

2013-02-02

NORTH DAKOTA SUPREME COURT

JASON BALVITSCH AND
CHAD WEISGRAM

Plaintiffs-APPELLEES

v.

JON R. TOLLEFSON et al,

Defendant - APPELLANT

On Appeal from the State of North Dakota District Court for the
East Central Division
Civil Case No. 09-2012-CV-01346

Appeal from Order(s) Extorting Defendant and Depriving Defendant of
Constitutional Rights violating 42 USC § 1983 and 18 USC § 242.

BRIEF OF APPELLANT

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SUMMARY OF THE APPEAL - REQUEST FOR ORAL ARGUMENT

1. Appellant Tollefson (“Tollefson”) Appeals to this Court for relief resultant to Judge Corwin’s (“Corwin”) April 29, 2013 Hearing and corresponding May 7, 2013 signed Order resulting in a Criminal and Constitutionally Unenforceable Order^[1] (“Order”) in Granting Plaintiff’s Motion for Contempt of Court with \$750.00 in sanctions (“Sanctions”) violating United States Constitution Protections, 42 U.S.C. §1983, 42 U.S.C. §242, 18 U.S.C. Chapter 41 via 18 U.S.C. §875 This Motion is supported by Civil Rights and Civil Rules 60(b)(1)(2)(3)(4)(6), Civil Rule 6 and Civil Rule 12. Corwin also denies Tollefson Access to the Courts as pled herein.

2. Corwin Ruled and imposed a sanction against Appellant – Tollefson (“Tollefson”) for Contempt of Court regarding Extraneous Constitutionally Protected Email content.

3. Further, Corwin Defamed Tollefson by Slander and Libel. Further, Corwin Extorted and Blackmailed Tollefson by threatening to imprison Tollefson if Tollefson launched any Gripe Site^{[2] [3]} about Chad

^[1] *New York Times Co. v. United States*, 403 US 713 (1971) citing *Near v. Minnesota*, 283 US 697

^[2] Circuit Judge Diana Gribbon Motz in the *Lamparello V. Falwell* Opinion identified that a Gripe Site, or a website dedicated to criticism of the markholder protected free speech by the First Amendment.

^[3] Notable lawyer Paul Levy, a lawyer with the Public Citizen Litigation Group founded in 1971 by Ralph Nader, states that A “gripe site” is a web

Weisgram (“Weisgram”) or Anderson Bottrell partner Lowell Bottrell (“Bottrell”) with the intent to “silence” the duly reported fact that Weisgram had extorted Tollefson by threatening that he (Weisgram), Balvitsch with Anderson Bottrell (“Conspirators”) will “Destroy your (Tollefson’s) reputation and drag your (Tollefson’s) name through the mud”. Corwin’s Extortion to imprison Tollefson for confronting the fact that the Conspirators have been defaming Tollefson relentlessly also violates 42 USC 1983, 18 USC 242 and more.

4. Plaintiffs and their Lawyer Mike Gust (altogether hereinafter “Conspirators”) conspired with Corwin in violating Tollefson’s Constitutional Rights.

5. Tollefson has filed an initial Federal Litigation against Corwin in The United States District Court for The District North Dakota Case No.: 3:13-cv-53 specifically for Extorting Tollefson with imprisonment, using the power and weight of the State, if Tollefson exercised his Constitutional Rights of Liberty, Freedom, Free Speech and Due Process. Please take judicial notice of the Federal Case.

6. Tollefson will file a second Federal Litigation against Corwin et al regarding his Constitutionally Unenforceable May 7, 2013 Order (Doc.

site established to criticize an institution such as a corporation, union, government body, or political figure.

#156) being an Email content Free Speech and Access to the Courts denial with sanctions.

7. An April 29, 2013 Hearing Transcript has been ordered.
8. Exhibits are referred to by their “Doc” Number.
9. Appellant Tollefson requests 60 minutes for oral argument.

SUPPLIMENTAL JURISDICTION STATEMENT

10. Supplemental jurisdiction exists whenever state law and federal law claims derive from the same nucleus of operative facts intertwined with constitutional questions for judicial considerations. *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 724 (1966).

11. 42 U.S.C. § 1983 is applicable to State Actors. A Bivens action applicable to State Actors who commit federal crimes under the color law resulting in 18 U.S.C. § 242. In *Davis v. Passman*, 99 S. Ct. 2264 (1979), the Court extended *Bivens* beyond the fourth amendment by implying a cause of action and a damages remedy under the Equal Protection component of the Due Process Clause of the Fifth Amendment. In *Carey v. Piphus* the Court ruled that nominal and proven compensatory damages are appropriate to redress such a grievance.

12. Conspirators and Corwin’s criminal and unconstitutional conduct will be further pursued in the Federal Courts.

13. Nonetheless those same Constitutional Rights violating crimes are addressed herein as evidence to an Unconstitutional and Void Order in this State Case articulated herein.

