

App. No. ____ - _____

In the Supreme Court of the United States

JOHN A. GENTRY, PETITIONER

v.

THE HONORABLE JOE H. THOMPSON,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This is a profoundly important case questioning whether constitutional rights are no longer enforceable against state court judges, and whether state court judges can repeatedly and grossly violate constitutionally guaranteed rights with impunity. In this matter, not only did the Respondent repeatedly and grossly violate rights but he also perpetrated federal crimes for which the Petitioner has brought separate suit in related case before this court: Gentry v. Tennessee Board of Judicial Conduct; et al. The facts of this case are not disputed and clearly evidence rights violations and federal crimes perpetrated against Petitioner by Respondent. Dismissal of this case was not a matter of error by the lower courts. Dismissal of this case was intentional circumvention of the intent of congress and constitutional provisions by the lower courts requiring the supervisory power of this Court necessary to affirm and re-institute constitutionally protected rights.

The question presented is:

1. Whether constitutionally guaranteed rights are usurped when they are not enforceable in either state courts or federal courts, under false cloak of sovereign and judicial immunity even when a plaintiff seeks only equitable relief.

PARTIES TO THE PROCEEDINGS

John A. Gentry was the appellant in the court of appeals and the plaintiff in the district court.

Respondent, The Honorable Judge Joe H. Thompson was the Appellee-Defendant.

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In the case styled Gentry v. Thompson, Petitioner, John Anthony Gentry, respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Magistrate Judge assigned to the case issued a Report and Recommendation attached as Appendix A. The District Court Judge's Memorandum & Order is attached as Appendix B. The court of appeals order affirming dismissal was labeled "NOT RECOMMENDED FOR FULL-TEXT PUBLICATION". The court of appeals Order is included in appendix to this petition as Appendix C. Petition for Rehearing En Banc was denied. The Order denying Petition for Rehearing En Banc is attached as Appendix D.

JURISDICTION

In the case styled Gentry v. Thompson, the final judgement of the court of appeals was entered on October 27, 2017. This petition has been timely filed within 90 days of final judgement. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the appendix to this petition. See Appendix H.

STATEMENT

Here before the Court is a matter of exceptional public importance, necessitating imperative of this Court to exercise its supervisory power so as to reaffirm and re-institute the republican principles upon which our country was founded. In state court proceedings, Tennesseans are routinely subjected to federal law and rights violations and have no means to seek redress and no means to enforce constitutionally guaranteed rights.

In the case styled Gentry v. Thompson, Petitioner, hereinafter "Mr. Gentry", brought suit against Respondent, Judge Joe H. Thompson for repeated and gross violations of due process under 42 U.S.C. § 1983. The facts of this case are not disputed and are well evidenced in the record.

Not only did Respondent repeatedly and grossly violate Mr. Gentry's rights, he also perpetrated federal crimes against him as follows: Conspiracy to violate rights, extortion under color of law, witness tampering, and subpoena evasion, which further gave rise to the separate related case Gentry v. Tennessee Board of Judicial Conduct: et al. As noted in that case, Mr. Gentry humbly sought the protection of his state government which was wrongfully denied through intentional gross negligence and further conspiracy to deprive rights.

Mr. Gentry then sought redress **and only equitable relief** in federal court only to find his case dismissed by the Dist. Ct. under the Rooker-Feldman Doctrine (proven in error) with dismissal subsequently upheld in appellate court not by

affirming dismissal under the Rooker-Feldman doctrine but through erroneous abrogation of jurisdiction under sovereign and judicial immunities, See Appendix C.

The uncontested facts of this case and decisions of the Dist. Ct. and 6th Cir. leave no doubt that a right of due process is no longer enforceable. The facts of this case and the case styled Gentry v. Tennessee Board of Judicial Conduct; et al, prove that state court judges and legal professionals can violate rights and perpetrate federal crimes with impunity. Many of the grievances stated in our Declaration of Independence are the same injustices to which Tennessee litigants are routinely subjected such as the "Mock Trial" inflicted upon Petitioner by the Respondent.

