

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Michael Lynn Heard — PETITIONER
(Your Name)

vs.

Angela Byrd, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Arkansas Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Lynn Heard
(Your Name)

55-2 Garrett Rd.
(Address)

Greenbrier, AR 72058
(City, State, Zip Code)

501-253-3148
(Phone Number)

QUESTION(S) PRESENTED

1. Whether section 72(d) of the Arkansas Rules of Civil Procedure violates the Supremacy Clause of the United States Constitution by depriving this Court of jurisdiction to hear a Title 42 U.S.C. 1983 claims from indigent individuals.
2. Whether the Circuit Court of Van Buren County, Arkansas correctly held that the use of the term "malicious prosecution", in section 72(d) of the Arkansas Rules of Civil Procedure, refers solely to a "Title 42 U.S.C. 1983" claim.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- (1.) Angela Byrd
- (2.) Chad Brown
- (3.) Harry G. Foster III
- (4.) Scott Solomon
- (5.) David Hess

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Circuit Court of Van Buren Co, AR court appears at Appendix C to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

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

For cases from **state courts**:

The date on which the highest state court decided my case was March 8, 2018. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Amendment XIV section 1:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

Section 72(d) of Arkansas Rules of Civil Procedure:

No person shall be permitted to prosecute any action of Slander, Libel or malicious prosecution in forma pauperis.

Title 28 U.S.C 1915(a)(1):

Any Court of the United States may authorize the commencement, prosecution or defense of ANY SUIT, action or proceeding, Civil or criminal, or appeal therein, without pre payment of fees.

STATEMENT OF CASE

Petitioner is challenging the statutory interpretation of section 72(d) of the Arkansas Rules of Civil Procedure (further known as “section 72(d)”). Petitioner believes that the Circuit court of Van Buren County and the Supreme Court of Arkansas incorrectly interpreted the term “malicious prosecution” in section 72(d) referring solely to a “Title 42 U.S.C. 1983” claim. Petitioner believes that the term “malicious prosecution” used in 72(d) refers to a “frivolous prosecution”, a statute similar to Title 28 U.S.C. 1915 (e)(2)(b)(i) that says an in forma pauperis case shall be dismissed at any time if the court determines that—the action or appeal—is frivolous or malicious. In Michigan v. Long, 463 us 1032, 1040 (1983) this court held upon the longstanding rule that state courts are permitted to interpret their state constitutions to provide greater freedoms to their citizens than those provided by the federal constitutions. The lower courts interpreted section 72(d) in a manner that raises serious constitutional issues of the Supremacy Clause of the United States Constitution.

The facts of this case are as follows; On June 1, 2017 petitioner filed a Title 42 U.S.C. 1983 claim, against the named respondents, in the Circuit Court of Van Buren County, Arkansas. Petitioner included an approved order to proceed in forma pauperis signed by District court of Faulkner County, Arkansas Judge David Clark (Appendix D). Petitioner claimed that the Arkansas “no drop” policy on domestic violence cases violated his civil rights under the Fourth and Fourteenth Amendments of the U.S. Constitution, he prayed for jury trial and damages. Petitioner’s case proceeded to discovery, which included answers by respondents denying all claims, deposition, interrogatories, and request for documents. Respondents filed a motion to dismiss on various grounds, including immunity and failure to state a claim for relief. On November 17, 2017 during an oral hearing, Judge Chris Carnahan reversed petitioner’s indigent status holding that judge David Clark erred when granting permission to proceed in forma pauperis, citing section 72(d) and ordering petitioner to pay past filing fees of \$177.50 by December 15, 2017 or be in contempt of court (Appendix B). Furthermore, granting respondents summary judgment and dismissing petitioners title 42 U.S.C. 1983 claim with prejudice, giving no explanation for the dismissal (Appendix C). Petitioner filed a timely appeal along with request to proceed in forma pauperis to the Arkansas Supreme Court challenging lower court’s decision. On March 8, 2018 The Arkansas Supreme Court denied petitioners motion to proceed in forma pauperis and therefore dismissing petitioner’s Title 42 U.S.C. 1983 claim on March 15, 2018 (Appendix A). From that denial, this petition originates.

REASONS FOR GRANTING THE PETITION

Section 1 of the Civil Rights Act of 1871, Rev. Stat. 1979, now codified as Title 42 U.S.C. 1983, creates a remedy for violations of federal rights committed by persons acting under color of state law. The Arkansas Supreme Court's interpretation of section 72(d) fundamentally restricts the courts power to hear and remedy constitutional violations. State courts as well as Federal courts have jurisdiction over Title 42 U.S.C. 1983 cases. If the lower court's interpretation were correct it would create different outcomes on whether a claim is filed in State or Federal court.

The Arkansas Supreme Court's decision conflicts with this Courts precedent and with the decisions of other District Courts. Other State Courts have concluded that a person may precede a Title 42 U.S.C. 1983 claim in forma pauperis. In Horsy v. Asher, 741 F.2d 209 (8th cir. 1984) the courts granted motion to proceed in forma pauperis is a Title 42 U.S.C. 1983 claim and even provided the indigent with an attorney. In Williams v. White, 897 F.2d 942, (8th cir. 1990) the court decided the only reason to deny in forma pauperis status would be if no rational claim can be inferred. In Maine v. Thiboutot, 448 U.S. 1 (1980), this court stated that "welfare" is protected by Title 42 U.S.C. 1983. In Deere Company v. Ohio Gear, (C.D. III. 7th cir. 2007) a judge abused his discretion when he applied a local rule for summary judgment. In Senate of California v. Mosbacher, 968 F.2d 974 (9th cir. 1992) says that misapplication of law constitutes as abuse of discretion.

In Martinez v. California, 444 U.S. 277 (1980), this Honorable court explained: "Conduct by persons acting under color of state law which is wrongful under 42 U.S.C. 1983 cannot be immunized by state law. A construction of the federal statute which permitted a state immunity defense to have controlling effect would transmute a basic guarantee into an illusory promise; and the supremacy clause of the Constitution insures that the proper construction may be enforced.

State courts cannot bar a person's rights. In Felder v. Casey, 487 U.S. 131 (1988), this Honorable court held that a Wisconsin notice-of-claim statute that effectively shortened the statute of limitations and imposed an exhaustion requirement on claims against public agencies and employees was pre-empted insofar as it was applied to 1983 actions. "The decision to subject state subdivisions to liability for violations of federal rights . . . was a choice that Congress, not the Arkansas Legislature, made and the State has no authority to override." In Hayward v. Drown, 556 U.S. 729 (2009) the Supreme Court held that New York's correctional law section 24, prohibiting claims brought against correction officers in their official capacities violates the Supremacy Clause and thus was unconstitutional. Title 28 U.S.C. 1915 states that a person may precede ANY CASE, criminal and civil, in forma pauperis.

Petitioner prays this Honorable court grant certiorari and remands his title 42 U.S.C. 1983 action and a trial by jury on its merits.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Stephen Head
Date: June 5, 2018