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FEB 06 2007	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	DEPUTY

1 Charles Edward Byrd # 103766
 2 A.S.P.C. - Douglas
 3 Box 5000
 4 Douglas, Arizona, 85608

5 In Propria Persona:

6
 7 IN THE
 8 UNITED STATE DISTRICT COURT
 9 FOR THE DISTRICT OF ARIZONA

9 Charles Edward Byrd)
 10) Petitioner,
 11 Vs.)
 12 Joseph Arpaio, et al.)
 13) Respondents,
 14)

CV-04-2701-PHX-NVW-ECV)
 Motion to dismiss
 defendant(s) Motion for
 Summary Judgment

15 Comes now the Plaintiff, Charles Edward Byrd respectfully
 16 asking of this Court to dismiss the defendant(s) Motion for
 17 Summary judgment based on the following statements.
 18 Six months after the Plaintiff filed his first grievance on
 19 October 28th, 2004 (Exhibit A), and his second grievance,
 20 (Exhibit B) and his third grievance (Exhibit C) and his
 21 fourth grievance (Exhibit D) The defendant's refused
 22 to take any action, so the Plaintiff wrote the Phoenix
 23 Police Department to file criminal charges on Officer
 24 O'Connell. The Phoenix Police Department sent the letter
 25 to Maricopa County Sheriff's Office, Then The Maricopa
 26 County Sheriff's Office sent the Plaintiff a letter dated
 27 April 29, 2005 in which the letter denied knowing this
 28 happened to the Plaintiff (Exhibit E). The Plaintiff(s)

1 Constitutional Rights were clearly violated, see
2 (Exhibit F) 607 P.2d 206, 44 Or. App. 755, Sterling
3 v. Cupp, (Or. App. 1980) 206 607 P.2d 206 44 Or.
4 App, 755, 22 Empl. Prac. Dec. P 30, 797 clearly
5 states "Except in emergency situations, frisking
6 or body searching of clothed male inmates by female
7 correction officers, which involved some touching
8 of genital and anal areas through clothing, violates
9 inmates' constitutional right to privacy.

10 Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. §
11 2000e et seq., clearly states, Male prisoners'
12 Constitutional right to privacy prevails over consequent
13 limitations on employment opportunities for women.

14 Individuals officials face liability under § 1983 when
15 they commit constitutional tort or are personally involved
16 in alleged unconstitutional act. 42 U.S.C.A. § 1983.

17 Plaintiff in § 1983 civil rights action can recover monetary
18 damages, including punitive damages against officials who are
19 named in their official capacity. 42 U.S.C.A. § 1983.

20 A cause of action to recover damages is a "fundamental
21 right" guaranteed by the Arizona Constitution. A.R.S. Const.
22 Art. 18, § 6.

23 A governmental entity is liable under § 1983 when injury
24 is inflicted by execution of that entity's policy, whether made
25 by its lawmakers or by those whose edicts or acts may
26 fairly be said to represent official policy, 42 U.S.C.A. § 1983
27 Flanders v. Maricopa County, 54 P.3d 837, 203 Ariz. 368.

28 Plaintiff may seek compensatory damages for the denial of

1 his constitutional rights. See Borunda v. Richmond, 885
2 F.2d 1384, 1389 (9th Cir. 1989) (providing that a § 1983
3 victim is "entitled to recover compensatory damages for all
4 injuries suffered as a consequence of those deprivations.")

5 The Plaintiff has shown the existence of a "genuine"
6 issue of material facts, and the Plaintiff has established
7 that a reasonable jury could return a verdict in his
8 favor. (Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S.
9 Ct. 2505, 91 L. Ed. 2d 202 (1986).)

10 Plaintiff seeks and is entitled to seek compensatory
11 and punitive damages for the denial of his Constitutional
12 Rights.

13 Wherefore the Plaintiff respectfully ask of
14 this Court to dismiss the defendant(s) Motion
15 for summary judgment and allow this case to
16 proceed to trial.

17 Respectfully submitted on this
18 31st day of January, 2007

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20 Charles Edward Byrd
21 *Charles Edward Byrd*
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