2 *Black & White Taxi Transfer Co. v. Brown & Yellow Taxi Transfer Co.*, 276 U.S. 518, 533 (1927) Exhibit 6

The question we should be asking or looking into regarding all the oppressive and what appears to be unconstitutional law is, what is the authority behind this law? The answer to this primarily depends upon the source of the law and our relationship to that source.

The Source of a Law

We generally understand that all laws which regulate human conduct are either human or divine according to whether they have man or God for their author or source. Under Anglo-Saxon jurisprudence, the law of God has always stood in pre-eminence in relation to human law.

> Man's laws are strengthless before God's laws, consequently a human law, directly contrary to the law of God, would be an absolute nullity.[3]

While this proposition is quite true and important, it also acknowledges that man is a source of law. Actually, God has in many instances recognized that this ability or power for human law does exist, as with kings, patriarchs or heads of a house.

For something to be regarded as a law, it must come from a source which has authority to enact the law. If a person is required to follow a law of another person or entity, then that person must in some manner or degree be subject to the law making entity. Thus the authority for a law depends on the source of the law, and the relationship between that source and the one obligated to follow the law. Let us look at some examples of this concept.

The prime example of a law making authority is God. We readily acknowledge that God can enact laws which we are obligated to follow. But what is His authority to do so? Why are we required to follow laws of God? Is it because God is all powerful, or all knowing or because He is eternal? No it is not. God's authority to place law over us lies not in the fact that He is omnipotent or a Supreme Being, but rather in our relationship to God. That relationship lies in the fact that God is our Creator and provider. Sir William Blackstone expressed this relationship in his discussion on "the nature of laws," as follows:

> Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being. A being, independent of any other, has no rule [law] to pursue, but such as he prescribes to himself; but a state of dependence will inevitably oblige the inferior to take the will of him, on whom he depends, as the rule of his conduct. . . . And consequently, as man depends absolutely upon his Maker for everything, it is necessary that he should in all points conform to his Maker's will.[4]

God has the authority to make law we are subject to because we are His creatures and because of our dependence upon Him for necessities of life. These things establish a relationship between us and God, making us legally obligated to Him. Thus, because of these relationships God has authority to make laws we must follow.

Similar to this is the authority of a parent to make laws which a child must follow. A parent is a law making authority over a child not because the parent is stronger or bigger or even more intelligent than the child, but because of the relationship between parent and child. The child was produced by the parent and is dependent upon the parent, thus when laws come from that source, the child's parent, the child is bound to obey. The parent has authority over the child because of the relationship that exists between them. But that same parent does not have authority to prescribe rules of conduct for another child as no legal relationship exists between them. The superior strength and knowledge of that parent does not give him the right to make law for any child he thinks needs correction but his own

3 *Borden vs. State*, 11 Ark. 519, 526 (1851).

4 1 *Blackstone's Commentaries*, § 38, p. 39.

An employer and employee have a legal relationship between them that gives the employer an authority to prescribe certain rules of conduct or laws that the employee must follow. The employer has authority to make such rules not because it has more wealth and assets than the employee, but because the employee has entered into a legal agreement with that employer. The same is true with the legal relationship between a master and servant. The servant is legally bond to follow the commands of his master, but not those of another master.

A colonel in the military has the authority to make commands or laws that majors, lieutenants, and privates must obey and follow. There is a legal relationship between them since they each have placed themselves under a Military Code and the Articles of War which require them to obey all lawful orders of a superior officer. However, a private in the American army is not required to obey the orders of a colonel from the German army as there is no legal relationship between them. There thus is no authority for a German colonel to give him laws or orders to follow.

A King has the authority to give laws and commands which his subjects must follow because of their relationship to the king as subjects of his kingdom. The king has control over the land and also provides protection for the people of his kingdom, creating a legal relationship between him and the subject.

We thus see that there are many valid sources of a law, but the authority that is needed for one to obey a law or be subject to a law from a particular source depends upon one's relationship to that source. If there is no legal relationship, there can be no authority for a law. A king cannot make people of another land or kingdom subject to his laws. A general from England cannot give commands to a buck private in the American army because there is no common relationship between them. The president of General Motors has no authority to make rules for an employee of Joe's auto body shop. In each case there is no legal relationship between the two parties.

Also, according to this principle of authority and law, is the fact that true lawful authority is not derived from force or power or wealth, but from a legal relationship between the two parties involved. When laws exist because of force or power, it is despotism or tyranny, not authoritative law. Many despotic governments have existed throughout history because they were based upon the concept of "might makes right." Force and power are not a substitute for a lawful relationship. God could certainly play the despot and compel obedience by force, since He has the power to do so. But that is not the way God works. His authority comes from legal and spiritual relationships between Him and His people.

Legislative Authority

Today we have the situation of legislative bodies, such as the State Legislature or Congress, existing as a source for making laws. The question we face is what is the authority for these legislative bodies to make laws we are subject to? This can only be answered by determining the relationship we have with the legislative body in question.

The fundamental concept of American government is that all political power which exists resides in the people.

> **The Constitution of Virginia, 1776, Sec. 2.** That all power is vested in, and consequently derived from the people; that magistrates are their trustees and servants, and at all times amenable to them.

> **Constitution of Massachusetts —1780.** All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.[5]

These declarations reveal the concept of delegation of powers. The people had political power or authority and delegated some of it to the legislature by declaring in their written Constitution—*"The legislative authority shall be vested in a General Assembly, which shall consist of a Senate, and House of Representatives."* This entity thus became a source of legislative authority. The people in effect said that this body of men can enact laws for specific purposes—i.e., the promotion of health, safety, morals and good order of the people or society. The U.S. Constitution enumerates specific topics that can be legislated upon—i.e., regulate foreign and interstate commerce, enact certain taxes, establish standards, etc. Thus the legislative bodies "derived" certain powers from the people.

The above declarations also reveal the nature of the legal relationship that exists between the people and those in government. Government employees are the "substitutes" or "agents" or "servants" of the people. Thus it is a contractual relationship which exists between the people and the Legislature. The people have in effect hired or commissioned certain individuals to occupy and to perform certain duties and functions within the offices and departments named in the Constitution. In performing these duties and functions they are to conform to fundamental law, rights and common law concepts, such as due process, and the things prescribed in the written Constitution.

We thus are bound to the valid laws of the legislative bodies named in a constitution or city charter. We are not bound to the legislature by its terms, but by our own terms, as Justice Wilson of the U.S. Supreme Court said:

> The only reason, I believe, why a freeman is bound by human laws, is that he binds himself.[6]

Thus the legislative bodies are given certain powers to enact certain laws within the confines of certain limitations which the people have agreed to be bound by. Whether we regard this as good or bad, wise or unwise, or that too much or too broad of powers were granted, is rather academic at this point. The fact remains that this is the way things are. The State Legislature or Congress can make laws that we the people are subject to, as there is a legal relationship between them.

Yet the evidence is clear today that our country has been invaded by a hostile, alien people who promote a law and religion that is contrary to the fundamental law and Christian foundations originally established in this land. They can be called socialists, communists, globalists, anti-Christs, and subversives, but their objectives are to enrich themselves by controlling your life, liberty and property. Their agenda and objectives cannot be implemented within the established frame of constitutional government. Thus they have laws enacted which are oppressive, contrary to individual rights, and which build up a socialistic type of government.

These subversive, anti-Christian people knew they could not gain control of the country by force or revolution as they did in Russia and France. They had to find a legal means to recreate or re-establish government, but done in such an indirect and clandestine manner so that no one would detect the change. The result of their actions is a government that is corrupt, arbitrary and oppressive but without being "unconstitutional." A necessary step in achieving this objective was their restructuring of the entire economic system of the country by the Federal Reserve Banking system, a system which they essentially own.

The established legislative bodies posed several obstacles and limitations on the plans

5 Thorpe, *The Federal and State Constitutions*, Washington, 1901, 7 vol.

6 *Chisholm v. Georgia*, 2 Dallas (2 U.S.) 419, 456 (1793).

of these subversives, and thus could not be directly used by them as a lawmaking source. This is because these legislative bodies were; 1) agents of the people and "answerable" to them; 2) subject to the limitations set forth in the constitution; 3) unable to violate the fundamental rights which the constitution was formed to protect; 4) forced to conform to due process as it existed under the Anglo-Saxon common law; and 5) only able to enact laws in the manner and process prescribed by the Constitution.

These legislative limitations posed some severe problems for the corrupt, power elite who wished to control the life, liberty and property of the people of this country. In order to get the oppressive, totalitarian type of laws enforced upon the people of America they needed to get laws passed by another source other that the State Legislature or Congress; but at the same time make it appear as though the laws were actually laws of the State Legislature and Congress.

Since they could not directly use the current legislative bodies to do things their way, they used them as an indirect means to create not only a new source of laws, but to create new executive and judicial functions as well. This was done by getting the current legislative bodies to create artificial legal entities —boards, commissions, bureaus, agencies, and trusts, which exist by statute instead of by the constitution or common law. The intent was to have these legal entities assume the role of governmental functions, or financial ones as was done with the Federal Reserve Board in 1913, or educational functions as was done with the NEA.

These subversive forces in our midst thus got the legislatures to recreate a new judicial system. We thus have courts that have been established or reorganized by legislative statute. They create new courts, and endow them with their judicial "powers." Sometimes these courts will be called by the same names as used in constitutions to mislead people into thinking they are constitutional courts which the people endowed with power. The court exists by "statute" or grant of the legislature just as a corporation exists by statute.

The legislatures have also created an executive body to enforce the corrupt and oppressive laws. We thus have police, highway patrol, Federal marshals, ATF agents, etc., which exist by a commission or agency and whose powers come from "statutes" not the constitution or common law. To make matters worse, somehow the subversive elements in our land have established a new source of law other than the State Legislature and Congress.

The cause or reason for how this all came about is actually a theological issue and not a legal issue. God certainly does allow or cause oppression to come upon a people for the purpose of testing them, or as just punishment. In doing so it becomes necessary that the people turn to God and rely on Him for deliverance from such oppression. The complexity and intricacies of the legal, political and economic problems we face today could not have been the sole work of human design and effort. The subverters could not possibly be behind every unlawful act and control all the things that have made up the current corrupt legal system. Such a feat could only come about by the providence of God.

A legal explanation can help to clarify the nature of things, and what has or has not happened to make things unlawful, but the cause is a spiritual question which is not within the scope of this material. This material shows the debauched and illegal nature of the laws used in criminal proceedings today. This was legally done by creating commissions to "revise," "codify" and rewrite the laws of the legislature, and pass them off as being laws of the State or Congress. We thus need to look into these "codes" and "revisions" of statutes to see their true nature in light of fundamental law and the Constitution.

– 2 –

Codes & Revised Statutes

During the 19th century, the concept of "codes" was introduced as a means to classify and organize a group of laws related in subject matter into one published volume. These codes included such things as a code of civil procedure, a code of criminal procedure, a penal code, a code of probate courts, a building code, a private corporations code, etc. Each of these codes covered one specific subject or subject area.

As these codes became more widely used, there resulted considerable debate over their validity and usefulness. A summation of the arguments for and against these codes is listed in *West's Annotated Californian Codes*, vol. 1, in which it discusses the "Development of the Law in California." It mentions the objects of modern codification as laid down by David Dudley Field, who was the pioneer advocate of codification. His views on codification, as expressed in 20 *Amer. Law. Rev.* 1, 1886, were that codes would make it easier to find the law and would keep judges from making laws ("bench law"). But the writers of this annotation did not see these objectives being fulfilled in modern times:

> The history of lawmaking in California demonstrates, that the hopes expressed by David Dudley Field have not been fully attained even in our comprehensive program of codification; judges still engage in the making of law; the ordinary citizen is still lost and often bewildered among the myriad of laws; and finding the law is yet often a laborious process for even the experienced practitioner.

Many debates also existed regarding the legality or constitutionality of such codes. An Alabama court stated that the criminal code enacted in its state was "not within the letter or spirit of the mandate of the constitution, * * * nor can it be supposed that it was within the contemplation of the framers of the constitution."[1] The Court also said that the code was done for the sake of "convenience."

Whatever has been said or could be said of these specific-subject codes in a negative sense, much more could be said of the modern-day comprehensive codes or revisions. These works are a revision of all the statutes of the state or nation, and thus embrace every subject in a multi-volume publication.

To understand the nature and validity of today's modern codes and revisions, we need to understand the established or constitutional method of enacting and publishing laws. When laws are passed by both houses of a legislative body, the bill is sent to the governor or president to sign. If it is signed the enacted bill goes to the office of the Secretary of State, who is the keeper of all official government documents and records. The Secretary of State is the official who possesses the state seal (or national seal), and affixes that seal to the true and valid documents and records that come to his office. Most State Constitutions prescribe these facts. Thus the laws passed by the legislature which are generally recognized as such are those that are issued or published by the Secretary of State:

> We consider that the Secretary of State has an indisputable legal duty to publish validly enacted laws; a duty imposed upon him by Article IV, Section 4(b) of the Florida

1 *Ex parte Thomas*, 21 So. 369, 370 (Ala. 1897).

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> Constitution, requiring him to "keep the records of the official acts of the legislative and executive departments."[2]

As to whether a bill has become a law or not, the fact that the publication was verified by the Secretary of State is proof that it has:

> The publication of an act in the volume of session laws of the year in which it purports to have been approved and verified by the secretary of state, creates a presumption that it became a law pursuant to the requirements of the constitution.[3]

As more laws became enacted, the usual or traditional mode of recording and publishing them gradually underwent a change:

> The acts passed by each legislative session of Congress or of a state legislature are compiled at the end of the session in what is known as the "Statutes at Large" in the national government, or as "Session Laws" in the states. After a few years it becomes very difficult for judges, attorneys and the general public to know what the law is. Amendments have been made, many sections have been repealed, and even the legislators are often at a loss. At such time a compilation may be made. This is simply a gathering together, usually into a single volume, of all the laws in effect in a given jurisdiction. Changes in punctuation and spelling may be made, and repealed and unconstitutional laws eliminated, but little more. If a more constructive result is desired, a revision or codification may be ordered.[4]

So the laws of the state have traditionally been published by the Secretary of State in a book titled "Session Laws" (or in some cases "Acts" or Resolves" of the State), while the acts of Congress were always published in the "Statutes at Large." But the law-making factories of the State Legislatures and Congress had created a problem with the mass of laws they enacted. It became difficult to keep track of all these laws, so it was decided that a new method of simplifying the way they were published needed to be devised. Thus sometimes the laws were reorganized and recompiled into other books to get rid of the repealed and unconstitutional laws. These compilations were usually done by the Secretary of State since all the records were in his office.

The Statutes at Large and Session laws are themselves a compilation of laws. But a "revision" or "codification" is very different from a mere compilation. They are different because they are written or drafted by a commission or committee or some non-legislative source. Further, the laws are not just compiled together, they are altered and modified along with additions or deletions made to the contents. They then are passed off as the laws of the Legislature.

In a case in Kentucky we have an example of this change in the publication of laws. In 1894 the "first compilation" of the laws was conducted by "private editors." This was just a reorganization of the existing laws. This type of compilation continued up to 1935. In 1936 the legislature "directed and empowered the Governor to appoint a committee, selected from a list submitted by the Board of Commissioners of the Kentucky Bar." This committee of lawyers then "revised, codified, annotated and published" their work, calling it "the Statute law of Kentucky." But this work was not much more than a compilation since the act authorizing it provided that the Committee "should not alter the language or sense of any act of the General Assembly." In 1943, this provision was removed and the Legislature called for a "definite plan for revision and publication of the statutes."

> Thus, the Legislature was getting away from the idea of a mere compilation. It

2 *Florida Optometric Ass'n v. Firestone*, 465 So.2d 1319, 1321 (1985).

3 *Bound v. The Wisconsin Cent Ry. Co.*, 45 Wis. 543 (1878).

4 Harvey Walker, *Law Making in the United States*, N.Y., 1934, p. 268.

> empowered the Committee to prepare and submit a complete revision, broader in its scope and more comprehensive in its purpose.[5]

The Legislature was giving more power and authority to this committee it had commissioned to "revise" the laws of the state. This change was noted by state Supreme Court:

> The Kentucky Revised Statutes were, therefore, enacted as the law of the Commonwealth and not adopted as a compilation. The distinction is important. A compilation is merely an arrangement and classification of the legislation of a state in the exact form in which it was enacted, with no change in language. It is merely a bringing together in a convenient form of the various acts of legislation enacted over a period of time. It does not purport to restate the law or to be a substitute for prior laws. It does not require any legislative action in order to have the effect it is intended to have. * * * A revision, on the other hand, contemplates a redrafting and simplification of the entire body of statute law. * * * A revision is a complete restatement of the law. It requires enactment by the legislature in order to be effective and upon enactment it becomes the law itself, replacing all former statutes.[6]

We thus have a committee of lawyers re-creating the laws of the state. Such committees have become the new source of law in the nation. While the legislature will "enact the revision into law," this is no different than when the legislature approves the by-laws of a corporation. The laws of the corporation do not become laws of the legislature because of this. Rather, they are laws of the artificial legal entity (or corporation) which the legislature created, just as the "Revised Statutes of Kentucky" are laws of the artificial legal entity or commission that the legislature created.

This process is also no different than when the Legislature authorizes the laws of a city, or approves a city charter. The laws and charter are not regarded as those of the Legislature, or as laws of the State. While the laws which the "committee" drafts are based upon original statutes of the Legislature, they are a complete restatement of them. New material is added, items are removed, provisions are modified. The results are, in legal parlance, laws that are of this artificial legal entity known as "The Commission on Revising Statutes" or "Reviser of Statutes." This legal entity is no different than a corporation or any other legal entity which the legislature created or commissioned.

✓The laws which this entity writes cannot be deemed the lawful statutes of the State. This is especially so since the various Constitutions of the land specify how each law is to come into being. It was never the intent that such a comprehensive mass of legislation containing every law of the State, and passed in one act, would be the mode for making laws. There are inherent problems associated with this method, as explained by one legal writer:

> The usual practice is to introduce the revision [of statutes] as a single bill, sending it through the same process as any other bill. Obviously, however, the members of the legislature cannot give such a comprehensive measure adequate consideration. It is almost as difficult for a committee to do so.[7]

When the mass of laws from the committee is complete, the legislature is to approve it as a single statute, but because it is so massive not one single legislator will read the new body of law. There are no discussions in the legislature on any of the hundreds of new or revised laws of the committee. Further, it is required by fundamental law and constitutional mandates that a bill be read on three separate days in the legislature. This is impossible with the comprehensive codes that have been adopted in modern times. There thus is no real

5 *Fidelity & Columbia Trust Co. v. Meek*, 171 S.W.2d 41, 43, 44 (1943).

6 Ibid., p. 44.

7 Walker, *Law Making in the United States*, p. 272.

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opportunity for citizens to raise questions or objections in the legislature to the numerous laws they will be subject to. No one knows what is contained in the revision of laws. The unknown contents are revealed by the textual errors discovered afterwards; as Walker states:

> Many revised statute bills are voted through only for the members to find later numerous 'jokers' and unwise provisions which must then be repealed or amended—and the process of change goes on.

Again we have to ask, is this the mode and process intended by the framers of the Constitution for laws to come into existence? That this is a highly questionable process is revealed by the fact that several states have passed amendments to the State constitutions which allow for a "codification of laws." This indicates that neither this procedure nor the basic concept are not in line with traditional constitutional methods for enacting laws.

According to the Constitution, enacting and changing laws for a state falls upon the legislative branch of government, and that branch cannot delegate the power to any other. The "Code Commissioners" or "Revising Committee" may be composed of some members of the Legislature, but it is also composed of lawyers, judges and private persons. It thus has been noted that "revisers have no legislative authority, and are therefore powerless to lessen or expand the letter or meaning of the law."[8]

Therefore the work of these committees cannot be regarded as law pursuant to the Constitution. The law they produce is another manner of law coming from a source other than the Constitutionally authorized source. These comprehensive revisions or codifications are like a private law approved by the legislature.

Governments, like individuals, tend to do things because they are convenient and easy, such as with codes. But whenever governments do things for convenience sake, they usually transcend constitutional limitations or trespass on individual rights. The desire to have easy arrests without the need of a warrant is one area in which government has done things which are more convenient, but are unlawful.

The completely comprehensive revisions which embrace every law of the state first appeared in the 1940's. Walker states that at the time of his writing (1934), "No American state has a complete code."[9] That is, no state had yet adopted a comprehensive revision of all statutes. We saw that Kentucky adopted its comprehensive revised statutes in 1943. Minnesota adopted a revision in 1945, Illinois and Missouri in 1939, and Virginia in 1950.

The mass of laws written by revisers and codifiers is not the law of the legislature, even when approved by it. They were not enacted in the mode intended by the terms of the Constitution. Also, since we have no legal relationship to the commission or committee that drafted the code or revised statutes, it would seem the laws they write have no authority over us. This is made clear by the fact that these comprehensive codes and revisions have no sign of authority which all law is required to have.

When we look at the specific-subject codes, or the ancient codes of the past, such as the Code of Justinian, the Roman Twelve Tables, or the Napoleonic Civil Code, we find in their contents or on their face the authority by which they existed or were promulgated. The specific-subject codes had what is called an "enacting clause" which is an official declaration of authority and authenticity. The modern day codes have no such declaration of authority on their face or contents. We thus need to look further into this key issue of authority by way of an enacting clause.

8 *State v. Maurer*, 164 S.W. 551, 552, 255 Mo. 152 (1914).

9 Walker, *Law Making in the United States*, p. 272.

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– 3 –

The Enacting Clause

Constitutional Requirements of Laws

All written constitutions prescribe the mode and process of making laws. This includes the reading of the bill on three different days in each house, that if passed it is to be signed by the speaker of the house and by the president of the senate, the recording of the votes upon the journal, being signed by the governor or president, and other such procedures.

But the constitutions also regulate the *form* and *style* in which laws are to be enacted to make them laws of the State. The form and style are regarded as essential parts of the law and thus must be included at all times with the law to make it a valid law. Laws or statutes traditionally have had three main parts:

> The three essential parts of every bill or law are: (1) the title, (2) the enacting clause, and (3) the body.[1]

The title and enacting clause of a law are two aspects of its *form* and *style* which are necessitated by both fundamental law and constitutional mandate. Titles and enacting clauses have been used in the process of making laws long before America was a country. But when the comprehensive "Revised Statutes" started to be used, the titles and enacting clauses disappeared from the records and publications of the laws. A look at any modern Revised or Codified State Statute book or the United States Code will reveal that the laws within them have neither titles nor enacting clauses. What does this mean? We have to look at these areas specifically to see the ramifications they have on the authority of law as found in these codes and revisions. We will first examine the enacting clause as this is the main item that directly relates to authority of law.

An enacting clause, sometimes called an enacting style or enacting authority, is that part of a law which usually comes after the title and before the body of the law. The following shows the manner in which this provision is prescribed in some of our state constitutions:

> **CONSTITUTION OF CALIFORNIA—1879**
> SECTION 1. The enacting clause of every law shall be as follows: "The People of the State of California, represented in Senate and Assembly, do enact as follows."

> **CONSTITUTION OF INDIANA—1851**
> SECTION 1. The style of every law shall be, "Be it enacted by the General Assembly of the State of Indiana."

> **CONSTITUTION OF TEXAS—1876**
> SEC. 29. The enacting clause of all laws shall be, *"Be it enacted by the legislature of the State of Texas."*

> **CONSTITUTION OF NORTH CAROLINA—1876**
> SEC. 21. The style of the acts shall be: "The General Assembly of North Carolina do enact."

The Constitution for the United States does not prescribe an enacting clause, but Congress has from the beginning used such a clause on all congressional laws. The style which has preceded all laws of Congress is, *"Be it enacted by the Senate and House of Representatives of the United States of America."* The Supreme Court of Georgia in 1967, said that "the constitutions of 46 states specify the form of

1 H. Walker, *Law Making in the United States*, p. 316. Some laws also have an optional "preamble" after the title.

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the enacting clause. Only the constitutions of Delaware, Georgia, Pennsylvania and Virginia, as well as the Constitution of the United States, are silent on the point." The Court also stated the function and purpose of such a provisions:

> The enacting clause is that portion of a statute which gives it jurisdictional identity and constitutional authenticity. * * * The purpose of an enacting clause is to establish the act; to give it permanence, uniformity and certainty; to afford evidence of its legislative, statutory nature, and thus prevent inadvertence, possible mistake, and fraud."[2]

The enacting clause gives a statute its "constitutional authenticity," which makes its use essential since the constitution is the source of the legislature's authority for enacting laws. A law cannot be regarded as coming from a constitutionally authorized source if it does not have an enacting clause. The enacting clause provides evidence that the law which follows is of the proper legislative source or jurisdiction. This function and purpose of such a constitutional provision has often been expressly stated:

> What is the object of the style of a bill or enacting clause anyway? To show the authority by which the bill is enacted into law; to show that the act comes from a place pointed out by the Constitution as the source of legislation.[3]

> The enacting clause is a short formal statement, appearing after the title, indicating that all which follows is to become law, and giving the authority by which the law is made. There is no excuse for not using it.[4]

> The enacting clause is the section of a bill or statute which establishes the whole document as a law.[5]

> The enacting part of a statute is that which declares its enactment and identifies it as an act of legislation.[6]

Since the Legislature, and not any other body or agency, is given certain law making authority, an enacting clause is necessary to show that the law in question comes from that duly assembled Legislature. If any law is to have authority behind it, it must have an enacting clause preceding it, as is required by the constitution and fundamental law.

Historical Usage of An Enacting Clause

An enacting clause of some sort has long been used to preface a law, order or command, so as to declare or make known to all concerned the source of the law, and thereby the authority for that law or order to exist. It is in effect a statement of the name of the authority that enacted the law affixed to the law, or on its face, to make it clear that all which follows is to be law from that authority so named.

> The almost unbroken custom of centuries has been to preface laws with a statement in some form declaring the enacting authority. The purpose of an enacting clause of a statute is to identify it as an act of legislation by expressing on its face the authority behind the act.[7]

The use of an enacting clause is one of the oldest concepts used in the process of issuing or enacting laws, edicts and commands, to identify the source and authority for the law. It was perhaps first used by God Himself when He issued a command, directive or law. Thus when God gave Israel the Ten Commandments it was made known to Israel the source and authority of these laws:

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2 *Joiner v. State*, 155 S.E.2d 8, 10, 223 Ga. 367 (1967).

3 *Ferrill v. Keel*, 151 S.W. 269, 272, 105 Ark. 380 (1912).

4 Harvey Walker, *The Legislative Process*, N.Y., Ronald Press Co. (1948), p. 346.

5 *Pearce v. Vittum*, 61 N.E. 1116, 1117, 193 Ill. 192 (1901).

6 *State v. Reilly*, 95 Atl. 1005, 1006, 88 N.J. Law 104 (1915).

7 73 *American Jurisprudence* 2d, "Statutes," § 93.

I am the LORD thy God, which brought you out of the land of Egypt, from the house of bondage.

Thou shalt have no other gods before me.

Thou shalt not make for yourself any graven image.

Thou shalt not take the name of the LORD thy God in vain

Keep the Sabbath day to sanctify it. . . [8]

That which is italicized is essentially the enacting clause for the Ten Commandments. It states or identifies the source of the laws that follow. They came not from just any god, but from the God which brought Israel out of Egypt. That which follows the statement of authority is the body of the law. When additional laws were given by Moses, he made a statement of the authority for the laws:

> Now these are the commandments, the statutes, and the judgments, which the LORD your God commanded to teach you, that you might do them in the land where you go to possess it.[9]

> And Moses gathered all the congregation of the children of Israel together, and said to them, These are the words which the LORD has commanded, that you should do them.[10]

> And Moses said to the Congregation, This is the thing which the LORD commanded to be done.[11]

These were all enacting clauses for the commandments and laws which followed. Through these statements Israel knew the authority behind the laws. They were not just something Moses made up. They did not come from Pharaoh or the king of Mesopotamia. They were not laws of the Baal god. They came from Jehovah God.

Sometimes such statements also appeared after the laws of God were read or stated, as with the food laws which concluded, "For I am the LORD your God" (Lev. 11:44; see also the laws in Lev. 19). But in any case, Israel always knew by what authority the laws they were to follow were enacted. Even before this time, when God dealt with the patriarchs, we see God making a formal declaration of His identity, and thus authority:

> And when Abram was ninety-nine years old, the LORD appeared to Abram, and said to him, I am the Almighty God; walk before me, and be thou perfect.[12]

At the outset of his communication with Abraham, God makes a statement of His identity. Thus it was known to Abraham and to all of us who read Scripture that the terms of the covenant that followed were by the authority of "Almighty God," and not of any man or king or government.

This concept of an enacting authority was used by every king and ruler when issuing their laws, decrees or proclamations. We thus see that when Cyrus, king of Persia, issued his written proclamation for the return of the Israelites back to Jerusalem and the rebuilding of the Temple, he prefaced the proclamation with these words: "Thus says Cyrus king of Persia."[13]

We again see a type of enacting clause in the letter of king Artaxerxes to Ezra authorizing him to bring the people of Israel to Jerusalem, and directing what should be done and observed. The letter starts as follows:

> "Artaxerxes, king of kings, To Ezra the priest, . . . I issue a decree that all those of the people of Israel. . ." (Ezra 7:12,13).