28 USC § 1746 DECLARATION

14. Pursuant to 28 USC § 1746^[4] declaration: I certify, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

^[4] <http://www.law.cornell.edu/>

TABLE OF CONTENTS

SUMMARY OF THE APPEAL - REQUEST FOR ORAL ARGUMENT... ii

SUPPLIMENTAL JURISDICTION STATEMENT iv

28 USC § 1746 DECLARATION v

TABLE OF AUTHORITIES vii

STATEMENT OF THE ISSUES 12

STATEMENT OF THE APPEAL..... 13

STATEMENT OF THE FACTS 14

ARGUMENT 17

 FREE SPEECH ARGUMENT 18

 Gripe Sites Are Noncommercial 23

 Domain Names are Protected by the First Amendment..... 24

 UNCONSTITUTIONAL VOID JUDGMENTS BY A JUDGE..... 26

 ACCESS TO THE COURTS 29

 CORWIN’S JUDICIAL MISCONDUCT 33

CONCLUSION..... 38

REQUEST FOR RELIEF 39

CERTIFICATE OF COMPLIANCE WITH RULE 32..... 40

CERTIFICATE OF SERVICE 41

TABLE OF AUTHORITIES

Cases

Adams v. Tanner, 244 U.S. 590	21
Allcock v. Allcock, 437 N.E.2d 392 (1982)	28
Allen v. City of Los Angeles	33
Anheuser-Busch v. L&L Wings, 962 F2d 316, 321 (CA4 1992).....	25
Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002).....	20
Bad Frog Brewery v. New York Liquor Auth., 134 F3d 87, 94-97 (CA2 1998).....	23
Burke v. Smith, 252 F.3d 1260, 1264 (11th Cir. 2001	37
Capital Federal Savings Bank v. Bewley, 795 P.2d 1051 (1990)	28
Chambers v. Baltimore & Ohio Railroad Co.,207 U.S. 142, 148 (1907	33
City of Los Angeles v. Morgan, 234 P.2d 319 (1951)	27
Crapp v. City of Miami Beach, 242 F.3d 1017, 1020 (11th Cir. 2001)	37
Davidson Chevrolet, Inc. v. City and County of Denver, 330 P.2d 1116, (1958);	27
Dr. Seuss Enterprises v. Penguin Books USA, 924 FSupp. 1559, 1574 (SDCal 1996).....	23
Eckel v. MacNeal, 628 N.E.2d 741 (1993).....	27
Farrington v. Tokushige, 273 U.S. 284.....	20
Freedom, N.Y., Inc. v. United States, 438 F. Supp.2d 457, 462-63 (S.D.N.Y. 2006).....	38
Frost v. R.R. Comm. of California, 271 U.S. 583;	21
Gitlow v. New York, 268 U.S. 652, 666	20

Graff v. Kelly, 814 P.2d 489 (1991).....	28
Grodin v. Allen, No. 3:03-CV-1685-D.....	38
Hays v. Louisiana Dock Co., 452 N.E.2d 1383 (1983),.....	27
Hobbs v. U.S. Office of Personnel Management, 485 F.Supp. 456.....	27
Holstein v. City of Chicago 803 F.Supp. 205 (1992).....	27
Hustler Magazine v. Falwell, 485 U.S. 46, 50-51 (1988).....	24
Jay Burns Baking Co. v. Bryan, 264 U.S. 504.....	21
Kathrein v. McNamara, Kinsella, et. al.....	34
Klugh v. U.S., 620 F.Supp. 892 (D.S.C. 1985).....	27
Klugh v. U.S., D.C.S.C., 610 F.Supp 892, 901.....	27
Lake Shore & Michigan Southern Railway Co. v. Hunt, 39 46.....	29
Lamparello V. Falwell.....	ii
Lamparello v. Falwell, 420 F. 3d 309 - 4th Circuit (2005).....	22
Lange v. Johnson, 204 N.W.2d 205 (Minn. 1973).....	27
Long v. Shorebank Development Corp., 182 F.3d 548 (C.A. 1999).....	28
Lorillard Tobacco Co. v. Reilly, 533 U.S. 525, 554, 121 S.Ct. 2404, 150 L.Ed.2d 532 (2001).....	22
Loyd v. Director, Dept. of Public Safety, 480 So.2d 577 (1985.....	27
Lubben v. Selective Service System Local Bd. No. 27, 453 F.2d 645, (C.A. 1 1972).....	27
Lucas v. Estate of Stavos, 609 N.E.2d 1114.....	28
Marbury v. Madison, 5 U.S. 137, 2 L. Ed. 60, 1 Cranch 137 (1803).....	32
Mattel v. Walking Mountain Prods., 353 F3d 792, 807 (CA9 2003).....	23
Matter of Marriage of Hampshire, 896 P.2d 58 (1997).....	27

Meyer v. Nebraska, 262 U.S. 390.....	20
Minor v. Happersett, 21 Wall. 162; cf.....	32
Near v. Minnesota, 283 U.S. 697 (1931).....	19
New Kids on the Block v. New America Pub., 971 F2d 302, 306-309 (CA9 1992).....	24
New York Times Co. v. United States, 403 U.S. 713 (1971).....	20
New York Times v. Sullivan, 376 U.S. 254, 272 (1964).....	24
Nguyen v. INS 99-2071 (2001).....	32
Olmstead v. United States, 277 U. S. 438, 277 U S. 469, 277 U S. 471	30
Olmstead v. United States, 277 U.S. 438, 485 (1928).....	30
On Lee v. United [p361] States, 343 US. 747, 758~ 759 (1952).....	30
Parks v. LaFace Records 329 F.3d 437, 449 (6th Cir. 2003)	25
Pennsylvania Coal Co. v. Mahon, 260 U.S. 393	21
Pierce v. Society of Sisters, 268 U.S. 510	20
Playboy Entertainment, 529 U.S. 803.....	20
PSINet, Inc. v. Chapman, 362 F.3d 227 (4th Cir. 2004).....	20
Republican Party of Minnesota v. White 01-521 (2002).....	21
Rex v. Secretary of Home Affairs, Ex parte O'Brien, [1923] 2 K.B. 361, 38	20
Reynolds v. Volunteer State Life Ins. Co	26
Rogers v. Grimaldi, 875 F.2d 994 (2d Cir. 1989).....	23, 25
Rook v. Rook, 353 S.E. 2d 756 (1987).....	28
Ryland v. Shapiro, 708 F.2d 967, 971 (5th Cir. 1983).....	34
Sambo's Restaurants v. Ann Arbor, 663 F2d 686, 694 (CA6 1981).....	23

State v. Richie, 20 S.W.3d 624 (2000)	28
Sweeney v. Patterson, 128 F.2d 457, 458 (1942)	24
Twin Peaks Production v. Publications Int’l, 996 F2d 1366, 1379 (CA2 1993);	23
U.S.C.A. Const. Amend. 5-Triad Energy Corp. v. McNell, 110 F.R.D. 382 (1986).....	27
United States Supreme Court, in Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics	iv
United States V. Calandra 414 U.S. 338.....	30
United States v. Smiley, 553 F.3d 1137	38
USX Corp. v. TIECO, Inc., 132 Fed. Appx. 237, 239 (11th Cir. 2005).....	37
Watkins v. Lundell, 169 F.3d 540, 545 (8th Cir. 1999)	37
Weaver v. Palmer Bros. Co., 270 U.S. 402	21
Statutes	
18 U.S.C. § 1503	33
18 U.S.C. §875	ii
18 U.S.C. Chapter 41	ii, 33
18 USC § 1983	ii
28 USC § 1746.....	v, 40
42 USC § 1983	iv, 33
House Report (H.Rep.) No. 104-374, at 4 (1995).....	22
Senate Report No. 106-140 (1999), 1999 WL 594571, at 8.....	22
Other Authorities	
Cornell Law Review The Anti-Corruption Principle	31

Federalist Society of Harvard Law School “American Legal System Is Corrupt Beyond Recognition.....	34
HARVARD LAW REVIEW [Vol. 122:1151.....	33
Rules	
Res Judicata.....	28
Rule 12	ii
Rule 6	ii
Rule 60	13, 27, 36, 37
Constitutional Provisions	
Due Process Clause.....	14, 29, 36, 38
Equal Protection.....	iv
Equal Protection Clause.....	31
Fifth Amendment.....	iv
Free Speech Doctrine.....	passim

STATEMENT OF THE ISSUES

15. This Appeal regards Constitutional Right issues including Freedom, Liberty, Free Speech, and Access to the Courts, Fifth Amendment Rights and Fourteenth Amendment Rights.