REASONS FOR GRANTING THE PETITION

I. Constitutionally Guaranteed Rights Are Unenforceable In Any Court And Under Any Circumstance

The undeniable fact that constitutionally guaranteed rights are no longer enforceable for Tennesseans, alone provides sound basis for this Court to exercise its supervisory power. No matter how heinous the crime or rights violation, Tennesseans cannot enforce their rights against state court judges, even when only seeking equitable relief. (1) If a citizen complains of rights violations or crimes perpetrated against them by a state court judge to the State's judicial oversight agency, The Tenn. Bd. of Judicial Conduct (TBJC), the complaint

is wrongfully dismissed. The State does not dispute the fact that the TBJC dismisses 100% of complaints filed by non-legal professionals. (2) If suit is brought against the state court judge in state or federal court, the state asserts that “sovereign immunity” protects them in their official capacity and state and federal courts always dismiss these cases, even when only equitable relief is sought. (3) In both federal and state courts, if suit is brought against a state court judge in his personal capacity, the state asserts “judicial immunity” protects them in their personal capacity, and again, the courts always dismiss these cases too, even when only equitable relief is sought. (4) If suit is brought against the state for rights violations, the same defense of “sovereign immunity” is used as a cloak to deny enforcement of constitutionally guaranteed rights. (5) If a Tennessean attempts to bring suit against a “governmental entity” for rights or federal law violations, the state has enacted unconstitutional statute providing false and unconstitutional immunity from suit as well the sovereign immunity defense.

The undisputed facts of this case leave no doubt that Tennesseans are provided no means to address grievances against the state or its officials for rights violations. This singular fact provides sound basis for this Court to assert its supervisory power.

In the case, *Marbury v. Madison*, 5 US 137, 2 L. Ed. 60, 2 – Sup. Ct. 1803, quoting Blackstone: “*it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit,*

or action at law,..."(at 163). Both Amendment V and Amendment XIV of the United States Constitution guarantee that no person shall be deprived of life, liberty, or property without due process law. Therefore, a right of due process is a legal right for which there must be a legal remedy.

This our highest court has repeatedly affirmed that due process includes: (1) a right to be heard, (2) a right to confront adverse witness testimony, (3) a right to present evidence, (4) a right to a fair and impartial court, and (5) a right to present arguments orally. The Respondent repeatedly and grossly violated and denied these basic elements of due process to Petitioner. Respondent also perpetrated federal crimes against Petitioner of: witness tampering, subpoena evasion and extortion under color of law for which Petitioner has brought separate suit against the state. Denial of review by this our highest court will affirm with ultimate finality that a right of due process is no longer enforceable against state court judges.

II. Rights Violations And State Official Corruption Have Devastating and Far Reaching Consequences

In a recent Executive Order, our President recognized the harm caused by corruption and rights violations as follows:

Human rights abuse and corruption undermine the values that form an essential foundation of stable, secure, and functioning societies; have devastating impacts on individuals; weaken democratic institutions;

degrade the rule of law; perpetuate violent conflicts; facilitate the activities of dangerous persons; and undermine economic markets. *Executive Order Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption*, December 21, 2017

These harms enumerated by our President, are the exact same harms Mr. Gentry has argued are the result of state court corruption and rights violations in related case *Gentry v. Tennessee Bd of Judicial Conduct*, et al, and why the State must be reformed. Since these same harms enumerated by our President are the same harms caused by corrupted state court proceedings, hereto is imperative for this Court to exercise its supervisory power.

In the case, *Pacific States Telephone & Telegraph Co. v. Oregon*, 223 US 118, 32 – Sup. Ct., 1912, the supreme court stated:

... to afford no method of testing the rightful character of the state government, would be to render people of a particular State hopeless in case of a wrongful government. (at 146)

In *Cruikshank*, the Supreme Court stated: “the very idea of a government, republican in form, implies a right of its citizens to petition for redress of grievances.” *United States v. Cruikshank*, 92 US 542, 23 – Sup. Ct, 1876 (at 553).

