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United States District Court

for the District of Arizona

Raymond Cross	)	Case No. CV 18-220 TUC CKJ
Plaintiff	)	**Plaintiff's Response In**
vs.	)	**Opposition To Defendant's**
Department of the Interior	)	**Motion To Dismiss For Lack**
Defendant	)	**Of Subject Matter Jurisdiction**
	)	**Under Rule 12(b)(1)**

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Plaintiff Cross moves this Court to deny Defendant's motion to dismiss his complaint on the grounds this Court lacks subject matter jurisdiction over those claims

that are set forth in Cross' complaint. Plaintiff Cross' motion is supported by his Memorandum of Points and Authorities as well as all matters of record in this case.

Introduction

The BIA doesn't welcome a tribal member's petition to amend his or her own tribe's constitution; it fears her petition is only "intended to harass" her tribal government. See, Secretarial Election Procedures, BIA Final Rule, 25 C.F.R. Parts 81 and 82, 80 Fed. Reg. 63094-63114 (Oct. 19, 2015)("80 Fed. Reg.") ("The Bureau of Indian Affairs is amending its regulations governing Secretarial Elections and procedures for tribal members to petition for Secretarial Elections.") at 63104

Therefore, to manage this risk the BIA imposes, through its 2015 Final Rule regulating tribal members' Secretarial Petitions that request a Secretarial Election be held on a specific issue, on would be tribal petitioners "that are high enough so as to avoid harassment of organized tribal governments through frivolous petitions [brought forth by] a small minority of the [tribal] membership." See Ibid However, the BIA's broader purpose in setting high signature collection requirements is to discourage to squelch free expression and fair discussion of important issues as is clear from the BIA officials following comment on the Final Rule: "[u]ltimately, [tribal members'] signatures on a [member sponsored petition] only a *request to bring an issue to a vote* (emphasis added), rather than a decision on the issue to be voted upon." See, 80 Fed. Reg. at 63103

This BIA commentary on the 2015 Final Rule lead one tribal critic to state: this rule's primary goal is to erect "unnecessary [administrative] obstacles and processes that are designed to thwart the efforts of [tribal] petitioners [to amend their own tribes' governing documents]." See. Ibid at 63104 As the above cited commentator pointed out, the 2015 Final Rule also requires the tribal petitioners to have their proposed Secretarial Petitions *validated* [emphasis added] by the BIA stating that: "[u]nlike when the tribal governing body submits a resolution requesting a [Secretarial] election, the [tribal petitioners must first undergo a review to verify [their] petitions." See, Ibid at 63102

Plaintiff Cross' lawsuit may well be the first tribal petitioner lawsuit—as well as the only given the financial and educational constraints that prevent other tribal members from ever challenging the BIA on these Indian civil rights type issues—that challenges both the impossible of meet signature collection requirements as well as the procedural hurdle of the petitioning verification process as disregarding and infringing on the important substantive and procedural rights of tribal members.

Plaintiff Cross' Memorandum Of Points And Authorities

Plaintiff Cross Requests this Court deny Defendant's Motion To Dismiss because:

1. Congress has waived Defendant's sovereign immunity to suit in these circumstances:

Defendant's claimed defense of sovereign immunity does not entitle it to the dismissal of Plaintiff Cross' lawsuit in these circumstances. Congress' 1976 amendment to the Administrative Procedure Act (APA) (now codified at 5 U.S. C. §702) effected a general waiver of the federal agencies'—including the Department of the Interior (DOI)–sovereign immunity to unconsented lawsuits wherein the plaintiffs in such lawsuits seek only non-monetary judicial relief against the federal government or its agencies. See, Clark v. Library of Congress, 750 F.2d 89, 102 (D.C. Cir. 1984) ("With respect to claims for nonmonetary judicial relief, the 1976 amendments to §702 of the [APA] eliminated the sovereign immunity defense in virtually all actions for nonmonetary relief against a U.S agency or officer acting in an official capacity.")

