

18-7892
No. _____

Supreme Court, U.S.
FILED

AUG 29 2018

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

SHEILA HALOUSEK
Petitioner

v.

PUBLIC EMPLOYEES RETIREMENT SYSTEM
Respondents

PETITION FOR WRIT OF CERTIORARI TO
THE CALIFORNIA COURT OF APPEAL,
APPELLATE DEPARTMENT,
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO,
THIRD APPELLATE DISTRICT

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ORIGINAL

QUESTIONS PRESENTED

With regard to the violation of Petitioner's civil rights to be "free and independent," "enjoying and defending life and liberty," and "pursuing and obtaining safety, happiness, and privacy" in determining and making her own informed medical choices: what is required for the consistent application of these civil rights and for redress of violations?

With regard to workplace conditions: what is required under the Occupational Safety and Health Act (OSHA) of 1970; which includes whistleblower or anti-retaliation provisions making it illegal for an employer to fire, demote, transfer or otherwise retaliate against a worker because the employee has filed a complaint or otherwise exercised any rights provided to employees; for the consistent application of law requiring an employer to assure safe and healthful working conditions, as Respondents failed to provide Petitioner with a safe environment; what is the redress for her being attacked and retaliated against?

With regard to the violation of Petitioner's rights for due process in terminating her employment: what is required for the consistent application of these civil rights and for redress of violations?

With regard to the violation of Petitioner's rights to privacy: what is required for the consistent application of these civil rights and for redress of violations?

LIST OF PARTIES

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

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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 state courts: the opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The remaining California court decisions appear at Appendix B through C to the petition and are unpublished.

JURISDICTION

The date on which the highest state court decided this case was/is unknown to Petitioner, however, it was filed on May 4, 2018. A copy of that decision, from the Appellate Division of the Superior Court of California, County of Sacramento, Third Appellate District, appears at Appendix A.

No petition for rehearing was filed in this case.

A timely Petition for Review, filed on June 7, 2018, in the Supreme Court of the State of California, was thereafter denied. This was filed on the following date: July 11, 2018; this information appears at Appendix C.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Right of Petitioner to File Claims and Seek Redress in Court

In the United States the right to petition is guaranteed by the First Amendment to the United States Constitution, which specifically prohibits Congress from abridging "the right of the people...to petition the Government for a redress of grievances."

According to the Court in the 1972 decision *California Motor Transport v. Trucking Unlimited*, "The same philosophy governs the approach of citizens or groups of them to administrative agencies (which are both creatures of the legislature, and arms of the executive) and to courts, the third branch of Government. **Certainly, the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right to petition.**"

In 1983, the Supreme Court's opinion in *Bill Johnson's Restaurants, Inc. v. NLRB* set out the principle that "the right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances." In a June 2002 decision, *BE&K Construction Co. v. National Labor Relations Board*, the high court, though not ruling on First Amendment grounds, nevertheless noted that it had long viewed the right to sue in court as a form of petition.

"We have recognized this right to petition as one of the most precious of the liberties safeguarded by the Bill of Rights," Justice Sandra Day O'Connor wrote for the Court, "and have explained that the right is implied by the very idea of a government, republican in form." O'Connor further observed that the First Amendment petition clause says nothing about success in petitioning — "it speaks simply of the right of the people to petition the Government for a redress of grievances."

The right to petition the government for redress of grievances includes a right to file suit in a court of law. When right-to-sue claims do not involve issues of constitutional magnitude, such as forms of "political expression," the Court has grounded its First Amendment analysis in associational freedoms inherent in a collective resort to the courts. But when neither constitutional issues nor collective action is present, the Court has addressed claims of the right to seek redress in court as a due-process or equal-protection challenge.