8 Exodus 20:2-8; Deuteronomy 5:6-12.

9 Deuteronomy 6:1

10 Exodus 35:1

11 Leviticus 8:5.

12 Genesis 17:1

13 Ezra 1:2; 2 Chronicles 36:23

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The Caesars and Emperors of the Roman Empire had always prefaced their edicts and commands with a statement containing their name to show the source and authority for the law. Thus when Constantine issued his edict to suppress soothsayers, it started by stating:

> The Emperor Constantine Augustus to Maximus. No soothsayer may approach his neighbor's threshold, even for any other purpose.[14]

In the early middle ages in Europe (476-1000 A.D.), the Merovingian and the Carolongian kings would often form councils to help regulate civil or ecclesiastical matters. The decrees would often name the king and council, and state, "We do ordain . . ."

A statement of enacting authority was always used in the royal decrees and commands of the kings of England. Thus *Magna Carta* (1215), begins with the name of the authority which adopted and issued it:

> "JOHN, by the grace of God, king of England, lord of Ireland, duke of Normandy. . ."

The *Statutes of Westminster*, which were issued in 1275 by king Edward I, begins: "These be the acts of king Edward, son to king Henry, made at Westminster. . ." In the *Ordinance of the Staples* (1353) by Edward III, the decree begins:

> EDWARD by the grace of God, king of England and of France, and lord of Ireland, to all sheriffs, mayors, bailiffs, ministers, and other our faithful people to whom these present letters shall come, Greeting: Whereas, . . .[15]

In the *Letters of Patent to John Cabot* (1496), granting the use and specifying the conditions for certain lands discovered in America, it states:

> HENRY, by the grace of God, king of England and France, and lord of Ireland, To all to whom these presents shall come, Greeting.[16]

When one would read these documents it was immediately known from what source the orders or laws came from, and thus what was the authority behind them. When Parliament developed into a true law-making body around 1440, their use of an enacting clause became a regular part of English statutes to this day. A typical act of Parliament from the reign of King George III, about 1792, reads as follows:

> Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, there shall be no Drawback or allowance paid on the Exportation. . . "[17]

This enacting clause made it known to all by what authority the law before them was enacted. The American colonists were, of course, well familiar with Parliamentary forms and procedure in passing laws. When self-representative bodies started to appear in America, an enacting style was also used by them. The first Assembly of Virginia was convened July 30, 1619 by Governor Yeardley, under the authority of the Virginia Company, and marks the beginning of representative government in America. The Assembly framed the *Ordinance For Virginia*, July 24, 1621, which starts with these words:

> An ordinance and Constitution of the Treasurer, Council, and Company in England, for a Council of State and General Assembly. . . To all people, to whom these Presents shall come, be seen, or heard. . .[18]

The document thus starts off by declaring the authority for the law which follows. In

14 Henry Bettenson, *Documents of the Christian Church*, 2nd edition, Oxford University Press, 1963, p. 25.

15 *Select Documents of English Constitutional History*, edited by G. Adams & H. Stephens, Macmillan Co., London, 1926, pp. 68, 124.

16 Thorpe, *Federal and State Constitutions*, Washington, 1909, vol. I, p. 46.

17 32 George III. c. 60.

another famous document of self-government, the *Mayflower Compact,* begins as follows:

> IN The Name of God, Amen. We, whose names are underwritten, . . .Do by these Presents, solemnly and mutually in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, . . .

The compact sets forth some general principles that are to constitute a government in the colony, which those of that colony are to be under and follow. As to the authority by which this is established, it states, "we whose names are underwritten."

In 1692, the Massachusetts Bay province enacted a law for the punishing of various capital laws, which included idolatry, witchcraft, blasphemy, high treason, murder, poisoning, sodomy, bestiality, rape, arson, and piracy. The act, as found in the original statute book, reads as follows:

CHAPTER 19.

AN ACT FOR THE PUNISHING OF CAPITAL OFFENDERS.

> *Be it ordained and enacted by the Governor, Council and Representatives in General Court assembled, and by the authority of the same,*
>
> That all and every of the crimes and offenses in this present act hereafter mentioned be and hereby are declared to be felony; and every person or persons committing any of the said crimes or offenses, being thereof legally convicted, shall be adjudged to suffer the pains of death.[19]

The enacting clause appeared right after the title, but before the body of the law. All laws from the Assembly were prefaced with such an enacting clause. Thus every person reading them knew from what source the laws came and by what authority they existed. Likewise, an act regulating marriages in the colony of Carolina in 1715, had this enacting style:

> *Be it Enacted by the Plantation & Lords Proprietors of Carolina, by & with the consent of this present Grand Assembly and the authority thereof,* that any two persons desirous to be joined together in the Holy Estate of Matrimony, . . .[20]

In the *Pennsylvania Charter of Privileges* (1701), the document starts out by declaring the source and authority for the provisions of the charter: "William Penn, Proprietary and Governor of the Province of Pennsylvania and Territories."[21] Nearly all the various colonial assemblies, proprietors, governors, and councils which established laws, charters and governments declared their authority in their decrees.

At the time of the American Revolution the colonists, regarding themselves as free and independent, formed governments for themselves. So, just like the *Mayflower Compact,* we also find some statement of authority for the people to ordain a government in a type of enacting clause, as used in the U.S. Constitution: "We the people of the United States." The same concept is found in every state constitution: "We, therefore, the representatives of the people, . . . do ordain and declare," (Const. of Georgia, 1777); or, "We, the people of the State of Alabama, in order to establish justice. . ." (Const. of Alabama, 1901).

All state constitutions now start with an enacting statement that identifies the authority for their existence. Consequently, the framers of these constitutions required that the laws of the legislature also be prefaced with an enacting clause, to show the authority for its laws, as has been done throughout history:

18 *Documents of American History,* edited by Henry S. Commager, Appleton, New York, 1949, p. 13.

19 *The Acts and Resolves of the Province of the Massachusetts Bay,* Wright & Potter, Boston, 1869, vol. I, p. 555.

20 *The State Records of North Carolina,* edited by Walter Clark, Nash Brothers, Goldsboro, 1904, vol. XXIII, p. 1.

21 Commager, op. cit., p. 40.

> By an enacting clause, the makers of the Constitution intended that the General Assembly should make its impress or seal, as it were, upon each enactment for the sake of identity, and to assume and show responsibility. While the Constitution makes this a necessity, it did not originate it. The custom is in use practically everywhere, and is as old as parliamentary government, as old as king's decrees, and even they borrowed it. The decrees of Cyrus, King of Persia, which Holy Writ records, were not the first to be prefaced with a statement of authority. The law was delivered to Moses in the name of the Great I Am, and the prologue to the Great Commandments is no less majestic and impelling. But, whether these edicts and commands be promulgated by the Supreme Ruler or by petty kings, or by the sovereign people themselves, they have always begun with some such form as an evidence of power and authority.[22]

Much of what is often regarded as law, or common law, depends upon what has proven to be legally soundly and commonly used in history. Thus many legal authorities have recognized the historical legacy of using an enacting clause, thus indicating it is a concept of fundamental law.

> Written laws, in all times and all countries, whether the edicts of absolute monarchs, decrees of King and Council, or the enactments of representative bodies, have almost invariably, in some form, expressed upon their face the authority by which they were promulgated or enacted. The almost unbroken custom of centuries has been to preface laws with a statement in some form declaring the enacting authority.[23]

> The propriety of an enacting clause in conformity to this ancient usage was recognized by the several states of the Union after the American Revolution, when they came to adopt Constitutions for their government, and without exception, so far as we can ascertain, express provision was made for the form to be used by the legislative department of the state in enacting laws.[24]

Laws, whether by God or man, have at all times in history used an enacting statement to show the source and authority of the law enacted.

Mandatory Requirement of an Enacting Clause

The question has often been raised as to whether constitutional provisions that call for a particular form and style of laws, or procedure for their enactment, are to be regarded as directory or mandatory. The question is critical since its use will have an affect on the *validity* of a statute or law. If such provisions are directory, then they are treated as legal advice which those in government can decide whether or not to follow. But if mandatory such provisions must be strictly followed or else the resulting act or law is unconstitutional and invalid.

While a few courts at an early period held that such provisions were merely directory, the great weight of authority has deemed them to be mandatory. In speaking on the mandatory character of enacting clause provisions one legal textbook states:

> [T]he view that this provision is merely directory seems to conflict with the fundamental principle of constitutional construction that whatever is prohibited by the constitution, if in fact done, is ineffectual. And the vast preponderance of authority holds such provisions to be mandatory and that a failure to comply with them renders a statute void.[25]

22 *Commonwealth v. Illinois Cent. R. Co.*, 170 S.W. 171 175, 160 Ky. 745 (1914).

23 *Sjoberg v. Security Savings & Loan Assn*, 73 Minn. 203, 212, 213 (1898); *State v. Kozer*, 239 Pac. 805, 807, (Ore. 1925); *Joiner v. State*, 155 S.E.2d 8, 9, 223 Ga. 367 (1967); 25 *Ruling Case Law*, "Statutes," § 22, p. 775, 776; *City of Carlyle v. Nicolay*, 165 N.E. 211, 216, 217 (Ill. 1929); *Joiner v. State*, 155 S.E.2d 8, 9, 223 Ga. 367 (1967).

24 *State v. Burrow*, 104 S.W. 526, 529, 119 Tenn. 376 (1907).

25 *Ruling Case Law*, vol. 25, "Statutes," § 84, p. 836.

When something is "directory" its usage is only an advisable guide, and can be ignored. But the requirement of an enacting clause is based upon its ancient usage in legislative acts.

> A declaration of the enacting authority in laws is a usage and custom of great antiquity, * * * and a compulsory observance of it is founded in sound reason.[26]

The Supreme Court of Illinois had under consideration an ordinance with no enacting clause. The Court expounded upon why the lack of the clause invalidated the law:

> Upon looking into the constitution, it will be observed that "The style of the laws of this State shall be: '*Be it enacted by the People of the State of Illinois, represented in the General Assembly.*'" (Art. 4 § 11). * * * The forgoing sections of articles 3, 4, and 5, of the Constitution, are the only ones in that instrument proscribing the mode in which the will of the people, acting through the legislative and executive departments of the government, can become law. * * * That these provisions, giving the form and mode by which, * * * valid and binding laws are enacted, are, in the highest sense mandatory, cannot be doubted. * * * Then it follows that this resolution cannot be held to be a law. It is not the will of the people, constitutionally expressed, in the only mode and manner by which that will can acquire the force and validity, under the constitution, of law, for this legislative act is without a title, has no enacting clause, * * * and is sufficient to deprive this expression of the legislative will of the force and effect of law; and the same did not become, therefore, and is not, legally binding and obligatory upon the respondents.[27]

The Court concluded that the constitutional provisions regulating the form and mode of laws, such as the enacting clause and title, are "essential and indispensable parts" of the process of making laws.

The Supreme Court of Arkansas, on several occasions, ruled on the necessity of an enacting clause:

> As long ago as 1871, this court, in Vinsant v. Knox, 27 Ark. 266, held that the constitutional provision that the style of all bills should be, "Be it enacted by the General Assembly of the state of Arkansas," was mandatory, and that a bill without this style was void, although otherwise regularly passed and approved.[28]

In a case in Nevada a law passed the legislature without a proper enacting clause, raising the question of whether the constitutional enacting clause was a requisite to a valid law. The Court said it was because the provision was mandatory:

> [T]he said section of the Constitution is imperative and mandatory, and a law contravening its provisions is null and void. If one or more of the positive provisions of the Constitution may be disregarded as being directory, why not all? And if all, it certainly requires no argument to show what the result would be. The Constitution, which is the paramount law, would soon be looked upon and treated by the legislature as devoid of all moral obligations; without any binding force or effect; a mere "rope of sand," to be held together or pulled to pieces at its will and pleasure. We think the provisions under consideration must be treated as mandatory.
>
> Every person at all familiar with the practice of legislative bodies is aware that one of the most common methods adopted to kill a bill and prevent its becoming a law, is for a member to move to strike out the enacting clause. If such a motion is carried, the bill is lost. Can it be seriously contended that such a bill, with its head cut off, could thereafter by any legislative action become a law? Certainly not.[29]

This case was cited and approved by the Supreme Court of Michigan, which also stated:

26 *Caine v. Robbins*, 131 P.2d 516, 518 61 Nev. 416 (1942).

27 *City of Carlyle v. Nicolay*, 165 N.E. 211, 215, 216 (Ill. 1929); affirmed, *Liberty Nat. Bank of Chicago v. Metrick*, 102 N.E.2d 308, 310, 410 Ill. 429 (1951).

28 *Ferrill v. Keel*, 151 S.W. 269, 273, 105 Ark. 380 (1912).

29 *Nevada v. Rogers*, 10 Nev. 250, 255, 256 (1875); approved in *Caine v. Robbins*, 131 P.2d 516, 518, 61 Nev. 416 (1942).

> It will be an unfortunate day for constitutional rights when courts begin the insidious process of undermining constitutions by holding unambiguous provisions and limitations to be directory merely, to be disregarded at pleasure.[30]

In Montana a case arose that involved a statute with a "defective enacting clause." The Supreme Court of Montana, after quoting the constitutional section relating to the enacting clause, held that:

> These provisions are to be construed as mandatory and prohibitory, because there is no exception to their requirements expressed anywhere in the Constitution. * * * We think the provisions of the Constitution are so plainly and clearly expressed and are so entirely free from ambiguity that there can be no substantial ground for any other conclusion than that Chapter 199 was not enacted in accordance with the mandatory provisions of that instrument, and that the Act must be declared invalid.[31]

In affirming this decision in a later case, the same Court said that "the enacting clause of a bill goes to the substance of that bill; it is not merely procedural."[32] The Court also said that a resolution could not be regarded as a law because, "It had no *enacting clause* without which it never could become a law."[33]

The Court of Appeals of Kentucky held a statute void for not having an enacting clause, holding that all constitutional provisions are mandatory:

> Certainly there is no longer room for doubt as to the effect of all provisions of the Constitution of this state. By common consent they are deemed mandatory. * * * No creature of the Constitution has power to question its authority or to hold inoperative any section or provision of it. * * * The bill in question is not complete, it does not meet the plain constitutional demand. Without an enacting clause it is void.[34]

The mandatory character of laws was examined by the Supreme Court of Tennessee, which reviewed many other cases and concluded the following:

> The provision we are here called upon to construe is in plain and unambiguous words. The meaning of it is clear and indisputable, and no ground for construction can be found. The language is: "The style of the laws of this state shall be," etc. The word "shall," as used here, is equivalent to "must." We know of no case in which a provision of the Constitution thus expressed has been held to be directory. We think this one clearly mandatory, and must be complied with by the Legislature in all legislation, important or unimportant, enacted by it; otherwise it will be invalid.[35]

This case was quoted by the New Jersey Superior Court which cited the following from the case:

> The provisions of these solemn instruments (constitutions) are not advisory, or mere suggestions of what would be fit and proper, but commands which must be obeyed.[36]

The Supreme Court of Minnesota, in one of the landmark cases on this subject, held the following regarding the enacting clause provision in its Constitution:

> Upon both principle and authority, we hold that article 4, § 13, of our constitution, which provides that "the style of all laws of this state shall be, 'Be it enacted by the legislature of the state of Minnesota,' " is mandatory,

30 *People v. Dettenthaler*, 77 N.W. 450, 453, 118 Mich. 595 (1898).

31 *Vaughn & Ragsdale Co. v. State Bd. of Equalization*, 96 P.2d 420, 423, 424, 109 Mont. 52 (1939).

32 *Morgan v. Murray*, 328 P.2d 644, 654 (Mont. 1958).

33 *State v. Highway Patrol Board*, 372 P.2d 930, 944 (Mont. 1962).

34 *Commonwealth v. Illinois Cent. R. Co.*, 170 S.W. 171, 175, 160 Ky. 745 (1914); *Louisville Trust Co. v. Morgan*, 203 S.W. 555, 180 Ky. 609 (1918)..

35 *State v. Burrow*, 104 S.W. 526, 529, 119 Tenn. 376 (1907); *Biggs v. Beeler*, 173 S.W.2d 144, 146 (Tenn. 1943).

36 *Village of Ridgefield Park v. Bergen Co. Bd. of Tax.*, 162 A.2d 132, 134, 62 N.J. Super. 133 (1960).

> and that a statute without any enacting clause is void. Strict conformity with the constitution ought to be an axiom in the science of government.[37]

Section 45 of the Constitution of Alabama prescribes that, "the style of laws of this state shall be, *'Be it enacted by the Legislature of Alabama.'*" In determining the nature and purpose of this section the Federal Circuit Court of Alabama stated:

> Complainant correctly urges that this section is mandatory, and not directory; that no equivalent words will suffice; and that any departure from the mode prescribed is fatal to the enactment, since, if one departure in style, however slight, is permitted, another must be, and the constitutional policy embodied in the section would soon become without any force whatever.[38]

The Supreme Court of Georgia said the use of an enacting clause is "essential," and that without it the Act they had under consideration was "a nullity and of no force and effect as law."[39] This decision was based upon the traditional use of an enacting clause by Georgia's Generally Assembly. In an earlier decision the Court held that a measure containing no enacting clause had no effect as intended in a legal sense.[40]

The Supreme Court of North Carolina held that an act prohibiting the sale of spirituous liquors is inoperative and void for want of an enacting clause as prescribed by the Constitution:

> The very great importance of the constitution, as the organic law of the state and people, cannot be overstated. * * * It is not to be disregarded, ignored, suspended, or broken, in whole or in part. * * * When it prescribes that a particular act or thing shall be done in a way and manner specified, such direction must be treated as a command, and an observance of it essential to the effectiveness of the act or thing to be done. Such act cannot be complete, such thing is not effectual, until done in the way and manner so prescribed.[41]

This case was later approved by the Court holding that an enacting clause is "mandatory," and thus the act under consideration which had no enacting clause "must be regarded as inoperative and void." It further said:

> To be valid and effective the Acts of the General Assembly must be enacted in conformity with the Constitution.[42]

The Supreme Court of Missouri held that constitutional requirements, such as that for an enacting clause, "are mandatory and not directory." The case involved an initiative measure by the people which was without an enacting clause as required by the constitution. The Court said that, "under such a requirement the omission of an enacting clause in a proposed initiative measure renders it void."[43] Earlier the Court held that where a law fails to conform to such provisions "there is no other alternative but to pronounce it invalid."[44]

In a similar case in Arkansas, a legislative initiative under the state constitution required to have a specific enacting clause, but the initiative involved had no such clause. The Court held:

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37 *Sjoberg v. Security Savings & Loan Assn*, 75 N.W. 1116, 73 Minn. 203, 212 (1898); affirmed in *Freeman v. Goff*, 287 N.W. 238, 241 (Minn. 1939); *State v. Naftalin*, 74 N.W.2d 249, 262 (Minn. 1956); *State v. Zimmerman*, 204 N.W. 803, 812 (Wis. 1925).

38 *Montgomery Amusement Co. v. Montgomery Traction Co.*, 139 Fed. 353, 358 (1905), affirmed, 140 Fed. 988.

39 *Joiner v. State*, 155 S.E.2d 8, 10, 223 Ga. 367 (1967).

40 *Walden v. Town of Whigham*, 48 S.E. 159, 120 Ga. 646 (1904).

41 *State v. Patterson*, 4 S.E. 350, 351, 98 N.C. 660 (1887).

42 *Advisory Opinion In Re House Bill No. 65*, 43 DE.2d 73, 76, 77 (N.C. 1947).

43 *State ex rel Scott v. Kirkpatrick*, 484 S.W.2d 161, 163 (Mo. 1972).

44 *The State of Missouri v. Miller*, 45 Mo. 495, 498 (Mo. 1870).

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> This constitutional requirement, that the measure sought to be initiated shall have an enacting clause, is mandatory. There is absolutely no enacting clause in the measure here involved; and therefore, the petition is not legally sufficient. The absence of the enacting clause is a fatal defect.[45]

The dangers of not treating such provisions as mandatory have been noted:

> It seems to us that the rule which gives to the courts and other departments of the government a discretionary power to treat a constitutional provision as directory, and to obey it or not, at their pleasure, is fraught with great danger to the government. We can conceive of no greater danger to constitutional government, and to the rights and liberties of the people, than the doctrine which permits a loose, latitudinous, discretionary construction of the organic law.[46]

That an enacting clause provision is mandatory and not directory, and that its absence renders a law invalid, was also held by the Supreme Court of South Carolina,[47] and the Supreme Court of Indiana.[48] These provisions relating to the mode of enacting laws "have been repeatedly held to be mandatory, and that any legislation in disregard thereof is unconstitutional and void."[49]

Thus laws which fail to adhere to the fundamental concept of containing an enacting clause lose their authority as law. It thus would seem quite clear that the lack of enacting clauses on the laws used in Revised Statutes or the U.S. Code have no sign of authority and are void as laws. It was not a choice of Congress or the Legislature to approve of laws which have no enacting style. The use of such form and style for all laws is mandatory, and any failure to comply with it for any reason, such as for convenience, renders the measure void.

The Absence of an Enacting Clause Provision in a Constitution

While the U.S. Constitution and a few State constitutions do not specifically prescribe that all laws use an enacting style, its use is nonetheless required by our unwritten constitution. The use of an enacting clause and even a title exists by fundamental law; they are common law concepts.

Like many other old and well established concepts of law and procedure, the framers of the U.S. Constitution did not feel it necessary to write into it the requirement of an enacting clause or titles on all laws. There are so many of these fundamental concepts that it would be impractical to list them all in a constitution. But that does not mean they don't exist, just like the rights enumerated in the Bill of Rights were not originally written into the Constitution because they were recognized to be so fundamental it would be superfluous to list them.

That the use of an enacting clause is necessary or required despite its failure to be prescribed in a constitution has been often recognized. Several legal authorities have cited with approval Mr. Cushing, in his *Law & Practice of Legislative Assemblies* (1819) § 2102, where he states:

> (1) Where enacting words are prescribed, nothing can be a law which is not introduced by those very words, even though others which are equivalent are at the same time used.
>
> (2) Where the enacting words are not prescribed by a constitutional provision, the enacting authority must notwithstanding be stated, and any words which do this to a common understanding are doubtless sufficient, or the words may be prescribed

45 *Halley v. Carter*, 251 S.W.2d 826, 828 (Ark. 1952).

46 *Hunt v. State*, 3 S.W. 233, 235, 22 Tex. App. 396 (1886).

47 *Smith v. Jennings*, 45 S.E. 821, 67 S.C. 324 (1903).

48 *May v. Rice*, 91 Ind. 546 (1883).

49 *State v. Burlington & M. R.R. Co.*, 84 N.W. 254, 255, 60 Neb. 741 (1900).

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> by rule. In this respect much must depend upon usage.[50]

The usage of an enacting clause is thousands of years old, and every state and the United States have followed this custom from the beginning. Thus for something to be regarded as a true and valid law it is logical that one would expect to see an enacting clause on its face.

One of the leading cases on this issue was from the Supreme Court for the Territory of Washington. The validity of an act of the Territorial Legislature that would move the seat of the government was in question. The act had no enacting clause, and the territory had no constitution of its own requiring one, as it was generally governed by the U.S. Constitution. The Court held the law invalid stating:

> Strip this act of its outside appendages, leave it "solitary and alone," is it possible for any human being to tell by what authority the seat of government of Washington Territory was to be removed from Olympia to Vancouver?
>
> The staring fact that the constitutions of so many states, made and perfected by the wisdom of their greatest legal lights, contain a statement of an enacting clause, in which the power of the enacting authority is incorporated, is to our minds a strong, and powerful argument of its necessity. It is fortified and strengthened by the further fact that Congress, and the other states, to say nothing of the English Parliament, have, by almost unbroken custom and usage, prefaced all their laws with some set form of words, in which is contained the *enacting authority*. Guided by the authority of such eminent jurists as Blackstone, Kent, and Cushing, and the precedents of national and state legislation, the Court arrives with satisfaction and consciousness of right in declaring, that where an act like the one now under consideration, is wanting in the essential formalities and solemnities which have been mentioned, it is inoperative and void, and of no binding force or effect.[51]

The Court here judged the validity of the law based upon fundamental law, rather than any specific constitutional provision. This case has been cited quite frequently by various legal texts and courts and always in a favorable or approving manner.

Various law textbooks in the discussion of statutes have clearly stated the need for an enacting clause despite the lack of a constitutional provision for one:

> Although there is no constitutional provision requiring an enacting clause, such a clause has been held to be requisite to the validity of a legislative enactment.[52]
>
> In recognition of this custom [of using an enacting clause], it has sometimes been been declared that an enacting clause is necessary to the validity of a statute, although there is no provision in the fundamental law requiring such a clause.[53]

In 1967, the Supreme Court of Georgia held that a law without an enacting clause was null and void, even though their State constitution had no provision requiring one. They based their decision on the long standing custom of its usage.[54]

The requirement that all laws contain an enacting style or clause is deeply rooted in precedent and the common law. There thus need not be any constitutional provision for an enacting clause to make its usage mandatory. If it is not used the law in question is not valid and carries no obligation to be followed.

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50 *Smith v. Jennings*, 45 S.E. 821, 824, 825, 67 S.C. 324 (1903); *Commonwealth v. Illinois Cent. R. Co.*, 170 S.W. 171, 173, 160 Ky. 745 (1914); State of *Nevada v. Rogers*, 10 Nev. 250, 256, 257 (1875); *Sjoberg v. Security Savings & Loan Assn*, 73 Minn. 203, 211, 75 N.W. 1116 (1898).

51 *In re Seat of Government*, 1 Wash. Ter. 115, 123 (1861).

52 82 *Corpus Juris Secundum*, "Statutes," § 65, p. 104.

53 *Ruling Case Law*, vol. 25, "Statutes," § 22, p. 776.

54 *Joiner v. State*, 155 S.E.2d 8, 10, 223 Ga. 367 (1967).

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Enacting Clauses in the Publication of Statute Books

While it has been well decided that the passage of a bill in the legislature without an enacting clause on the bill renders it void as a law, we need to consider the result of not using an enacting clause after it leaves the legislature. This is the important question today in light of the fact that the state "Codes" and "Revised Statutes" and the "U.S. Code" are publications which purport to be law, but which use no enacting clauses. Is a publication of a law without an enacting clause a valid and lawful law?

If laws are only required to have an enacting clause while in the legislative system, only to be thereafter removed, then what is their value and purpose to the public? If they are to serve as evidence of a law's legislative nature, and as identification of its source and authority as a law, what good does that function do only for the legislators? The vast majority of the public never sees the bill under consideration until it passes and is printed in public records or statute books. They generally only see the finished "law."

When we read the provisions which require an enacting clause, they say that "all laws shall . . .", or "the laws of this State shall . . ." They do not say "all bills shall . . ." The terms "bill" and "law" are clearly distinguished from one another in most constitutions in prescribing the procedure of the legislative process, such as:

> "No *law* shall be passed except by *bill*"
>
> "No *bill* shall become a *law* except by a vote of a majority."
>
> "Every *bill* which shall pass both houses shall be presented to the governor of the State; and every *bill* he approves shall become a *law*."

✓ A bill is a form or draft of a law presented to a legislature. "A bill does not become a law until the constitutional prerequisites have been met."[1] Thus a bill is something that becomes a law. Laws do not exist in the legislature, rather only bills do. Laws exist only when the legislative process is followed and completed as prescribed in the constitution.

> Clearly, the legislature cannot enact a law. It merely has the power to pass bills which may become laws when signed by the presiding officer of each house and are approved and signed by the Governor.[2]

Since all constitutional provisions place the requirement of an enacting clause on "laws" it includes the statute as it exists outside the legislative process, that is, as it is published in statute books. We have to also regard the fundamental maxim which states: "A law is not obligatory unless it be promulgated."[3] An act is not even regarded as a law, or enforceable as a law, unless it be made publicly known. This is usually done through a publication by the proper public authority such as the Secretary of State. But a law is not properly

1 *State v. Naftalin*, 74 N.W.2d 249, 261, 246 Minn. 181 (1956).

2 *Vaughn & Ragsdale Co. v. State Bd. of Eq.*, 96 P.2d 420, 423 (1939).

3 *Black's Law Dictionary*, 2d edition, p. 826.

or lawfully promulgated without an enacting clause or title published with the law.

Since the constitution requires "all laws" to have an enacting clause, it makes it a requirement on published laws as well as on bills in the legislature. If the constitution said "all bills" shall have an enacting clause, then their use in publications would not be required.

That published laws are to have an enacting clause is made clear by the statement commonly used by legal authorities that an enacting clause of a law is to be "on its face." To be on its face means to be in the same plain of view.

> Face has been defined as the surface of anything; especially the front, upper, or outer part or surface; that which particularly offers itself to the view of a spectator.[4]

> The face of an instrument is that which is shown by the language employed without any explanation, modification or addition from extrinsic facts or evidence.[5]

For the enacting clause to be of any use it must appear with a law, that is, on its face, so that all who look at the law know that it came from the legislative authority designated by the Constitution. The enacting clause would not serve its intended purpose if not printed in the statute book on the face of the law.