2.This Court has subject matter jurisdiction over Plaintiff Cross' claims because they each "arise under" the Constitution, laws or treaties of the United States as is required by 28 U.S.C. §1331:

Plaintiff Cross' claims all "arise under" the Constitution, laws and treaties of the United States. See, Verizon Md. Inc. v. Public Service Comm'n of Md., 535 U.S. 635, 643 (2001) ("[T]he district court has jurisdiction if 'the right of the petitioners to recover under their complaint will be sustained if the Constitution and laws of the United States are given one construction and will be defeated if they are given another,' unless the claim 'clearly appears to be clearly immaterial and made solely for

the purpose of obtaining jurisdiction or where the claim is wholly insubstantial and frivolous.'")

Defendant further asserts—as a jurisdictional fact potentially barring this Court's exercise of subject matter jurisdiction over Plaintiff Cross' complaint—there has been no final agency action in this matter and that "some courts have [therefore] dismissed an APA claim for lack of subject matter jurisdiction where there is no final agency action to review." (citations omitted) D's Motion at 8

However, even assuming that there has been no final agency action in this matter, which Plaintiff Cross resoundingly disputes, he Ninth Circuit Court of Appeals disfavors the district court's threshold resolution of these merit based issues in the context of a motion to dismiss "because the jurisdictional issue is dependent upon the resolution of factual issues going to the merits it was incumbent upon the district court to apply summary judgment standards in deciding whether to grant or deny the government's motion [to dismiss]...[therefore] it was improper for the district court to grant the government's motion unless the relevant facts were not in dispute and the government was entitled to prevail as a matter of law." Augustine v. United States, 704 F.2d 1074, 1079 (9th Cir. 1983)

For these reasons, and the additional ones developed below in Plaintiff Cross' more detailed argument of this issue—particularly that there is no "jurisdictional fact"

whether in the APA or otherwise—justifying this Court's dismissal of Plaintiff Cross' complaint for lack of subject matter jurisdiction.

3. Two BIA officials—the FBA Superintendent Danks and Regional Director LaPointe—determined that the validation of Plaintiff Cross' Secretarial Petition requires the participation of more than *NINE TIMES* (emphasis added) the number of qualified tribal voters than it took to validate the 2013 Secretarial Election on Fort Berthold Reservation (3, 447 to 357) while interpreting the *EXACT SAME* (emphasis added) TAT Constitutional provison—Article X—to determine that number:

No one—including the Defendant and the IBIA—has disputed that is the discrete, dispositive, substantive, binding and *FINAL* (emphasis added) number—3,447— of tribal members' signatures that Cross must collect to *VALIDATE* (emphasis added). No one, as well, SHOULD reasonably dispute that this impossible to attain number of qualified tribal voters will squelch any hope that Plaintiff Cross, as well as his fellow petitioners of once moving their Secretarial Petition forward. Consequently, it's almost beside the point to debate whether this number is one from which "legal consequences will flow" and will also impose substantial additional "day to day" financial costs and administrative responsibilities on Cross and his fellow tribal petitioners. Bennet v. Spear, 520 U. S. 154, (1997)

4. Plaintiff Cross has both Article III standing And prudential standing to maintain his lawsuit against the BIA in that he has suffered a concrete, particularized

and immediate "injury in fact" due to Defendant's actions in this matter and that his interests he asserts as a tribal petitioner herein fall well within the constitutional, statutory and regulatory "zone of interests" that Congress intended to protect, consistent with the Court's decision in Data Processing, 397 U.S. 150 (1969)

Plaintiff Cross is mystified by the IBIA's statement in its first decision in this matter states: "It appears doubtful that the Regional Director's *interim action* (emphasis added) regarding the number of required signatures, in the absence of a petition submitted by [Cross] and a decision on the validity of such a petition, has resulted in an actual or imminent, concrete and particularized injury to [Cross]." Cross v. Great Plains Regional Director, 65 IBIA 89. 93 (01/11/2018).

Why would Cross' submission of a petition affect the issue of his standing to maintain his suit against the BIA one way or the other? Why would a determination of "validity" of his petition his standing—which is viewed as a threshold determination of a court's jurisdiction over a particular plaintiff's case—given that validity is merely rather simplistic clerical and ministerial review of the elements of a proposed Secretarial Petition?

Standing, when it is boiled down to its essence, simply asks whether a litigant "has a sufficient state in an otherwise justiciable controversy to obtain resolution of that controversy." See, Scalia, The Doctrine of Standing As An Essential Element of the

Separation of Powers, 17 Suffolk U. L. Rev. 881, 882 (1983) (Justice Scalia says it's the answer to the rude inquisitor's question of: "What's it to you?")