While the civil disorders of the Ku Klux Klan in the 19th century, which induced passage of the Civil Rights Act, are no longer significant, society has not yet reached the idyllic state in which all vestiges of racism, oppression, and malicious deprivation of constitutional rights have been eliminated. Accordingly, the purposes underlying section 42 U.S.C. Section 1983 -- i.e., to serve as an antidote to discriminatory state laws, to protect federal rights where state law is inadequate, and to protect federal rights where state processes are available in theory but not in practice (*Monroe v. Pape* (1961) 365 U.S. 167, 173-175 [5 L. Ed. 2d 492, 497-499, 81 S.Ct. 473]) -- must still be served, and may not be frustrated by state substantive limitations couched in procedural language.

Nothing in the legislative history of the Civil Rights Acts, as interpreted by the Supreme Court, suggests that Congress desired to limit recoveries by plaintiffs. Indeed, it is beyond question that Section 1983 was intended to provide private parties a cause of action for abuses of official authority which resulted in the deprivation of constitutional rights, privileges, and immunities.

The Federal Civil Rights Act, (42 United States Code Section 1983), reads, in part, as follows, "Every person who, under color of any statute, ordinance, regulation, custom, or usage,

of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress,..."

Violation of Petitioner's Civil Liberties - Rights to Due Process

The Constitution states only one command twice, the requirement for due process. The genesis of due process found in the United States Constitution is as follows: the Fifth Amendment stipulates that, according to the federal government, no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states, which includes California as well as the counties and municipalities incorporated therein. Section One of the Fourteenth Amendment to the United States Constitution states in the relevant part, "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." These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures. These amendments *are to protect people from being abused by a powerful government.*

The U.S. Supreme Court has published many opinions on this issue arriving at the conclusion that due process is essentially the right of a party to be provided "notice" and "an opportunity to be heard" on all issues in dispute. This requirement means that notice must be in advance so that one has opportunity to be heard prior to action taken.

In the U.S. Supreme Court case of *Grannis v. Ordean* (1914) 234 U.S. 385, 34 S. Ct. 779,

58 L. Ed. 1363 [234 U.S. 385 (lexis.com)], the Court stated, “the fundamental requisite of due process of law is the opportunity to be heard.” This means that “notice” must be in advance of action taken to enable a person’s self-defense.

As above, CalPERS, violated Petitioner rights to due process prior to depriving her of valuable property interest in continued employment. (Without engaging in an interactive process, CalPERS, et al, placed Petitioner on medical leave effective April 3, 2013, based on the (mis)representation of a perceived disability; obtained a restraining order against Petitioner based on the (mis)representation of a perceived disability; and initiated administrative actions ending her employment.) As CalPERS had a clear obligation to initiate and engage in an interactive process with Petitioner prior to taking action against her on April 3, 2013, both the trial and appellate courts erred in not upholding Petitioner’s complaint for damages.

Violation of Petitioner’s Rights Under OSHA / FMLA

The Occupational Safety and Health Act (OSHA) of 1970 mandates workplace conditions to assure safe and healthful working conditions for working men and women by setting and enforcing standards. OSHA also includes whistleblower or anti-retaliation provisions making it illegal for an employer to fire, demote, transfer or otherwise retaliate against a worker because the employee has filed a complaint or otherwise exercised any rights provided to employees.

It was after CalPERS’ Manager Julie Morgan’s attack on Petitioner and Petitioner took steps to contact a CalPERS’ Senior Manager, Eric Baggesen, to both start an interactive process and report Ms. Morgan’s conduct that Ms. Morgan, John Cole, and Leslie Just (CalPERS Managers) acting in concert, waylaid Petitioner, evicted her from the office, filed unsupported restraining orders against Petitioner and started a chain of events that deprived her of her property interest in continued employment. Such conduct on the part of Respondents constitutes

retaliation as part of a cover-up of the attack on Petitioner which constitutes an unsafe working condition, both violations of OSHA.

The Family and Medical Leave Act of 1993 (FMLA) is a United States labor law requiring covered employers to provide employees with job-protected and unpaid leave for qualified medical and family reasons. Once CalPERS placed Petitioner on FMLA leave, Petitioner was protected and had the right to return to her job once she substantiated her fitness for duty. However, without waiting for this documentation, CalPERS canceled their Employer Initiated Disability Retirement on behalf of Petitioner as their position was without adequate basis. To date, in violation of FMLA, CalPERS has not reinstated Petitioner to her position.