16. Corwin's extortion and Order ("Order") (Doc. #156) primarily concerns his previous February 8, 2013 Hearing Order (Doc. #123) ("February Order"). The April Hearing Order, Corwin slandered, extorted and sanctioned Tollefson violating Tollefson's Constitutional Rights and violating 42 U.S.C. § 1983 and 18 U.S.C. § 242 etc.

Supporting United States Supreme Court Authorities:

Free Speech: *Schenck v. United States* 249 u.s. 47 (1919) through *Republican Party of Minnesota v. White* 01-521 (2002).^[5]

Fifth Amendment: *Barron v. Mayor & City Council of Baltimore* 32 u.s. 243 (1833) through *Reno v. ACLU* 521 u.s. 844 (1997) 99-2047 (2001).^[6]

Fourteenth Amendment: *Ableman v. Booth* 62 u.s. 506 (1858) through *Troxel v. Granville* 530 u.s. 57 (2000) 99-2047 (2001).^[7]

^[5] Listed at

http://www.law.cornell.edu/supct/cases/topics/tog_freedom_of_speech.html

^[6] Listed at

http://www.law.cornell.edu/supct/cases/topics/tog_fifth_amendment.html

^[7] Listed at

http://www.law.cornell.edu/supct/cases/topics/tog_fourteenth_amendment.html

STATEMENT OF THE APPEAL

17. This Appeal is before the North Dakota Supreme Court (“Appeal Court”) following Corwin’s granting Plaintiffs a Constitutional Right[s] (“Right[s]”) violating Contempt of Court Order (“Order”) with sanctions which violated Tollefson’s Rights, a volume of Statutes, Judicial Canons and North Dakota Rules of Professional Conduct.

18. Due to Corwin refusing to address Tollefson’s properly pled Rule 60 and Rule 62 Motions (Docs # 152, 153, 162, 159 and 163)^[8] until July 24, 2013 (after the allowable time to Appeal), Tollefson was forced to Appeal the Order to comply with Appeal timing requirements.

19. Tollefson is NOT providing a \$750.00 bond pursuant to The United States Supreme Court deeming “*De minimis*” bonds as unreasonable. Further the Order is VOID^[9] as pled herein and is a Rooker Feldman exception wherein this action will be petitioned to the Federal Courts^[10] in the event the Appeal Court fails to protect Tollefson’s Constitutional Rights. Further a VOID^[11] Order is not time barred and not subject to Res Judicata^[12].

^[8] Exhibits are identified as (Doc. #s) corresponding to instant case document numbers.

^[9] Graff v. Kelly, 814 P.2d 489 (1991), Capital Federal Savings Bank v. Bewley, 795 P.2d 1051 (1990), Rook v. Rook, 353 S.E. 2d 756 (1987).

^[10] Lake Shore & Michigan Southern Railway Co. v. Hunt, 39 469

^[11] Long v. Shorebank Development Corp., 182 F.3d 548 (C.A. 1999)

^[12] Allcock v. Allcock, 437 N.E.2d 392 (1982)

STATEMENT OF THE FACTS

20. Defendant Tollefson's Constitutional Rights of Due Process and Free Speech were repeatedly violated by Judge Corwin ("Corwin") in an April 29, 2013 Hearing and Order wherein Corwin also slandered and extorted Tollefson.

21. Conspirators with intent to deprive Tollefson of Freedom, Liberty, Free Speech, and Due Process, pled Extraneous issues (Docs # 135, 136, 138, 139) towards obtaining a Contempt of Court regarding Corwin's February Order (Doc. #123). Corwin wrongfully allowed in and ruled on Extraneous issues, centering on Exhibit "A" ("Email") pled with Doc. # 138. The Email content is regarding Federal Litigation of Extortion and Gripe Sites. Corwin sanctioned Tollefson for exercising his Constitutional Rights regarding Email issues.

22. Corwin sanctioned Tollefson \$750.00 "for violating a February Order (Doc. # 123) of the Court seemingly instructing him (Tollefson) to stop making threats about bringing an action against parties (Plaintiffs) and non-third party individuals (Gust and Anderson Bottrell)" (See Doc. #156). Not that it matters but noteworthy is that Doc. #123 makes no mention whatsoever regarding "threats" or "actions".

23. Corwin's hearing conduct was extremely caustic wherein at

approximately 18 minutes and 55 seconds into the proceeding, Corwin with malice and forethought, fraudulently accused Tollefson of Extorting others failing to provide any particulars.

24. Corwin's and Conspirators "actions" obvious intent is to deprive Tollefson of his Constitutional Rights to litigate against Conspirators for Extortion, Defamation and violating Tollefson's Constitutional Rights. Their intent literally deprives Tollefson of "Access to the Courts" (See 1152 Harvard Law Review [Vol. 122:1151: Access To Courts) which is beyond the pale, unconstitutional and criminal conduct.

25. Corwin's and Conspirators criminal conduct in depriving Tollefson of Property, Liberty and Freedom for Extraneous issue Email content "threats", obviously designed to address the Conspirator's extortion and defamation of Tollefson in Federal litigation and Gripe Sites, is beyond the pale again designed to deprive Tollefson of Access to the Courts and the Right to voice his opinion ("silence a critic").

26. Corwin further slandered Tollefson and extorted him with an oral Order threat of imprisonment with the intent to deprive Tollefson of his Constitutional Rights if and web site (Gripe Site) were launched with the intent to deprive Tollefson of his Constitutional Rights to Property, Liberty, Freedom, Free Speech etc.

27. Conspirators committed Fraud Upon the Court in a Brief in Support of Motion for Contempt (Doc. # 136 ¶3) stating “Tollefson has ignored that Order (oral) and threatened to launch a website which would publish defamatory and unfounded accusations against Bottrell to the world”. Noting Conspirator’s Exhibit A (Email) you will find absolutely no content whatsoever regarding the publishing of defamatory... against Bottrell. It wouldn’t matter had the Email content were exactly as Conspirator fraudulently claimed.