> The purpose of an enacting clause in legislation is to express on the face of the legislation itself the authority behind the act and identify it as an act of legislation.[6]

> The purpose of provisions of this character [enacting clauses] is that all statutes may bear upon their faces a declaration of the sovereign authority by which they are enacted and declared to be the law, and to promote and preserve uniformity in legislation. Such clauses also import a command of obedience and clothe the statute with a certain dignity, believed in all times to command respect and aid in the enforcement of laws.[7]

> It is necessary that every law should show on its face the authority by which it is adopted and promulgated, and that it should clearly appear that it is intended by the legislative power that enacts it that it should take effect as a law.[8]

> The enacting clause, sometimes referred to as the commencement or style of the act, is used to indicate the authority from which the statute emanates. Indeed, it is a custom of long standing to cause legislative enactments to express on their face the authority by which they were enacted or promulgated.[9]

A law is "promulgated" by its being printed and published and made available or accessible by a public document such as an official statute book. When this promulgation occurs, the enacting clause is to appear "on the face" of that law, thus being printed in that statute book along with the law.

Enacting clauses traditionally appear right after the title and before the body of the law, and when so printed, whether on a bill or in a statute book, it is then regarded as being on the face of the law. It cannot be in some other record or book, as stated by the Supreme Court of Minnesota:

> If an enacting clause is useful and important, if it is desirable that laws shall bear upon their face the authority by which they are enacted, so that the people who are to obey them need not search legislative and other records to ascertain the authority, then it is not beneath the dignity of the framers of a

4 *Cunningham v. Great Southern Life Ins. Co.*, 66 S.W.2d 765, 773 (Tex. Civ. App.).

5 *In re Stoneman*, 146 N.Y.S. 172, 174.

6 *Preckel v. Byrne*, 243 N.W. 823, 826, 62 N.D. 356 (1932).

7 *State v. Burrow*, 104 S.W. 526, 529, 119 Tenn. 376 (1907).

8 *People v. Dettenthaler*, 77 N.W. 450, 451, 118 Mich. 595 (1898); citing *Swan v. Buck*, 40 Miss. 268 (1866).

9 Earl T. Crawford, *The Construction of Statutes*, St. Louis, 1940, § 89, p. 125.

> constitution, or unworthy of such an instrument, to prescribe a uniform style for such enacting clause.[10]

This case dealt with "the validity of Laws 1897, c. 250," and it was held that "Law 1897, c. 250, is void." While the court mainly decided this because the law had no enacting clause when signed by the governor, it clearly expressed that if laws are to be regarded as valid laws of the state, they "must express upon their face the authority by which they were promulgated or enacted." The law was published in the statute book without an enacting clause (see Fig. 1). The law was thus challenged as being "unconstitutional" because it "contains no enacting clause whatever."

The enacting clause must be readily visible on the face of the statute so that citizens don't have to search through the legislative journals or other records or books to see if one exists. Thus a statute book without the enacting clause is not a valid publication of laws. In regards to the validity of a law that was found in their statute books without an enacting clause, the Supreme Court of Nevada held:

> Our constitution expressly provided that the enacting clause *of every law* shall be, "The people of the state of Nevada, represented in senate and assembly, do enact as follows." This language is susceptible of but one interpretation. There is no doubtful meaning as to the intention. It is, in our judgment, an imperative mandate of the people, in their sovereign capacity, to the legislature, requiring that all laws, to be binding upon them, shall, upon their face, express the authority by which they were enacted; and, since this act comes to us without such authority appearing upon its face, it *is not a law.*"[11]

The manner in which the law came to the court was by the way it was found in the statute book, cited by the Court as "Stat. 1875, 66," and that is how they judge the validity of the law. Since they saw that the act, as it was printed in the statute book, had an insufficient enacting clause on its face, it was deemed to be "not a law." It is only by inspecting the publicly printed statute book that the people can determine the source, authority & authenticity of the law they are expected to follow.

The Supreme Court of Arkansas, in construing what are the essentials of law making, and what constitutes a valid law, stated the following:

> [A] legislative act, when made, should be a written expression of the legislative will, in evidence, not only of the passage, but of the authority of the law-making power, is nearly or quite a self-evident proposition. Likewise, we regard it as necessary that every act, thus expressed, should show on its face the authority by which it was enacted and promulgated, in order that it should clearly appear, upon simple inspection of the written law, that it was intended by the legislative power which enacted it, that it should take effect as law. These relate to the legislative authority as evidence of the authenticity of the legislative will. These are features by which courts of justice and the public are to judge of its authenticity and validity. These, then, are essentials of the weightiest importance, and the requirements of their observance, in the enacting and promulgation of laws, are absolutely imperative. Not the least important of these essentials is the style or enacting clause.[12]

The common mode by which a law is "promulgated" is by it being printed and published in some authorized public statute book. Thus that mode of promulgation must show the enacting clause of each law therein on its face, that is, on the face of the law as it is printed in the statute book. This is the only way that the "courts of justice and the public are to judge of its authenticity and validity."

10 *Sjoberg v. Security Savings & Loan Assn*, 73 Minn. 203, 213, 75 N.W. 1116 (1898).

11 *State of Nevada v. Rogers*, 10 Nev. 120, 261 (1875); cited with approval in: *People v. Dettenthaler*, 77 N.W. 450, 452, 118 Mich. 595 (1898); *Kefauver v. Spurling*, 290 S.W. 14, 15, 154 Tenn. 613 (1926).

12 *Vinsant, Adm'x v. Knox*, 27 Ark. 266, 284, 285 (1871).

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street, road, sidewalk, park, public ground, ferry boat, or public works of any kind in said city, village or borough, or by reason of any alleged negligence of any officer, agent, servant or employe of said city, village or borough, the person so alleged to be injured, or some one in his behalf, shall give to the city or village council, or trustees or other governing body of such city, village or borough, within thirty days after the alleged injury, notice thereof; and shall present his or their claim to compensation to such council or governing body in writing, stating the time when, the place where and the circumstances under which such alleged loss or injury occurred and the amount of compensation or the nature of the relief demanded from the city, village or borough, and such body shall have ten days' time within which to decide upon the course it will pursue with relation to such claim; and no action shall be maintained until the expiration of such time on account of such claim nor unless the same shall be commenced within one year after the happening of such alleged injury or loss.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved April 23, 1897.

CHAPTER 249.

An act to amend section two thousand eight hundred and six (2806) of the general statutes of one thousand eight hundred and ninety-four (1894), relating to the capital stock of manufacturing corporations.

Be it enacted by the Legislature of the state of Minnesota:

SECTION 1. That section two thousand eight hundred and six of the general statutes of one thousand eight hundred and ninety-four be amended so as to read as follows:

Sec. 2806. The amount of capital stock of every such corporation shall be fixed and limited by the stockholders in their articles of association and shall be divided into shares of not less than ten and not more

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved April 23, 1897.

CHAPTER 250.

An act to amend section twenty (20) of chapter one hundred and thirty-one (131) of general laws of Minnesota for one thousand eight hundred and ninety-one (1891), relating to building, loan and savings associations doing a general business.

SECTION 1. That section twenty (20) of chapter one hundred and thirty-one (131) of the general laws of one thousand eight hundred and ninety-one (1891) is hereby amended to read as follows:

Sec. 20. If it shall appear to said public examiner from any examination made by him, or from any report of any examination made by him, or from any annual or semi-annual report aforesaid, that any corporation governed by this act is violating its charter, or the law, or that it is conducting business in an unsafe, unauthorized, or dishonest manner, he shall, by an order under his hand and seal of office addressed to such corporation, direct conformity with the requirements of its charter and of the law; and whenever such corporation shall refuse or neglect to make such report or account as may be lawfully required, or to comply, with such order aforesaid within thirty days from the date thereof, or if it has become apparent that there is such a deficiency in its assets that the purpose for which the association was organized cannot be carried out, the public examiner may, if such corporation be organized under the laws of the state of Minnesota, forthwith take possession of the books, records and the assets of every description of such corporation and shall at once proceed to make a careful and detailed examination of the condition of the affairs of such corporation; and the books, records and assets of such corporation so held by him shall not be subject to levy or attachment or garnishment at any time while under his control. If at the close of such examination it shall appear to the public examiner that such corporation is able to complete

Fig. 1 — An excerpt from, *General Laws of the State of Minnesota, 1897.* Chapter 250 appears in this statute book without an enacting clause, which resulted in it being declared "void" in *Sjoberg v. Security Savings & Loan Assn.*, 73 Minn. 203. Note that the law on the adjacent page (Chapter 249) has the required enacting clause.

The decision in the *Vinsant* case was later approved by the Court in a case where a man was convicted of failing to follow an animal health law—"The Tick Eradication Law." He appealed by demurrer on the basis that the law claimed violated in the indictment did not have an enacting clause as found in the statute book. The Court said:

> The appellant demurred to the indictment on the ground that the facts stated do not charge a public offense. The appellant contends that Act 200 of the Acts of 1915, p. 804, providing a method for putting in operation the tick eradication law in Pike county, was void because it has no enacting clause. Appellant is correct in this contention. The act contains no enacting clause, and, under the decisions of this court, such defect renders it a nullity. Article 5, § 19, and article 29, amend. 10, Const. 1874; Vinsant, Adm'x v. Knox, 27 Ark. 266.[13]

The section of the state Constitution cited by the Court (Art. 5, § 19) states: "The style of the laws of the State of Arkansas shall be: '*Be it enacted by the general assembly of the State of Arkansas*'." The laws of the State are to bear this enacting style, otherwise they are not valid laws. The law in this case was missing this constitutional prerequisite of an enacting clause as printed in the statute book (see Fig. 2). As such it carried no force and effect as a law. Thus laws, as they are taken or cited from statute books, which have no enacting clause cannot be used to charge someone with a public offense because they are not valid laws.

In a case in Kansas, a man was indicted for violating a law making it unlawful to print and circulate scandals, assignations, and immoral conduct of persons. He was arrested upon an indictment and applied for his discharge upon *hapeas corpus* alleging that the act of the legislature was not properly published. The act had been published several weeks before the indictment, "which publication omitted an essential part of said act, to-wit, the enacting clause." The Court held that the act was not properly and legally published at the time the indictment was found, thus the act was not in force at the time the indictment was brought against the petitioner. The Court also held:

> The publication of an act of the legislature, omitting the enacting clause or any other essential part thereof, is no publication in law. The law not being in force when the indictment was found against the petitioner, nor when the acts complained of therein were done, the petitioner could not have been guilty of any crime under its provisions, and is therefore, so far as this indictment is concerned, entitled to his discharge.[14]

There was no question involved here of whether an enacting clause was used on the bill in the legislature. The fact that the law was published without one was sufficient to render it void or invalid. Thus a publication of an act omitting the enacting clause is not a valid publication of the act. If the required statement of authority is not *on the face* of the law, it is not a law that has any force and effect. Such a published law cannot be used on indictments or complaints to charge persons with a crime for its violation. This decision was upheld and affirmed by the Court in 1981, when it said:

> In [the case of] *In re Swartz, Petitioner*, 47 Kan. 157, 27 P. 839 (1891), this court found the act in question was invalid because it had been mistakenly published without an enacting clause. We again adhere to the dictates of that opinion.[15]

Thus whatever is published without an enacting clause is void, as it lacks the required evidence or statement of authority. Such a law lacks proof that it came from the authorized source spelled out in the constitution, and thus is not a valid publication to which the public is obligated to give any credence.

13 *Palmer v. State*, 208 S.W. 436, 137 Ark. 160 (1919).

14 *In re Swartz*, 27 Pac. 839, 840, 47 Kan. 157 (1891).

15 *State v. Kearns*, 623 P.2d 507, 509, 229 Kan. 207 (1981).

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ACT 200.

AN ACT for a tick eradication law in the counties of Howard, Pike, Little River, Clark, Miller and La-Fayette counties.

SECTION 1. At the general election held in the State of Arkansas in the year 1916, at which the members of the Forty-first General Assembly of the State of Arkansas are to be voted for and every two years thereafter in each separate county until the tick eradication is adopted in that county, when the tick eradication law is adopted by a majority of the votes of any

ACT 277] ACTS OF ARKANSAS. 1031

ACT 277.

AN ACT making appropriation for the expenses of the executive and judicial departments of the State Government.

Be It Enacted by the General Assembly of the State of Arkansas:

SECTION 1. That the following named sums of money be, and the same are hereby appropriated for the object hereinafter expressed, for the fiscal years

Fig. 2 — Excerpt from, *Public and Private Acts of the State of Arkansas, 1915.* Act 200 (above) was published without an enacting style, and was thus declared to be a "nullity" in *Palmer v. State*, 137 Ark. 160. Act 277 (below) from the same statute book displays an enacting style.

176 ACTS OF THE GENERAL ASSEMBLY

CHAPTER 68.

AN ACT to establish and regulate the maximum rate of charges for the transportation of passengers by corporations or companies operating or controlling railroads within the boundaries of this State in part or in whole.

§ 1. That it shall hereafter be unlawful for any common carrier earning as much or more than $4,000.00 per year per mile gross, from all sources on its said road, and engaged in the carriage of

COMMONWEALTH OF KENTUCKY. 169

CHAPTER 65.

AN ACT to further regulate tobacco warehouse companies in the State of Kentucky.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

§ That on and after the first day of August, 1914, every individual, firm, company or corporation conducting a warehouse business in Kentucky where tobacco is sold at public auction, either prized in hogsheads or sold in the hands loose, shall keep a correct account of the number of pounds of leaf tobacco sold upon the floor of his house daily. On or before the 5th day of each succeeding month the proprietor of the said warehouse shall make a statement under oath of all of the tobacco so sold

Fig. 3 — Excerpt from, *Acts of the General Assembly of the Commonwealth of Kentucky, 1914.* Chapter 68 (above) has no enacting clause and thus was pronounced "void" in *Commonwealth v. Illinois Cent. R. Co.*, 160 Ky. 745. Chapter 65 (below) has an enacting clause.

In the law text, *Ruling Case Law,* is a section that deals with the requirements of statutes, and under the subheading, "Publication of Statutes," it says:

> The publication of a statute without the enacting clause is no publication.[16]

A publication of a statute book without the title and enacting clause on the laws therein is an incomplete or invalid publication, just like a publication of a book or magazine article is incomplete without the title and author's name, it is just a nameless body of words.

When a law in Kentucky was claimed to be void because it was found to have no enacting clause, the Court of Appeals of Kentucky read the entire law (Chapter 68) from the statute book and then said:

> It will be noticed that the act does not contain an enacting clause. * * * The alleged act or law in question is unnamed; it shows no sign of authority; it carries with it no evidence that the General Assembly or any other lawmaking power is responsible or answerable for it.[17]

The law was thus declared "void" because of the fact that the act appeared in the statute book without an enacting clause (see Fig. 3). Likewise, the alleged laws in the U.S. Code or the state Revised Statutes are "unnamed," they show "no sign of authority" on their face, there is no evidence that they came from Congress or a State Legislature. The enacting clause has been deliberately removed from these "laws" and they thus are only nameless decrees without authority. The Supreme Court of South Carolina said that in order for bills to "have the force of *law*," they "must have an enacting clause showing the authority by which they are *promulgated*."[18] Thus the publication of a law must display its enacting authority.

The Kentucky case above was cited later by the same Court when it was found that an enacting clause was missing from "chapter 129, p. 540, of the Session Acts" for 1934. Regarding this omission the Court said:

> By oversight and mistake the constitutionally required enacting clause was omitted from the act, thereby rendering it illegal and invalid.[19]

The law in question, which was to "consolidate the county offices of sheriff and jailer," was deemed to be "ineffectual" in accomplishing its objective because it was published without an enacting clause for some unknown reason (see Fig. 4).

In a case in Montana, the validity of a statute in its statute book (Chapter 199, Laws of 1937) was being questioned because it had a faulty or insufficient enacting clause. The State Supreme Court held the law invalid stating:

> The measure comes before this court in the condition we find it in the duly authorized volume of the Session Laws of 1937, and in determining whether Chapter 199 is invalid or not we are confronted with a factual situation. It is entirely immaterial how the defective enacting clause happens to be a part of the measure.[20]

Here again the invalidity of the law, due to its "defective" enacting clause, was judged by its condition as it was published in the statutes books of the State (see Fig. 5). The law had the enacting clause, "Be it enacted by the people of Montana." But this style was only to be used for measures initiated by the people. Laws passed by the Legislature were to have a different enacting clause—"Be it enacted by the Legislative Assembly of the State of Montana." As this was a legislative enactment, it was void for having the wrong enacting clause.

16 *Ruling Case Law,* vol. 25, "Statutes," § 133, p. 884 ; citing L.R.A.1915B, p. 1065.

17 *Commonwealth v. Illinois Cent. R. Co.,* 170 S.W. 171, 175, 160 Ky. 745 (1914).

18 *Smith v. Jennings,* 67 S.C. 324, 45 S.E. 821, 824 (1903).

19 *Stickler v. Higgins,* 106 S.W.2d 1008, 1009, 269 Ky. 260 (1937).

20 *Vaughn & Ragsdale Co. v. State Board of Equalization,* 96 P.2d 420, 422 (Mont. 1939).

CHAPTER 129.

AN ACT providing for the consolidation of the office of jailer with that of sheriff in each county of the State.

§ 1. The office of jailer is hereby consolidated with that of sheriff, in each county of the state, under the provisions of Section 105 of the Constitution. There are hereby transferred to and vested in the sheriff, all the powers and duties heretofore authorized by law to be exercised or performed by the jailer. Wherever in any law of the State, reference is made to the jailer, such reference shall be deemed to apply to the sheriff, except where the context requires otherwise.

CHAPTER 144.

AN ACT to regulate, control and fix standard weights of wheat flour and the size of packages containing same; and to provide penalties for the violation of this Act.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Each package shall have the net weight printed or plainly marked on it.

Fig. 4 — Excerpt from, *Acts of the General Assembly of the Commonwealth of Kentucky, 1934.* Chapter 129 (above) was published with no enacting clause and was thus declared "invalid" in *Stickler v. Higgins*, 269 Ky. 260. Chapter 144 (below), from the same statute book, shows the constitutionally required enacting clause.

CHAPTER 199

An Act Requiring Licenses for the Operation, Maintenance, Opening or Establishment of Stores in This State, the Classifying of Such Stores, Prescribing the License and Filing Fees to Be Paid Therefor and the Disposition Thereof, and the Powers and Duties of the State Board of Equalization in Connection Therewith; and Prescribing Penalties for the Violation Thereof and Repealing Sections 2420.1, 2420.2, 2420.3, 2420.4, 2420.5, 2420.6, 2420.7, 2420.8, 2420.9, 2420.10, 2420.11, Revised Codes of Montana, 1935.

Be It Enacted by the People of the State of Montana:

Section 1. That from and after the first day of January A. D. 1938, it shall be unlawful for any person, firm, corporation, association or co-partnership, either foreign or domestic, to open, establish, operate or maintain any

CHAPTER 202

An Act Providing the Method for Computing Certain Deductions Allowable on Mine Taxes in the Production of Petroleum and Natural Gas in Montana.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The state board of equalization in computing the deductions allowable for expenditures under Section 2090 of the Revised Codes of the State of Montana on petroleum and natural gas production, shall compute and allow deductions for any such expenditures

Fig. 5 — Excerpt from, *Laws, Resolutions and Memorials of the State of Montana, 1937.* Chapter 199 was published with the wrong type of enacting clause and thus was held "invalid" by the State Supreme Court in the *Vaughn* case, 109 Mont. 52. Chapter 202 (below) shows the proper style of an enacting clause for a law of the State.

In North Carolina a legislative enactment for the incorporation of a town and the regulation of spirituous liquors therein was challenged because it had no enacting clause. The law was cited from the statute book as "Priv. Acts 1887, c. 113, § 8" (see Fig. 6). A man was indicted with the offense of selling spirituous liquors in the town and there was a verdict of guilty. On appeal the State Supreme Court said there was "error" in the judgment because the law charged against the man was void, stating:

> In the case before us, what purports to be the statute in question has no enacting clause, and nothing appears as a substitute for it. * * * The constitution, in article 2, in prescribing how statutes shall be enacted, provides as follows:
>
> "Sec. 23. The style of the acts shall be: '*The General Assembly of North Carolina do enact.*"
>
> It thus appears that its framers, and the people who ratified it, deemed such provisions wise and important; the purpose being to require every legislative act of the legislature to purport and import upon its face to have been enacted by the general assembly.
>
> We are therefore of the opinion that the supposed statute in question has not been perfected, and is not such in contemplation of the constitution; that it is wholly inoperative and void.[21]

This alleged law could not be called a law pursuant to the constitution, because it existed in the statute books without an enacting clause on its face.

In a case in Louisiana, a law was claimed to be unconstitutional based on the fact that it had no enacting clause as it existed in statute book (see Fig. 7). The main evidence that the court used in holding the act unconstitutional was its status as found within the printed statute book.

> The contention that the statute of 1944 is unconstitutional is based upon the fact that it contains no enacting clause. The State Constitution of 1921, in section 7 of Article 3, provides that:
>
> "The style of the laws of this State shall be: 'Be it enacted by the Legislature of Louisiana.'"
>
> A mere glance at an official volume of the acts of 1944, discloses that the statute in question, Act 303 of 1944, contains no such enacting clause nor any part thereof. * * * And from the fact that it does not appear in the printed volume of acts, we conclude that the act was originally and finally defective.[22]

It could not be deduced exactly how the law came to be with no enacting clause. An examination of the original journal of the proceedings of each house could not disclose whether the enacting clause was present when the act was passed. The Court thus relied upon the status of the law in the printed statute book as proof of the overall status of the law. Thus the law was said to be "originally" defective because it was deduced that there was no enacting clause when the act was passed, and it was "finally" defective because it was printed in the volume of the acts without an enacting clause.

In a later case, this same court upheld this decision in declaring that a law was void because it too was recorded or printed in the statute books without an enacting clause:

> [T]he state statute on which both plaintiff and defendant rely cannot be given effect. What is reported in La.Acts 1968, Ex. Sess., as Act No. 24 is not law because it does not contain the enacting clause which La.Const. art. 3, § 7 requires to distinguish legislative action as law rather than mere resolution or some other act. Complete absence of the enacting clause renders the statute invalid.[23]

Again the invalidity of the law was deduced by the manner in which it was published (see

21 *State v. Patterson*, 4 S.E. 350, 352, 98 N.C. 660 (1887).

22 *O'Rourke v. O'Rourke*, 69 So.2d 567, 572, 575 (La. App. 1954).

23 *First Nat. Bank of Commerce, New Orleans v. Eaves*, 282 So.2d 741, 743, 744 (La.App. 1973).

CHAPTER 112.

An act supplemental to an act to incorporate the town of Charleston in Swain County.

The General Assembly of North Carolina do enact:

SECTION 1. That after the authorities of the town of Charleston shall have prepared suitable and convenient places for hitching horses, that hitching horses to gates and fences belonging to individuals in said town shall be construed a nuisance, and the authorities of said town are authorizd to abate such nuisance, and are authorized to impose such fines and penalties as will abate them. Hogs running at large shall also be construed a nuisance.

SEC. 2. This act shall be in force from and after its ratification.

In the general assembly read three times, and ratified this the 7th day of March, A. D. 1887.

CHAPTER 113.

An act to incorporate the town of Forest Hill.

SECTION 1. That the town of Forest Hill, in Cabarrus county, be and the same is hereby incorporated, by the name and style of the town of Forest Hill, and it shall enjoy all the rights and privileges of incorporated towns and be subject to all the provisions of law now existing in reference to incorporated towns.

SEC. 2. That the corporate limits of said town shall be as follows: beginning opposite the old cotton mill on the line of Concord corporate line, and running north with said line fifty-three and one half degrees east one half mile to a stone, thence north forty-eight and one-half degrees west one half mile to a stake, thence south fifty-three and one-half degrees west one mile to a stone, thence south fifty-three and one half degrees east one half mile to a stone, thence north fifty-three and one-half degrees east to the beginning.

SEC. 3. That the officers of said town shall consist of a mayor, four commissioners and a constable, and the commissioners shall have power to elect a secretary and treasurer, and to elect the constable.

Fig. 6 — Excerpt from, *Laws and Resolutions of the State of North Carolina, 1887.* Chapter 113 (below) was published with no enacting clause, and thus was "void," *State v. Patterson,* 98 N.C. 660. The preceding law, Chapter 112, was published with an enacting clause.

ACT No. 303.

House Bill No. 872. By Mr. Fernandez, Chairman of Committee on Public Health and Quarantine (Substitute for House Bill No. 405 by Messrs. Fernandez and Landry).

AN ACT

To provide for the discovery and treatment of mental disorders; to define and interpret certain terms used herein; to designate institutions and places for mental patients; to provide for the examination, admission, commitment and detention of mental patients and their transfer, discharge, leave of absence, boarding out, return of escaped patients and interstate rendition and deportation; to provide for the assessment, imposition and collection of costs, fees and expenses incidental to carrying out the provisions of this Act; to grant certain rights to patients committed under this Act.

ARTICLE I.

Short Title, Interpretations and Definitions.

Section 1. Short Title: This Act shall be known as the Mental Health Act of 1944.

ACT No. 284.

House Bill No. 670. By Messrs. Martinez and Picciola.

AN ACT

To amend and re-enact the Title and Sections 1, 2 and 3 of Act 309 of 1938, entitled: "To create and establish a trades school for the education of white people of the State of Louisiana, in Thibodaux, Lafourche Parish, Louisiana, under the supervision of the State Board of Education, and to provide for the building, equipping and maintenance of said institution."

Section 1. Be it enacted by the Legislature of Louisiana, That the title of Act 309 of 1938 is hereby amended and re-enacted so as to read as follows:

Fig. 7 — Excerpt from, *Acts passed by the Legislature of the State of Louisiana, 1944.* Act 303 (above) was held "defective" as it had no enacting clause. *O'Rourke v. O'Rourke,* 69 So.2d 567. Act 284 (below) has an enacting clause in Section 1 where the body of the law starts.

Fig. 8). This decision raises another reason why the enacting clause must be printed in the public law book. It is so that citizens can identify it as a public law as opposed to a resolution, proclamation, executive order, or administrative rule. The enacting clause distinguishes a true public law from these other type of acts.

An enacting style of a law generally reads, "Be it enacted," while the style of a resolution usually reads, *"Be it resolved,"* or *"Resolved, that."* Most state constitutions make a distinction between a law and a resolution. The Constitution for the United States distinguishes a "resolution" and "order" from a "bill" which can "become a law" (Art. 1, Sec. 7). They each go through the same basic formalities with respect to vote and procedure in Congress, but they are not the same thing.

When we look at the "laws" in the "United States Code," how do we know that they are public laws passed by Congres? For all we know they could be "mere resolutions," which carry no force and effect as laws. When we are charged with a violation of a law from the "Oregon Revised Statutes," how do we know that this is a law from the legislature of Oregon, as authorized by the Constitution of Oregon? There is no enacting clause on the face of the law to indicate whether it is a law, a resolution, an order, or an administrative rule. What then is a resolution?

> **RESOLUTION.** The term is usually employed to denote the adoption of a motion, the subject-matter of which would not properly constitute a statute; such as a mere expression of opinion; an alteration of the rules; a vote of thanks or of censure, etc.[24]
>
> A resolution or order is not a law, but merely the form in which the legislative body expresses an opinion. [25]
>
> The general rule is that a joint or concurrent resolution adopted by the legislature is not a statute, does not have the force or effect of law, and cannot be used for any purpose for which an exercise of legislative power is necessary.[26]

In Indiana, a joint resolution was passed for the appropriation of money, which used the enacting style: *"Be it Resolved by the General Assembly of the State of Indiana."* The State Constitution allows for the appropriation of funds to be made only by law. The State Supreme Court said "the resolution is not law," as laws for the appropriation of money "cannot be enacted by joint resolution."[27]

That which is printed in the Revised Statute books and the U.S. Code could just as well be resolutions, which carry no force of law. If these statutes had enacting clauses, all would know what they were, the authority for their existence, and how they affect their rights and obligations. But they have no enacting clauses, and thus these publications are not legitimate publications in law which can be used to charge citizens with a crime. No enacting clause has been published with these "laws." They are only words of some committee, and thus are not constitutionally authorized laws which citizens are obligated to follow or obey.

So we must confront those in government who try to accuse us of violating a law published in some code, and ask them what is the authority for this law to exist? Where is its enacting authority on its face that identifies it as a law of the legislature? A law exists not only in the manner in which it was enacted, but also in the manner in which it is promulgated or published. A law cannot validly exist in printed form without the constitutionally required enacting clause.

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24 *Black's Law Dictionary*, 2nd edition, p. 1027.

25 *Chicago & N.P.R. Co. v. City of Chicago*, 51 N.E. 596, 598 (Ill. 1898); *Village of Altamont v. Baltimore & O.S.W. Ry. Co.*, 56 N.E. 340, 341, 184 Ill. 47; *Van Hovenberg v. Holeman*, 144 S.W.2d 718, 721, 261 Ark. 370 (1940).

26 73 *American Jurisprudence*, 2nd, "Statutes," § 3, p. 270; cases cited.

27 *May v. Rice*, 91 Ind. Rep. 546 (1883).

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ACT No. 21

Senate Bill No. 20. By: Mr. Mouton.

AN ACT

To amend and reenact Subsection A of Section 272 of Title 17 of the Louisiana Revised Statutes of 1950 as enacted by Act 408 of the 1968 Regular Session, to provide with respect to teaching French and the culture of Louisiana in the public elementary and high schools in the state.

