

No. 18-595

In The
Supreme Court of the United States

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

JAMES P. TATTEN,

Petitioner,

v.

CITY AND COUNTY OF DENVER, a municipality;
DEBRA JOHNSON, Clerk and Recorder, in her official
capacities; and LSF9 MASTER PARTICIPATION TRUST,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner James P. Tatten was admitted to the Bar of this Court on August 27, 1999.

On November 8, 2008, Tatten was the victim of a violent assault that caused severe, traumatic-brain injury. He is disabled and lives with significant cognitive impairments and limitations. Tatten is *pro se*.

This case results from the conduct of state and non-state actors seeking to collect a time-barred debt.

The questions presented are:

1. Whether this Court's decision in *Haines v. Kerner* permits a United States Court of Appeals to create a special and unique *pro se* pleading standard for cognitively-disabled litigants.
2. Whether the court erred in barring 42 U.S.C. §1983 claims for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine.
3. Whether the Fair Debt Collection Practices Act applies to non-judicial foreclosure proceedings.
4. Whether the Fourteenth Amendment permits non-judicial foreclosure to authorize a state actor to sell and vest title in real property secured by a deed of trust extinguished by operation of state law.

PARTIES TO THE PROCEEDINGS BELOW

The caption contains the names of all of the parties to the proceeding below. Petitioner is James P. Tatten. Tatten was appellant below and plaintiff in the district court. Respondents are the City and County of Denver, Clerk and Recorder Debra Johnson, and LSF9 Master Participation Trust. Respondents were appellees below and defendants in the district court.

RULE 29.6 DISCLOSURE

Petitioner James P. Tatten is an individual. There is no parent corporation or publicly held company with 10% or more stock.

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PETITION FOR A WRIT OF CERTIORARI

James P. Tatten respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINIONS BELOW

The Order and Judgment of the Tenth Circuit is included in the Appendix at App. 1 – App. 16. The Order of the Tenth Circuit denying the petition for rehearing and rehearing en banc is included in the Appendix at App. 83. The District Court Order is included in the Appendix at App. 17 – App. 29.

Petitioner James P. Tatten could not determine if the opinions below have been published.

JURISDICTION

The Court of Appeals for the Tenth Circuit entered its judgment on April 11, 2018 and denied Tatten's timely petition for rehearing or rehearing en banc on June 5, 2018.

On July 25, 2018, Tatten filed an application for an extension of time to file a petition for a writ of certiorari with the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Tenth Circuit. On August 2,

2018, the application was granted and the time extended to and including November 2, 2018.

On October 9, 2018, Tatten applied for a further extension of time.

On October 15, 2018, the Office of the Clerk, Supreme Court of the United States, returned the application and stated that the maximum extension had been already granted and the application for further extension cannot be granted.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Amend. XIV, § 1 provides:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Fair Debt Collection Practices Act (FDCPA) are:

15 U.S.C. § 1692(a)(2) provides:

The term “communication” means the conveying of information regarding a debt directly or indirectly to any person through any medium.

15 U.S.C. § 1692(a)(3) provides:

The term “consumer” means any natural person obligated or allegedly obligated to pay any debt.

15 U.S.C. § 1692(a)(5) provides:

The term “debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

The relevant provision of Rules Enabling Act is:

28 U.S.C. § 2072(b) provides:

Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and law shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

INTRODUCTION

Fixed to the exterior of the Byron White U.S. Courthouse are the words: DISABLED ACCESS.

For most Americans, those words mean welcome.

For the growing population of cognitively-disabled citizens, those words warn of barriers built on bias and flawed judgments.

Access is not equal.

The *pro se* litigant has ears, he can hear.

The *pro se* litigant has eyes, he can read.

The *pro se* litigant has arms, he can write.

The *pro se* litigant speaks, therefore he comprehends.

Profiling is not judicial.