28. Conspirators further committed Fraud Upon the Court Doc. # 136 ¶4) stating “Tollefson has ignored the Court’s (February oral) Order and has threatened Weisgram with the re-launch of a website the defames...” Noting Conspirator’s Exhibit A (Email) you will find absolutely no content whatsoever regarding the publishing of defamatory... against Weisgram. It wouldn’t matter had the Email content were exactly as Conspirators fraudulently claimed.

29. Noteworthy is that Corwin has deemed any Defamation claims that Tollefson has against Conspirators and any Defamation claims that Conspirators have against Tollefson as “Extraneous” and not to be pled to the instant case.

30. The Extraneous Email content was pled by Mike Gust (“Gust”)

(NOT Tollefson) to the instant State Case and is plainly in response to Conspirator's Extortion^[13] and Defamation of Tollefson which will be litigated in the Federal Courts and can be disclosed in web sites ("Gripe Sites"^[14]) about Bottrell and Weisgram contrary to Corwin's Order.

ARGUMENT

31. Ordinarily, courts consider statutory issues first to avoid constitutional issues. However, denying any citizen the right to litigate and silence speech are customarily construed in light of Constitutional Rights, particularly insofar as they distinguish between Access to the Courts; Free Speech; Due Process; and their deprivations. Accordingly, we begin our analysis with Constitutional issues.

32. Simply put, neither Corwin nor the Conspirators have the right or authority to deprive any citizen of Access to the Courts, Due Process or silence Speech. Their attempt to do so violated Tollefson's Constitutional Rights and committed many felonies.

^[13] 18 USC § 875 - Interstate communications (d) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both.

^[14] Gripe sites are a Federal question and protected free speech by the First Amendment.

FREE SPEECH ARGUMENT

Corwin's Criminal Contempt Of Court Order Regarding Extraneous Email[S] Content Infringes on Tollefson's Free Speech Rights and Denies Tollefson Access to the Courts.

33. Corwin lacks the authority to deprive any citizen of Free Speech or deny Due Process which his Order criminally attempts to accomplish. Corwin wrongfully overreaches in admitted into this State Case, the Conspirators fraudulently pled Email content which is First Amendment Protected Free Speech in contradiction to Corwin's February Order interpretation.

34. Conspirators fraudulently pled Extraneous Email content Federal Issues into this State Case^[15]. Further is that Conspirator's and Corwin's attempt to obstruct and impeded the administration of justice by attempting to silence Tollefson's right to report the crimes to the appropriate authorities violate 18 U.S.C. § 1503 Obstruction of Justice in denying Tollefson "actions".

Obstruction of justice is defined in the omnibus clause of 18 U.S.C. § 1503, which provides that **"whoever . . . corruptly or by threats or**

^[15] *Simons v. United States*, 452 F.2d 1110, 1115 (2d Cir. 1971)); See *Texgas Corp.*, 831 F.2d at 259 (citation omitted); *Entral Group Int'l, LLC v. 7 Day Café & Bar*, 298 Fed. Appx. 43, 44 (2d Cir. 2008); *Hutchins v. Zoll Med. Corp.*, 492 F.3d 1377, 1386 (Fed. Cir. 2007); *State Street Bank & Trust Co. v. Inversiones Errazuriz Limitada*, 374 F.3d 158, 176 (2d Cir. 2004); *Entral Group*, 298 Fed.Appx.at 44; *Atkinson v. Prudential Prop. Co., Inc.*, 43 F.3d 367, 372-73 (8th Cir. 1994).

force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be (guilty of an offense)." Persons are charged under this statute based on allegations that a defendant intended to interfere with an official proceeding, by doing things such as destroying evidence, or interfering with the duties of jurors or court officers.

35. Email content addresses Plaintiffs' and Gust's continued Extortion and Defamation of Tollefson. Tollefson has Constitutional Rights to confront Conspirators actions and Corwin's interference violated Tollefson's Constitutional Rights.

36. Corwin's April 12, 2013 Order to Show Cause criminally interferes with Tollefson's Free Speech and Access to the Courts also failing to identify an "attack"; not that it would matter if he did.^[16]

37. Corwin's action in criminally demanding that Tollefson discontinue confronting the Conspirator's extortion and defamation of Tollefson "actions", violate Tollefson's Constitutional Rights.

38. *Near v. Minnesota*, 283 U.S. 697 (1931), was a landmark United States Supreme Court decision that recognized the freedom of speech by roundly rejecting prior restraints on publication even if "malicious" or "scandalous" violated the First Amendment to the United States Constitution (as applied through the Fourteenth Amendment). It was later a key precedent

^[16] Listed at http://www.law.cornell.edu/supct/cases/topics/tog_freedom_of_speech.html

in *New York Times Co. v. United States* (1971) regarding the Pentagon Papers^[17] (See *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002); *Playboy Entertainment*, 529 U.S. 803; *PSINet, Inc. v. Chapman*, 362 F.3d 227 (4th Cir. 2004)).

39. In addition to being Extraneous issues, the Email[s] content is protected by the First Amendment Free Speech Clause. Tollefson can communicate in any manner he desires to address the Conspirator's defamation of Tollefson. Whether the Email content "Attacks Bottrell" or not is immaterial in that the content is protected Free Speech as articulated in 39 Harvard Law Review, 431, 461 on *Whitney V. California (No. 3) 453*, Supreme Court of the United States; Justice Sanford states:

Thus, all fundamental rights comprised within the term liberty are protected by the Federal Constitution from invasion by the States. The right of free speech, the right to teach, and the right of assembly are, of course, fundamental rights. See *Meyer v. Nebraska*, 262 U.S. 390; *Pierce v. Society of Sisters*, 268 U.S. 510; *Gitlow v. New York*, 268 U.S. 652, 666; *Farrington v. Tokushige*, 273 U.S. 284. **These may not be denied or abridged.**

Justice Holmes joins in this opinion quoting Justice Scrutton in *Rex v. Secretary of Home Affairs, Ex parte O'Brien*, [1923] 2 K.B. 361, 382 who stated: **"You really believe in freedom of speech if you are**

^[17] **"First Amendment"**. Cornell University Law School Legal Information Institute. Archived from the original on May 3, 2013. Retrieved May 3, 2013.

willing to allow it to men whose opinions seem to you wrong and even dangerous;” . . . and Thomas Jefferson: **“We have nothing to fear from the demoralizing reasonings of some, if others are left free to demonstrate their errors and especially when the law stands ready to punish the first criminal act produced by the false reasonings; these are safer corrections than the conscience of the judge.”** Citing *Frost v. R.R. Comm. of California*, 271 U.S. 583; *Weaver v. Palmer Bros. Co.*, 270 U.S. 402; *Jay Burns Baking Co. v. Bryan*, 264 U.S. 504; *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393; *Adams v. Tanner*, 244 U.S. 590.

