John Quintero
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NEVADA BOARD of PAROLE COMMISSIONERS
in its Quasi-Legislative Capacity
and Quasi-Judicial Capacity
Ex rel. John Quintero,
Real party in interest,
and Citizen of California
vs
STATE of Nevada ex rel.
Board of Parole Commissioners
Christopher P. Derricco, Chair
Department of Public Safety
George Togliatti, Director

RECEIVED
MAY 04 2020
STATE OF NEVADA
PAROLE BOARD

PETITION for ADOPTION, FILING, AMENDMENT
or REPEAL of REGULATION NAC 213.512
per NRS 233B.100

Now comes John Quintero, an interested person,
and citizen of California subject to the will
and volition of the State of Nevada, by and
through the Department of Public Safety and
its political entity Board of Parole Commissioners
to file this Petition to Repeal NAC 213.512
as an act of official fraudulent concealment,
invalidated by vagueness contrary to state and
U.S. Constitutions, and destructive to the
common good of the people of the United States;
This is based on following argument and Exhibits.

I. Introduction

1.) On or about 02/06/2020 the petitioner received letter from Nevada Board of Parole Commissioner (NBPC) notifying the petitioner the "Board will accept all petitions under NRS 233.B.100(1) in any written format,"

2.) the letter of 02/06/2020 also states the Board "will then consider the petition as an agenda item at the Board's next available public meeting" See Exhibit 1 last line.

3.) the petitioner objects to this construction of 233B.100, which requires a response within 30 days;

4.) because of the gravity of the petition and because of the complexity of the issue, and because of the petitioners intention to pursue the review process available at NRS 233B.110 of the Nevada Administrative Procedure Act (NAPA), the petitioner has elected to set out a formalized layout to insure the clarity and understanding of the rulemaking minds to which this petition is addressed

II Jurisdiction

5) the Board has the duty to hear this petition under the NAPA provision at NRS 233B.100;

6) further judicial review is available at NRS 233B.110, and presumably NRS Chapter 30 on Declatory and Injunctive Relief;

7.) the petitioner also invokes NRS 233B.120 as a petition for a declatory order and/or advisory opinion on the substantive content of this petition for further challenge in the judicial branch;

8) the petitioner has captioned his status as a California citizen, a non-Nevadan for purposes of diversity jurisdiction in the event the petitioner finds it necessary to turn to federal jurisdiction over application of state;

III Standing

9.) the "any person" clause of 233B.100 on its plain language meaning includes human persons convicted of the criminal sanctions of incarceration in the custody of the Nevada Department of Corrections (NDOC).

10.) it shall be important to note that the NDOC, at NRS 233B.037, falls under the category of "person," because it states therein "Person includes any political subdivision or public or private organization of any character other than an agency; this means that at any time, any other agency, in the interest of the just execution of the law of parole in Nevada, could and should avail themselves of the NAPA provisions of NRS 233B.100, and other provisions therein;

11.) the petitioner, in 2016 and 2019 suffered the natural harm of continued loss of liberty caused by the Board's reliance on the "Crime Severity Index" created by an agency which is exempt from the due process safeguards of NAPA (see NRS 233B.039(1)(b))

12) because the petitioner was exposed to a consideration by a procedure created outside the due process of NAPA, there exists a controversy for which he has standi

IV Background

A. Pre-2008
B. 2008 - 2020

A. Pre-2008 History of NAC 213.512[1]

13.) Attached at Exhibit 2 are pages 1-8 of the Proposed Regulation in LCB File No R080-98 which modified prior NAC's created by the Board in 06-27-90 and 05-11-96; also attached are pages 3 to 6 of the Adopted Regulations of R08-98;

14.) What is to be noted is that the Board, utilizing NRS 193.130 Letter designations with "A" being high "severity" and "E" the least "severity," increased the degrees, or Kinds of "severity" from 7 to 11 to list on the Y-Axis on the table at NAC 213.530, shown a pg. 7 of Agency Draft and described at 213.510 pg 5 of Agency Draft;

15.) Also important is 213.510 (3) at page 5 Agency draft: "the board may use the following table to assist it in determining the severity of the crime; it is clear from language the Board's job was to "determine" the crime severity, no one else;

[1] attached at Exhibit 1 is current printout of NAC 213.512, which was printed out by NDOC database; note it excludes history footnotes, creating unfair obstacle;

II Background (continued)

B. 2008-2020 History of NAC 213.512

16. Attached at Exhibit 3 are the following documents:
    A. Emergency Regulation dtd 11-17-2007 including a "Statement of Emergency"
    B. Request for clarification/rationale submitted during consideration of modification of NAC 213.510[2] by Pat Hines
    C. Proposed Regulation LCB File No. R018-08
    D. Text of NRS 213.10885 which proposes increase of time between review of standards
    E. NRS 209.341, which the Board of Parole misrepresents to be authorization for "seventy table"
17. These documents will be referred to in the upcoming section "Why Remedy Should Be Granted;"

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[2] At some point in proceedings as yet not found, old 213.510 was re-numbered to 213.512

IV Remedy Sought

18 To repeal NAC 213.512 insofar as its nexus to the NDOC "severity" table;

19 to repeal the NACs which presume the validity of the NDOC generated "severity" tables of NAC 213.512