Be it enacted by the Legislature of Louisiana:

Section 1. Subsection A of Section 272 of Title 17 of the Louisiana Revised Statutes of 1950 as enacted by Act 408 of the 1968 Regular Session is hereby amended and reenacted to read as follows:

§ 272. French language and culture; teaching in public schools

A. The French language and the culture and history of French populations in Louisiana and elsewhere in the Americas shall be taught for a sequence of years in the public elementary and high school systems of the state, in accordance with the following general provisions:

(1) As expeditiously as possible but not later than the beginning of the 1972-1973 school year, all public elementary schools shall offer at least five years of French instruction starting with oral French in the first grade; except that any parish or city school board, upon request to the State Board of Education, shall be excluded from this requirement, and such request shall not be denied. Requests already received from school boards for exclusion from the provisions of Act 408 of 1968 shall also be valid for exclusion from the provisions of this Act unless individual school boards deem otherwise. School boards which have not already requested exclusion may do so at any time between July 1, 1971, and the beginning of the 1972-1973 school year. The fact that any board is excluded, as here provided, from participation in the program established by this section shall in no case be construed to prohibit such school board from offering and conducting French courses in the curriculum of the schools it administers. In any school where the program provided for herein has been adopted the parent or other person legally

ACT No. 24

Senate Bill No. 27. By: Messrs. Mouton and O'Keefe.

AN ACT

To regulate loans and advances of credit by banks under revolving loan plans and to provide for interest and other charges thereunder; to provide for penalties; and to repeal all conflicting laws.

TITLE I - REVOLVING LOAN PLANS

Section 1. Definitions:

(a) The term "revolving loan" means an arrangement, including by means of a credit card, between a lender and a debtor pursuant to which it is contemplated or provided that the lender may from time to time make loans or advances to or for the account of the debtor (1) through the means of checks, drafts, items, invoices for the purchase of goods, orders for the payment of money, evidence of debt or similar written instruments or requests whether or not negotiable, endorsed or signed by the debtor or by any person authorized or permitted to do so on behalf of the debtor or (2) through the means of any other direction to pay by the debtor for loans or advances or charges to an account in respect of which account the lender is to render bills or statements to the debtor at regular intervals (hereinafter sometimes referred to as the "billing cycle"), the amount of which bills or statements is payable by and due from the debtor on a specified date stated in such bill or statement or at the debtor's option may be payable by the debtor in installments.

(b) Credit cards - The term "credit card" as used herein means an identification card, credit number, credit device or other credit document issued to a person, firm or corporation by a lender which permits such persons, firm or corporation to purchase or obtain money, goods, property. or services on the credit of the issuer.

(c) "Lender" means a bank chartered or licensed by state or federal authorities and authorized to do business and doing business in this state.

Section 2. Revolving Loan Interest Charge, Separate Charge Statement

Fig. 8 — An excerpt from, *Louisiana Acts* 1968, Extra Session, 1968 (bound in "*Acts of the Legislature*" Regular Session, 1969). Act 24 (right) was declared to be "null" and without effect because of the manner in which it was printed or reported in the statute book without an enacting clause, *First Nat. Bank of Commerce, New Orleans v. Eaves*, 282 So.2d 741. A preceding law, Act 21 (left), shows proper use of the enacting clause on the face of the law.

– 5 –

Federal Laws and Crimes

The issues of authority and law are especially critical in understanding the trend that has developed in the Federal arena, with its communistic income tax, oppressive laws, and activities that invade the domain of the states. While many of the basic concepts dealing with the states on this subject are applicable to the Federal government, there also are some aspects unique to the Federal issues. Many of the problems today may not truly be usurpation or unconstitutional acts, but are due to a different source of law and thus a different jurisdiction than what the Constitution for the United States established. First we need to understand some basic facts about the manner of government and jurisdiction that originally existed.

Federal Criminal Jurisdiction

Jurisdiction, in a governmental sense, is the authority to apply law over certain objects and certain acts of persons. Jurisdiction gives a government the right to use force in applying this law to bring about its objective. Under the American system that objective is generally to exact justice through certain courts pursuant to constitutional authority, the law of God, and our common law concepts of right and wrong.

The Constitution for the United States created a government which has jurisdiction over certain enumerated subject matter. It is only in these areas that Congress can enact laws, and when they do, the Federal Courts are to enforce the law. But when laws do not come from an enumerated power, the Federal Courts are to prevent the U.S. Government or Congress from applying them.

The U.S. Constitution prescribes what the "jurisdiction" of the Federal government is by the enumerated powers. That government can regulate foreign and interstate commerce, fix the standards of weights and measurements, establish rules of naturalization, establish uniform laws on bankruptcies, coin money and provide for the punishment of counterfeiting of the coins and securities of the United States, protect the arts and sciences by copyrights and patents, punish for piracies and felonies committed on the high seas, raise and support an army and navy, and lay and collect direct taxes by apportionment, and indirect taxes by excises, duties, or imposts.

This is about the extent of the jurisdiction of the United States government. It is only in these areas that a "crime (or offense) against the United States" can exist, and this is so only when Congress actually passes a law in one of these areas.

> But an act committed within a State, whether for good or a bad purpose, or whether with honest or a criminal intent, cannot be made an offense against the United States, unless it have some relation to the execution of a power of Congress, or to some matter within the jurisdiction of the United States.[1]

> [T]he courts of the United States, merely by virtue of this grant of judicial power, and in the absence of legislation by Congress, have no criminal jurisdiction whatever. The criminal jurisdiction of the courts of the United States is wholly derived from the statutes of the United States.[2]

1 *United States v. Fox*, 95 U.S. 670, 672 (1877).

2 *Manchester v. Massachusetts*, 139 U.S. 240, 262 (1890); *United States v. Flores*, 289 U.S. 137, 151 (1932).

"6"
Exhibit

> Acts of Congress, as well as the constitution, must generally unite to give jurisdiction to a particular court.[3]

The Federal Courts only have jurisdiction in matters involving an "offense against the United States," and nothing can be an offense against the United States unless it is made so by Congressional act pursuant to the U.S. Constitution. There is no other source from which Congress can get authority to make law, including the Common Law. Thus it has been said that, "There is no Federal Common Law." But the better way of stating this is to say, "There are no common law offenses (or crimes) against the United States,"[4] In other words, the common law is not a source for criminal jurisdiction as it is in the states.

> There is no federal common law. There are no offenses against the United States, save those declared to be such by Congress. * * * Only those offenses are to be proceeded against by information or are indictable in the federal courts which are specifically made so by acts of Congress, since the common law crime of itself has no existence in the federal jurisdiction.[5]

By "jurisdiction" is meant the authority of the Federal courts to hear and decide a matter. Thus it is even more correct to say that, "The federal courts have no jurisdiction of common law offenses, and there is no abstract pervading principle of the common law of the Union under which we (the Federal courts) can take jurisdiction."[6] Thus where one was charged for libel on the President and Congress of the United States, it was held that the Federal Circuit Court had no common law jurisdiction in the case and the act was not a crime.[7]

If Congress tries to make a common law offense a crime (such as libel, theft, burglary, murder, kidnapping, arson, rape, sodomy, abortion, assault, fraud, etc.), having no relation to an enumerated power, it would simply be an "unconstitutional" act. Congress can declare nothing to be a crime except where it is based upon a delegated power. Thus the only thing that can be a crime against the United States (a Federal crime) is that which comes from the U.S. Constitution. These concepts were early stated by the U.S. Supreme Court:

> In relation to crimes and punishments, the objects of the delegated power of the United States are enumerated and fixed. Congress may provide for the punishment of counterfeiting the securities and current coin of the United States, and may define and punish piracies and felonies committed on the high seas, and offenses against the law of nations. Art. s. 8. * * * But there is no reference to a common law authority: Every power is [a] matter of definite and positive grant; and the very powers that are granted cannot take effect until they are exercised through the medium of a law.[8]

The United States courts are governed in the administration of the criminal law by the rules of the common law.[9] Thus the common law is not a source of power, but is the means or instrument through which it is exercised. In civil matters where general common law rights of an individual are concerned, the federal courts are to apply the common law in the state in which the controversy originated.[10]

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3 *U.S. v. Bedford*, 27 Fed. Cas., page 91, 103, Case No. 15,867 (1847).

4 *United States v. Britton*, 108 U.S. 199, 206 (1882); *United States v. Eaton*, 144 U.S. 677, 687 (1891); *United States v. Gradwell*, 243 U.S. 476, 485 (1916); *Donnelley v. United States*, 276 U.S. 5\05, 511 (1927); *Jerome v. United States*, 318 U.S. 101, 104 (1942); *Norton v. United States*, 92 Fed.2d 753756 (1937).

5 *United States v. Grossman*, 1 Fed.2d 941, 950, 951 (1924).

6 *State of Pennsylvania v. The Wheeling &c. Bridge Co.*, 13 Howard (54 U.S.) 518, 563 (1851).

7 *United States v. Hudson*, 7 Cranch (11 U.S.) 32 (1812).

8 *The United States versus Worrall*, 2 Dallas (2 U.S.) 384, 391 (1798).

9 *Howard v. U.S.*, 75 Fed. 986 (1896).

10 *Wheaton v. Peters*, 8 Peters (33 U.S.) 591, 658 (1834); *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1937).

While these concepts of jurisdiction are basic, and ones which were generally followed for about 140 years, it is apparent that since the 1930s, there has been a gradual departure from them. As a result, the jurisdiction of the Federal Government seems almost without bounds today, as it legislates and judicates on every subject under the sun, many of which are blatantly and obviously not from an enumerated power under the U.S. Constitution.

In light of such Federal action the question of authority comes again to the forefront. What was it that changed our system of Federal jurisprudence? Was something new or different introduced into the judicial process that could explain the change? One thing that was introduced into the system was the use of the United States Code.

The Change from Statute to Code

The laws of the United States as passed by Congress were from the very beginning published in a series of books called "United States Statutes at Large." The first Congress under the U.S. Constitution convened in New York City from March 4, 1789, to September 29, 1789, during which time Congress passed 27 separate acts. These Acts are recorded in volume one of the Statutes at Large. This publication was issued by the Secretary of State and the Government Printing Office. These books were regarded as the official source for all public and private laws, resolutions, treaties, and proclamations.

Through the course of time many volumes of the Statutes at Large were published, which contained not only new laws but repeals of old laws. It became more difficult to ascertain what the law was on a given matter. As early as 1866 Congress authorized a consolidation of all laws arranged by subject matter. The first edition of a "Revised Statutes" was produced in 1872, but was not favored by Congress so it was revised in 1875, but that edition contained many "errors." Another edition of the Revised Statutes was published in 1878. These works were rarely cited as most courts and lawyers continued to use the Statutes at Large.

In 1924, a bill to revise all the laws of the United States that were enacted up to that time passed the House but was defeated in the Senate. The Senate then appointed a committee to inspect the bill (which contained over two million words) and this group recommended that a commission be appointed to do the work over. The commission was formed and the revision of laws, called "The United States Code" was finally approved by an act of Congress on June 30, 1926 (44 Stat. Part 1).

The Code was divided into 50 Titles or subject headings, under which the revised laws were listed. The U.S. Code has, since 1926, been periodically compiled by a standing committee appointed to revise the laws.

The Code is assembled and revised under the supervision of "the Committee on the Judiciary of the House of Representatives." The main work of revision is done by a subcommittee or office of this committee called "the Office of the Law Revision Counsel of the House of Representatives." It consists of an appointed supervisor, some members of Congress, some volunteer lawyers, and persons from West Publishing of St. Paul, Minnesota.

At first the Code was generally ignored, as everyone was used to using the Statutes at Large. In most cases where laws, including "New Deal" laws, were held to be unconstitutional, the indictments and court records had generally used the Statutes at Large citation. For instance, in the case of *Carter v. Carter Coal Co,* 298 U.S. 238 (1936), involving the Bituminous Coal Conservation Act, it was cited as "C. 824, 49 Stat. 991." Only a few cases used the U.S. Code citation and then only along with the Statutes at Law citation.

One case in which the U.S. Code was used is *Steward Machine Co. v. Davis,* 301 U.S. 548 (1937), which involved the Social Security Act.

While the Statute at Large was cited, the U.S. Code was also included – "42 U.S.C., c. 7 (Supp.)." This case was the turning point of our judicial system, at least in regards to criminal matters. The decision was perhaps by the narrowest margin ever. The Chief Justice Charles E. Hughes had been against the New Deal legislation of Roosevelt and his socialists friends. But when Roosevelt came out with his outlandish antics to "pack the court" with his cronies, the act became an embarrassment to the court and to Hughes. Even though Hughes let it be known he was against the Social Security Act, he withheld making a definite vote. The vote was 4 to 4 on the matter. But the Jewish justice, Cardozo, took hold of the case and claimed the Act was constitutional. Chief Justice Hughes apparently did not say anything, probably to avoid further embarrassment.

Technically, the Social Security Act was held by the majority of the Supreme Court to be unconstitutional, or at most was a 4 to 4 tie. But nonetheless this decision paved the way for more socialistic legislation, and on all indictments charging a violation of these laws appeared the U.S. Code, not the Statutes at Large. By the 1940s, the Code effectively replaced the Statutes at Large in all criminal proceedings and indictments.

The Nature and Status of the U.S. Code

With the U.S. Code, the laws of the Statutes at Large were not only "revised" in content, but in form and style. When incorporated into the U.S. Code all titles and enacting clauses were removed, making the nature of the laws and their source of authority unknown.

Laws within the Statutes at Large were identified as being either public or private laws. Acts which were laws, resolutions, or proclamations were so designated by their identifying enacting clauses and titles. But no one can tell the nature of the "laws" in the U.S. Code.

When the U.S. Code was first published, it never was stated to be the official laws of the United States. Rather, it was stated that the Code was a "restatement" of law; or was only "prima facie evidence of the laws of the United States."[11] On this matter one Court stated:

> The United States Code was not enacted as a statute, nor can it be construed as such. It is only a prima facie statement of the statute law. * * * If construction is necessary, recourse must be had to the original statutes themselves.[12]

This tells us that the United States Code, as originally established, was not on an equal plain with the "original statutes" or the Statutes at Large. The evidence of a thing is not the thing itself. Thus the Code was not true law.

With the start of regular use of the U.S. Code, numerous problems arose in that it contained mistakes, errors and inconsistencies as compared to the Statutes at Large. Thus in 1947, Congress enacted several of the Titles into "positive law," such as the act: "To codify and enacted into positive law, Title 1 of the United States Code." In doing so they devised some new terminology:

> United States Code.— The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included: *Provided, however,* That whenever titles of such Code shall have been enacted into positive law the text thereof shall be

11 *Five Flags Pipe Line Co. v. Dept. of Transportation,* 854 F.2d 1438, 1440 (1988); *Stephan v. United States,* 319 U.S. 415, 426 (1943); 44 Statutes at Large, Part 1, preface.

12 *Murrell v. Western Union Tel. Co.,* 160 F.2d 787, 788 (1947); also, *United States v. Mercur Corporation,* 83 F.2d 178, 180 (1936).

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> legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.[13]

Note the new term, "legal evidence." But what are these titles legal evidence of? It does not say these Titles of the Code are legal evidence of the statutes of Congress, or of the laws of the United States. They are "legal evidence of the laws therein contained." In other words, the fact that the laws are in the Code, is in itself legal evidence that they exist. So what! Such a statement really says nothing at all about the legal nature of those laws. It doesn't explain anything about its nature or its legal status other than its own existence.

This is like saying if a hammer is in your hand, then that hammer in your hand stands as legal evidence of the hammer in your hand. But it doesn't say anything about the legal nature of the hammer. Is it your hammer, or is it borrowed, stolen or lost? Is it the property of the government, or Joe Smith, or the XYZ corporation? Likewise, saying that the laws in a book are evidence of those laws in the book, says nothing at all about their nature. Are they Acts of Congress, or of the State of Florida, or of the United Nations? It does not say, but only makes the generalized remark that they are laws. It obviously does not mean that these laws are constitutionally enacted or exist constitutionally.

Congress, or lawyers in Congress, have made this statement to make it appear that there is a difference between the Code as it was, from the titles that have been enacted into positive law. There really is no significant difference between prima facie evidence and legal evidence. Prima facie evidence *is* legal evidence, just as "circumstantial evidence is legal evidence."[14] Even hearsay evidence when relevant to an issue can be treated as "legal evidence."[15] The term legal evidence is just a more general term for most types of evidence.

> **Legal evidence.** A broad general term meaning all admissible evidence, including both oral and documentary.[16]

Whether Congress has enacted a title into positive law is irrelevant, as it does not change it into a law of the United States. One Federal Court said that "Congress's failure to enact a title into positive law has only evidentiary significance."[17] In other words, it does not affect the nature of what it is legally. The Court further said, "Like it or not, the Internal Revenue Code is the law." It can indeed be called law, but what manner of law is it? Why did the court not say that it is an act of Congress? or a law under the Constitution? Another court said regarding the Code that, "Enactment into positive law only affects the weight of evidence."[18] This is because the Title has gone though extra proofreading and checking to remove the errors and inconsistencies. This measure does not change the legal nature of the Title of the Code, such as occurs with a bill when it is enacted into law.

The words "legal evidence" were used to convince people that some change occurred when in fact it is just a lot of double talk and does not change the nature of what the U.S. Code really is. It really makes no difference if a Title has been enacted into positive law, for its contents cannot be regarded as acts of Congress because they have no evidence of being such by way of enacting clauses. The greatest evidence of true law is that which bears an enacting clause. A Federal law requires an

13 61 Statute at Large 633, 638; 1 U.S.C. § 204(a).

14 *Hornick v. Bethlehem Mines Corp.*, 161 Atl. 75, 77, 307 Pa. 264.

15 *Oko v. Krzyzanowski*, 27 A.2d 414, 419, 150 Pa. Sup. 205.

16 *Black's Law Dictionary*, 2nd edition, p. 448.

17 *Ryan v. Bilby*, 764 F.2d 1325, 1328 (1985).

18 *United States v. Zuger*, 602 F.Supp 889, 891 (1984).

enacting clause to make it a law coming from the authorized source—Congress.

> The object of an enacting clause is to show that the act comes from a place pointed out by the Constitution as the source of power.[19]

The laws in the U.S. Code are unnamed; they show no sign of authority; they carry with them no evidence that Congress or any other lawmaking power is responsible for them. They lack the essential requisites to make them a law authorized under article 1 of the Constitution for the United States.

Look back at the cases cited which stated that the criminal jurisdiction of the United States exists only by acts of Congress pursuant to the Constitution. If the question is put forth to a Federal Court whether the Code cited in an indictment is an act of Congress, they could not rightfully say it is. If the court says it is, it should be asked, where is the congressional enacting clause for that law as required by 61 Statutes at Large 633, 634, § 101?[20] If no such clause appears *on the face* of the law, it is not an act of Congress. No criminal jurisdiction exists without a bona fide act of Congress. The argument in such a case is that the indictment does not set forth a case arising under the Constitution, as there is no act of Congress with a duly required enacting clause. Thus there is no subject matter jurisdiction pursuant to the federal judicial power defined in Art. III, § 2.

Nowhere does it say in the Code, or in pronouncements by Congress or the courts, that the laws in the U.S. Code are acts of Congress. In fact, the Code is always regarded as something different from the Statutes at Large:

> But no one denies that the official source to find United States laws is the Statutes at Large and the Code is only prima facie evidence of such laws.[21]

> STATUTE. State laws are generally called Session Laws (occasionally Acts); while federal laws are called Public Laws such as *Public Law* 89-110 which is the Voting Rights Act of 1965 and which can be found in 79 *Statutes at Large* 437 (1965), the latter being the official and preferred citation.[22]

The Statutes at Large are recognized by everyone to be the "official" publication of Federal laws. Why is not the U.S. Code, even when enacted into "positive law," ever called the "official source of United States laws?" Could it be because the "laws" in the Code are only the decrees of some committee?

Positive Law

The term "positive law" is also misleading. Positive law is a general designation for a "law that is actually ordained or established, under human sanctions, as distinguished from the law of nature or natural law."[23] Any rule or law established and written out by human agency is positive law. In this sense the U.S. Code was from the beginning a type of positive law, being written and established by human sanctions—i.e., the Committee of the House of Representatives.

The U.S. Code is also declared to be a codification of "all the general and permanent laws of the United States." But the articles of war, a treaty, or an executive order can also be called "general and permanent laws of the United States," or "positive law." They are laws that exist under the United States, but they are clearly of a different nature than acts of Congress which a citizen can be indicted for violating. We thus come again to the question of authority. What is the authority for citizens to follow the "laws" in the U.S. Code? None legally exists unless one acquiesces to such law.

19 *Ferrill v. Keel*, 151 S.W. 269, 272, 105 Ark. 380 (1912).

20 In § 102, Congress also established the "resolving clause" style that is to be used on all joint resolutions.

21 *Royer's, Inc. v. United States*, 265 F.2d 615, 618 (1959).

22 Edward Bander, *Dictionary of Selected Legal Terms and Maxims*, 2nd edition, Oceana Publications, 1979, p. 78.

23 *Bouvier's Law Dictionary*, Banks-Baldwin Law Pub., Cleveland, 1948, p. 955.

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When Congress enacts sections of the Code into positive law they do so by passing a law, as they did with Title 18, stating to the effect:

> That Title 18 of the United States Code, entitled "Crimes and Criminal Procedure", is hereby revised, codified, and enacted into positive law, and may be cited as "18 U.S.C., §__", as follows:[24]

The text of Title 18 then follows. The measure does not really change anything since this Title had already been positive law just as it had already been codified. The State Legislatures often do the same thing with their Revised Statutes. They pass a law saying that the material in a certain collection of books is law. But it is fundamental that nothing can become a law just because the legislature says it is law.

> [N]othing becomes a law simply and solely because men who possess the legislative power will that it shall be, unless they express their determination to that effect, in the mode pointed out by the instrument which invests them with the power, and under all the forms which that instrument has rendered essential.[25]

The "forms" of legislation include the title and enacting clause, which are both essential aspects of a law. This excerpt was quoted by the Supreme Court of Arkansas, who also said:

> All those rules and solemnities, whether derived from the common law or prescribed by the Constitution, which are of the essentials of law making, must be observed and complied with, and, without such observance and compliance, the will of the Legislature can have no validity as law.[26]

The U.S. code has none of the forms and solemnities that are essential to make it law which citizens in America are subject to, and Congress cannot make it law by its say-so.

It might be argued that the U.S. Title in question has an enacting clause and title as it exists in the Statutes at Large, and this is sufficient for the text of the entire Title of the Code. In the past some courts did hold that the titles on the specialized codes were sufficient for the entire code. Title 18 thus could only be called valid laws of the United States if its contents are cited from the Statutes at Large. But the government never cites Title 18 from the Statutes at Large on indictments, it only cites it as published in the U.S. Code, which has absolutely no enacting clauses on its face. It is always 18 U.S.C. § 1951, instead of the 62 Stat. Lg. 1084. The difference is critical.

The U.S. Code is not law of Congress, but it has fooled everyone because the laws used in it by the committee were based upon laws once passed by Congress. If Congress passed some laws which were then codified by the Russian government, which code was later recognized by Congress, no one would accept laws cited from the Russian code as valid law of Congress. A Russian law against forgery cannot be charged against us just because an identical law exists in our State. Now suppose, for instance, I listed some laws for you to follow such as:

- You shall not steal.
- You shall not murder anyone.
- You shall not kidnap anyone.
- You shall not commit adultery.

Now let me ask you, is there any authority behind these laws I have written and declared? Nearly everyone would say there is because they recognize that God issued similar laws, and thus there is authority behind them. But God did not issue these laws or enact them as law, I did. I never said they are laws of God but are my laws. They thus have no authority as law because I am not a source of law to which you are subject. There is no legal relationship between you and myself, just as there is no legal relationship between you and the "Law Revision Counsel" that drafted the U.S. Code.

24 62 *Statutes At Large*, 683, June 25, 1948.

25 *Caine v. Robbins*, 131 P.2d 516, 518 (Nev. 1942), citing *Cooley's Constitutional Limitations*, 6th Ed., p. 155.

26 *Vinsant, Adm.x v. Knox*, 27 Ark. 266, 277 (1871).

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Procedure, Jurisdiction & Arguments

Now that this material of law has been presented, we next need to know how to properly use it in court or against government encroachment. Since this information can have a devastating affect on the very foundation of the current corrupt legal system, just arguing that the laws used against a person are not valid will not be very effectual. Even though there is no argument that can be raised against this material, judges will be motivated to set it aside or rule against it because their love of money is greater than their love of law and justice.

This material, however, can be used in different ways which will force bureaucrats and judges to accept it, or commit obvious acts of usurpation and corruption. The material can be used or presented by way of affidavit, abatement, habeas corpus, memorandum and motion to dismiss, or demurrer. In each case the main issues are that of no valid law, fraud, and lack of subject matter jurisdiction. It is important to understand how this material directly affects the jurisdiction of the court.

There have been, of course, many wrong and erroneous arguments upon the subject of jurisdiction. Most people readily see the results of a corrupt and spiritually debauched society, economy and government, and want nothing to do with it, so they make up some jurisdictional argument to "get out of the system." While the general concept seems right, the arguments about jurisdiction have not been legally sound. So we need to accurately understand the matter of jurisdiction in the criminal system.

Criminal Jurisdiction

Jurisdiction, in terms of the authority of a court, is of two main types, as Judge Cooley states:

> The proceedings in any court are void if it wants jurisdiction of the case in which it has assumed to act. Jurisdiction is, *first*, of the subject-matter; and, *second*, of the persons whose rights are to be passed upon.[1]

Both types of jurisdiction are required in criminal matters.

> To try a person for the commission of a crime, the trial court must have jurisdiction of both the subject matter and the person of the defendant.[2]

Personal jurisdiction, or the authority to judge a person, is primarily one of venue or procedure. Generally, if one is standing in a court, it has some degree of jurisdiction over that person. Thus if one is named in a suit, but is "absent" from court by being "either in prison or by escape, there is a want of jurisdiction over the person, and the Court cannot proceed with the trial." [3] In some cases certain irregularities in procedural matters, such as not having a complaint or affidavit signed, or failure to apprise the defendant of the nature and cause of the accusation, can affect personal jurisdiction. But such irregularities in obtaining personal jurisdiction may be "waived." Thus, "jurisdiction of the person may be conferred by consent and by pleading to the merits of this case." [4] Also, "any lack of jurisdiction over the person is waived by his

1 Thomas M. Cooley, *A Treatise on the Constitutional Limitations*, Little, Brown, & Co., Boston, 1883, p. 493.

2 21 *American Jurisprudence*, "Criminal Law," § 338, p. 588.

3 *State v. Brown*, 64 S.W.2d 841, 849 (Tenn. 1933).

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appearance through counsel."[5] It is also true that any irregularities in procedural matters which might inhibit personal jurisdiction can be corrected and the case retried.

The jurisdictional arguments most patriots have been raising in recent times deal with personal jurisdiction, that is, they claim the court has no jurisdiction to try them personally. But one can not simply claim a lack of personal jurisdiction without any legal grounds and then expect the court to just dismiss the matter.

In summary, it is rare to have an issue regarding personal jurisdiction that will completely stop proceedings or end the action against a person. One of the few exceptions is if the person is a foreign ambassador or dignitary with diplomatic immunity, in which a treaty exists with his country.

Some have asserted that they are a "non-resident" or a "non-resident alien" and thus do not come under the jurisdiction of the courts or laws of Congress or the State. But it matters not where one lives or if he is a citizen or alien, for all in the land are subject to the laws of the nation. Aliens cannot come to this country and violate laws with impunity and then claim our courts are powerless to try and punish them for their acts. The courts do have jurisdiction over aliens. If you go to Mexico and break their laws and claim that you are a nonresident alien or America citizen it isn't going to hold any water. If that is your only defense you will end up in a Mexican prison.

Jurisdictional arguments, to be of any merit, even in the present day *de facto* courts, have to be based upon some concept of law that would have had merit 150 years ago. All of the popular jurisdictional arguments used today fail this test. But by Divine Providence a flaw has been placed within the current corrupt legal system, one which causes it to exist and operate without any actual jurisdiction to which citizens are subject. This flaw relates to subject matter jurisdiction, not personal jurisdiction. The system that has grown up around us has a defect which causes a lack of subject matter jurisdiction in the courts, which means that no criminal case can be lawfully tried.

But it is important that one know of this defect so it can be asserted against officials or in court, for if it is not, then it is as though the defect doesn't exist. The key then lies in understanding subject matter jurisdiction.

Subject Matter Jurisdiction

Jurisdiction of the subject matter involves the actual thing involved in the controversy. In civil matters it is usually some property or money in dispute, or it might be the tort or wrong one committed against another, or it might be a contract, marriage, bankruptcy, lien, or will that is in dispute. If the property or thing in dispute never existed there would be no subject matter jurisdiction.

In criminal proceedings the thing that forms the subject matter is the crime or public offense that is allegedly committed.

> The subject-matter of a criminal offense is the crime itself. Subject-matter in its broadest sense means the cause; the object; the thing in dispute.[6]

Most cases in which there would be a want of subject matter jurisdiction are self evident. If a subject matter or crime is outside the territorial jurisdiction of the court, then the court would not have jurisdiction over the thing or crime involved. Also, certain types of courts are given the authority, either by constitutional grant or statute, to hear certain types of cases. A federal tax court has subject matter jurisdiction over federal tax matters, not

4 *Smith v. State*, 148 S. 858, 860 (Ala. App. 1933).

5 *State v. Smith*, 70 A.2d 175, 177, 6 N.J. Super. 85 (1949).