40. Tollefson’s Free Speech Rights are supported in dozens of cases from *Shenck v. United States* 249 u.s. 47 (1919); through *Republican Party of Minnesota v. White* 01-521 (2002)^[18].

41. Corwin’s April 29, 2013 Order and extortion of Tollefson in threatening to imprison him for possible Free Speech in the Future is criminal conduct on the part of Corwin. *Marshall v. Jerrico Inc.*, 446 US 238, 242, 100 S.Ct. 1610, 64 L. Ed. 2d 182 (1980) states: "The neutrality requirement helps to guarantee that life, **liberty, or property** will not be taken on the basis of **an erroneous or distorted conception of the facts or the law.**"

42. The above is applicable to this court by application of Article VI of the United States Constitution See *Stone v Powell*, 428 US 465, 483 n. 35, 96 S. Ct. 3037, 49 L. Ed. 2d 1067 (1976) stating "State courts, like federal courts, have a constitutional obligation to safeguard personal liberties and to

[18] Cornell Law “Supreme Court Free Speech Cases”

uphold federal law."

**Corwin, with Malice and Criminal Intent to Extort Tollefson,
Commits Crimes and Infringes on Tollefson Free Speech Doctrine
Rights Via Gripe Sites.**

43. In the Anticybersquatting Consumer Protection Act ("ACPA") Congress explained that language was added to "adequately address[] legitimate First Amendment concerns," House Report (H.Rep.) No. 104-374, at 4 (1995), *reprinted in* 1995 U.S.C.C.A.N. 1029, 1031, and "incorporate[d] the 'commercial speech' doctrine." *Id.* at 8, *reprinted in* 1995 U.S.C.C.A.N. at 1035; *cf. Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 554, 121 S.Ct. 2404, 150 L.Ed.2d 532 (2001) (defining commercial speech as "speech proposing a commercial transaction").

44. The legislature believed this provision necessary to "protect[] the rights of Internet users and the interests of all Americans in free speech for such things as parody, comment, criticism, comparative advertising, news reporting, etc." Senate Report No. 106-140 (1999), 1999 WL 594571, at 8.

45. The Internet has been described as a "vast democratic for[um]," *Reno v. ACLU*, 521 U.S. 844, 868 (1997), which gives average users an unprecedented ability to join a worldwide discussion and debate on a range of subjects "as diverse as human thought." *Id.* at 852.

46. Any use of a domain name in a Gripe Site constitutes protected

speech. Courts have repeatedly held that speech is protected by the First Amendment, even when used only to designate source. E.g., *Bad Frog Brewery v. New York Liquor Auth.*, 134 F3d 87, 94-97 (CA2 1998); *Sambo's Restaurants v. Ann Arbor*, 663 F2d 686, 694 (CA6 1981).

47. Using [marks] in domain names is analogous to using [marks] in book titles, to which the courts give First Amendment protection because they are part of the authors' expression, and call attention to the fact that the works in question contain content on those topics. E.g., *Twin Peaks Production v. Publications Int'l*, 996 F2d 1366, 1379 (CA2 1993); *Rogers v. Grimaldi*, 875 F2d 994, 999 (CA2 1989); *Accord Mattel v. Walking Mountain Prods.*, 353 F3d 792, 807 (CA9 2003).

48. Similarly, in adopting the 1996 amendments, Senator Hatch explained that the purpose of the statute's use exception was to protect "parody, satire, editorial and other forms of expression that are not part of a commercial transaction." *Dr. Seuss Enterprises v. Penguin Books USA*, 924 FSupp. 1559, 1574 (SDCal 1996) (quoting legislative history), *aff'd*, 109 F3d 1394 (CA9 1997).

Gripe Sites Are Noncommercial

49. A Gripe Site is noncommercial in character dedicated to the communication of opinions and information. Cases involving critical websites

fall under the rubric of “nominative fair use,” where the speaker uses the [mark] to speak about the [mark] holder or its goods and services. *Id.* at 1065-66; *New Kids on the Block v. New America Pub.*, 971 F.2d 302, 306-309 (CA9 1992).

50. Additionally, the government interest in enforcing deprivation of free speech is at its lowest when noncommercial speech is involved. See *CPC Intern., Inc. v. Skippy Inc.*, 214 F.3d 456, 461 (4th Cir. 2000).” *New York Times v. Sullivan*, 376 U.S. 254, 272 (1964) (quoting *Sweeney v. Patterson*, 128 F.2d 457, 458 (1942), cert denied, 317 U.S. 678).

51. The Supreme Court has recognized that criticism is an important exercise of free speech. “At the heart of the First Amendment is the recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern.” *Hustler Magazine v. Falwell*, 485 U.S. 46, 50-51 (1988). Because a Gripe Site consists of protected, noncommercial speech, it is entitled to a high degree of First Amendment protection *Id.*

Domain Names are Protected by the First Amendment

52. Titles of books, films and other works are protected by the First Amendment and there exists only limited power to prevent a speaker from using the mark as part of a title. The seminal analysis of titles as First

Amendment speech is *Rogers v. Grimaldi*, 875 F.2d 994 (2d Cir. 1989) See *Mattel v. MCA Records*, 296 F.2d 894 (9th Cir. 2002); *Parks v. LaFace Records* 329 F.3d 437, 449 (6th Cir. 2003)

53. In this State Case, Corwin threatens to imprison Tollefson for any domain name which describes the [mark] of a website. Because a domain name acts as a title, it must be analyzed within the *Rogers v. Grimaldi* framework.

54. The similarity of a [mark] to a name in a website about the [mark] is fair use. When the mark is used for purposes of identifying the subject of criticism, similarity is not so helpful to the mark because there is an alternate use of the name – to identify the target of criticism. *CPC v. Skippy*, 214 F3d at 462; See also *Anheuser-Busch v. L&L Wings*, 962 F2d 316, 321 (CA4 1992).

55. Gripe Sites are an example of the Internet’s immense power to allow ordinary citizens to criticize the great and powerful. It is of vital importance that courts fulfill their responsibility as defenders of free speech by rigorously applying First Amendment principles to claims of [mark] infringement on the Internet.