It is an undeniable fact that the state uses a false cloak of judicial and sovereign immunity as defense for wayward judges, such as Respondent in this case, even when a person seeking to enforce their rights, seeks only equitable relief. Due to this undeniable fact, the state and federal courts provide no means whatsoever to enforce constitutionally guaranteed rights. A right that is no longer enforceable is a right that has been usurped. Hereto is imperative for this court to exercise its supervisory power lest the people be subject to despotism.

III. Eleventh Amendment State Sovereignty Is Vitiating When A State Government Acts Contrary To Federal And State Constitutions

A state's sovereignty is established through its constitutional authority.

Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not. ..., the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. *Luther v. Borden, 48 US 1, 12 L. Ed. 581, - Supreme Court, 1849.*

The Supreme Court repeated in Sheehan, officials who knowingly violate the law are not entitled to immunity. *San Francisco v. Sheehan 135, 1765 - Sup. Ct., 2015 (at 1774).*

The doctrine of judicial immunity exists to protect mistaken but reasonable decisions, not

purposeful criminal conduct. Similarly, sovereign immunity is established by a state government republican in form and character. In this case, the Sixth Circuit panel ruled Eleventh Amendment immunity extends to Respondent. By the same logic, crimes and rights violations perpetrated by state agents reflect back, and extend to the state, resulting in the state's loss of republican character and vitiation of immunity.

A state that is no longer republican in form or character vitiates sovereign immunity just as a judge vitiates judicial immunity when acting criminally and or unconstitutionally. To hold otherwise renders the people of a state hopeless in circumstance of a wrongful government as referenced in the *Pacific States Telephone v. Oregon* case above. Herein, Mr. Gentry has provided sound legal argument that a state vitiates sovereign immunity when its agents act criminally and unconstitutionally.

Moreover, this Court has repeatedly affirmed eleventh amendment immunity is necessarily limited by fourteenth amendment provisions, for example; *Atascadero State Hospital v. Scanlon*, 473 US 234 - Supreme Court 1985. Furthermore, in *Fitzpatrick v. Bitzer*, 427 US 445 - Supreme Court 1976, this Court affirmed Congress has to power to authorize federal courts the power to enforce substantive guarantees of the Amendment XIV pursuant to § 5 of Amendment XIV. Congress provided this authority to federal courts by way of enactment of 42 U.S.C. § 1983, See Appendix H.

IV. This Court Should Exercise Its Supervisory Power

Pursuant to U.S. Sup. Ct. Rule 10(a), reasons for which review on a writ of certiorari is appropriate include when a United States court of appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such departure by a lower court, as to call for an exercise of this Court's supervisory power. Petitioner respectfully suggests such is the case in this matter.

As the Supreme Court stated in *Ex parte Young*, 209 US 123, 28 S. Ct. 441, 52 L. Ed. 714 - Supreme Court, 1908

"It is most true that this court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is to exercise our best judgment, and conscientiously perform our duty." (at 143)

There is no doubt the Dist. Ct. and the appellate court have departed from the accepted and

usual course of judicial proceedings requiring the supervisory power of this court to ensure the integrity of our federal courts. In the words of Justice Peckham, who delivered this Court's opinion in *Ex parte Young*, for the District Court to knowingly and wrongfully abrogate jurisdiction under the Rooker-Feldman is "*treason to the Constitution.*" The same is true of the U.S. Court of Appeals for the Sixth Circuit wrongfully abrogating jurisdiction under judicial and sovereign immunities. Not only does this unfortunate fact apply to the panel who wrongfully dismissed the case, it applies to all the active judges of the Sixth Circuit due to the fact of denial of petition for rehearing en banc.