The doctrine of standing's long evolution in American law, matured in 1970 into the two pronged test articulated by Justice Douglas in the Court's Data Processing decision:

> "First, the plaintiff must assert an 'injury in fact, economic or otherwise.' Second, the plaintiff's injury must be to an interest 'arguably with the zone of interests to be regulated or protected by the statute or constitutional guarantee in question.'" See, Kevin A. Coyle. Standing of Third Parties To Challenge Administrative Agency Actions, 76 Cal. L. Rev. 1061, 1074 (1988)

Plaintiff Cross asserts that the BIA's requiring him, as a tribal petitioner, to collect a frankly impossible to achieve number of tribal members' signature to validate his Secretarial Petition meets both the "injury in fact" and "zone of interests" tests 3 set in that decision.

5. The Interior Board of Indian Appeals (IBIA) acted in "excess of [its] statutory jurisdiction..[or]...authority" and "without the observance of procedure" as required by law in establishing what Defendant describes as an *interim process* (emphasis added) that suspends or defers whatever actual or imminent wrongs or injuries Plaintiff Cross may have suffered as a result of BIA's actions or decisions due to " [the IBIA's] finding that the calculation of the number of [tribal members'] signatures needed [to validate his Secretarial Petition] and the Regional Director's affirmation did not constitute final agency action...[nor did] that *interim action* (emphasis

added)…resul[t] in actual or imminent, concrete and particularized harm to [Plaintiff Cross]."

6. The IBIA, in establishing its new regulatory category known as an interim action, has acted contrary to [Plaintiff Cross'] constitutional right, power or privilege" so as to violate his rights secured to him by the First and Fifth Amendments to the U.S. Constitution, Article X of the TAT Constitution, §16 of the Indian Reorganization Act (IRA) (now codified at 25 U.S.C. §476), §§ 706(2)(A) and (B) of the APA and of his Right to Petition the federal government for the redress of his grievances as well as his constitutionally guaranteed rights of Freedom of Association and Expression:

The IBIA's purported establishment of an interim process as a means of suspending or deferring tribal petitioners' complaints regarding the BIA's wrongful or injurious actions appears simply, to tribal petitioners, to be the latest iteration of the BIA's long standing policy objective of stringently managing tribal members' access to the tribal petitioning process.

For these above cited reason Plaintiff Cross requests that this Court deny the Defendant's motion to dismiss.

Procedural History

The Defendant's concerted effort to re-characterize the entire record of this case as consisting entirely of an *interim process* [emphasis added] in which all that happened was that "Plaintiff [Cross]…was made aware [that] the information

provided to him by the FBA [Fort Berthold Agency] Superintendent [regarding the 3,447 tribal members' signatures that he must collect to render his Secretarial Petition valid] was *not* [emphasis added] final agency action[.] " Defendant's Memorandum at page 8. After reading Defendant's Procedural History of this case, Cross is reminded of an anecdote told by Christopher Hitchens about Salman Rushdie's comment on the title of Hitchens' book, *God Is Not Great.* Rushdie, by Hitchens' recounting, thought that he could well have dispensed with the last word of the book's title.

In that same vein, Defendant's entire recounting of the procedural history of this case is directed to showing what Plaintiff Cross' complaint is *not* (emphasis added). But he takes 7 single spaced paragraphs to do so.

However, I will briefly critique some of Defendant's potential mischaracterizations of the facts and proceeding in this matter;

(1) Bulleted Paragraph 2: He asserts that Superintendent Danks "*informed* (emphasis added) Plaintiff—on May 18, 2017--that *3,447 signatures would be needed for a valid petition* (emphasis in original) as if this discrete and substantive number were some sort of free floating, unanchored fact independent of any decision or action by the Superintendent or by higher level BIA officials with whom she may have consulted prior to informing Cross of this otherwise seemingly unencumbered number. Defendant's Motion at 8

(2) Bulleted paragraph 4: Defendant now recounts the origin story of this number—the 3,447 tribal members' signatures that Cross needs to collect to validate his petition—and how it did *not* (emphasis added) come from any BIA decision or action but from "information received from the TAT Enrollment Office and that total number was simply divided by 1/3 pursuant to Article X of the TAT Constitution." Defendant's Motion at 9 Furthermore, and as a legal consequence of the tribal origin of that discrete and substantive number—3,447—there was no "[BIA] decision that was appealable under 25 C.F.R. §2.7(c)." Defendant's Motion at 9