56. Conspirator’s Brief fraudulently claims on Page 1 “In no uncertain terms he (Corwin) told Tollefson that he was to stop all attacks

against Lowell Bottrell as his allegations were not relevant to this case". The Email makes no Bottrell attack whatsoever but confronts Conspirator's Extortion and Defamation of Tollefson as per Email "Subject" matter being Extraneous to the State Case and Constitutionally protected. It wouldn't matter had Tollefson attacked Bottrell as being Extraneous and Tollefson's Speech cannot be silenced.

57. The Email content clearly states that SEPARATE Federal Civil and Criminal Extortion and RICO actions would be pursued against Weisgram and Conspirators. The Email content is clearly NOT about the State instant case issues and again Constitutionally Protected in any event.

UNCONSTITUTIONAL VOID JUDGMENTS BY A JUDGE

58. Tollefson asserts that Judge Corwin's Order is VOID^[19] having no legal effect having not legal force or effect *Reynolds v. Volunteer State Life Ins. Co.* due to from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree.

59. Corwin's Unconstitutional Order is resultant from Corwin acted in a manner inconsistent with due process in violating Tollefson's Civil Rights

^[19] Black's Law Dictionary, Sixth Edition

and acting unconstitutionally “**Judgment is a "void judgment" if court acted in a manner inconsistent with due process**” *Klugh v. U.S., D.C.S.C., 610 F.Supp 892, 901*, or otherwise acted unconstitutionally in entering judgment, **U.S.C.A. Const. Amend. 5**, *Hays v. Louisiana Dock Co., 452 N.E.2d 1383 (1983)*, *Matter of Marriage of Hampshire, 896 P.2d 58 (1997)*; *Lange v. Johnson, 204 N.W.2d 205 (Minn. 1973)*, *Lubben v. Selective Service System Local Bd. No. 27, 453 F.2d 645, (C.A. 1 1972)*; *Hobbs v. U.S. Office of Personnel Management, 485 F.Supp. 456*; *Holstein v. City of Chicago 803 F.Supp. 205 (1992)*; *U.S.C.A. Const. Amend. 5-Triad Energy Corp. v. McNell, 110 F.R.D. 382 (1986)*;

60. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A.; **U.S.C.A. Const Amend. 5**. *Klugh v. U.S., 620 F.Supp. 892 (D.S.C. 1985)*, *Rubin v. Johns, 109 F.R.D. 174 (1985)*; *Loyd v. Director, Dept. of Public Safety, 480 So.2d 577 (1985)*; *City of Los Angeles v. Morgan, 234 P.2d 319 (1951)*; *Davidson Chevrolet, Inc. v. City and County of Denver, 330 P.2d 1116, (1958)*; *Eckel v. MacNeal, 628 N.E.2d 741 (1993)*.

61. Corwin’s lacks the authority or inherent power to render a judgment violating Tollefson’s Constitutional Rights in his Order being a void judgment being one in which the judgment is **facially invalid** because the **court lacked jurisdiction or authority to render the judgment**, *State v.*

Richie, 20 S.W.3d 624 (2000). A **void judgment** has no effect whatsoever and is **incapable of confirmation or ratification**, *Lucas v. Estate of Stavos*, 609 N.E.2d 1114, (1993).

62. Tollefson can vacate Corwin's Order at any time in that a void judgment, such as Corwin's Order[s], may be vacated at any time being one whose invalidity appears on face of judgment roll, *Graff v. Kelly*, 814 P.2d 489 (1991), *Capital Federal Savings Bank v. Bewley*, 795 P.2d 1051 (1990). A void judgment is one that has been procured by **extrinsic or collateral fraud**, or entered by court that did not **have jurisdiction over subject matter** or the parties, *Rook v. Rook*, 353 S.E. 2d 756 (1987). Corwin does not have subject matter jurisdiction to deprive a citizen of the Constitutional Rights as pled herein.

63. Corwin's Order was procured by the Conspirator's and Corwin's Fraud Upon the Court in that a Void judgment entered by a court procured by fraud, can be attacked at any time, in any court, either directly or collaterally... See *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 1999).

64. Further is that Res Judicata consequences cannot be applied to Corwin's void judgment *Allcock v. Allcock*, 437 N.E.2d 392 (1982) nor can Res Judicata consequences be applied to a void judgment which is one which,

from its inception, is a complete nullity and without legal effect, *ID.*

65. Further is that no evidence exists to sustain Corwin's Order wherein Certiorari is an appropriate remedy to get rid of a void judgment, one which there is no evidence to sustain. *Lake Shore & Michigan Southern Railway Co. v. Hunt, 39 469.*

ACCESS TO THE COURTS

66. The North Dakota Constitution Article 1§16 states:

"All courts shall be open, and every man for an injury done him in his land, goods, person, or reputation, shall have remedy by due process of law, and right and justice administered without sale, denial, or delay."

67. A litigant's Constitutional Rights to Substantial Justice "Trumps" Rules of Civil Procedure. Due Process Clause gives each individual a right "to be heard," and "at a meaningful time and in a meaningful manner." More specific rights flow from this general right, such as a right to reasonable notice and a right to participate and a meaningful Access to the Courts^[20].

68. Contrary to Corwin's actions, Federal and State Courts must uphold Constitutional Rights see *Marshall v. Jerrico Inc., 446 US 238, 242, 100 S.Ct. 1610, 64 L. Ed. 2d 182 (1980)* states: "The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis **of an erroneous or distorted conception of the** facts or the **law.**" applicable

^[20] Substantial Justice Doctrine

to this court by application of Article VI of the United States Constitution in *Stone v Powell*, 428 US 465, 483 n. 35, 96 S. Ct. 3037, 49 L. Ed. 2d 1067 (1976) stating "State courts, like federal courts, have a constitutional obligation to safeguard personal liberties and to uphold federal law."

69. Corwin has violated the very Constitution he has sworn to uphold in violating innumerable Constitutional Rights of Jon Tollefson. The Supreme Court of the United States *United States V. Calandra* 414 U.S. 338 Opinion states: When judges appear to become "accomplices in the willful disobedience of a Constitution they are sworn to uphold," *Elkins v. United States*, supra at 223, we imperil the foundation of our people's trust in their Government on which our democracy rests. See *On Lee v. United States* [p361] States, 343 US. 747, 758~ 759 (1952) [sic] (citing *Terry v. Ohio* 392 US. 1).