STATEMENT OF THE CASE

This case results from the unlawful conduct of state and non-state actors. All relevant conduct was directed at Petitioner James P. Tatten, a disabled consumer, for the purpose of collecting a time-barred debt.

The actors violated state and federal laws, both civil and criminal. Tatten's claims for relief do not request review of a state-court, civil judgment. The conduct at issue is separate, identifiable, and distinct.

Abusive, deceptive, and unfair conduct continues to this day.

REASONS FOR GRANTING THE PETITION

The petition for a writ of certiorari should be granted for the following compelling reasons.

- I. The Tenth Circuit's decision so far departs from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's supervisory power.**
 - A. The Tenth Circuit's decision creates a special and unique *pro se* pleading standard for cognitively-disabled litigants by holding " . . . we decline to extend the liberal-construction rule afforded typical *pro se* litigants because Mr. Tatten is an attorney who has chosen to represent himself."**

- B. The Tenth Circuit's decision creates a special and unique *pro se* pleading standard for cognitively-disabled litigants by holding "The obvious reason for according liberal construction to *pro se* litigants is that a typical *pro se* plaintiff does not have the legal training and is 'unskilled in the law.'"
- C. The Tenth Circuit's decision creates a special and unique *pro se* pleading standard for cognitively-disabled litigants by stating "... Tatten's failure to disclose to the district court that he is a licensed attorney, whilst seeking application of the *pro se* liberal construction rules may be sanctionable conduct."
- D. The Tenth Circuit's decision abridges and modifies the substantive rights of *pro se* cognitively-disabled litigants, in violation of 28 U.S.C. § 2072(b) by holding "... Tatten was not entitled to liberal construction on our same determination in Mr. Tatten's first appeal, in which we explained that 'we do not extend that indulgence ... to *pro se* litigants who, like Mr. Tatten, are also attorneys.'"

II. The Tenth Circuit decided several important federal questions in a way that conflicts with relevant decisions of this Court.

- A. The Tenth Circuit erred in holding that this Court's decision in *Haines v. Kerner* applies to the pleadings prepared by a *pro se*, cognitively-disabled litigant based on bar membership prior to suffering a severe, traumatic-brain injury.

- B. The Tenth Circuit erred in holding that this Court’s *Rooker-Feldman* doctrine applies to claims for relief for conduct that is separate and identifiably distinct from injury caused by a state-court judgment.

III. The Tenth Circuit decided an important question of federal law that has not been, but should be, settled by this Court.

- A. The Tenth Circuit created a special and unique *pro se* pleading standard for cognitively-disabled litigants.
- B. The Tenth Circuit determined the *Rooker-Feldman* doctrine applies to 42 U.S.C. § 1983 claims that are separate and identifiably distinct from a request to review a state-court civil judgment.
- C. The Tenth Circuit determined the Fair Debt Collection Practices Act does not apply to non-judicial foreclosures.

IV. This case presents an important question of federal law that has divided the courts of appeals.

- A. Despite Respondent LSF9 Master Participation Trust disclosing, in its legal documents related to non-judicial foreclosure, that it was attempting to collect a debt, the Tenth Circuit determined “. . . and as to LSF9, that initiating foreclosure proceedings does not constitute the collection of a debt under the FDCPA.”

- B. On June 28, 2018, this Court granted the petition for a writ of certiorari in *Obduskey v. McCarthy & Holthus, LLP*, No. 17-1307. In that case, the question presented is: Whether the FDCPA applies to non-judicial foreclosure proceedings.
- C. In *Greer v. Green Tree Servicing, LLC*, No. 17-1351, the question presented is: Whether the FDCPA applies to non-judicial foreclosure proceedings.
- D. In this case, the petition for a writ of certiorari presents the same question presented in *Obduskey v. McCarthy & Holthus* and *Geer v. Green Tree Servicing*: Whether the FDCPA applies to non-judicial foreclosure proceedings.

V. This is the kind of case this Court ought to hear.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

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November 2, 2018.