6 *Stilwell v. Markham*, 10 P.2d 15, 16 (Kan. 1932).

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over state tax matters or over bankruptcy cases. A probate court has jurisdiction over a will, but has no subject matter jurisdiction over the crime of burglary. A Justice of the Peace who is given authority to hear misdemeanor cases, has no subject matter jurisdiction to hear any felony cases.

It thus is said in a general sense that subject matter jurisdiction refers to the power of the court to hear and decide a case, or a particular class of cases; this is because jurisdiction of a court is derived from law (constitution or statute), and cannot be conferred by consent.

> The law creates courts and defines their powers. Consent cannot authorize a judge to do what the law has not given him the power to do. [7]

Because subject matter jurisdiction is a matter of law and authority of the court to hear a matter, the accused can not waive the lack of it, or even give his consent to it if it does not exist. Thus, the issue of subject matter jurisdiction can be raised at any time during the case, even after a plea has been entered.

> Jurisdiction of the subject matter is derived from the law. It can neither be waived nor conferred by consent of the accused. Objection to the court over the subject matter may be urged at any stage of the proceedings, and the right to make such an objection is never waived. However, jurisdiction of the person of the defendant may be acquired by consent of the accused or by waiver of objections.[8]

> [I]t is everywhere held that jurisdiction over subject matter or cause of action cannot be conferred upon a Court by consent or waiver, but may be questioned at any stage of the proceedings.[9]

Even if one fails to raise the issue of the lack of subject matter jurisdiction at trial, he can still raise the issue upon appeal.

> It is elementary that the jurisdiction of the court over the subject matter of the action is the most critical aspect of the court's authority to act. Without it the court lacks any power to proceed; therefore, a defense based upon this lack cannot be waived and may be asserted at any time. Accordingly, the appellants may raise the issue of jurisdiction over the matter for the first time on appeal although they initially failed to raise the issue before the trial court.[10]

> A reviewing court is required to considered-the issue of subject matter jurisdiction even where it was not raised below in order to avoid an unwarranted exercise of judicial authority.[11]

There is nothing that one can do, or fail to do, that would cause the issue of subject matter jurisdiction to be lost. Even if a person pleads guilty he can raise the issue later on if the subject matter jurisdiction never existed.

> Subject matter jurisdiction cannot be conferred by a guilty plea if it does not otherwise exist.
>
> The guilty plea must *confess* some punishable offense to form the basis of a sentence. The effect of a plea of guilty is a record admission of whatever is well alleged in the indictment. If the latter is insufficient the plea confesses nothing.[12]

In this case a man was charged with a "felony-theft charge" to which he entered into a plea bargain and pleaded guilty. But the facts alleged in the indictment did not constitute the offense charged. There thus was no subject matter jurisdiction, and the conviction was void.

7 *Singleton v. Commonwealth*, 208 S.W.2d 325, 327, 306 Ky. 454 (1948).

8 21 *American Jurisprudence*, 2nd, "Criminal Law," § 339, p. 589.

9 *Harris v. State*, 82 A.2d 387, 389, 46 Del. 111 (1950).

10 *Matter of Green*, 313 S.E.2d 193, 195 (N.C.App. 1984).

11 *Honomichl v. State*, 333 N.W.2d 797, 799 (S.D. 1983).

12 *People v. McCarty*, 445 N.E.2d 298, 304, 94 Ill.2d 28 (1983), cases cited.

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There are many cases where a person was convicted and put into prison, then upon discovery of a lack of subject matter jurisdiction, submitted a *habeas corpus* based upon the jurisdictional defect, and was released.

Subject matter jurisdiction involves more than having the right offense for the right court. Even if the court has jurisdiction over the type, class or grade of crime committed, it will still lack subject matter jurisdiction if the law which the crime is based upon is invalid, void, unconstitutional, or nonexistent.

> Jurisdiction over the subject matter of action is essential to power of court to act, and is conferred only by constitution or by valid statute.[13]

The court must be authorized to hear a crime, and have a valid law that creates a crime. Thus the crux of subject matter jurisdiction is always the crime or offense. If a law is invalid there is no crime; if there is no crime there is no subject matter jurisdiction.

> If a criminal statute is unconstitutional, the court lacks subject-matter jurisdiction and cannot proceed to try the case.[14]

In a case where a man was convicted of violating certain sections of some laws, he later claimed that the laws were unconstitutional which deprived the county court of jurisdiction to try him for those offenses. The Supreme Court of Oregon held:

> If these sections are unconstitutional, the law is void and an offense created by them is not a crime and a conviction under them cannot be a legal cause of imprisonment, for no court can acquire jurisdiction to try a person for acts which are made criminal only by an unconstitutional law.[15]

In Wisconsin a case involved a charge for violating a law which had actually been repealed. There was a motion hearing on the issue of whether the court had subject matter jurisdiction, and the Supreme Court held:

> Where the offense charged does not exist, the trial court lacks jurisdiction.[16]

In a case in Minnesota, a man was charged with the offense of "Being an Habitual Offender." But the statute did not make this a crime it only increased the punishment for a crime. The State Supreme Court said the man could not be convicted of a crime because the statute used did not state an offense, which meant the "court was without subject matter jurisdiction."[17]

An invalid, unconstitutional or non-existent statute also affects the validity of the "charging document," that is, the complaint, indictment or information. If these documents are void or fatally defective, there is no subject matter jurisdiction since they are the basis of the court's jurisdiction.

> When a criminal defendant is indicted under a not-yet-effective statute, the charging document is void.[18]

The indictment or complaint can be invalid if it is not constructed in the particular mode or form prescribed by constitution or statute (42 C.J.S., "Indictments and Informations," § 1, p. 833). But it also can be defective and void when it charges a violation of a law, and that law is void, unconstitutional or non-existent. If the charging document is void, the subject matter jurisdiction of a court does not exist.

> The want of a sufficient affidavit, complaint, or information goes to the jurisdiction of the

13 *Brown v. State*, 37 N.E.2d 73, 77 (Ind. 1941).

14 22 *Corpus Juris Secundum*, "Criminal Law," § 157, p. 189; citing *People v. Katrinak*, 185 Cal.Rptr. 869, 136 Cal.App.3d 145 (1982).

15 *Kelley v. Meyers*, 263 P. 903, 905 (Ore. 1928).

16 *State v. Christensen*, 329 N.W.2d 382, 383, 110 Wis.2d 538 (1983).

17 *State ex rel. Hansen v. Rigg*, 104 N.W.2d 553, 258 Minn. 388 (1960).

18 *State v. Dungan*, 718 P.2d 1010, 1014, 149 Ariz. 357 (1985).

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> court, * * * and renders all proceedings prior to the filing of a proper instrument void ab initio.[19]

Jurisdiction then is brought to a court by way of a complaint, information or indictment. If these instruments fail to charge a crime, there can be no subject matter jurisdiction.

> The allegations in the indictment or information determines the jurisdiction of the court.[20]

> Where an information charges no crime, the court lacks jurisdiction to try the accused, and a motion to quash the information or charge is always timely.[21]

> Without a formal and sufficient indictment or information, a court does not acquire subject matter jurisdiction and thus an accused may not be punished for a crime.[22]

One way in which a complaint or indictment fails to charge a crime, is by its failure to have the charge based upon a valid or existing law. Complaints or indictments which cite invalid laws, or incomplete laws, or nonexistent laws are regarded as being invalid on their face. Thus they are said to be "fatally defective" or "fatally bad." Usually when such matters occur the accused would have the complaint or indictment set aside either by a "motion to quash," or a "demurrer." But with today's system, if they are not based on the jurisdictional question, such a motion can be easily denied.

The crux then of this whole issue of jurisdiction revolves around law, that is, the law claimed to be violated. If one is subject to a law, they are then under the jurisdiction of some authority. If a king passes a law then those who are subject to the law are under his jurisdiction, and they can be judged for the violation of the law by the king or one of his ministers. When a person is outside the king's jurisdiction, there is no law he is subject to. But the reverse of this is also true, that being, if there is no law of the king, then there is no jurisdiction or authority to judge the person, even if he is the king's subject.

If a crime is alleged but there is no law to form the basis of that crime, there is no jurisdiction to try and sentence one even though they are subject to the legislative body and the court. There has to be a law, a valid law, for subject matter jurisdiction to exist.

The current corrupt legal system has in effect sown its own seeds of destruction by arbitrarily forming codes and revised statutes. All complaints or indictments today cite laws from these codes or revised statute books which contain no enacting clauses. Laws which lack an enacting clause are not laws of the legislative body to which we are constitutionally subject. Thus if a complaint or information charges one with a violation of a law which has no enacting clause, then no valid laws is cited. If it cites no valid law then the complaint charges no crime, and the court has no subject-matter jurisdiction to try the accused.

No complaint or indictment can allege that a criminal act has been committed when there is no law which makes the act a crime. When common law crimes were prosecuted in state courts, there were many cases that arose where the accused claimed the act was not a crime at common law. Thus when issued a complaint or indictment, the accused would, before trial, demurrer to the complaint or file a motion to quash the complaint based on the fact that the complaint failed to cite anything that was a crime. It therefore might be held that the act

19 22 *Corpus Juris Secundum*, "Criminal Law," § 324, p. 390.

20 *Ex parte Waldock*, 286 Pac. 765, 766 (Okla. 1930).

21 *People v. Hardiman*, 347 N.W.2d 460, 462, 132 Mich.App. 382 (1984); 22 *Corpus Juris Secundum*, "Criminal Law," § 157, p. 188; citing, *People v. McCarty*, 445 N.E.2d 298, 94 Ill.2d 28.

22 *Honomichl v. State*, 333 N.W.2d 797, 798 (S.D. 1983).

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was not a crime at common law, and since there was no law, the court had no jurisdiction over the subject matter.

The legal system today does not recognize common law crimes, and thus the only thing that is a crime is made so by statute. If there is no statute or law for the crime alleged, there can be no crime, and if there is no crime, there is no subject matter jurisdiction. If a law does not exist, or is not constitutional, the complaint is void and it cannot give subject-matter jurisdiction to the court.

Error Versus Usurpation

To better understand why this must be an issue of subject matter jurisdiction, we need to understand the powers and limitations placed upon a court by fundamental law.

The jurisdiction of a court is in essence its authority to hear and decide a matter. But a court or a judge is in actuality a human agency, and as such is liable to make a mistake or "error" on some issue he decides. All of history is replete with examples of such error occurring. It is universally recognized that a court, which has proper jurisdiction, has the right to be wrong in its judgment.

> The jurisdiction and authority to enter a judgment includes the power to decide a case wrongly.[23]

> Jurisdiction, it is agreed, includes the power to determine either rightfully or wrongfully. It can make no difference how erroneous the decision may be.[24]

> Jurisdiction to decide is jurisdiction to make a wrong as well as a right decision.[25]

It matters not how unconstitutional a law is, it matters not how much your rights are violated, it matters not how arbitrary government has been in violating due process of law, a court can rule against you and it is only regarded as "error" or a wrong decision. The judge can give the most incorrect, erroneous or illogical decision and it is binding until it is reversed by a higher court.

> The power of a court to decide includes the power to decide wrongly. An erroneous decision is as binding as one that is correct until it is set aside or corrected in a manner provided by law.[26]

It may be hard for many to accept this concept, especially in light of the corrupt courts that exist today. But it would not be a problem if judges and other leaders were godly men as prescribed by the Bible:

> Moreover you shall select from all the people able men, such as fear God, men of truth, hating covetousness; and place such over them to be rulers (Exod. 18:21).

There was a time in this country that when a man was elected to office he had to take an oath that he believed in God and believed in a future state of rewards and punishments. But the spiritual condition of the nation has taken on an evil disposition, which has a definite affect on the nature of the legal system. The result has been courts which defy the law of God, uphold unconstitutional laws, support abortion, allow property to be taken without due process, and make other "wrong" decisions.

The key then is not to find the right law or argument to present in court, but to somehow remove the jurisdiction of the court so that the right to decide wrongly does not exist. This can be done by showing that there are no valid laws charged against you because they do not have enacting clauses or titles. Without valid laws there is no subject matter jurisdiction and any decision rendered is void. There can be no

23 *Provance v. Shawnee Mission Unified School*, 683 P.2d 902, 235 Kan. 927 (1984).

24 *Garcia v. Dial*, 596 S.W.2d 524, 528 (Tex.Cr.App. 1980); *Olson v. Cass County*, 253 N.W.2d 179, 183 (N.D. 1977).

25 *Pope v. United States*, 323 U.S. 1, 65 Sup. Ct. Rep. 16, 23 (1944), cases cited.

26 *Mayhue v. Mayhue*, 706 P.2d 890, 893, note 7 (Okla. 1985).

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valid judgment, either right or wrong, without this type of jurisdiction.

> [N]o authority need to be cited for the proposition that, when a court lacks jurisdiction, any judgment rendered by it is void and unenforceable, * * * and without any force or effect whatever.[27]

> Where judicial tribunals have no jurisdiction of subject matter, the proceedings are void.[28]

Where subject matter jurisdiction does not exist, any bad, wrong or corrupt decision is *void*, but if the jurisdiction exists, a wrong or erroneous decision is only *voidable* by appeal.

> The test of jurisdiction is the right to decide, not right decision. Judgments of courts, which at the time the judgments were rendered had no jurisdiction, * * * are absolutely void, and may be attacked and defeated collaterally. On the other hand, judgments of courts empowered to hear and determine issues related to the subject matters and persons, although such judgments may be illegal and wrong, are simply voidable and are not open to collateral attack.[29]

The only remedy to correct an error or illegal decision is by appeal. But the judges of the appeals court also have the right to make error or be wrong, and can thus support the illegal decision of the trial court. But if the trial court decision was void for lack of jurisdiction, it cannot be made valid by an appeal decision.

> Even though a void judgment is affirmed on appeal, it is not thereby rendered valid.[30]

When jurisdiction is lacking, the court can do nothing except dismiss the cause of action. Any other court proceeding is usurpation.

> *Lack of jurisdiction* and the *improper exercise of jurisdiction* are vitally different concepts. * * * Where the court is without jurisdiction it has no authority to render any judgment other than one of dismissal.[31]

A judge or court may be in a legal sense immune from any claims that it is guilty of corruption because of its improper exercise of jurisdiction. However, it has no such protection where it lacks jurisdiction and the issue has been raised and asserted before judgment. Thus when the lack of jurisdiction has been shown, a judgment rendered is not only void, but is also *usurpation!*

> Jurisdiction is a fundamental prerequisite to a valid prosecution and conviction, and a usurpation thereof is a nullity.[32]

> If [excessive exercise of authority] has reference to want of power over the subject matter, the result is void when challenged directly or collaterally. If it has reference merely to the judicial method of the exercise of power, the result is binding upon the parties to the litigation till reversed * * * The former is usurpation; the latter error in judgment.[33]

> The line which separates error in judgment from the usurpation of power is very definite.[34]

Since the laws in use today are invalid on their face, it deprives the court of subject matter jurisdiction. For the court to proceed with trial and make a judgment or sentence after such a jurisdictional challenge has been made, it is simply an act of usurpation and treason. The importance of this material is that it forces the courts to either completely retract from enforcing corrupt and ungodly laws, or it forces them to establish the grounds for

27 *Hooker v. Boles*, 346 Fed.2d 285, 286 (1965); *Honomichl v. State*, 333 N.W.2d 797, 799 (S.D. 1983).

28 21 *Corpus Juris Secundum*, "Courts," § 18, p. 25; *People v. Mckinnon*, 362 N.W.2d 809, 812 (Mich.App. 1985).

29 *United States v. U.S. Fidelity & Guaranty Co.*, 24 F.Supp. 961, 966 (1938); 47 Am Jur 2d, "Judgments," § 916.

30 *Ralph v. Police Court of City of El Cerrito*, 190 P.2d 632, 634, 84 Ca.App.2d 257 (1948).

31 *Garcia v. Dial*, 596 S.W.2d 524, 528 (Tex.Cr.App. 1980).

32 22 *Corpus Juris Secundum*, "Criminal Law," § 150, p. 183.

33 *Harrigan v. Gilchrist*, 99 N.W. 909, 934, 121 Wis. 127 (1904).

34 *Voorhees v. The Bank of the United States*, 35 U.S. 449, 474-75 (1836).

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revolution—usurpation and tyranny! There is no right to commit tyranny or usurpation, and such acts can be disobeyed or resisted. A maxim of law states:

> A judge who exceeds his office or jurisdiction is not to be obeyed.
>
> He who exercises judicial authority beyond his proper limits can not be obeyed with safety or impunity.[35]

A judge cannot claim immunity to acts of usurpation, for the law does not recognize such acts. Thus one cannot be punished for not obeying a judgment rendered by usurpation or want of jurisdiction:

> The rule is fundamental that, where the court has no jurisdiction over the subject matter of the action, all proceedings in such action are void. The rule is likewise well settled that refusal to obey a void order or judgment is not contempt.[36]

It should be stated in all fairness that an act cannot really be classified as usurpation unless the problem is revealed and the judge warned of the situation. The American colonists knew that it was proper to first warn King George of his acts of usurpation and tyranny before they could take action against him. Up to now judges have escaped being held accountable for committing usurpation or tyranny for using invalid law against citizens. If this is not pointed out and objected to, it is assumed the accused has acquiesced to the invalidity of the law. There must be notice and warning of the matter.

It is often held that a void judgment, or an act committed without jurisdiction, can be attacked collaterally, which means it can be attacked differently from what the law usually prescribes, as one text writer explains:

> There are only two ways to attack a judicial proceeding, direct and collateral. Any proceeding provided by law for the purpose of avoiding or correcting a judgment, is a direct attack which will be successful upon showing the error; while an attempt to do the same thing in any other proceeding is a collateral attack, which will be successful only upon showing a want of power.[37]

The American colonists at first attacked the usurpation and tyranny of King George directly with petitions and redresses. Later on they attacked it in a collateral sense by force of arms and by proclaiming their independence from that government. However, no act or judgment can be attacked until it is understood how and why it is without power or authority. This material on authority of law can give the people of this land the right to collaterally attack the legal system and government.

If one is asked to plead to the charges, it should be said that you can't plead at this time because you believe that the subject matter for this case is lacking, and you choose first to submit a motion to dismiss on those grounds. The government may try to say that, "the laws in question were lawfully passed by the Legislature pursuant to the Constitution." Technically this can be said since laws like the ones in the Revised Statutes (or U.S. Code) were passed by the Legislature, but this is not the issue. The issue is not whether the laws charged against you or laws like them were passed by the Legislature (or Congress), but rather that they don't exist in their current state as valid laws. That is, they fail to follow the valid form and style of a law due to the manner in which they are published or promulgated. If the court says that the authority for the law is the legislature, the reply should be, where is the legislative enacting authority for the law?

The following is an example of a memorandum and motion to dismiss due to lack of subject matter jurisdiction. With this argument you are not asking for the charges to be dismissed, since legally there are no charges, but rather that the cause of action be dismissed.

35 See, *Maxims of Law*, edited by C. Weisman, 63z, 66m.

36 *Wolski v. Lippincott*, 25 N.W.2d 754, 755 (Neb. 1947).

37 John M. Vanfleet, *The Law of Collateral Attack on Judicial Proceedings*, Callaghan & Co., Chicago, 1892, p. 5.

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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN 4TH JUDICIAL DISTRICT

State of Minnesota, Plaintiff, vs. John R. Smith, Accused.	)	**MEMORANDUM AND MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION** Court Case Nos. KX-95-2125 KO-95-2277

COMES NOW THE ACCUSED denying and challenging the jurisdiction of the above-named court over the subject matter in the above-entitled cause, for the reasons explained in the following memorandum:

MEMORANDUM OF LAW

I. The Nature of Subject Matter Jurisdiction.

The jurisdiction of a court over the subject matter has been said to be essential, necessary, indispensable and an elementary prerequisite to the exercise of judicial power. 21 C.J.S., "Courts," § 18, p. 25. A court cannot proceed with a trial or make a judgment without such jurisdiction existing.

> It is elementary that the jurisdiction of the court over the subject matter of the action is the most critical aspect of the court's authority to act. Without it the court lacks any power to proceed; therefore, a defense based upon this lack cannot be waived and may be asserted at any time. *Matter of Green,* 313 S.E.2d 193 (N.C.App. 1984).

Subject matter jurisdiction cannot be conferred by waiver or consent, and may be raised at any time. *Rodrigues v. State,* 441 So.2d 1129 (Fla.App. 1983). The subject matter jurisdiction of a criminal case is related to the cause of action in general, and more specifically to the alleged crime or offense which creates the action.

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The subject-matter of a criminal offense is the crime itself. Subject-matter in its broadest sense means the cause; the object; the thing in dispute. *Stillwell v. Markham,* 10 P.2d 15, 16 135 Kan. 206 (1932).

An indictment or complaint in a criminal case is the main means by which a court obtains subject matter jurisdiction, and is "the jurisdictional instrument upon which the accused stands trial." *State v. Chatmon,* 671 P.2d 531, 538 (Kan. 1983). The complaint is the foundation of the jurisdiction of the magistrate or court. Thus if these charging instruments are invalid, there is a lack of subject matter jurisdiction.

Without a formal and sufficient indictment or information, a court does not acquire subject matter jurisdiction and thus an accused may not be punished for a crime. *Honomichl v. State,* 333 N.W.2d 797, 798 (S.D. 1983).

A formal accusation is essential for every trial of a crime. Without it the court acquires no jurisdiction to proceed, even with the consent of the parties, and where the indictment or information is invalid the court is without jurisdiction. *Ex parte Carlson,* 186 N.W. 722, 725, 176 Wis. 538 (1922).

Without a valid complaint any judgment or sentence rendered is "void ab initio" *Ralph v. Police Court of El Cerrito,* 190 P.2d 632, 634, 84 Cal. App.2d 257 (1948).

Jurisdiction to try and punish for a crime cannot be acquired by the mere assertion of it, or invoked otherwise than in the mode prescribed by law, and if it is not so acquired or invoked any judgment is a nullity. 22 C.J.S., "Criminal Law," § 167, p. 202.

The charging instrument must not only be in the particular mode or form prescribed by the constitution and statute to be valid, but it also must contain reference to valid laws. Without a valid law, the charging instrument is insufficient and no subject matter jurisdiction exists for the matter to be tried.

Where an information charges no crime, the court lacks jurisdiction to try the accused. *People v. Hardiman,* 347 N.W.2d 460, 462, 132 Mich.App. 382 (1984).

[W]hether or not the complaint charges an offense is a jurisdictional matter. *Ex parte Carlson,* 186 N.W. 722, 725, 176 Wis. 538 (1922).

An invalid law charged against one in a criminal matter also negates subject matter jurisdiction by the sheer fact that it fails to create a cause of action. "Subject matter is the thing in controversy." *Holmes v. Mason,* 115 N.W. 770, 80 Neb. 454, citing *Black's Law Dictionary.* Without a valid law, there is no issue or controversy for a court to decide upon. Thus, where a law does not exist or does not constitutionally exist, or where the law is invalid, void or unconstitutional, there is no subject matter jurisdiction to try one for an offense alleged under such a law.

If a criminal statute is unconstitutional, the court lacks subject-matter jurisdiction and cannot proceed to try the case. 22 C.J.S. "Criminal Law," § 157, p. 189; citing *People v. Katrinak,* 185 Cal.Rptr. 869, 136 Cal.App.3d 145 (1982).

Where the offense charged does not exist, the trial court lacks jurisdiction. *State v. Christensen,* 329 N.W.2d 382, 383, 110 Wis.2d 538 (1983).

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Not all statutes create a criminal offense. Thus where a man was charged with "a statute which does not create a criminal offense," such person was never legally charged with any crime or lawfully convicted because the trial court did not have "jurisdiction of the subject matter," *State ex rel. Hansen v. Rigg*, 258 Minn. 388, 104 N.W.2d 553 (1960). There must be a valid law in order for subject matter to exist.

In a case where a man was convicted of violating certain sections of some laws, he later claimed that the laws were unconstitutional which deprived the county court of jurisdiction to try him for those offenses. The Supreme Court of Oregon held:

> If these sections are unconstitutional, the law is void and an offense created by them is not a crime and a conviction under them cannot be a legal cause of imprisonment, for no court can acquire jurisdiction to try a person for acts which are made criminal only by an unconstitutional law. *Kelly v. Meyers*, 263 Pac. 903, 905 (Ore. 1928).

Without a valid law there can be no crime charged under that law, and where there is no crime or offense there is no controversy or cause of action, and without a cause of action there can be no subject matter jurisdiction to try a person accused of violating said law. The court then has no power or right to hear and decide a particular case involving such invalid or nonexistent laws.

These authorities and others make it clear that if there are no valid laws charged against a person, there is nothing that can be deemed a crime, and without a crime there is no subject matter jurisdiction. Further, invalid or unlawful laws make the complaint fatally defective and insufficient, and without a valid complaint there is a lack of subject mater jurisdiction.

The Accused asserts that the laws charged against him are not valid, or do not constitutionally exist as they do not conform to certain constitutional prerequisites, and thus are no laws at all, which prevents subject matter jurisdiction to the above-named court.

The complaints in question allege that the Accused has committed several crimes by the violation of certain laws which are listed in said complaints, to wit:

Intent to escape tax – M.S. §168.35
No Plates Affixed to Vehicle – M.S. §169.79
No insurance – M.S. §169.797, Subd. 2
No Minnesota Registration – M.S. §168.36
Driving after revocation – M.S. §171.24, Subd. 2

I have been informed that these laws or statutes used in the complaints against myself are located in and derived from a collection of books entitled "Minnesota Statutes." Upon looking up these laws in this publication, I realized that they do not adhere to several constitutional provisions of the Minnesota Constitution.

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By Article 4 of the Constitution of Minnesota (1857), all lawmaking authority for the State is vested in the Legislature of Minnesota. This Article also prescribes certain forms, modes and procedures that must be followed in order for a valid law to exist under the Constitution. It is fundamental that nothing can be a law that is not enacted by the Legislature prescribed in the Constitution, *and* which fails to conform to constitutional forms, prerequisites or prohibitions. These are the grounds for challenging the subject matter jurisdiction of this court, since the validity of a law on a complaint or indictment goes to the jurisdiction of a court. The following explains in authoritative detail why the laws cited in the complaints against the Accused are not constitutionally valid laws.

II. By Constitutional Mandate, all Laws Must Have an Enacting Clause.

One of the forms that all laws are required to follow by the Constitution of Minnesota (1857), is that they contain an enacting style or clause. This provision is stated as follows:

> Article IV, Sec. 13. The style of all laws of this State shall be: "Be it enacted by the Legislature of the State of Minnesota."

None of the laws cited in the complaints against the Accused, as found in the "Minnesota Statutes," 1994, contain any enacting clauses.

The constitutional provision which prescribes an enacting clause for all laws is not directory, but is mandatory. This provision is to be strictly adhered to as asserted by the Supreme Court of Minnesota:

> Upon both principle and authority, we hold that article 4, § 13, of our constitution, which provides that "the style of all laws of this state shall be, 'Be it enacted by the legislature of the state of Minnesota,'" is mandatory, and that a statute without any enacting clause is void. *Sjoberg v. Security Savings & Loan Assn*, 73 Minn. 203, 212 (1898).

[Add other material here relating to the mandatory nature of enacting clauses]

III. What is the Purpose of the Constitutional Provision for an Enacting Clause?

To determine the validity of using laws without an exacting clause against citizens, we need to determine the purpose and function of an enacting clause; and also to see what problems or evils were intended to be avoided by including such a provision in our State Constitution. One object of the constitutional mandate for an enacting clause is to show that the law is one enacted by the legislative body which has been given the lawmaking authority under the Constitution.

> The purpose of thus prescribing an enacting clause—"the style of the acts"—is to establish it; to give it permanence, uniformity, and certainty; to identify the act of legislation as of the general assembly; to afford evidence of its legislative statutory nature; and to secure uniformity of identification, and thus prevent inadvertence, possibly mistake and

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fraud. *State v. Patterson*, 4 S.E. 350, 352, 98 N.C. 660 (1887); 82 C.J.S. "Statutes," § 65, p. 104; *Joiner v. State*, 155 S.E.2d 8, 10, 223 Ga. 367 (1967).

What is the object of the style of a bill or enacting clause anyway? To show the authority by which the bill is enacted into law; to show that the act comes from a place pointed out by the Constitution as the source of legislation. *Ferrill v. Keel*, 151 S.W. 269, 272, 105 Ark. 380 (1912).

To fulfill the purpose of identifying the lawmaking authority of a law, it has been repeatedly declared by the courts of this land that an enacting clause is to appear **on the face of every law** which the people are expected to follow and obey.

The almost unbroken custom of centuries has been to preface laws with a statement in some form declaring the enacting authority. The purpose of an enacting clause of a statute is to identify it as an act of legislation by expressing on its face the authority behind the act. 73 Am. Jur.2d, "Statutes," § 93, p. 319, 320; *Preckel v. Byrne*, 243 N.W. 823, 826, 62 N.D. 356 (1932).