70. US. Supreme Court *Elkins v. United States*, 364 US. 206 (1960) Certiorari to The United States Court Of Appeals For The Ninth Circuit Opinion states:

But there is another consideration -- the imperative of judicial integrity. It was of this that Mr. Justice Holmes and Mr. Justice Brandeis so eloquently spoke in *Olmstead v. United States*, 277 U. S. 438, 277 U S. 469, 277 U S. 471, "For those who agree with me," said Mr. Justice Holmes, "no distinction can be taken between the government as prosecutor and the government as judge."

"In a government of laws," said Mr. Justice Brandeis, "existence of the government will be imperiled if it fails to observe the law

scrupulously... “ Even less should the courts be accomplices in the willful disobedience of a Constitution they are sworn to uphold.

71. Cornell Law Review The Anti-Corruption Principle- Zephyr

Teach out Anti-Corruption Provisions in Article III:

Justice David Souter's Opinion 7 stated: Inequality: Unequal Access, and Undue Influence states: ... Justice Souter means "unfair" in the sense that not all people can equally access it. Fairness and equality are the core principles around which this understanding of corruption radiates. This is very similar to the use of many members of the Court of the phrase, "undue influence." In doing so, they try to amplify inequality concerns

72. Corwin's Order to deny Tollefson Access to the Courts denies

Tollefson Equal Protection under the Law via the Equal Protection Doctrine in that State Courts are bound by the Fifth and Fourteenth Amendment and shall not deny equal protection. In the United States Supreme Court, an amicus brief was filed, authored by Laurence H. Tribe, counsel of record, and a group of other distinguished professors of constitutional law, they focused their argument, simply and elegantly, on the concept of *protection of the law*:

They argued that the Colorado initiative constituted a *per se* violation of the Equal Protection Clause of the Fourteenth Amendment, which provides that, "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." Thus, that command is violated when a state renders individuals ineligible for "the protection of the laws. As the brief argued: "Selective preclusion of access to state law for redress from private discrimination would be inconsistent with the Fourteenth Amendment's command of equality before the law." This is so self evident that it shocks one's sensibilities that the proposition could be contested, **and Justice Kennedy for the Court adopted the law professor's argument.**

73. Corwin's Order denying Tollefson Access to the Courts is contrary to:

The Procedure Which Is Due Process: The Interests Protected: Entitlements and Positivist Recognition: "The requirements of procedural due process apply to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount. See *Board of Regents v. Roth*, 408 U.S. 564, 569-70 (1972) *Minor v. Happersett* 88 u.s. 162 (1875); through *Nguyen v. INS* 99-2071 (2001).

74. Corwin's Order not only deprives Tollefson of Access to the Courts but also deprived him an opportunity for confrontation... due process are those that "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis to deprive them of protected interests. See *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

75. Due Process and Equal Protection: Justice John Marshall's Jurisprudence: *Marbury v. Madison*, 5 U.S. 137, 2 L. Ed. 60, 1 Cranch 137 (1803),

... stands virtually alone in our constitutional history... under a constitutional system. For our forefathers, no right was as fundamental as the capability to access the legal system, i.e., to be the beneficiary of a rule of law that protects one's rights against the most powerful.

All of "rights" law assumes the existence of government, of justice, and of access to it. The core idea of "access to justice" has been referred to by terms such as "access to the courts" and/or "the right to a remedy"; and/or a basic "common law right."

CORWIN'S JUDICIAL MISCONDUCT

76. Judge Corwin's Judicial Misconduct and Criminal Conduct are paramount to this Appeal. Corwin's conduct in holding Tollefson in Contempt, Sanctioning him and threatening to imprison Tollefson^[21] for confronting Conspirators, violated Tollefson's Constitutional Rights

77. A short list of Corwin's violations includes 18 U.S.C. § 1503, 18 U.S.C. § 242, 18 U.S.C. Chapter 41; 18 U.S.C. § 875, and 42 U.S.C. § 1983. See *Allen v. City of Los Angeles*, 66 F. 3d 1052 – 199 and a volume of Judicial Canons.

78. Meaningful Access to the Courts: 1152 HARVARD LAW REVIEW [Vol. 122:1151 DEVELOPMENTS IN THE LAW ACCESS TO COURTS states:

“The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship . . .” *Chambers v. Baltimore & Ohio Railroad Co.*, 207 U.S. 142, 148 (1907).

[21] 18 U.S.C. Chapter 41 - EXTORTION AND THREATS via 18 U.S.C. § 875 - Interstate communications (d)Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both.

“The right of access to the courts is basic to our system of government, and it is well established today that it is one of the fundamental rights protected by the Constitution.” *Ryland v. Shapiro*, 708 F.2d 967, 971 (5th Cir. 1983).

79. **Thomas Jefferson – Founder and Father of the Declaration of Independence:**

“At the establishment of our constitutions, the judiciary bodies were supposed to be the most helpless and harmless members of the government. Experience, however, soon showed in what way they were to become the most dangerous; that the insufficiency of the means provided for their removal gave them a freehold and irresponsibility in office; that their decisions, seeming to concern individual suitors only, pass silent and unheeded by the public at large; that these decisions, nevertheless, become law by precedent, sapping, by little and little, the foundations of the constitution...”^[22]

80. Corwin is a criminal as per Chief Justice Rehnquist’s concurrence with Judge Edith Jones of the U.S. Court of Appeals for the Fifth Circuit, who told the Federalist Society of Harvard Law School “American Legal System Is Corrupt Beyond Recognition” stating that:

Among other things, a dishonest judge can ignore evidence, twist rules and procedures, obstruct the record, retaliate, manufacture facts or ignore others, allow infirm claims or dismiss valid ones, deny admission of evidence prejudicial to the favored party, suborn perjury, mischaracterize pleadings, engage in ex parte communication and misapply the law. **When he or she does these things intentionally, (motivation is a separate issue) he or she commits a crime.** Petty or grand, the acts are still crimes. It takes surprisingly little to “steer” a case (*Kathrein v. McNamara, Kinsella, et. al. Petition for Writ of*

^[22] Letter to A. Coray, October 31, 1823 <http://goo.gl/T8bFA>]

Certiorari to the Supreme Court of the United States 05-1431 May 8, 2006).

81. Corwin epitomizes a “politician in a black robe” as retired Associate Justice Sandra Day O'Connor told some 300 attendees during a keynote in Charlotte, N.C.

The public is growing increasingly skeptical of elected judges in particular, said O'Connor. She was referencing surveys showing that more than 70 percent of the public and more than a quarter of judges are considerably more distrustful of their judges.