(3)Bulleted paragraph 5: For whatever reason, Defendant fails to include a critical aspect or part of the Regional Director's decision that not only "mooted" the Superintendent's decision, but placed the decision requiring Plaintiff Cross to collect 3,447 tribal members' signatures exclusively and solely on federal regulatory grounds:

> "Although Article X of the [TAT] Constitution uses the term "qualified voters" (quote marks in the original) in relation to *determining the number of signatures needed for a valid petition* (italics added), the section does not define "qualified voters." Where the tribal constitution is *silent* (italics added) it does not supplant federal regulations…it seems clear that to be *qualified for purposes of signing a petition to request a Secretarial Election, one must merely be a tribal member eighteen (18) years of age or older."* (italics added) Page 4

Defendant's elision of this portion of the Regional Director's decision—that fundamentally altered the legal basis of Superintendent Dank's decision from resting on tribal action to resting purely on federal regulatory action—may be understandable given the difficulty it presents in fitting it into Defendant's "not" narrative of no substantial or final federal action happening at all in this case. (4). Defendant's bulleted paragraph number 6: Fortunately for Defendant—but not for anyone seeking a coherent and cohesive understanding of this case—the IBIA's first decision or order in this case dismissed Cross' appeal from the Regional Director's decision because "it did not constitute final agency action within the meaning of 25 C.F.R.§4.331." Defendant's Motion at 9 The Board agreed that the BIA's determination of this discrete number—3.447—represented *agency action* (emphasis added) it just did not represent *final* (emphasis added) but merely *interim* (emphasis added) agency action. Defendant's Motion at 9 The Board seemed to regard the Regional Director's interim decision as effectively suspending or deferring Cross' injury based claims, whether stemming from the APA or not, until. and if, Cross, and presumably other tribal petitioners who seek to amend their own tribal constitutions chooses to file a formal petition with the BIA wherein Plaintiff Cross' claims would spontaneously spring to life once again, "in an appropriate forum as part of a challenge to a decision on the validity of a petition." Defendant's Motion at 9

But why, exactly, should Plaintiff Cross choose to defer or suspend his otherwise presumptively valid legal claims, for the convenience of the BIA, in a formal petition just to have them "validated"—which, from a review of the regulations, is simply a clerical and ministerial process lacking in any adjudicative or due process safeguards--in a ostensibly adequate and fair BIA forum?

Neither the Agency Superintendent or the Regional Director relied on that category of agency action, or even expressed a nodding familiarity with a regulatory action option called an "interim action." Plaintiff Cross has looked for in vain in the BIA's glossary of important regulatory terms and concepts and could not find anything related to that term.

Argument

1. Defendant Has No Sovereign Immunity To Suit In These Circumstances

Defendant's claim that there has been "no waiver of [federal] sovereign immunity" and, therefore, Plaintiff Cross is barred from proceeding further in this matter is simply not legally true or accurate. See D's Motion at p. 6 While it may be true that the U.S. "is immune from suit save as it consents to be sued…and the terms of its consent to be sued defines that court's court jurisdiction to be sued," that simply begs the question of whether or not D is subject to suit in these circumstances. The

answer to that question, for better or worse, is a resounding "yes." Defendant's Motion 6

Congress added, by way of a 1976 amendment to the APA, section 702 to that Act. That provision—subsequently interpreted by the federal courts as effecting a general waiver of the federal government's sovereign immunity to suit--reads as follows:

> "An action in a court of the United States for other than money damages and stating that a claim that an agency or officer or employee thereof acted or failed to act in a official capacity or under the color of legal authority shall not be dismissed nor relief denied on the ground that it is against the United States or that the United States is an indispensable party."