In District Court, the magistrate judge assigned to the case recommended dismissal under several false defenses and immunities, attached as Appendix A. Not only did the magistrate recommend dismissal under several false defenses and immunities, the magistrate's rhetoric was demeaning and mischaracterized facts. In response, Petitioner-Plaintiff timely filed an objection to the magistrate's Report and Recommendation (R&R), moving the court to strike the R&R from the record. See Dist. Ct. Dkt, DktEntry 21, PageID 147-174. Such demeaning characterization of Petitioner's complaint and mischaracterization of facts is conduct of the magistrate that is in violation of several canons of the Code Of Conduct For Federal Judges.

The District Court judge agreed with all of Mr. Gentry's sound arguments of law pertaining to all false immunity defenses with the exception of erroneous application of Rooker-Feldman Doctrine.

Moreover, the District Court Judge stated in her Memorandum & Order, attached as Appendix B, "*Mr. Gentry, to the contrary, seeks only equitable relief, and it is, therefore, unclear whether these grounds for dismissal would be appropriate upon de novo review.*" See Appendix B, page 22a. The District Court judge only accepted the often misconstrued Rooker-Feldman defense recommended by the magistrate judge. Obviously, application of Rooker-Feldman was in error as noted in the following opinion of this Court.

The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, "whether that action be executive, legislative, or judicial." *Mitchum v. Foster*, 407 US 225 - Supreme Court 1972 (at 242)

In carrying out that purpose, Congress plainly authorized the federal courts to issue injunctions in § 1983 actions, by expressly authorizing a "suit in equity" as one of the means of redress. And this Court long ago recognized that federal injunctive relief against a state court proceeding can in some circumstances be essential to prevent great, immediate, and irreparable loss of a person's constitutional rights. (*id* at 242)

Petitioner-Plaintiff then motioned the District Court to alter its judgement and provided the court a memorandum proving the inapplicability of the

Rooker-Feldman Doctrine. That memorandum is attached as Appendix G. Incredulously, even knowing that state court proceedings were on appeal and there was no “final judgement”, the District Court refused to alter its judgement. Without providing any response whatsoever, the District Court judge “stamped” the cover sheet of the motion “DENIED”, attached as Appendix E.

Petitioner timely appealed to the U.S. Ct. of App. for the 6th Cir. The panel assigned to the case in the 6th Cir. did not affirm dismissal under the Rooker-Feldman Doctrine (proven in error) but instead affirmed dismissal under sovereign and judicial immunity, defenses that were already defeated in District Court.

Petitioner then sought rehearing en banc, that Petition is attached as Appendix F. In that petition, Petitioner complained that the appellate court’s decision to affirm dismissal, renders our federal constitution a “dead document” and no longer enforceable. See Appendix F, page no. 46a. Petitioner’s petition for rehearing en banc was denied. The Order denying rehearing en banc is attached as Appendix D.

Accordingly, the dismissal of this case by the District Court and affirmation of dismissal by the Sixth Circuit are not reasonable but mistaken “error” of those judges. The dismissal of this case by the district and appellate courts are intentional circumvention of the intent of congress, amount to “treason to the Constitution” and are contradictory of this Court’s numerous decisions and should be

reversed. To not reverse these erroneous decisions is to nullify constitutionally guaranteed rights.

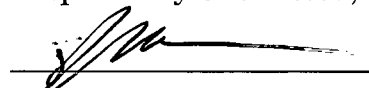
CONCLUSION

The Petition for writ of certiorari should be granted.

Petitioner refers the Court to related Sup. Ct. Case No. 17M88 and respectfully asserts these cases should be consolidated for review. Petitioner previously sought review by this Court of that case, 6th Cir. Case No. 17-6171 **before judgement**. That case is presently pending decision of Petition For Rehearing En Banc. Petitioner respectfully requests stay of these proceedings, for consolidation, pending Petition for Writ of Certiorari to this Court in that case.

DATED: April 23, 2018

Respectfully submitted,



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