Warning of a snowball effect, O'Connor added, Distrust of the judiciary in any jurisdiction becomes distrust of the judiciary in all jurisdictions. At risk is by the public is recognizing that judges are **"just politicians in black robes."**

THE PEOPLE are not stupid. Even an uneducated person can usually deduce when they are being cheated, lied to, “handled” and treated with duplicity. The Internet is blowing the lid off the dirty little secrets of the US Judiciary.

82. Abuse of Power, Abuse of Authority: Tollefson argues and incorporates by reference herein that Corwin's actions not only wielded power without reasonable basis, but failed to adhere to Constitutional Rights which conduct constitutes an abuse of power and abuse of authority wherein Tollefson has suffered, and will continue to suffer, damages personally, as the result of Corwin's Unconstitutional conduct.

83. Corwin has criminally ruled to strip Tollefson of his

Constitutional Rights sanctioning him for obvious Federal questions criminally pled by Conspirators, denying Tollefson Due Process failing in allowing Tollefson a reasonable Response time.

84. Conspirator's document "Notice of Motion and Motion for Contempt of Court" is Unconstitutional altogether.

85. Failing to provide Tollefson a reasonable, constitutional and Rule allowing time period to Respond, left Tollefson entirely in the dark and failed to provide him Due Process and Substantial Justice causing him great damage.

86. Corwin's Order to deny Tollefson Constitutional Rights would be inequitable to permit to stand. **Rule 60(b)** Offers a party relief from a judgment on motion when it is "**inequitable to permit a judgment to stand**"

Ackerman v. United States, 340 U.S. 193, 202 (1950); *R.C. by Ala.*

Disabilities Advocacy Program v. Nachman, 969 F. Supp. 682, 690 (M.D.

Ala. 1997); *Fort Knox Music, Inc. v. Baptiste*, 257 F.3d 108, 111 (2nd Cir.

2001); *Kingvision Pay-Per-View Ltd.*, 168 F.3d at 351-352; *United States v.*

Jacobs, 298 F.2d 469, 472 (4th Cir. 1961); *McDowell v. Celebrezze*, 310 F.2d 43, 44 (5th Cir. 1962).

87. **Rule 60(b)(3) Fraud or Misrepresentation:** Rule 60(b)(3) Tollefson clearly proves (1) the judgment (April 29, 2013 Order) was obtained through fraud, misrepresentation, or other misconduct by

Conspirators and Corwin, *USX Corp. v. TIECO, Inc.*, 132 Fed. Appx. 237, 239 (11th Cir. 2005) (citation omitted).

88. Rule 60(b)(4) The Judgment Is Void: Pursuant to Rule 60(b)(4), a court may relieve a party from a final judgment or order based on a finding that the judgment is void. *Burke v. Smith*, 252 F.3d 1260, 1264 (11th Cir. 2001). Tollefson has abundantly proven that Corwin’s judgment (Order) is void by the lack of subject matter in that the Extraneous Free Speech protected Emails are NOT a subject matter of this State Case or the party’s conduct of Free Speech or Justifiable Justice, and further that Judge Corwin acted in a manner inconsistent with due process of law.” *Id.* (citation omitted) given that Corwin extorted Tollefson, slandered Tollefson, interfered with Tollefson’s Constitutional Rights and threatened to imprison Tollefson for exercising his Constitutional Rights.

89. Rule 60(b)(6) Any Other Reason: Under Rule 60(b)(6), a court may grant relief for any other reason justifying relief from the operation of judgment. Relief under this may be invoked upon a showing of **exceptional circumstances**. Tollefson points an overabundance of “exceptional” case circumstances that warrant relief under Rule 60(b)(6) *Crapp v. City of Miami Beach*, 242 F.3d 1017, 1020 (11th Cir. 2001); *Watkins v. Lundell*, 169 F.3d 540, 545 (8th Cir. 1999). Tollefson has shown Exceptional Circumstances

including Judicial Misconduct, Judicial Extorting, Corwin violation Tollefson Constitutional Rights

90. In any event, Justice demands that the Appeals Court set aside Corwin's Order See *Freedom, N.Y., Inc. v. United States*, 438 F. Supp.2d 457, 462-63 (S.D.N.Y. 2006) (citations omitted). A court may exercise its equitable power to set aside a fraudulent judgment "to maintain the integrity of the courts and safeguard the public." *United States v. Smiley*, 553 F.3d 1137; *Grodin v. Allen*, No. 3:03-CV-1685-D, 2009 WL 1437834 at *7 n. 5 (N.D. Tex. 2009).

CONCLUSION

91. For the reasons stated herein, Defendant Tollefson requests the Appeals Court vacate/strike/reverse Judge Corwin's Unconstitutional April 29, 2013 Hearing^[23] Court Order holding Tollefson in Contempt of Court and sanctioning him \$750.00 for Conspirator's wrongful pleadings.

92. Further that the Court vacate/strike/reverse Judge Corwin's Unconstitutional Extortive oral Order to imprison Tollefson for exercising his Constitutional Rights.

93. Further is that Tollefson should be awarded costs and fees to prepare this Appeal and deserves costs and fees from Conspirators.

^[23] Including Corwin's Unconstitutional February 8, 2013 Hearing Order.

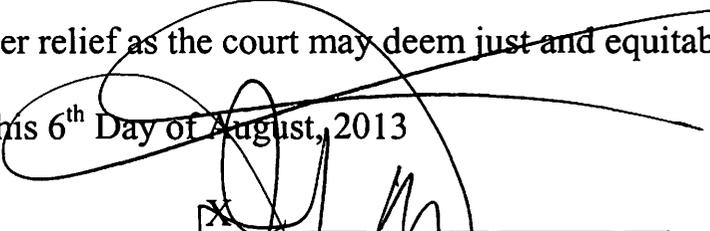
94. Tollefson respectfully submit that this Appeal requests granted.

REQUEST FOR RELIEF

For all of the foregoing reasons, Tollefson requests the Appeal Court:

1. Vacate/Strike/Reverse Corwin's April 29, 2013 hearing Order in whole or part.
2. Vacate/Strike/Reverse Corwin's February 8, 2013 hearing Order in whole or part.
3. Award Tollefson \$7,185.00 plus all future Appeal costs in sanctions against Conspirators.
4. Sanction Mike Gust and Wickham Corwin.
5. Report Gust and Corwin to the appropriate Law Enforcement and Disciplinary authorities.
6. For any such further relief as the court may deem just and equitable.

Respectfully submitted this 6th Day of August, 2013



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