For an enacting clause to appear on the face of a law, it must be recorded or published with the law so that the public can readily identify the authority for that particular law which they are expected to follow. The "statutes" used in the complaints against the Accused have no enacting clauses. They thus cannot be identified as acts of legislation of the State of Minnesota pursuant to its lawmaking authority under Article IV of the Constitution of Minnesota (1857), since a law is mainly identified as a true and Constitutional law by way of its enacting clause. The Supreme Court of Georgia asserted that a statute must have an enacting clause, even though their State Constitution had no provision for the measure. The Court stated that an enacting clause establishes a law or statute as being a true and authentic law of the State:

The enacting clause is that portion of a statute which gives it jurisdictional identity and constitutional authenticity. *Joiner v. State*, 155 S.E.2d 8, 10 (Ga. 1967).

The failure of a law to display on its face an enacting clause deprives it of essential legality, and renders a statute which omits such clause as "a nullity and of no force of law." *Joiner v. State*, supra. The statutes cited in the complaints have no jurisdictional identity and are not authentic laws under the Constitution of Minnesota.

The Court of Appeals of Kentucky held that the constitutional provision requiring an enacting clause is a basic concept which has a direct affect upon the validity of a law. The Court, in dealing with a law that had contained no enacting clause, stated:

The alleged act or law in question is unnamed; it shows no sign of authority; it carries with it no evidence that the General Assembly or any other lawmaking power is responsible or answerable for it. * * * By an enacting clause, the makers of the Constitution intended that the General Assembly should make its impress or seal, as it were, upon each enactment for the sake of identity, and to assume and show responsibility. * * * While the Constitution makes this a necessity, it did not originate it. The custom is in use practically everywhere, and is as old as parliamentary government, as old as king's decrees, and even they borrowed it. The decrees of Cyrus, King of Persia, which Holy Writ records, were not the first to be prefaced with a statement of authority. The law was delivered

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> to Moses in the name of the Great I Am, and the prologue to the Great Commandments is no less majestic and impelling. But, whether these edicts and commands be promulgated by the Supreme Ruler or by petty kings, or by the sovereign people themselves, they have always begun with some such form as a evidence of power and authority. *Commonwealth v. Illinois Cent. R. Co.*, 170 S.W. 171, 172, 175, 160 Ky. 745 (1914).

The "laws" used against the Accused are unnamed. They show no sign of authority on their face as recorded in the "Minnesota Statutes." They carry with them no evidence that the Legislature of Minnesota, pursuant to Article IV of the Constitution of Minnesota (1857), is responsible for these laws. Without an enacting clause the laws referenced to in the complaints have no official evidence that they are from an authority which I am subject to or required to obey.

When the question of the "objects intended to be secured by the enacting clause provision" was before the Supreme Court of Minnesota, the Court held that such a clause was necessary to show the people who are to obey the law, the authority for their obedience. It was revealed that historically this was a main use for an enacting clause, and thus its use is a fundamental concept of law. The Court stated:

> All written laws, in all times and in all countries, whether in the form of decrees issued by absolute monarchs, or statutes enacted by king and council, or by a representative body, have, as a rule, expressed upon their face the authority by which they were promulgated or enacted. The almost unbroken custom of centuries has been to preface laws with a statement in some form declaring the enacting authority. If such an enacting clause is a mere matter of form, a relic of antiquity, serving no useful purpose, why should the constitutions of so many of our states require that all laws must have an enacting clause, and prescribe its form. If an enacting clause is useful and important, if it is desirable that laws shall bear upon their face the authority by which they are enacted, so that the people who are to obey them need not search legislative and other records to ascertain the authority, then it is not beneath the dignity of the framers of a constitution, or unworthy of such an instrument, to prescribe a uniform style for such enacting clause.
>
> The words of the constitution, that the style of all laws of this state shall be, "Be it enacted by the legislature of the state of Minnesota," imply that all laws must be so expressed or declared, to the end that they may express upon their face the authority by which they were enacted; and, if they do not so declare, they are not laws of this state. *Sjoberg v. Security Savings & Loan Assn*, 73 Minn. 203, 212-214 (1898).

This case was initiated when it was discovered that the law relating to "building, loan and savings associations," had no enacting clause as it was printing in the statute book, "Laws 1897, c. 250." The Court made it clear that a law existing in that manner is "void" *Sjoberg*, supra, p. 214.

The purported laws in the complaints, which the Accused is said to have violated, are referenced to various laws found printed in the "Minnesota Statutes" book. I have looked up the laws charged against me in this book and found no enacting clause for any of these laws. A citizen is not expected or required to search through other records or books for the enacting authority. If such enacting authority is not "on the face" of

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the laws which are referenced in a complaint, then "they are not laws of this state;" and thus are not laws to which I am subject. Since they are not laws of this State, the above-named Court has no subject matter jurisdiction, as there can be no crime which can exist from failing to follow laws which do not constitutionally exist.

In speaking on the necessity and purpose that each law be prefaced with an enacting clause, the Supreme Court of Tennessee quoted the first portion of the *Sjoberg* case cited above, and then stated:

> The purpose of provisions of this character is that all statutes may bear upon their faces a declaration of sovereign authority by which they are enacted and declared to be the law, and to promote and preserve uniformity in legislation. Such clauses also import a command of obedience and clothe the statute with a certain dignity, believed in all times to command respect and aid in the enforcement of laws. *State v. Burrow*, 104 S.W. 526, 529, 119 Tenn. 376 (1907).

The use of an enacting clause does not merely serve as a "flag" under which bills run the course through the legislative machinery. *Vaughn & Ragsdale Co. v. State Bd. of Eq.*, 96 P.2d 420, 424 (Mont. 1939). The enacting clause of a law goes to its substance, and is not merely procedural. *Morgan v. Murray*, 328 P.2d 644, 654 (Mont. 1958).

Any purported statute which has no enacting clause on its face, is not legally binding and obligatory upon the people, as it is not constitutionally a law at all. The Supreme Court of Michigan, in citing numerous authorities, said that an enacting clause was a requisite to a valid law since the enacting provision was mandatory:

> It is necessary that every law should show on its face the authority by which it is adopted and promulgated, and that it should clearly appear that it is intended by the legislative power that enacts it that it should take effect as a law. *People v. Dettenthaler*, 77 N.W. 450, 451, 118 Mich. 595 (1898); citing *Swann v. Buck*, 40 Miss. 270.

The laws in the "Minnesota Statutes" do not show on their face the authority by which they are adopted and promulgated. There is nothing on their face which declares they should be law, or that they are of the proper legislative authority in this State.

These and other authorities then all hold that the enacting clause of a law is to be "on its face." It must appear directly above the content or body of the law. To be on the face of the law does not and cannot mean that the enacting clause can be buried away in some other volume or some other book or records.

> **Face.** The surface of anything, especially the front, upper, or outer part or surface. That which particularly offers itself to the view of a spectator. That which is shown by the language employed, without any explanation, modification, or addition from extrinsic facts or evidence. *Black's Law Dictionary*, 5th ed., p. 530.

The enacting clause must be intrinsic to the law, and not "extrinsic" to it, that is, it cannot be hidden away in other records or books. Thus the enacting clause is regarded as part of the law, and has to appear directly with the law, on its face, so that one charged with said law knows the authority by which it exists.

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IV. Laws Must be Published and Recorded with Enacting Clauses.

Since it has been repeatedly held that an enacting clause must appear "on the face" of a law, such a requirement affects the printing and publishing of laws. The fact that the constitution requires "all laws" to have an enacting clause makes it a requirement on not just bills within the legislature, but on published laws as well. If the constitution said "all bills" shall have an enacting clause, it probably could be said that their use in publications would not be required. But the historical usage and application of an enacting clause has been for them to be printed and published along with the body of the law, thus appearing "on the face" of the law.

It is obvious, then, that the enacting clause must be readily visible on the face of a statute in the common mode in which it is published so that citizens don't have to search through the legislative journals or other records and books to see the kind of clause used, or if any exists at all. Thus a law in a statute book without an enacting clause is not a valid publication of law. In regards to the validity of a law that was found in their statute books with a defective enacting clause, the Supreme Court of Nevada held:

> Our constitution expressly provided that the enacting clause *of every law* shall be, "The people of the state of Nevada, represented in senate and assembly, do enact as follows." This language is susceptible of but one interpretation. There is no doubtful meaning as to the intention. It is, in our judgment, an imperative mandate of the people, in their sovereign capacity, to the legislature, requiring that all laws, to be binding upon them, shall, upon their face, express the authority by which they were enacted; and, since this act comes to us without such authority appearing upon its face, it *is not a law*." *State of Nevada v. Rogers*, 10 Nev. 120, 261 (1875); approved in *Caine v. Robbins*, 131 P.2d 516, 518, 61 Nev. 416 (1942); *Kefauver v. Spurling*, 290 S.W. 14, 15 (Tenn. 1926).

The manner in which the law came to the court was by the way it was found in the statute book, cited by the Court as "Stat. 1875, 66," and that is how they judge the validity of the law. Since they saw that the act, as it was printed in the statute book, had an insufficient enacting clause on its face, it was deemed to be "not a law." It is only by inspecting the publicly printed statute book that the people can determine the source, authority and constitutional authenticity of the law they are expected to follow.

[Add other material here relating to the publication of statutes]

It should be noted that laws in the above cases were held to be void for having no enacting clauses despite the fact that they were published in an official statute book of the State, and were next to other laws which had the proper enacting clauses.

The preceding examples and declarations on the use and purpose of enacting clauses shows beyond doubt that nothing can be called or regarded as a law of this State which is published without an enacting clause on its face. Nothing can exist as a State law except in the manner prescribed by the State Constitution. One of those provisions is that "all laws" must bear on their face a specific enacting style—*"Be it enacted by the*

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Legislature of the State of Minnesota." (Minn. Const., Art. IV, Sec. 13). All laws must be published with this clause in order to be valid laws, and since the "statutes" in the "Minnesota Statutes" are not so published, they are not valid laws of this State.

V. The Laws Referenced to in the Complaints Contain no Titles.

The laws listed in the complaints in question, as cited from the "Minnesota Statutes," contain no titles. All laws are to have titles indicating the subject matter of the law, as required by the Constitution of Minnesota:

> Article IV, Sec. 27. No law shall embrace more than one subject, which shall be expressed in its title.

By this provision a title is required to be on all laws. The title is another one of the forms of a law required by the Constitution. This type of constitutional provision "makes the title an essential part of every law," thus the title "is as much a part of the act as the body itself." *Leininger v. Alger,* 26 N.W.2d 348, 351, 316 Mich. 644 (1947).

> The title to a legislative act is a part thereof, and must clearly express the subject of legislation. *State v. Burlington & M. R.R. Co.,* 60 Neb. 741, 84 N.W. 254 (1900).

Nearly all legal authorities have held that the title is part of the act, especially when a constitutional provision for a title exists. 37 A.L.R. Annotated, pp. 948, 949. What then can be said of a law in which an essential part of it is missing, except that it is not a law under the State Constitution.

This provision of the State Constitution, providing that every law is to have a title expressing one subject, is mandatory and is to be followed in all laws, as stated by the Supreme Court of Minnesota:

> We pointed out that our constitutional debates indicated that the constitutional requirements relating to enactment of statutes were intended to be remedial and mandatory,—remedial, as guarding against recognized evils arising from loose and dangerous methods of conducting legislation, and mandatory, as requiring compliance by the legislature without discretion on its part to protect the public interest against such recognized evils, and that the validity of statutes should depend on compliance with such requirements * * *. *Butt v. King,* 286 N.W. 311, 313 (Minn. 1939).

The constitutional provisions for a title have been held in many other states to be mandatory in the highest sense. *State v. Beckman,* 185 S.W.2d 810, 816 (Mo. 1945); *Leininger v. Alger,* 26 N.W.2d 384, 316 Mich. 644; 82 C.J.S. "Statutes," § 64, p. 102. The provision for a title in the constitution "renders a title indispensable" 73 Am. Jur. 2d, "Statutes," § 99, p. 325, citing *People v. Monroe,* 349 Ill. 270, 182 N.E. 439. Since such provisions regarding a title are mandatory and indispensable, the existence of a title is necessary to the validity of the act. If a title does not exist, then it is not a law pursuant to Art. IV, Sec. 27 of the Constitution of Minnesota (1857). In speaking of the constitutional provision requiring one subject to be embraced in the title of each law, the Supreme Court of Tennessee stated:

> That requirement of the organic law is mandatory, and, unless obeyed in every instance, the legislation attempted is invalid and of no effect whatever. *State v. Yardley*, 32 S.W. 481, 482, 95 Tenn. 546 (1895).

To further determine the validity of citing laws in a complaint which have no titles, we must also look at the purpose for this constitutional provision, and the evils and problems which it was intended to prevent or defeat.

One of the aims and purposes for a title or caption to an act is to convey to the people who are to obey it the legislative intent behind the law.

> The constitution has made the title the conclusive index to the legislative intent as to what shall have operation. *Megins v. City of Duluth*, 106 N.W. 89, 90, 97 Minn. 23 (1906); *Hyman v. State*, 9 S.W. 372, 373, 87 Tenn. 109 (1888).

> In ruling as to the precise meaning of the language employed in a statute, nothing, as we have said before, is more pertinent towards ascertaining the true intention of the legislative mind in the passage of the enactment than the legislature's own interpretation of the scope and purpose of the act, as contained in the caption. *Wimberly v. Georgia S. & F.R. Co.*, 63 S.E. 29, 5 Ga. App. 263 (1908).

> Under a constitutional provision * * * requiring the subject of the legislation to be expressed in the title, that portion of an act is often the very window through which the legislative intent may be seen. *State v. Clinton County*, 76 N.E. 986, 166 Ind. 162 (1906).

> The title of an act is necessarily a part of it, and in construing the act the title should be taken into consideration. *Glaser v. Rothschild*, 120 S.W. 1, 221 Mo. 180 (1909).

Without the title the intent of the legislature is concealed or cloaked from public view. Yet a specific purpose or function of a title to a law is to "protect the people against covert legislation" *Brown v. Clower*, 166 S.E.2d 363, 365, 225 Ga. 165 (1969). A title will reveal or give notice to the public of the general character of the legislation. However, the nature and intent of the "laws" in the "Minnesota Statutes" have been concealed and made uncertain by its nonuse of titles. The true nature of the subject matter of the laws therein is not made clear without titles. Thus another purpose of the title is to apprise the people of the nature of legislation, thereby preventing fraud or deception in regard to the laws they are to follow. The U.S. Supreme Court, in determining the purpose of such a provision in state constitutions, said:

> The purpose of the constitutional provision is to prevent the inclusion of incongruous and unrelated matters in the same measure and to guard against inadvertence, stealth and fraud in legislation. * * * Courts strictly enforce such provisions in cases that fall within the reasons on which they rest, * * * and hold that, in order to warrant the setting aside of enactments for failure to comply with the rule, the violation must be substantial and plain. *Posados v. Warner, B. & Co.*, 279 U.S. 340, 344 (1928); also *Internat. Shoe Co. v. Shartel*, 279 U.S. 429, 434 (1928).

The complete omission of a title is about as substantial and plain a violation of this constitutional provision as can exist. The laws cited in the complaints against the

Accused are of that nature. They have no titles at all, and thus are not laws under our State Constitution.

The Supreme Court of Idaho, in construing the purpose for its constitutional provision requiring a one-subject title on all laws, stated:

> The object of the title is to give a general statement of the subject-matter, and such a general statement will be sufficient to include all provisions of the act having a reasonable connection with the subject-matter mentioned. * * * The object or purpose of the clause in the Constitution * * * is to prevent the perpetration of fraud upon the members of the Legislature or the citizens of the state in the enactment of laws. *Ex parte Crane*, 151 Pac. 1006, 1010, 1011, 27 Idaho 671 (1915).

The Supreme Court of North Dakota, in speaking on its constitutional provision requiring titles on laws, stated that, "This provision is intended * * * to prevent all surprises or misapprehensions on the part of the public." *State v. McEnroe*, 283 N.W. 57, 61 (N.D. 1938). The Supreme Court of Minnesota, in speaking on Article 4, § 27 of the State Constitution, said:

> This section of the constitution is designed to prevent deception as to the nature or subject of legislative enactments. *State v. Rigg*, 109 N.W.2d 310, 314, 260 Minn. 141 (1961); *LeRoy v. Special Ind. Sch. Dist.*, 172 N.W.2d 764, 768 (Minn. 1969).
>
> [T]he purpose of the constitutional provision quoted is * * * to prevent misleading or deceiving the public as to the nature of an act by the title given it. *State v. Helmer*, 211 N.W. 3, 169 Minn. 221 (1926).

The purposes of the constitutional provision requiring a one-subject title, and the mischiefs which it was designed to prevent, are defeated by the lack of such a title on the face of a law which a citizen is charged with violating. Upon looking at the laws charged in the complaint from the "Minnesota Statutes," I am left asking, what is the subject and nature of the laws used in the complaints against me? What interests or rights are these laws intended to affect? Since the particular objects of the provision requiring a one-subject title are defeated by the publication of laws which are completely absent of a title, the use of such a publication to indict or charge citizens with violating such laws is fraudulent and obnoxious to the Constitution.

> It is to prevent surreptitious, inconsiderate, and misapprehended legislation, carelessly, inadvertently, or unintentionally enacted through stealth and fraud, and similar abuses, that the subject or object of a law is required to be stated in the title. 73 Am. Jur. 2d, "Statutes," § 100, p. 325, cases cited.

Judge Cooley says that the object of requiring a title is to "fairly apprise the people, through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered." Cooley, *Const. Lim.*, p. 144. The State Constitution requires one-subject titles. The particular ends to be accomplished by requiring the title of a law are not fulfilled in the statutes referred to in the "Minnesota Statutes." Thus the laws charged in the complaints against me are not valid laws.

VI. The Minnesota Statutes are of an Unknown and Uncertain Authority.

The so called "statutes" in the "Minnesota Statutes" are not only absent enacting clauses, but are surrounded by other issues and facts which make their authority unknown or uncertain or questionable.

The title page of the "Minnesota Statutes" states that the statutes therein were, "Compiled, edited, and published by the Revisor of Statutes of Minnesota." It does not say that they are the official laws of the Legislature of Minnesota. The official laws of this state has always been listed in the "Session Laws" of Minnesota. The title page to the Session Laws makes it clear as to the nature of the laws therein, to wit—*"Session Laws of the State of Minnesota passed during the Forty-Fourth session of the State Legislature."* The Minnesota Statutes states that: "Minnesota Revised Statutes must not be cited, enumerated, or otherwise treated as a session law" (M.S. 3C.07, Subd. 1).

The "Session Laws" were also published by the Secretary of the State, who historically and constitutionally is in possession of the enrolled bills of the Legislature which become State law. The Constitution of Minnesota, Art. IV, Sec. 11 (1857) requires that every bill which passes both the Senate and House, and is signed by the Governor, is to be deposited "in the office of Secretary of State for preservation." Thus in this state, as in nearly all other states, all official laws, records, and documents are universally recognized by their being issued or published by the Secretary of State.

The "Minnesota Statutes" are published by the Revisor of Statutes, and are also copyrighted by him or his office. The "Session Laws" were never copyrighted as they are true public documents. In fact no true public document of this state or any state or of the United States has been or can be under a copyright. Public documents are in the public domain. A copyright infers a private right over the contents of a book, suggesting that the laws in the "Minnesota Statutes" are derived from a private source, and thus are not true public laws.

The Revisor of Statutes, in the preface to his statute book called "Minnesota Statutes," points out the difference in the various types of arrangements of laws, and states the following:

> In order to understand and use statutory law, it is necessary to know the meaning of the terms used and the inclusiveness and authority of the laws found in the various arrangements. The terms *laws, acts, statutes, revisions, compilations,* and *codes* are often used indiscriminately, but in the following discussion each has a specific meaning. "Minnesota Statutes," vol. I, p. x.

The Revisor then proceeds to point out the difference that exists between the "Session Laws" and that of a compilation, revision or code. He makes it apparent that the "Session Laws" are of a different authority than that of compilations, revisions and codes. The "Minnesota Statutes" are apparently a 'revision,' which was first published in 1945 (p. ix). The "Minnesota Statutes" appear to be nothing more than

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a reference book, like "Dunnell Minnesota Digest," or "West's Minnesota Statutes Annotated," which are also copyrighted. The contents of such reference books cannot be used as law in charging citizens with crimes on criminal complaints.

The Revisor does not say that the statutes in his book are the official laws of the State of Minnesota. He indicates that these statutes are only in "theory" laws of the State (p. xii). There thus are many confusing and ambiguous statements made by the Revisor as to the nature and authority of the statutes in the "Minnesota Statutes." It is not at all made certain that they are laws pursuant to Article IV of the Constitution of Minnesota. That which is uncertain cannot be accepted as true or valid in law.

> Uncertain things are held for nothing. *Maxim of Law.*
>
> The law requires, not conjecture, but certainty. *Coffin v. Ogden*, 85 U.S. 120, 124.
>
> Where the law is uncertain, there is no law. *Bouvier's Law Dictionary*, vol. 2, "Maxims," 1880 edition.

The purported statutes in the "Minnesota Statutes" do not make it clear by what authority they exist. The statutes therein have no enacting authority on their face. In fact, their is not a hint that the Legislature of Minnesota had anything at all to do with these so-called statute books. Thus the statutes used against the Accused are just idle words which carry no authority of any kind on their face.

VII. Established Rules of Constitutional Construction.

The issue of subject matter jurisdiction for this case thus squarely rests upon certain provisions of the Constitution of Minnesota (1857), to wit:

> Article IV, Sec. 13. The style of all laws of this State shall be: "Be it enacted by the Legislature of the State of Minnesota."
>
> Article IV, Sec. 27. No law shall embrace more than one subject, which shall be expressed in its title.

These provisions are not in the least ambiguous or susceptible to any other interpretation than their plain and apparent meaning. The Supreme Court of Montana, in construing such provisions, said that they were "so plainly and clearly expressed and are so entirely free from ambiguity," that "there is nothing for the court to construe" *Vaughn & Ragsdale Co. v. State Bd. of Eq.*, 96 P.2d 420, 423, 424. The Supreme Court of Minnesota stated how these provisions are to be construed, when it was considering the meaning of a another provision under the legislative department (Art. 4, § 9):

> In treating of constitutional provisions, we believe it is the general rule among courts to regard them as mandatory, and not to leave it to the will or pleasure of a legislature to obey or disregard them. Where the language of the constitution is plain, we are not permitted to indulge in speculation concerning its meaning, nor whether it is the embodiment of great wisdom. * * * The rule with reference to constitutional construction is also well stated by Johnson, J., in the case of Newell v. People, 7 N.Y. 9, 97, as

follows: "If the words embody a definite meaning, which involves no absurdity, and no contradiction between different parts of the same writing, then that meaning apparent upon the face of the instrument is the one which alone we are at liberty to say was intended to be conveyed. In such a case there is no room for construction. That which the words declare is the meaning of the instrument; and neither courts nor legislatures have the right to add to or take away from that meaning. * * * It must be very plain,—nay, absolutely certain—that the people did not intend what the language they have employed in its natural signification imports, before a court will feel itself at liberty to depart from the plain reading of a constitutional provision." *State ex rel. v. Sutton*, 63 Minn. 147, 149, 150, 65 N.W. 262 (1895); affirmed, *State v. Holm*, 62 N.W.2d 52, 55, 56 (Minn. 1954); *Butler Taconite v. Roemer*, 282 N.W.2d 867, 870, 871 (Minn. 1979).

It is certain that the plain and apparent language of these Constitutional provisions are not followed in the publication known as the "Minnesota Statutes" which contain no titles and no enacting clauses, and thus it is not and cannot be used as the law of this State under our Constitution. No language could be plainer or clearer than that used in Art. 4, § 13 and § 27 of our Constitution. There is no room for construction! The contents of these provisions were written in ordinary language, making their meaning self-evident, as said by the Supreme Court of Minnesota:

In construing a provision of our constitution, however, we are governed by certain well-established rules. Foremost among these is the rule that, where the language used is clear, explicit, and unambiguous, the language of the provision itself is the best evidence of the intention of the framers of the constitution. If the language is free from obscurity, the courts must give it the ordinary meaning of the words used. *State v. Holm*, 62 N.W.2d 52, 55, (Minn. 1954).

No matter how much the courts of this State have relied upon and used the publication entitled "Minnesota Statutes" as being law, that use can never be regarded as an exception to the Constitution. To support this publication as law, it must be said that it is "absolutely certain" that the framers of the Constitution did not intend for titles and enacting clauses to be printed and published with all laws, but that they did intend for them to be all stripped away and concealed from public view when a compilation of statutes is made. Such an absurdity will gain the support or respect of no one. Nor can it be speculated that a revised statute publication which dispenses with all titles and enacting clauses must be allowed under the Constitution as it is more practical and convenient than the "Session Law" publication. The use of such speculation or desired exceptions can never be used in construing such plain and unambiguous provisions.

[T]he general rule of law is, when a statute or Constitution is plain and unambiguous, the court is not permitted to indulge in speculation concerning its meaning, nor whether it is the embodiment of great wisdom. A Constitution is intended to be framed in brief and precise language. * * * It is not within the province of the court to read an exception in the Constitution which the framers thereof did not see fit to enact therein. *Baskin v. State*, 232 Pac. 388, 389, 107 Okla. 272 (1925).

There is of course no need for construction or interpretation of these provisions as they have been adjudicated upon, especially those dealing with the use of an enacting

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clause. The Supreme Court of Minnesota has made it clear that Art. 4, § 13 of our constitution "is mandatory, and that a statute without any enacting clause is void." *Sjoberg v. Security Savings & Loan Assn.*, 73 Minn. 203, 212. Being that the statutes used against me are without enacting clauses and titles they are void, which means there is no offense, no valid complaints, and thus no subject matter jurisdiction.

The provisions requiring an enacting clause and one-subject titles were adhered to with the publications known as the "Session Law" and "General Laws" for the State of Minnesota. But because certain people in government thought that they could devise a more convenient way of doing things without regard for provisions of the State Constitution, they devised the contrivance known as the "Minnesota Statutes," and then held it out to the public as being "law." This of course was fraud, subversion, and a great deception upon the people of this State which is now revealed and exposed.

There is no justification for deviating from or violating a written constitution." The "Minnesota Statutes" cannot be used as law, like the "Session Laws" were once used, solely because the circumstances have changed and we now have more laws to deal with. It cannot be said that the use and need of revised statutes without titles and enacting clauses must be justified due to expediency. New circumstances or needs do not change the meaning of constitutions, as Judge Cooley expressed:

> A constitution is not to be made to mean one thing at one time, and another at some subsequent time when the circumstances may have so changed as perhaps to make a different rule in the case seem desirable. A principal share of the benefit expected from written constitutions would be lost if the rules they established were so flexible as to bend to circumstances or be modified by public opinion.* * * [A] court or legislature which should allow a change in public sentiment to influence it in giving to a written constitution a construction not warranted by the intention of its founders, would be justly chargeable with reckless disregard of official oath and public duty; and if its course could become a precedent, these instruments would be of little avail. * * * What a court is to do, therefore, is *to declare the law as written.* T. M. Cooley, *A Treatise on the Constitutional Limitations*, 5th edition, pp. 54, 55.

There is great danger in looking beyond the constitution itself to ascertain its meaning and the rule for government. Looking at the Constitution alone, it is not at all possible to find support for the idea that the publication called the "Minnesota Statutes" is valid law of this State. The original intent of Article 4, §13 and §27 of the Constitution cannot be stretched to cover their use as such. These provisions cannot now be regarded as antiquated, unnecessary or of little importance, since "no section of a constitution should be considered superfluous." *Butler Taconite v. Roemer*, 282 N.W.2d 867, 870, (Minn. 1979). The Constitution was written for all times and circumstances, because it embodies fundamental principles which do not change with time.

Judges are not to consider the political or economic impact that might ensue from upholding the Constitution as written. They are to uphold it no matter what may result, as that ancient maxim of law states: *"Though the heavens may fall, let justice be done."*

MOTION

Based upon the above memorandum, the Accused moves that this action and cause be dismissed for lack of subject matter jurisdiction.

> A court lacking jurisdiction cannot render judgment but must dismiss the cause at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking. *United States v. Siviglia*, 686 Fed.2d 832, 835 (1981), cases cited.

Nothing can be regarded as a law in this State which fails to conform to the constitutional prerequisites which call for an enacting clause and title. There is nothing in the complaints which can constitutionally be regarded as laws, and thus there is nothing in them which I am answerable for or which can be charged against me. Since there are no valid or constitutional laws charged against me there are no crimes that exist, consequently there is no subject matter jurisdiction by which I can be tried in the above-named court.

CAVEAT

I regard it as just and necessary to give fair warning to this court of the consequences of its failure to follow the Constitution of Minnesota and uphold its oath and duty in this matter, being that it can result in this court committing acts of treason, usurpation, and tyranny. Such trespasses would be clearly evident to the public, especially in light of the clear and unambiguous provisions of the Constitution that are involved here which leave no room for construction, and in light of the numerous adjudications upon them as herein stated. The possible breaches of law that may result by denying this motion are enumerated as follows:

1. The failure to uphold these clear and plain provision of our Constitution cannot be regarded as mere error in judgment, but deliberate USURPATION. "Usurpation is defined as unauthorized arbitrary assumption and exercise of power."*State ex rel. Danielson v. Village of Mound*, 234 Minn. 531, 543, 48 N.W.2d 855, 863 (1951). While error is only voidable, such usurpation is void.

> The boundary between an error in judgment and the usurpation of judicial power is this: The former is reversible by an appellate court and is, therefore, only voidable, which the latter is a nullity. *State v. Mandehr*, 209 N.W. 750, 752 (Minn. 1926).