20 to amend the NAC's 213 in strict accordance with 213.10885 (1)

> "The standards must be based upon objective criteria for determining the person's probability of success on parole"

21 To hold hearings regarding such an "objective" instrument that takes into consideration of the issues raised by Pat Hines in 2008 regarding the severity table;

22 declatory findings that in fact the "severity" table created (putatively) by the NDOC is not an objective criteria and was not subject to any due process safeguards of NAPA because NDOC is exempt from NAPA;

II Why Remedies Should Issue

I

Repeal of NAC 213.512 Should Issue Because the Emergency Regulation Was Based on Fraudulent Representation, Was Never Promulgated, and Creates Conflicts of Law, and Violates the Overbroad Law Doctrine

23. The Statement of Emergency States AB 510 of 2007 invalidated the 55-cell matrix created by the Board at LCB File No. R080-98. The Statement represents that the statute which invalidated the prior 55-cell consideration of severity was NRS 213.10885(6) which is quoted in the Statement of Emergency. The trigger clause appears to be

> "If a standard appears to be ineffective, the Board shall not use that standard."

24) however, no records exist that demonstrate that such a determination of ineffectiveness, for the prior system of severity determinations adopted in 1998, that the petitioner knows of, this representation of the parole board to then Governor Jim Gibbons is patently false because the statement implies an unstated presumption that the NDOC Severity Table is objective and had been tested as such by the due process safeguards of NAPA when in fact NDOC is exempt from NRS 233; the governor relied on affirmatively false information;

25 The governor relied also on the unstated assumption that a 15-cell consideration matrix created by use of the five criteria of the "severity" table is more objective than a 55-cell matrix; 15 degrees of "severity" is a reduction ~~in~~ from the 55 prior degrees of severity, which necessarily gross over-generalizations that neglect particular circumstances that may mitigate a prisoner's "severity" label and increase his likelihood of success;

26. next, NDOC has never promulgated its "severity tables" and this violates well known principles of legislative law and the due process right to "notice" of what the law is; the severity tables are not announced by any Administrative Regulation; the coded severity is machine language that populates automatically in the NOTES Parole Board Reports generated by NDOC; this can hardly be described as an "objective" criteria -- it is a static arbitrary assignment

27. having unlawfully given over to NDOC its duty to create "objective criteria," the act creates conflicts of law; for example, the "severity index" applies a status of crime to a statute that declares itself in its own text; not to be an offense at all -- NRS

28) the new NAC 213.572 (supplanted 213.570) creates also a conflict in the due process provisions of NAC 213, , in that the inmates challenge of the severity level assigned cannot in any meaningful way be challenged, because it is merely a predetermmated decision which is now merely code to populate a field in the Parole Board Report;

29) as described in par. 25, the NAC 213.512 "severity" table is constitutionally void for overbroadness and in no way is an "objective criteria" that satisfies 213.10885,

II

Other NACs Cornerstoned on the Fraudulent Severity Table Needs Must Be Repealed and/o Amended to Accomodate the Repeal of 213.512

30) this use of NDOCs 5-severity degrees was used to create an overbroad reduction of a 55-degree of severity index for consideration for parole, to a 15-degrees of severity; as stated above, the 15-Degrees of RO-18-08 is constitutionally overbreand and becomes illegal if 213.512 is declared illegal;

II

The USE of Objective Criteria Is Not Possible When NRS 213.10885(1) Is Circumvented By the Subjective Criteria of the NDOC Generated Severity Table

31.) the prior NAC regulation of 213.510 was more objective than the superceding 213.512 because it was geared to a greater quantity of particular sets of circumstances and degrees of severity

32.) this record of actions or exhibit can be inferred to be fraud on the people of which are subject to its operations, because it appears to be a ruse to categorize a greater number of inmates as highest severity to justify the greater number of parole denials and increase the term of liberty deprivations to a greater number of inmates in proportion to the decreased number of severity levels

33.) the proposed NDOC Severity Table of NDOC was not only not promulgated by NDOC, it was not properly promulgated by the Parole Board -- at Exh 3 D, Proposed Regulations the NDOC Severity Index is presented but it does not appear to be promulgated by publications, rendering them constitutionally void;

IV

The Objections Raised By Pat Hines were Ignored and Swept Under the Rug and Must Be Revisited

34. Attached at Exh. 3B is the letter of Pat Hines found in the LCB File No. R018-08
35. her objections were deliberately unaddressed in subsequent required reports, even though she asks "how it came about" (the severity table) no mention is made (in any of the documents disclosed by the Board when requested per NRS 239) of the Emergency Regulation;
36. mal intention can be inferred from the blaring concealment by non-responsiveness to Pat Hines' request that "the public get a little history of how the [severity table] came about";

V

Per NRS 233B.120, the petitioner must first ask this Board to pass on question of declaration on illegality of its regulations and hereby does so.

The foregoing 233B.100 Petition for Adoption, Filing, Amendment or Repeal of a Regulation is hereby sworn under penalty of perjury to be true to the best of his understanding and knowledge per NRS 208.165 on this 28th day of April 2020 in Carson City Nevada

John Quintero

Certificate of Service

The foregoing was served by U.S. Mail on
Nevada Attorney General
100 North Carson St
Carson City NV 89701
on April 29 2020