The federal courts of appeals have interpreted §702 as .constituting a general waiver of the federal government's sovereign immunity to suit. That's because they regard it as not applying just to suits brought under the APA.) of the government's sovereign immunity regardless of the cause of action. In Clark v. Library of Congress the U. S. Court of Appeals for the District of Columbia (D.C. Circuit) held that the although the Library of Congress, as an arm of Congress, was not a "federal agency" for the purpose of a suit under the APA, the APA nonetheless waived the Library of Congress' sovereign immunity thereby subjecting it to suit based upon an alleged violation of the First Amendment: "With respect to claims for non-monetary relief the 1976 amendments to §702 of the [APA] eliminated the sovereign immunity defense in

virtually all actions for nonmonetary relief against a U.S. agency or officer acting in an official capacity."Clark v. Library of Congress, 750 F. 2d 89, 102 (D.C. Cir., 1984)

2.The BIA's Requiring The Participation of 3, 447 Qualified Tribal Voters To Validate PC's Secretarial Petition—While Requiring The Participation of Only 357 To Validate A Secretarial Election Called Pursuant To That Petition Constitutes Final—As Well As Arbitrary and Capricious—Action By The BIA Officials Involved

Two conditions must be met for "final agency action" to be judicially reviewable: 1. the agency action must mark the "final consummation" of the agency decision making process. In this regard, the respective decisions by the Agency Superintendent and the Regional Director's decisions represented the final determination of the number of tribal member signatures that plaintiff Cross must collect to validate his petition; and 2. The action involved must "create rights and obligations from which legal consequences will flow (i.e., both of their decisions established an administratively legal binding standard for evaluating the validity of Plaintiff Cross' Secretarial Petition. See, 25 C.F.R. §81.62 (a) (1)("The Local Bureau Official will confirm the petition has required number of signatures.")

There is a strong presumption of reviewability when the person affected by the agency action—Plaintiff Cross here has to choose between "disadvantageous

compliance" (i.e, accept the interim action alternative) or"risk the imposition of serious penalties" (risk a finding his petition is invalid for want of 3,447 signatures).

Under the recent Reliable decision here are two questions to ask: 1) are there questions re: the IBIA's statutory power to create a new regulatory category called an "interim action? The answer that question is potentially yes!; and 2) are there formal adjudicatory measures by which Cross can appeal within the agency? The answer is clearly no! Then there is final agency action. Reliable Automatic Sprinkler Co. v.Consumer Product Safety Comm'n, 324 F.3rd 734 (9th Cir.2003)

3.This Court Has Subject Matter Jurisdiction Over Plaintiff Cross' Claims In That They "Arise Under" The Constitution, Law or Treaties of the United States As Is Required By 28 U.S.C. §1331 and Under §704 Of The APA

Plaintiff Cross has clearly demonstrated that final agency action has occurred in this matter entitling him to bring this action pursuant to § 704 of the APA. However, Defendant hypothesizes that the "only potential basis for this Court's [subject matter] jurisdiction [over Plaintiff Cross' complaint] is under the Administrative Procedure Act. " (citations omitted) Defendant's Motion at 7

He then asserts that "[s]ome courts have dismissed an APA claim for lack of subject matter jurisdiction." (citations omitted) Defendant's Motion at Ibid However, to even get to Defendant's concept that that "finality [of agency action]…is a jurisdictional requirement [for this Court's exercise of subject matter jurisdiction over

Cross' complaint] this Court would have to agree with Defendant's contention that Plaintiff Cross' being *twice* (italics) ordered—each order based on differing legal and regulatory bases by the officials involved—to collect 3,447 tribal members' signatures to validate his petition under Article X of the TAT Constitution. Furthermore, the 2015 Hudson decision confirmed the Great Plains Regional Director's claim that it only takes the participation of only 357 qualified TAT voters to validate a 2013 Secretarial Election on Fort Berthold under Article X's substantive and procedural standards while it takes over 9 TIMES that number to validate Cross' petition. Still Defendant concludes that decision constitutes only an "interim" action and not a discrete, substantive final decision by each of those BIA officials. D's Motion at 8

The better way for this Court to assess the impact of D's asserted "jurisdictional fact" is to approach it as Justice Scalia recommended in his majority opinion in the Court's 2001 Verizon decision. He stated "the district courts have jurisdiction [under §1331] if 'the right of the petitioners to recover under their complaint will be sustained if the Constitution and laws of the United States are given one construction and will be defeated if given another,' unless the 'claim clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous.'" Verizon, at 643