To take jurisdiction where it clearly does not exist is usurpation, and no one is bound to follow acts of usurpation, and in fact it is a duty of citizens to disregard and disobey them since they are void and unenforceable.

> [N]o authority need be cited for the proposition that, when a court lacks jurisdiction, any judgment rendered by it is void and unenforceable. *Hooker v. Boles*, 346 Fed.2d 285, 286 (1965).

The fact that the "Minnesota Statutes" has been in use for over forty years cannot be held as a justification to continue to usurp power and set aside the constitutional provisions which are contrary to such usurpation, as Judge Cooley stated:

> Acquiescence for no length of time can legalize a clear usurpation of power, where the people have plainly expressed their will in the Constitution. Cooley, *Constitutional Limitations*, p. 71.

2. To assume jurisdiction in this case would result in TREASON. Chief Justice John Marshall once stated:

> We [judges] have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. *Cohens v. Virginia*, 6 Wheat. (19 U.S.) 264, 404 (1821).

The judge of this court took an oath to uphold and support the Constitution of Minnesota, and his blatant disregard of that obligation and allegiance can only result in an act of treason.

3. If this court departs from the clear meaning of the Constitution, it will be regarded as a blatant act of TYRANNY. Any exercise of power which is done without the support of law or beyond what the law allows is tyranny.

> It has been said, with much truth, "Where the law ends, tyranny begins." *Merritt v. Welsh*, 104 U.S. 694, 702 (1881).

The law, the Constitution, does not allow laws to exist without titles or enacting clauses. To go beyond that and allow the "Minnesota Statutes" to exist as "law" is nothing but tyranny. Tyranny and despotism exist where the will and pleasure of those in government is followed rather than established law. It has been repeatedly said and affirmed as a most basic principle of our government that, "this is a government of laws and not of men; and that there is no arbitrary power located in any individual or body of individuals." *Cotting v. Kansas City Stock Yards Co.*, 183 U.S. 79, 84 (1901). The Constitution requires that all laws have enacting clauses and titles. If these clear and unambiguous provisions of the State Constitution can be disregarded, then we no longer have a constitution in this State, and we no longer live under a government of laws but a government of men, i.e., a system that is governed by the arbitrary will of those in office. The creation of the "Minnesota Statutes" is a typical example of the arbitrary acts of government which have become all too prevalent in this century. Its use as law is a nullity under our Constitution.

Dated: February 26, 1996

John R. Smith
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Minneapolis, Minnesota

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Our Nonconstitutional Legal System

Many recognize that the legal system today does not follow constitutional law or the common law, as it once did, but is now operating under some other law. While it is generally agreed that we are under a different law and legal system, its exact nature seems to be in dispute. It has been said that we are under admiralty law, equity law and procedure, administrative rules, public policy, emergency measures, bankruptcy law, the war powers, international law, or martial law.

In a sense, all of these concepts are in part correct, since aspects of each of them are being arbitrarily followed. But none of them specifically state or identify the legal problem and situation. While the cause or source of the current corrupt law and legal system is to be found in the spiritual sector, there is a legal explanation for what is transpiring in the government and courts.

Constitutional Avoidance

The question many of us have often asked is, how can those who control the legal and judicial system avoid conflict with the constitution while implementing arbitrary and tyrannical laws and procedures?

The answer is that they make use of a concept known as "constitutional avoidance." By this basic concept it is never presumed that the legislature intended to act contrary to the Constitution or Bill of Rights, or that it "meant to exercise or usurp any unconstitutional authority."[1] Thus if a statute can be interpreted two ways, one which conflicts with the constitution, and one which does not, the courts will always adopt the interpretation that avoids constitutional conflict. They will also dispose of matters by some other means which does not involve the constitution if available.

> The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of.[2]

> Where a case in this court can be decided without reference to questions arising under the Federal Constitution, that course is usually pursued. . .[3]

> A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.[4]

Thus a construction or decision which would be in conflict with the Constitution is to be avoided, if another is available that causes no conflict. In dealing with what it called a "nonconstitutional issue" the U.S. Supreme Court stated this rule of procedure:

> [T]he ordinary rule [is] that a federal court should not decide federal constitutional questions where a dispositive nonconstitutional ground is available.[5]

1 *United States v. Coombs*, 12 Peters (37 U.S.) 72, 75 (1838); *San Gabriel County Water Dist. v. Richardson*, 68 Cal. App. 297, 229 P. 1055, 1056 (1924).

2 *Ashwander v. Valley Authority*, 297 U.S. 288, 347 (1935).

3 *Siler v. Louisville & Nashville R.R. Co.*, 213 U.S. 175, 193 (1908); *Light v. United States*, 220 U.S. 523, 538 (1910).

4 *Panama R.R. Co. v. Johnson*, 264 U.S. 375, 390 (1923); *United States v. Standard Brewery*, 251 U.S. 210, 220 (1919).

5 *Hagans v. Lavine*, 415 U.S. 528, 547 (1973).

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Suppose that a Federal statute required all farmers to sell their grain to certain designated grain mills. One farmer had a contract with one of these grain mills to sell his grain to them. When the law is passed he stops sending his grain to that mill in protest of the law which is obviously not authorized by the Federal Constitution. The grain mill thus sues the farmer and the farmer claims that the statute which the grain mill bases its claim upon is unconstitutional. But as the record shows that the farmer was under a contract to sell his grain, the court holds that the farmer is required to sell his grain to the mill, and the statute appears to be held valid.

That contract became the "other ground" or the "nonconstitutional ground" upon which the matter can be settled. Thus if a non-constitutional ground exists, as well as an unconstitutional one, the issue will be decided upon the nonconstitutional ground to avoid conflict with the Constitution, no matter how much the statute involved might conflict with the Constitution. If there was no contract and thus no "other ground" existed, the court still would see if the statute could be interpreted in some reasonable way so as to avoid the conflict.

The concept of constitutional avoidance is basic and somewhat logical and just; but those who are in control of the current legal system have taken this principle and have expanded upon it and made it the basis of the system we now have. They have intentionally created other "nonconstitutional grounds" and "issues" to circumvent the application of constitutional law. They have done this through legislative action by creating a host of boards, commissions, agencies, bureaus and trusts which make up a rather new concept of law and government called "administrative law." The legal status of these entities is much like that of a corporation, which is also created by statute.

> The powers granted to an administrative body may be such as to establish it as a legal entity, and, although not expressly declared to be a corporation, it may be considered a public-quasi corporation.[6]

> The interstate Commerce Commission is a body corporate, with legal capacity to be a party plaintiff or defendant in the Federal courts.[7]

When a government is created by a compact or constitution, it too is in a sense a legal entity, or corporate body, but one which exists by the decree of the people or by the common law. But these administrative agencies or bodies, being creatures of statute, have a different relationship to the people than do the legislative, executive and judicial bodies created by the constitution. This point is critical since the relationship to an entity determines the authority for the "law" it might make.

These agencies and commissions are not true constitutional entities and have no common law authority being that they are created by the legislature. But, like a corporation, they also are not unconstitutional. Rather they are "non-constitutional" in nature, which simply means their existence does not come from the constitution. Thus, the problems and conflicts citizens have with these "legal entities" can be decided on some ground other than a constitutional one. It becomes an issue that can be decided without reference to the Constitution, as they are not its creatures.

> No creature of the Constitution has power to question its authority or to hold inoperative any section or provision of it. [8]

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6 73 *Corpus Juris Secundum*, "Public Administrative Law and Procedure," § 10, p. 372, citing *Parker v. Unemployment Compensation Commission*, 214 S.W.2d 529, 358 Mo. 365.

7 *Texas & Pacific Railway v. Interstate Commerce Com.*, 162 U.S. 197 (1895). In 2 Am Jur 2d, "Administrative Law," § 32, p. 56, it states: "Some administrative agencies are corporate bodies with legal capacity to sue or be sued."

8 *Commonwealth v. Illinois Cent. R. Co.*, 170 S.W. 171, 175, 160 Ky. 745 (1914).

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Artificial legal entities are creatures of the legislature, and are not "creatures of the constitution." Therefore they are not bound to the terms or limitations of the constitution, except as statute might make them. Thus when citizens have a conflict with these entities, the issue can be resolved upon a "nonconstitutional ground," not the constitution. The Internal Revenue Service is a typical example, as it is not a creature of the U.S. Constitution nor does it have common law powers. It is a mechanism created by government and thus any conflicts with it can be decided upon grounds other than the Constitution – nonconstitutional grounds.

The constitution with its requirements and limitations has been avoided by creating a *nonconstitutional* entity. The activities of such entities are generally immune from attack as being *unconstitutional.* This is especially so today with the adverse spiritual conditions that prevail in the land.

The Federal Reserve is another example of this, as it is an artificial legal entity created by Congress. While it is true its "Federal Reserve Notes" are not constitutional, since such things are obviously not specifically authorized by the U.S. Constitution, they also are not *unconstitutional,* since Congress is not printing or issuing the paper currency. Congress is clearly prohibited from doing such things since it is a constitutional entity and its actions are limited by the Constitution. But a corporation or trust is not. So to avoid constitutional conflict, certain lawyers got Congress to create an artificial legal entity and then let that entity issue the paper currency. It is no different if a corporation would print and issue its own "Monopoly" money. Such a measure is not unconstitutional because the corporation is not a constitutional entity. Thus all constitutional issues have been avoided with the creation of the Federal Reserve.

Whatever area these nonconstitutional legal entities have control over, they function to avoid conflict with the constitution and due process procedures. It is true that we are not legally bound to follow the laws of these entities, or to use or accept Federal Reserve Notes. Since the *powers that be* have avoided the Constitution, there must be a way in which we can legally avoid their nonconstitutional activities, rules and laws. This can be done by declaring a lack of authority and subject matter jurisdiction because of the lack of valid law from the Legislature or Congress.

Under the Christian republic of the past the problems associated with this "administrative law" would have been minimal or less severe. But America, and the world, has become plagued with an ungodly spiritual condition which has magnified these problems. Though this adverse spiritual problem is the source of the legal problems and dilemma we face today, the nature and reasons for it are beyond the scope of this treatise. But the spiritual realm does affect the legal realm, and it has made these legal entities created by statute a severe problem with regards to freedom and individual rights.

Nonconstitutional Laws

A law is constitutional if it conforms to the written constitution of the state or nation; it is unconstitutional if it is repugnant to that constitution. But this is based upon the presumption that the law was enacted and passed by the constitutional body which is authorized to do so. In other words, the law comes from a "creature of the Constitution."

The commissions, committees, or revisors who drafted the codes and the comprehensive revised statutes in this country are not "creatures" of any constitution. They are a creation of the legislature or Congress and thus are creatures of statute. The "laws" they write are not subject to any constitution. Thus any conflict a citizen might have with their laws is not subject to a constitutional attack. As nonconstitutional entities there is no constitutional issue that can be raised. Thus

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any constitutional issue raised will be avoided and the matter decided on other grounds.

Suppose the parliament of France passes a law that prohibits anyone from having over 200 dollars on them while in public, and any violation thereof shall be punished by 90 days imprisonment. That law cannot be called a constitutional law from the perspective of the U.S. Constitution, since it did not come from Congress. But it also cannot be called unconstitutional, no matter how oppressive it is or how contrary it is to the U.S. Constitution. Such a law could only be regarded as being "nonconstitutional" in nature.

Suppose now that you happen to be charged with violating this law by the Federal Government. In your defense you argue in court that this law violates your rights under the 4th and 5th Amendments, and is repugnant to the Constitution. The judge ignores your arguments and holds that the law is not "unconstitutional." The court would, of course, be correct but it would seem to you and everyone else that the court is corrupt and has no regard for the U.S. Constitution.

When the nature of this law is made known the decision of the court makes sense. The law was not a law of Congress, though it might have been presented as such, but rather was a law from another legal body. The clue should have been clear to all by the fact that the law in question did not have an enacting clause for Congress that said:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.*

The law in question was nonconstitutional because it came from a nonconstitutional source. This is because the French Parliament is not subject to the U.S. Constitution. While you are subject to certain laws that Congress can enact under the Constitution, you are not subject to laws of the French Parliament. But your failure to raise this fact of the non-constitutional law created the implication that you were subject to the law. Your position should have been that there is no valid law of Congress on the indictment, which makes the indictment insufficient, which causes a lack of subject matter jurisdiction of the court.

The French Parliament cannot pass any unconstitutional laws because their legislative authority does not come from the constitution, nor are they legally bound to its terms as is Congress. From our perspective in America, all laws passed by this assembly are nonconstitutional, that is, they have no relation to the U.S Constitution or any state constitution. But if one fails to point this matter out in court, such laws will be used against him.

This same situation is what is occurring with the current legal system. The laws we are being charged with violating are written by commissions and committees, and are held out to the public as being laws of the State or nation. But we are not required to follow these laws as they do not come from a constitutional source. Congress and the State legislatures have created these legal entities to write laws which are based upon laws they once passed, so as to make it appear they are laws of Congress or the Legislature.

If the California Legislature passes a law and then the Legislature of Texas copies that law verbatim and enacts it as a law, no one can look at what the Legislature of Texas wrote and enacted and say it is a California law. If a prosecutor in California had the Texas Statute book which contains this law and cited from it on a complaint, would that make a valid complaint? No, it wouldn't because the law is not a law of the California Legislature, as it does not have the enacting clause of the California Legislature. The fact that the California Legislature passed an identical law is irrelevant because that law is not referred to in the complaint. Likewise, the laws from the commissions and committees do not become

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laws of the State Legislature just because they are similar to laws once passed by that Legislature. The laws of these entities do not have the enacting clause of the Legislature.

Let us look at another example of this problem. Suppose that General Motors corporation passed a regulation or by-law which prohibited anyone from parking their car in neutral gear. You are caught doing so and your car is towed away by the city, and you are charged for violating this regulation by the State. The complaint or indictment might cite the regulation as GMR 142.65, subd. c (GMR=General Motors Regulations).

If you argue that the law or regulation is a violation of the Bill of Rights, or is unconstitutional, you shall not prevail because General Motors cannot do anything unconstitutional, nor can they violate your rights of life, liberty and property as prescribed by the Bill of Rights. They can commit torts, trespasses, false imprisonments, thefts, and damages, but they can never write a rule, regulation or by-law which would violate your rights under the Constitution. As a corporation, General Motors is not subject to the limitations of the Constitution. Only duly constituted offices, departments or positions under the constitution, or which exist by the common law, are subject to the constitution. Only these entities can do something "unconstitutional." Thus your claim that the law violates your constitutional rights and exceeds the limits of the Constitution would be denied and held as frivolous.

It is true that the Regulation of General Motors (GMR 142.65, subd. c.) is not a constitutional law, but it also is not an unconstitutional law. It is a "nonconstitutional law," meaning it comes from a source outside the realm of the constitution, because General Motors is not a constitutional entity. The law passed by General Motors has no authority behind it which would make you obligated to follow it. The law contains no enacting clause showing that it comes from the State Legislature or some authority to which you are subject. There is no obligation on your part to follow the law because there is no legal relationship between you and General Motors. If one is an employee of General Motors the law might apply to him, since some manner of legal relationship then exists. But the law could not apply to employees of other companies.

Creating an Issue for Trial

The issue of a trial or hearing exists when the plaintiff and defendant arrive at some specific point or matter in which one affirms and the other denies.[9] In a criminal matter this issue is that a law has or has not been violated. But if there is no valid law, or the accused is not subject to the law in question, no issue can legally exist as the basis for the point of contention does not legally exist.

The current corrupt legal system has actually sown its own seeds of destruction by arbitrarily forming codes and statute revisions. All complaints or indictments today cite laws from these codes and revised statute books which contain no enacting clauses. Any law which fails to have an enacting clause is not a law of the legislative body to which we are constitutionally subject. The laws from the U.S. Code or Revised Statutes of the State are from another legal entity, that being some commission or committee.

Since there are no valid laws on the complaint or indictment, there legally is no issue before the court. But the court system creates an issue by asking the accused how he pleads to the charges. The plea causes an issue to exist because it creates a controversy. The controversy relates to what is on the complaint or indictment because the plea acknowledges that it is a genuine document.

9 Black's Law Dictionary, 2d ed., West Publishing, 1910, p. 657.

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> The very act of pleading to it [an indictment] admits its genuineness as a record.[10]

If there is a law on the complaint which is unconstitutional, or is from another state or other legal entity, the violation of that law can become a triable issue by way of the plea. Thus when one pleads to a false or invalid charge on the complaint, he establishes an issue which would not have otherwise existed.

> The plea forms the issue to be tried, without which there is nothing before the court or jury for trial.[11]

It is essential to a valid trial that in some way there should be an issue between the state and the accused, and without a plea, there could be no issue.[12] If you make a plea of "not guilty" to the charge of violating GMR 142.65, subd. c, or the law of the French Parliament, you have admitted or acknowledged that the law used in the complaint is genuine. It has now been established that there exists an issue which can be tried. When one is charged for violating a zoning ordinance, driving without a license, or failure to file an income tax return, and a plea of "not guilty" is made, one has in effect acquiesced to the validity of these laws. The only way one can prevail is by showing they did not commit them, or by showing they are unconstitutional. But since these are nonconstitutional laws of some committee or commission, such constitutional arguments will not work. The one thing that can stop this procedure is showing a lack of subject matter jurisdiction, which can be shown because the laws used have no enacting clauses and are thus void. It now is an issue of authority for that law to exist as a law of the state or Congress.

When you are charged with a violation of some "Code" of some committee, the court proceedings are in *equity* since your conflict is not with a constitutional source of law, or with a common law crime.

The legal system today does not recognize or proceed upon common law crimes, and thus the only things that are crimes are made so by statute (or rather code). A crime exists when a law exists which prohibits or commands an action. If there is no law, there can be no crime, and if there is no crime, there can be no subject-matter jurisdiction of the court to hear a matter. A nonconstitutional law has the same effect upon a complaint or indictment as does an unconstitutional law or a non-existent law. It renders the charging instrument void.

A nonconstitutional law is not a law to which we are subject, so doing what it prohibits cannot constitute a crime. Thus if General Motors passes a law requiring all persons to show up for work by 6:00 A.M. or they will lose their jobs, it is a nonconstitutional law. Unless one is an employee of General Motors, he is not subject to that law and so cannot be charged for violating it. Because it is a nonconstitutional law it is has no force and effect as a law over you and the court lacks subject matter jurisdiction to try the matter.

Only a constitutionally established government, or that which exists by the common law, (sheriffs, constables, coroners, mayors, etc.), can do something that is unconstitutional. Only the State Legislature is limited by the provisions of the State Constitution regarding laws enacted. Thus only the State Legislature can enact an unconstitutional law or statute. General Motors, Inc., or the Parliament of France, can pass all sorts of rules, regulations and laws, but none of them can ever be declared unconstitutional. But they are not valid laws which we are subject to, for we have no legal relationship to these entities. Likewise, we have no legal relationship to the commissions which drafted the modern-day "Codes" or "Revised Statutes."

10 *Frisbie v. United States*, 157 U.S. 160, 165 (1894).

11 *Koscielski v. State*, 158 N.E. 902, 903 (Ind. 1927); *Andrews v. State*, 146 N.E. 817, 196 Ind. 12 (1925); *State v. Acton*, 160 Atl. 217, 218 (N.J. 1932).

12 *United States v. Aurandt*, 107 Pac. 1064, 1065 (N.M. 1910).

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Conclusions and Comments

The comprehensive codes and revised statutes that exist today are but a clandestine means to subject citizens to some legal entity other than the State Legislature or Congress. They also serve as a clandestine means to bring laws into existence that are not limited to the confines of a constitution or the common law. While these codes were intended to solve the problem of massive amounts of law, they have created even bigger problems.

There is no way anyone can say that it was the intent of the framers of the Constitution, and the people who adopted it, to have all titles and enacting clauses stripped away from all the laws when they are published. Such a measure totally defeats the purpose for which these forms of law were intended and thus required in the State constitutions. In Washington it was held that the compilation entitled "Revised Code of Washington . . . is not the law."[1]

It has been repeatedly said that the comprehensive codes were done for the sake of "convenience." It also has been said that it would not be practicable to have the enacting clause or title precede every law within a revision or comprehensive code.[2] But note that nothing is ever raised or said about the constitutionality of such a measure. If those in government are free to do things based solely upon what they deem to be more practicable or convenient, then we truly live under an arbitrary and despotic government.

> The necessities of a particular case will not justify a departure from the organic law. It is by such insidious process and gradual encroachment that constitutional limitations and government by the people are weakened and eventually destroyed. It has been well said:
>
> "One step taken by the Legislature or judiciary in enlarging the powers of government opens the door for another, which will be sure to follow, and so the process goes on until all respect for the fundamental law is lost, and the powers of government are just what those in authority please to make or call them." Oakley v. Aspinwall, 3 N.Y. 547, 568.[3]

Constitutions were written to prescribe certain ways of doing things, which means there will no doubt be other means of doing the same thing which are easier and more convenient. Governments naturally tend do that which is easier, more convenient and practical for their own sake. Whenever they do so they always transcend constitutional limitations and trespass on individual rights, and all of history attests that this is the result of arbitrary action.

The enacting clause acts as a sign or seal of constitutional authority of law. A king may have a seal which indicates his authority. All things that bear the seal of the king are recognized as existing by his authority. If a king's agent presents a document claiming it is from the king but has not his seal, many may believe it is by the authority of the king, though it is not. This is what the government has done with the codes and revised statutes. It has presented to the public a collection of statute books, claiming they are from the State Legislature or Congress, but the laws in them do not have the seal of authority upon them. They do not have the official enacting clause upon them to indicate they are laws from an authorized source. They thus are laws which no one needs to respect or obey.

1 *In re Self v. Rhay*, 61 Wash. (2d) 261, 264, 265, 377 P. (2d) 885 (1963).

2 This argument is also not sound as the Illinois revised statutes had been compiled with titles and enacting clauses.

3 *Village of Ridgefield Park v. Bergen Co. Bd. of Tax.*, 162 A.2d 132, 134, 135, 62 N.J. Super. 133 (1960); citing *State v. Burrow*, 104 S.W. 526, 527, 119 Tenn. 370 (1907).

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This material deals with the oldest and most basic legal principle associated with the use of law, one which today is being grossly ignored and violated.

This ancient principle relates to the enacting authority of a law, which is necessary to give a law its authority, authenticity, identity and validity.

Most "law" today exists by way of various codes or revised statutes, which fail to use this required enacting authority. This makes these statutory works invalid as a law which citizens are subject to.

Due to this, all criminal prosecutions, both State and Federal, are groundless, and the courts are without without jurisdiction to render any judgment.

Up to now courts have only made "errors" in judgment which cannot be attacked. This material forces courts to either dismiss the action or commit "usurpation," which can serve as legal justification for revolution.

Learn how the arbitrary acts of government have violated ancient and fundamental prerequisites of law, to make people subject to oppressive laws.

Here is proof that the "United States Code" and the State "Codes" or "Revised Statutes" have no authority as law, and are not laws citizens are obligated to follow.

This material reveals what may prove to be one of the biggest legal scams ever perpetrated upon the American people, and one which could contribute to the downfall of America's corrupt legal system.

exhibit 66699

THE STATE OF NEVADA EX REL. C. C. STEVENSON, ET AL., RELATORS, v. GEORGE TUFLY, STATE TREASURER, RESPONDENT.
SUPREME COURT OF NEVADA
19 Nev. 391; 12 P. 835; 1887 Nev. LEXIS 4
No. 1260.
January, 1887, Decided

Editorial Information: Prior History

Application for mandamus.

Disposition:

Mandamus denied.

CASE SUMMARY

PROCEDURAL POSTURE: An action was brought to test the validity of an amendment to the Nevada constitution authorizing the investment of moneys pledged to educational purposes, in the bonds of any of the states of the United States.A proposed constitutional amendment did not amend the constitution where it was not entered upon the journal of both houses, as required, because the constitution could only be amended as specifically provided.

OVERVIEW: An amendment to the Nevada constitution was proposed regarding the investment of moneys pledged to educational purposes, in the bonds of any of the states of the United States. No entry of the proposed amendment was made upon the journal of either house, and the question was whether or not the omission was fatal to the adoption of the amendment. The court examined various decisions and constitutional provisions and held that Nev. Const. art. 16, § 1, prescribing how amendments were to be made, was to be specifically followed in order for the constitution to be amended. The court held that amendments could only be made in the mode provided for within the constitution, and it was necessary for the proposed amendment to be entered upon the journals. The court held that the amendment was not adopted and denied the mandamus.

OUTCOME: The court denied the mandamus.

LexisNexis Headnotes

Constitutional Law > State Constitutional Operation

Nev. Const. art. 16, § 1 prescribes how amendments may be made without calling a convention.

Constitutional Law > State Constitutional Operation

See Nev. Const. art. 16, § 1.

Constitutional Law > State Constitutional Operation

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The object of the provision of Nev. Const. art. 26, § 1 for entering the amendment upon the journals cannot be doubted or misunderstood. It is to preserve, in the manner indicated, the identical amendment proposed, and in an authentic form, which, under the constitution, is to come before the succeeding general assembly. No better mode could have been adopted, when it is considered that, to be effective, the proposed amendment must be agreed to by the succeeding general assembly. This thought is much strengthened by the consideration that the proposed amendment is only required to be entered on the journals of the first general assembly which acts thereon. This distinction, to our minds, is significant, and enhances the importance of the constitutional injunction that the proposed amendment shall be entered on the journals of both houses of the general assembly which first agrees thereto.

Constitutional Law > State Constitutional Operation

If any provision of the Nevada constitution should be regarded as mandatory, it is when it provides for its own amendment.

Constitutional Law > State Constitutional Operation
Contracts Law > Negotiable Instruments > Enforcement > Joint & Several Instruments

The Nevada Constitution can be amended in but two ways, either by the people, who originally framed it, or in the mode prescribed by the instrument itself. If the last mode is pursued, the amendments must be proposed by two-thirds of each house of the general assembly; they must be published in print at least three months before the next general election for representatives, it must appear from the returns made to the secretary of state that a majority of those voting for representatives have voted in favor of the proposed amendments; and they must be ratified by two-thirds of each house of the next assembly after such election, voting by yeas and nays, the proposed amendments having been read at each session three times on three several days in each house.

Constitutional Law > State Constitutional Operation

The constitution is the supreme and paramount law. The mode by which amendments are to be made under it is clearly defined. It has been said that certain acts are to be done, certain requisitions are to be observed, before a change can be effected.

Constitutional Law > State Constitutional Operation
Constitutional Law > Bill of Rights > General Overview
Constitutional Law > Bill of Rights > Fundamental Rights > General Overview

The Nev. Const. Bill of Rights provides that all political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people; and they have the right to alter or reform the same whenever the public good may require it.

Constitutional Law > State Constitutional Operation
Criminal Law & Procedure > Criminal Offenses > Miscellaneous Offenses > Resisting Arrest > General Overview

The voice of the people, in their sovereign capacity, can only be of legal force when expressed at the times and under the conditions which they themselves have prescribed and pointed out by the constitution, or which, consistently with the constitution, have been prescribed and pointed out for them by statute; and if by any portion of the people, however large, an attempt should be made to interfere with the regular working of the agencies of government at any other time or in any other mode than as allowed by

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existing law, either constitutional or statutory, it would be revolutionary in character, and must be resisted and repressed by the officers who, for the time being, represent legitimate government.

Constitutional Law > State Constitutional Operation

Amendments to the constitution can be made only in the mode provided by the instrument itself. A proposed amendment, if agreed to by a majority of each house of the legislature, must be entered upon the journals, so that no doubt may arise as to its provisions.

Headnotes

CONSTITUTION--AMENDMENT--ENTRY ON JOURNALS OF LEGISLATURE.--An amendment was proposed to the constitution of Nevada, authorizing the investment of moneys pledged to educational purposes in the bonds of any of the states of the United States, but no entry of the same was made upon the journal of either house of the legislature: *Held*, that this omission was fatal to the adoption of the amendment.

Counsel J. F. Alexander, Attorney-General, for Relators.
Wm. M. Stewart, for Respondent.
The facts are stated in the opinion.

Judges: BELKNAP, J.

Opinion

Opinion by: BELKNAP

Opinion

{12 P. 835} {19 Nev. 391} By the Court, BELKNAP, J.:

This is an amicable proceeding brought for the purpose of testing the validity of an amendment to the constitution authorizing the investment of moneys pledged to educational purposes, in the bonds of any of the states of the United States.

Section 1 of article 16 of the constitution prescribes how amendments may be made without calling a convention. It reads as follows: "Any amendment or amendments to this constitution may be proposed in the senate or assembly; and, if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their respective journals, with the yeas and nays taken thereon, and referred to the legislature then next to be chosen, and shall be published for three months next preceding the time of making such {12 P. 836} choice. And if, in the legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people in such manner, and at such time, as the legislature may prescribe; and, if the people shall approve {19 Nev. 392} and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments shall become a part of the constitution."

At the eleventh session of the legislature, the following proposed amendment was agreed to:

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"Resolved by the senate, the assembly concurring, that section 3 of article 11 of the constitution of the state of Nevada be amended so as to read as follows:

"Sec. 3. All lands, including the sixteenth and thirty-sixth sections in every township, donated for the benefit of the public schools in the act of the thirty-eighth congress to enable the people of the territory of Nevada to form a state government; the thirty thousand acres of public lands granted by an act of congress approved July 2, A. D. 1862, for each senator and representative in congress; and all proceeds of lands that have been or may hereafter be granted or appropriated by the United States to this state, and also the five hundred thousand acres of land granted to the new states under the act of congress distributing the proceeds of the public lands among the several states of the Union, approved A. D. 1849, provided that congress make provisions for or authorize such diversion to be made for the purpose herein contained; all estates that may escheat to the state; all of such per cent. as may be granted by congress on the sale of lands; all fines collected under the penal laws of this state; all property given or bequeathed to the state for educational purposes; and all proceeds derived from any or all said sources, shall be, and the same are hereby, solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses, and the interest thereon shall from time to time be apportioned among the several counties in proportion to the ascertained number of the persons between the ages of six and eighteen years in the different counties, and the legislature shall provide for the sale of floating land warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above mentioned sources, in United States bonds or bonds of this state, or the bonds of such other state or states as may be selected by the boards authorized by law to make such investments; provided, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus **{19 Nev. 393}** interest shall be added to the principal sum; and, provided further, that such portions of said interest as may be necessary may be appropriated for the support of the state university."

No entry of the proposed amendment was made upon the journal of either house, and the question presented is whether or not this omission was fatal to the adoption of the amendment.

An inquiry based upon similar facts and constitutional provisions was recently presented to the supreme court of Iowa. In pronouncing the amendment invalid, the court employed the following language, which we adopt: "The object of the provision (entering the amendment upon the journals) cannot be doubted or misunderstood. It is to preserve, in the manner indicated, the identical amendment proposed, and in an authentic form, which, under the constitution, is to come before the succeeding general assembly. No better mode could have been adopted, when it is considered that, to be effective, the proposed amendment must be agreed to by the succeeding general assembly. This thought is much strengthened by the consideration that the proposed amendment is only required to be entered on the journals of the first general assembly which acts thereon. This distinction, to our minds, is significant, and enhances the importance of the constitutional injunction that **{12 P. 837}** the proposed amendment shall be entered on the journals of both houses of the general assembly which first agrees thereto." (*Koehler* v. *Hill*, 60 Iowa 543, 14 N.W. 738.)

The court considered the omission fatal, notwithstanding a vote of the people had approved the proposed amendment, and declared that, if any provision of the constitution should be regarded as mandatory, it is when it provides for its own amendment.

The remarks of Judge Cooley made in considering the construction to be placed upon constitutional provisions are pertinent and instructive. He says: "In all we have said upon this subject, we have assumed the constitutional provision to be mandatory. * * * The fact is this: That whatever constitutional provision can be looked upon as directory merely, is very likely to be treated by the legislature as if it were devoid even of moral obligation, and to be therefore habitually disregarded. To

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Exhibit 66633

say that a provision is directory seems, with many persons, to be equivalent to saying that it is not law at all. {19 Nev. 394} That this ought not to be so must be conceded; that it is so we have abundant reason and good authority for saying. If, therefore, a constitutional provision is to be enforced at all, it must be treated as mandatory. And, if the legislature habitually disregarded it, it seems to us that there is all the more urgent necessity that the courts should enforce it. And it also seems to us that there are few evils which can be inflicted by a strict adherence to the law so great as that which is done by the habitual disregard, by any department of the government, of a plain requirement of that instrument from which it derives its authority, and which ought, therefore, to be scrupulously observed and obeyed." (Cooley, Const. Lim. 183.)

"In *Collier* v. *Frierson*, 24 Ala. 100, it appeared that the legislature had proposed eight different amendments to be submitted to the people at the same time. The people had approved them, and all the requisite proceedings to make them a part of the constitution had been had, except that, in the subsequent legislature, the resolution for their ratification had by mistake omitted to recite one of them. On the question whether this one had been adopted, we quote from the opinion of the court: 'The constitution can be amended in but two ways, either by the people, who originally framed it, or in the mode prescribed by the instrument itself. If the last mode is pursued, the amendments must be proposed by two-thirds of each house of the general assembly; they must be published in print at least three months before the next general election for representatives, it must appear from the returns made to the secretary of state that a majority of those voting for representatives have voted in favor of the proposed amendments; and they must be ratified by two-thirds of each house of the next assembly after such election, voting by yeas and nays, the proposed amendments having been read at each session three times on three several days in each house. We entertain no doubt that, to change the constitution by any other mode than by a convention, every requisition which is demanded by the instrument itself must be observed, and the omission of any one is fatal to the amendment. We scarcely deem any argument necessary to enforce this proposition. The constitution is the supreme and paramount law. The mode by which amendments are to be made under it is clearly defined. It has been said that certain acts are to be done, certain requisitions are to be observed, {19 Nev. 395} before a change can be effected. But to what purpose are those acts required, or those requisitions enjoined, if the legislature or any department of the government can dispense with them? To do so would be to violate the instrument which they are sworn to support, and every principle of public law and sound constitutional policy requires the courts to pronounce against any amendment which is not shown to have been made in accordance with the rules prescribed by the fundamental law." (Cooley, Const. Lim., 40.)

At the last general election a majority of the electors of the state ratified {12 P. 838} the amendment, and we were asked at the argument to give to this fact such consideration as it may deserve. The suggestion is doubtless based upon the fact that, under our form of government, all political power originates with the people. The bill of rights contained in our constitution declares that "all political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people; and they have the right to alter or reform the same whenever the public good may require it."

{In commenting upon reservations of this character, Judge Cooley says: "Although, by their constitutions, the people have delegated the exercise of sovereign powers to the several departments, they have not thereby divested themselves of the sovereignty. They retain in their own hands, so far as they have thought it needful to do so, a power to control the governments they create, and the three departments are responsible to, and subject to be ordered, directed, changed, or abolished by them. But this control and direction must be exercised in the legitimate mode previously agreed upon. The voice of the people, in their sovereign capacity, can only be of legal force when expressed at the times and under the conditions which they themselves have prescribed and pointed out by the

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constitution, or which, consistently with the constitution, have been prescribed and pointed out for them by statute; and if by any portion of the people, however large, an attempt should be made to interfere with the regular working of the agencies of government at any other time or in any other mode than as allowed by existing law, either constitutional or statutory, it would be revolutionary in character, and must be resisted and repressed by the officers who, for the time being, represent legitimate government." (Cooley, Const. Lim. 751.)

{19 Nev. 396} We conclude that amendments to the constitution can be made only in the mode provided by the instrument itself. A proposed amendment, if agreed to by a majority of each house of the legislature, must be entered upon the journals, so that no doubt may arise as to its provisions. The yeas and nays must be entered in order to ascertain whether the requisite number have agreed to the amendment. It is then to be referred to the next legislature, and is to be published for three months preceding the election, so that the members may, if the people desire, be elected specially to consider it. And, finally, the proposed amendment must be submitted by the legislature to a vote of the people. These provisions were intended to secure care and deliberation on the part of the legislature and people, and are exclusive and controlling.

The amendment was not constitutionally adopted. The statute enacted for the purpose of executing its provisions is unconstitutional, and respondent properly refused to comply with its requirements. *Mandamus* denied

Special Exhibit "6"

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version 1

copy

ACT OF THE 48TH SESSION OF THE NEVADA LEGISLATURE ADOPTING AND ENACTING NEVADA REVISED STATUTES

1

AN ACT to revise the laws and statutes of the State of Nevada of a general or public nature; to adopt and enact such revised laws and statutes, to be known as the Nevada Revised Statutes, as the law of the State of Nevada; to repeal all prior laws and statutes of a general, public and permanent nature; providing penalties; and other matters relating thereto.

[Approved January 25, 1957]*The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:*

Section 1. Enactment of Nevada Revised Statutes.

The Nevada Revised Statutes, being the statute laws set forth after section 9 of this act, are hereby adopted and enacted as law of the State of Nevada.

EXHIBIT "B"
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Sec. 2. Designation and citation.

The Nevada Revised Statutes adopted and enacted into law by this act, and as hereafter amended and supplemented and printed and published pursuant to law, shall be known as Nevada Revised Statutes and may be cited as "NRS" followed by the number of the Title, chapter or section, as appropriate.

Sec. 3. Repeal of prior laws.

Except as provided in section 5 of this act and unless expressly continued by specific provisions of Nevada Revised Statutes, all laws and statutes of the State of Nevada of a general, public and permanent nature enacted prior to January 21, 1957, hereby are repealed.

Sec. 4. Construction of act.

1. The Nevada Revised Statutes, as enacted by this act, are intended to speak for themselves; and all sections of the Nevada Revised Statutes as so enacted shall be considered to speak as of the same date, except that in cases of conflict between two or more sections or of any ambiguity in a section, reference may be had to the acts from which the sections are derived, for the purpose of applying the rules of construction relating to repeal or amendment by implication or for the purpose of resolving the ambiguity.

2. The provisions of Nevada Revised Statutes as enacted by this act shall be considered as substituted in a continuing way for the provisions of the prior laws and statutes repealed by section 3 of this act.

3. The incorporation of initiated and referred measures is not to be deemed a legislative reenactment or amendment thereof, but only a mechanical inclusion thereof into the Nevada Revised Statutes.

4. The various analyses set out in Nevada Revised Statutes, constituting enumerations or lists of the Titles, chapters and sections of Nevada Revised Statutes, and the descriptive headings or catchlines immediately preceding or within the texts of individual sections, except the section numbers included in the headings or catchlines immediately preceding the texts of such sections, do not constitute part of the law. All derivation and other notes set out in Nevada Revised Statutes are given for the purpose of convenient reference, and do not constitute part of the law.

5. Whenever any reference is made to any portion of Nevada Revised Statutes or of any other

law of this state or of the United States, such reference shall apply to all amendments and additions thereto now or hereafter made.

Sec. 5. Effect of enactment of NRS and repealing clause.

1. The adoption and enactment of Nevada Revised Statutes shall not be construed to repeal or in any way affect or modify:

(a) Any special, local or temporary laws.

(b) Any law making an appropriation.

(c) Any law affecting any bond issue or by which any bond issue may have been authorized.

(d) The running of the statutes of limitations in force at the time this act becomes effective.

(e) The continued existence and operation of any department, agency or office heretofore legally established or held.

(f) Any bond of any public officer.

(g) Any taxes, fees, assessments or other charges incurred or imposed.

(h) Any statutes authorizing, ratifying, confirming, approving or accepting any compact or contract with any other state or with the United States or any agency or instrumentality thereof.

2. All laws, rights and obligations set forth in subsection 1 of this section shall continue and exist in all respects as if Nevada Revised Statutes had not been adopted and enacted.

3. The repeal of prior laws and statutes provided in section 3 of this act shall not affect any act done, or any cause of action accrued or established, nor any plea, defense, bar or matter subsisting before the time when such repeal shall take effect; but the proceedings in every case shall conform with the provisions of Nevada Revised Statutes.

4. All the provisions of laws and statutes repealed by section 3 of this act shall be deemed to have remained in force from the time when they began to take effect, so far as they may apply to any department, agency, office, or trust, or any transaction, or event, or any limitation, or any right, or obligation, or the construction of any contract already affected by such laws, notwithstanding the repeal of such provisions.

5. No fine, forfeiture or penalty incurred under laws or statutes existing prior to the time Nevada Revised Statutes take effect shall be affected by repeal of such existing laws or statutes, but the recovery of such fines and forfeitures and the enforcement of such penalties shall be effected as if the law or statute repealed had still remained in effect.

6. When an offense is committed prior to the time Nevada Revised Statutes take effect, the offender shall be punished under the law or statute in effect when the offense was committed.

7. No law or statute which heretofore has been repealed shall be revived by the repeal provided in section 3 of this act.

8. The repeal by section 3 of this act of a law or statute validating previous acts, contracts or transactions shall not affect the validity of such acts, contracts or transactions, but the same shall remain as valid as if there had been no such repeal.

9. If any provision of the Nevada Revised Statutes as enacted by this act, derived from an act that amended or repealed a preexisting statute, is held unconstitutional, the provisions of section 3 of this act shall not prevent the preexisting statute from being law if that appears to have been the intent of the legislature or the people.

Sec. 6. Severability of provisions.

If any provision of the Nevada Revised Statutes or amendments thereto, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of the Nevada Revised Statutes or such amendments that can be given effect without the invalid provision or application, and to this end the provisions of Nevada Revised Statutes and such amendments are declared to be severable.

Sec. 7. Effective date.

This act, and each and all of the laws and statutes herein contained and hereby enacted as the Nevada Revised Statutes, shall take effect upon passage and approval.

Sec. 8. Omission from session laws.

The provisions of NRS 1.010 to 710.590, inclusive, appearing following section 9 of this act shall not be printed or included in the Statutes of Nevada as provided by NRS 218.500 and NRS 218.510; but there shall be inserted immediately following section 9 of this act the words: "(Here followed NRS 1.010 to 710.590, inclusive.)"

Sec. 9. Content of Nevada Revised Statutes.

The following laws and statutes attached hereto, consisting of NRS sections 1.010 to 710.590, inclusive, constitute the Nevada Revised Statutes:

(Here followed NRS 1.010 to 710.590, inclusive.)

Version 2

LAWS OF THE STATE OF NEVADA

Passed at the

FORTY-EIGHTH SESSION OF THE LEGISLATURE

1957

Senate Bill No. 1—Senator Johnson

CHAPTER 1

AN ACT creating a legislative fund.

[Approved January 23, 1957]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. For the purpose of paying the salaries, mileage, and the postage and stationery allowances of members of the 1957 Nevada legislature, the salaries of the attachés, and the incidental expenses of the respective houses thereof, and the unpaid expenses incurred by the 1956 special session of the Nevada legislature, the state treasurer is hereby authorized and required to set apart, from any money now in the general fund not otherwise appropriated, the sum of $150,000, which shall constitute the legislative fund.

SEC. 2. The state controller is hereby authorized and required to draw his warrants on the legislative fund in favor of the members and employees of the senate and assembly for per diem, mileage, stationery allowances, compensation, and incidental expenses of the respective houses, when properly certified in accordance with law, and the state treasurer is hereby authorized and required to pay the same.

SEC. 3. Any unexpended portion of the legislative fund shall revert to the general fund on December 31, 1959.

SEC. 4. This act shall become effective upon passage and approval.

Senate Bill No. 2—Committee on Judiciary Version 2

CHAPTER 2

AN ACT to revise the laws and statutes of the State of Nevada of a general or public nature; to adopt and enact such revised laws and statutes, to be known as the Nevada Revised Statutes, as the law of the State of Nevada; to repeal all prior laws and statutes of a general, public and permanent nature; providing penalties; and other matters relating thereto.

[Approved January 25, 1957]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Enactment of Nevada Revised Statutes. The Nevada Revised Statutes, being the statute laws set forth after section 9 of this act, are hereby adopted and enacted as law of the State of Nevada.

Exhibit "7"

SEC. 2. Designation and Citation. The Nevada Revised Statutes adopted and enacted into law by this act, and as hereafter amended and supplemented and printed and published pursuant to law, shall be known as Nevada Revised Statutes and may be cited as "NRS" followed by the number of the Title, chapter or section, as appropriate.

SEC. 3. Repeal of Prior Laws. Except as provided in section 5 of this act and unless expressly continued by specific provisions of Nevada Revised Statutes, all laws and statutes of the State of Nevada of a general, public and permanent nature enacted prior to January 21, 1957, hereby are repealed.

SEC. 4. Construction of Act.

1. The Nevada Revised Statutes, as enacted by this act, are intended to speak for themselves; and all sections of the Nevada Revised Statutes as so enacted shall be considered to speak as of the same date, except that in cases of conflict between two or more sections or of any ambiguity in a section, reference may be had to the acts from which the sections are derived, for the purpose of applying the rules of construction relating to repeal or amendment by implication or for the purpose of resolving the ambiguity.

2. The provisions of Nevada Revised Statutes as enacted by this act shall be considered as substituted in a continuing way for the provisions of the prior laws and statutes repealed by section 3 of this act.

3. The incorporation of initiated and referred measures is not to be deemed a legislative reenactment or amendment thereof, but only a mechanical inclusion thereof into the Nevada Revised Statutes.

4. The various analyses set out in Nevada Revised Statutes, constituting enumerations or lists of the Titles, chapters and sections of Nevada Revised Statutes, and the descriptive headings or catchlines immediately preceding or within the texts of individual sections, except the section numbers included in the headings or catchlines immediately preceding the texts of such sections, do not constitute part of the law. All derivation and other notes set out in Nevada Revised Statutes are given for the purpose of convenient reference, and do not constitute part of the law.

5. Whenever any reference is made to any portion of Nevada Revised Statutes or of any other law of this state or of the United States, such reference shall apply to all amendments and additions thereto now or hereafter made.

SEC. 5. Effect of Enactment of NRS and Repealing Clause.

1. The adoption and enactment of Nevada Revised Statutes shall not be construed to repeal or in any way affect or modify:

(a) Any special, local or temporary laws.

(b) Any law making an appropriation.

(c) Any law affecting any bond issue or by which any bond issue may have been authorized.

(d) The running of the statutes of limitations in force at the time this act becomes effective.

(e) The continued existence and operation of any department, agency or office heretofore legally established or held.

(f) Any bond of any public officer.

Exhibit "7"

(g) Any taxes, fees, assessments or other charges incurred or imposed.

(h) Any statutes authorizing, ratifying, confirming, approving or accepting any compact or contract with any other state or with the United States or any agency or instrumentality thereof.

2. All laws, rights and obligations set forth in subsection 1 of this section shall continue and exist in all respects as if Nevada Revised Statutes had not been adopted and enacted.

3. The repeal of prior laws and statutes provided in section 3 of this act shall not affect any act done, or any cause of action accrued or established, nor any plea, defense, bar or matter subsisting before the time when such repeal shall take effect; but the proceedings in every case shall conform with the provisions of Nevada Revised Statutes.

4. All the provisions of laws and statutes repealed by section 3 of this act shall be deemed to have remained in force from the time when they began to take effect, so far as they may apply to any department, agency, office, or trust, or any transaction, or event, or any limitation, or any right, or obligation, or the construction of any contract already affected by such laws, notwithstanding the repeal of such provisions.

5. No fine, forfeiture or penalty incurred under laws or statutes existing prior to the time Nevada Revised Statutes take effect shall be affected by repeal of such existing laws or statutes, but the recovery of such fines and forfeitures and the enforcement of such penalties shall be effected as if the law or statute repealed had still remained in effect.

6. When an offense is committed prior to the time Nevada Revised Statutes take effect, the offender shall be punished under the law or statute in effect when the offense was committed.

7. No law or statute which heretofore has been repealed shall be revived by the repeal provided in section 3 of this act.

8. The repeal by section 3 of this act of a law or statute validating previous acts, contracts or transactions shall not affect the validity of such acts, contracts or transactions, but the same shall remain as valid as if there had been no such repeal.

9. If any provision of the Nevada Revised Statutes as enacted by this act, derived from an act that amended or repealed a preexisting statute, is held unconstitutional, the provisions of section 3 of this act shall not prevent the preexisting statute from being law if that appears to have been the intent of the legislature or the people.

SEC. 6. Severability of Provisions. If any provision of the Nevada Revised Statutes or amendments thereto, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of the Nevada Revised Statutes or such amendments that can be given effect without the invalid provision or application, and to this end the provisions of Nevada Revised Statutes and such amendments are declared to be severable.

SEC. 7. Effective Date. This act, and each and all of the laws and

Exhibit "7"

statutes herein contained and hereby enacted as the Nevada Revised Statutes, shall take effect upon passage and approval.

SEC. 8. Omission From Session Laws. The provisions of NRS 1.010 to 710.590, inclusive, appearing following section 9 of this act shall not be printed or included in the Statutes of Nevada as provided by NRS 218.500 and NRS 218.510; but there shall be inserted immediately following section 9 of this act the words: "(Here followed NRS 1.010 to 710.590, inclusive.)"

SEC. 9. Content of Nevada Revised Statutes. The following laws and statutes attached hereto, consisting of NRS sections 1.010 to 710.590, inclusive, constitute the Nevada Revised Statutes:

(Here followed NRS 1.010 to 710.590, inclusive.)

Senate Bill No. 3—Committee on Judiciary

CHAPTER 3

AN ACT to amend NRS section 218.310 relating to drafting of bills, and to amend NRS sections 220.100, 220.130, 220.160 and 220.170 relating to the duties of the statute revision commission.

[Approved January 25, 1957]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. NRS 218.310 is hereby amended to read as follows:

218.310 1. Bills to amend existing general statutes *and all bills to enact new statutes of a general, public and permanent nature shall be deemed amendments to NRS and* shall contain reference to [sections of] NRS. [in the body of the bill rather than in the title.]

2. New matter shall be indicated by underscoring in the typewritten copy and italics in the printed copy [.] *except in bills to add new chapters or Titles to NRS and which do not amend existing sections of NRS.*

3. Matter to be omitted shall be indicated by brackets in the typewritten copy and brackets or strike-out type in the printed copy.

4. In the drafting and printing of bills all matter appearing as omitted and bracketed in previously enacted and printed statutes shall be omitted entirely.

SEC. 2. NRS 220.100 is hereby amended to read as follows:

220.100 1. As soon as practicable after May 1, 1951, the commission shall commence the preparation of a complete revision and compilation of the laws of the State of Nevada of general application, and a compilation of the constitution of the State of Nevada, together with brief annotations to sections thereof.

2. The revision when completed shall be known as Nevada Revised Statutes [, _____, and the year of first publication shall be filled in in the blank space of the title. For brevity the title may be cited as NRS _____] *and may be cited as NRS followed by the number of the Title, chapter or section, as appropriate.*

Exhibit "7"

EXHIBIT 8

Pg. 1. The mode of introducing of Assembly Bill No. Committee on Judiciary seems to be, the commingling of the branches of Gov. of the Legislature and Judicial Branches of Gov.

It seems that the form and style of Assem. Bill No. 43 is in the style of a bill.

That, the Acts of the 77th Session goes back to the 48TH Session makes the laws invalid and unconstitutional. (Pg. 2)

ASSEMBLY BILL NO. 43–COMMITTEE ON JUDICIARY

(ON BEHALF OF THE DEPARTMENT OF CORRECTIONS)

PREFILED DECEMBER 20, 2012 _____

Referred to Committee on Judiciary

SUMMARY—Clarifies provisions governing credits earned by an offender which reduce the offender's term of imprisonment. (BDR 16-318)

FISCAL NOTE: Effect on Local Government: No. Effect on the State: No.

~ EXPLANATION – Matter in bolded italics is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to offenders; clarifying provisions governing credits earned by an offender which reduce the term of imprisonment of the offender; and providing other matters properly relating thereto.

Legislative Counsel's Digest: Under existing law, certain offenders who have been sentenced to a term of 1 imprisonment generally may earn certain amounts of credit for various 2 achievements. Any amount of credit earned is applied to the length of the 3 offender's term of imprisonment and thereby reduces the offender's sentence. (NRS 4 209.432-209.451) This bill: (1) clarifies that an offender may not earn more than 5 the amount of credit required to expire his or her sentence; and (2) specifies that 6 such a provision shall not be construed to reduce retroactively the amount of credit 7 earned by an offender if doing so would constitute a violation under the 8 Constitution of the United States or the Constitution of the State of Nevada. 9

Ex.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 209 of NRS is hereby amended by adding 1 thereto a new section to read as follows: 2 1. Notwithstanding any provision of this section and NRS 3 209.432 to 209.451, inclusive, which entitles an offender to receive 4 credit or which authorizes the Director to allow credit for an 5

offender, an offender may not earn more than the amount of 1 credit required to expire his or her sentence. 2 2. Nothing in this section shall be construed to reduce 3 retroactively the amount of credit earned by an offender if doing 4 so would constitute a violation under the

EXHIBIT "g"

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77th (2013) Session
Vote on AB43 (As Introduced) on
Assembly Final Passage
March 27, 2013 at 11:46 AM

| 41 Yea | 0 Nay | 1 Excused | 0 Not Voting | 0 Absent |

Paul Aizley	Yea
Paul Anderson	Yea
Elliot Anderson	Yea
Teresa Benitez-Thompson	Yea
David Bobzien	Yea
Steven Brooks	Excused
Irene Bustamante Adams	Yea
Maggie Carlton	Yea
Richard Carrillo	Yea
Lesley Cohen	Yea
Skip Daly	Yea
Olivia Diaz	Yea
Marilyn Dondero Loop	Yea
Wesley Duncan	Yea
Andy Eisen	Yea
John Ellison	Yea
Michele Fiore	Yea
Lucy Flores	Yea

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Jason Frierson	Yea
Tom Grady	Yea
John Hambrick	Yea
Ira Hansen	Yea
Cresent Hardy	Yea
James Healey	Yea
Pat Hickey	Yea
Joseph Hogan	Yea
William Horne	Yea
Marilyn Kirkpatrick	Yea
Randy Kirner	Yea
Peter Livermore	Yea
Andrew Martin	Yea
Harvey Munford	Yea
Dina Neal	Yea
James Ohrenschall	Yea
James Oscarson	Yea
Peggy Pierce	Yea
Ellen Spiegel	Yea
Michael Sprinkle	Yea
Lynn Stewart	Yea
Heidi Swank	Yea
Jim Wheeler	Yea
Melissa Woodbury	Yea

668 99

Constitution of the 5 United States or the Constitution of the State of Nevada. 6 Sec. 2. NRS 209.432 is hereby amended to read as follows: 7 209.432 As used in NRS 209.432 to 209.451, inclusive, and 8 section 1 of this act, unless the context otherwise requires: 9 1. "Offender" includes: 10 (a) A person who is convicted of a felony under the laws of this 11 State and sentenced, ordered or otherwise assigned to serve a term 12 of residential confinement. 13 (b) A person who is convicted of a felony under the laws of this 14 State and assigned to the custody of the Division of Parole and 15 Probation of the Department of Public Safety pursuant to NRS 16 209.4886 or 209.4888. 17 2. "Residential confinement" means the confinement of a 18 person convicted of a felony to his or her place of residence under 19 the terms and conditions established pursuant to specific statute. The 20 term does not include any confinement ordered pursuant to NRS 21 176A.530 to 176A.560, inclusive, 176A.660 to 176A.690, inclusive, 22 213.15105, 213.15193 or 213.152 to 213.1528, inclusive. 23 Sec. 3. This act becomes effective upon passage and approval.

Exhibit 66 [redacted] 99

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Bryan P Bonham 66575
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Indian Springs, NEV 89070

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DISTRICT COURT

CLARK COUNTY, NEVADA

BRYAN BONHAM,

Plaintiff,

v.

STATE OF NEVADA ex rel NEVADA DEPARTMENT OF CORRECTIONS, *et al.*,

Defendants.

Case No. A-20-823142-C
Dept. XXIX

Hearing Date: August 2, 2022
Hearing Time: 9:00 a.m.

DEFENDANTS' OPPOSITION TO MOTION FOR DISCOVERY/EVIDENTIARY HEARING AND ORDER TO SHOW CAUSE

Defendants, Nevada Department of Corrections (NDOC), State of Nevada, Charles Daniels, Tim Garrett, and Carter Potter, by and through counsel, Aaron D. Ford, Nevada Attorney General, and Dawn R. Jensen, Deputy Attorney General, of the State of Nevada, Office of the Attorney General, request this Court deny Plaintiff's Motion for Discovery/Motion for Evidentiary Hearing and Order to Show Cause.

I. BACKGROUND

Bryan Bonham is an inmate lawfully incarcerated in the NDOC. Bonham filed a Complaint alleging the Defendants violated his constitutional rights by deducting funds

///

from an outside deposit to pay off debts that Bonham admittedly accrued. Complaint at 3:7-14.

On April 5, 2021, Defendants filed a Motion to Dismiss, or in the Alternative, a Motion for Summary Judgment. On May 11, 2021, the court granted Defendants' Motion as a Motion for Summary Judgment. On August 6, 2021, notice of entry of the order was entered. On August 30, 2021, Plaintiff filed a notice of appeal.

On March 17, 2022, the Nevada Supreme Court entered an order affirming in part and remanding in part. The Supreme Court remanded purely to consider whether Plaintiff's complaint presented state law claims. At a status hearing on May 3, 2022, the District Court ordered Plaintiff had sixty days to file supplemental briefing. Plaintiff filed supplemental briefing on July 1, 2022, which appears to be in response to the court order entered May 17, 2022.[1]

Now, Plaintiff brings a Motion for Discovery/Motion for Evidentiary Hearing and Order to Show Cause. This motion is set for hearing on August 2, 2022.

II. LEGAL ARGUMENT

Plaintiffs Motion Is Improper

Pursuant to NRCP 26(a),

> "At any time after the filing of a joint case conference report, or not sooner than 14 days after a party has filed a separate case conference report, or upon order by the court or discovery commissioner, any party who has complied with Rule 16.1(a)(1), 16.2, or 16.205 may obtain discovery by any means permitted by these rules."

In addition to not being properly served, Plaintiff's motion is entirely improper. To begin, plaintiff *seeks discovery* of a list of thirty-one questions, wholly irrelevant to the case at hand. Under any circumstances, such requests exceed the scope of relevancy and are disproportionate to the needs of the case. Plaintiff's motion also fails to comply with EDCR Rule 2.34 and is not directed to the discovery commissioner. Furthermore, the parties are not in discovery and no joint case conference report has been filed. More specifically, at this time,

[1] Plaintiffs supplemental briefing was not properly served on the Defendants.

PLEADING CONTINUES IN NEXT VOLUME