He further opined that the "absence [or presence] of a valid cause of action does not implicate [federal district courts'] subject matter jurisdiction, i.e., the courts' statutory

or adjudicatory *power* [italics in original] to adjudicate the case." Ibid Applying the Verizon decision to Plaintiff Cross' complaint, his claims clearly fall within the ambit of §1331 given that they will, likewise, "turn on" the interpretation and application of those federal and tribal Constitutional and statutory provisions presented in this case. These federal law provisions include federal Indian regulations such as 25 C.F.R. §§ 81.53 and 81.57(a)(2)(i) and decisions by the Indian Board of Interior Appeals (IBIA). See, Beneficial Nat'l Bank v. Anderson, 539 U.S. 1, 6 (2003)

At base, despite the foregoing, Defendant nonetheless seems to be requesting this Court to make merits based decision that there was no final agency action taken in this matter' Defendant's Motion at 8

If so, and Defendant is, in reality, claiming this Court may only exercise subject matter jurisdiction SMJ over Cross's complaint if and only if it also decides that the BIA's requirement that Cross must collect 3,447 signatures to validate his petition DOES constitutes final agency action, then Cross suggests this Court should heed the Ninth Circuit's counsel and hold: "Because the jurisdictional issue is dependent upon the resolution of factual issues going to the merits, it [is] incumbent upon the district court to apply summary judgment standards in deciding whether to grant or deny the government's motion. That is, it [is] improper for the district court to grant the government's motion unless the relevant facts are not in dispute and the government

was entitled to prevail as a matter of law." See Augustine v. United States, 704 F.2d 1074, 1079 (9th Cir. 1983)

Furthermore, the Fifth Circuit Court of Appeals held "where issues of fact are central to both subject matter jurisdiction and the claim on the merits we have held that the Court must assume jurisdiction and proceed to the merits. See, Montez v. Department of Navy, 392 F.3d 147, 150 (5th Cir. 2004)

4. Plaintiff Cross Has Both Article III Or Constitutional Level, Standing, As Well The Court Established "Prudential' Standing--Given The Imminent, Concrete and Particularized "Injury In Fact" He Has Suffered Due To Both Superintendent Danks' and the Regional Director's LaPointe's Decisions That Each Require Him, Albeit On Radically Differing Legal Bases, To Collect 3,447 Tribal Members' Signatures To Validate His Secretarial Petition

It seems after the APA's enactment, only prudential standing--expressed in the "zone of interests" test remains and asks whether Plaintiff Cross is an "adversely affected or aggrieved party" within APA's or another statute's—such as 25 U.S.C. §476--purview. See FEC v. Akins, It's also clear that Plaintiff Cross has suffered—in Article III's terms—an "a particularized, concrete and immediate" injury that can clearly be redressed by judicial action. See Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)

5. The Board acted in "excess of [its] statutory jurisdiction.. [or] authority" and "without the observance of procedure as required by law" in establishing what Defendant describes as an *interim process* (italics added) that either suspends or defers whatever actual and imminent wrongs or injuries Plaintiff Cross may have suffered as the result of the BIA's actions or decision because of the "[IBIA]

finding that the calculation of the number of [tribal members' signatures] needed [to validate his Secretarial Petition] and the Regional Director's affirmation did not constitute final agency action.. [but an] ..."*interim action"*

The judicial interpretive powers of an administrative court, like the IBIA, maybe substantially less than those of a Article III court. Therefore, there is a question whether the IBIA has the power—even assuming there is some regulatory ambiguity or silence in 43 C.F R.§ 4.331 regarding "final" agency action necessitating the Board's interjection of a new regulatory category known as interim action. See Chevron, USA, Inc. v. NRDC, 467 U.S. 837 (1984)

6. The Board, in establishing its new regulatory category or concept of an interim action in its two decisions or orders in this matter, has acted " contrary to [Plaintiff Cross'] constitutional right, power, or privilege" in violation of the First Amendment of the U. S. Constitution, Article X of the TAT Constitution, §16 of the Indian Reorganization Act (IRA) of 1934 (now codified at 25 U.S.C. §476), §706(2)(B) of the APA and of his Right to Petition the federal government for the redress of his grievances as well as his constitutionally guaranteed rights of Freedom of Association and Expression.

Conclusion

Plaintiff Cross requests this Court to deny Defendant's motion to dismiss his complaint in this matter.

Signed: _____

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