Violation of Petitioner's Civil Liberties – Rights to Privacy

While there is no express right to privacy in the United States Constitution, the United States Supreme Court recognized the right for the first time in *Griswold v. Connecticut* 381 U.S. 479 (1965). Over the past few decades, there has been a proliferation of privacy-related statutes passed aimed at protecting privacy rights in a wide variety of contexts.

“In an action for invasion of privacy, the damages that a plaintiff may recover are (1) general damages for harm to the plaintiff's interest in privacy which resulted from the invasion; (2) damages for mental suffering; (3) special damages; and (4) if none of these are proven, nominal damages.” *Sabrina W. v. Willman*, 4 Neb. App. 149, 540 N.W.2d 364 (1995).

United States Code: Section 652A. General Principle.

“(1) One who invades the right of privacy of another is subject to liability for the resulting harm to the interests of the other.

(2) The right of privacy is invaded by:

(a) unreasonable intrusion upon the seclusion of another, as stated in 652B; or

(b) appropriation of the other's name or likeness, as stated in 652C; or

(c) ***unreasonable publicity given to the other's private life***, as stated in 652D; or

(d) ***publicity that unreasonably places the other in a false light before the public***, as stated in 652E.”

United States Code: Section 652D. Publicity Given to Private Life

“One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that

- (a) would be highly offensive to a reasonable person, and
- (b) is not of legitimate concern to the public.”

That CalPERS, and their outside counsel, made public Petitioner’s personal information, such as her age and home address in the unsubstantiated restraining order filings, is a violation of Section 652D, as quoted above. CalPERS, violated Petitioner’s civil rights to privacy and is liable for the invasion of her privacy, which resulted in reputation damage as well as caused mental anguish, injury, and suffering to Petitioner.

United States Code: Section 652E. Publicity Placing Person in False Light.

“One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if

- (a) the false light in which the other was placed would be highly offensive to a reasonable person, and
- (b) ***the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.”***

The legal doctrine of false light addresses people’s right to not have false or misleading information, which puts them in a false light, made public. In other words, it deals with the invasion of a person’s privacy by disseminating false or misleading information, rather than the gathering of information through invasion of privacy.

One court has explained that “[t]he requirement to show malice applies only to public

figures, which plaintiffs are [Petitioner is] not.” *M. G. v. Time Warner, Inc.*, 89 Cal. App. 4th 623, 636 (2001)

False light invasion of privacy “is the wrong inflicted by publicity which puts the plaintiff . . . in a false but not necessarily defamatory position in the public eye.” . . . “[A] false light claim still requires the invasion of some type of privacy interest. “The right of privacy concerns one’s own peace of mind, while the right of freedom from defamation concerns primarily one’s reputation.”

Cort v. St. Paul Fire & Marine Ins. Cos., 311 F.3d 979, 987 (9th Cir. 2002); accord *Kennedy Funding, Inc. v. Chapman*, No. C 09-01957 RS, 2010 U.S. Dist. LEXIS 116038, at 13 (N.D. Cal. Nov. 1, 2010) (“The two torts are distinct, however, in that false light involves an invasion of privacy, not just harm to reputation.”). However, “[w]hen . . . an invasion of privacy claim rests on the same allegations as a claim for defamation, the former cannot be maintained as a separate claim if the latter fails as a matter of law.” *Alszeh v. Home Box Office*, 67 Cal. App. 4th 1456, 1464 (1998).

That Respondents, CalPERS, distributed a letter on April 3, 2018 placing Petitioner on medical leave, without due process or any credible substantiation of an actual medical condition, created a false presentation that Petitioner had debilitating medical issues. Since Petitioner’s medical condition, her state of robust health is not of legitimate concern to the public; CalPERS violated Petitioner’s right to privacy under Section 652E, as quoted above. Respondents’ actions resulted in reputation damage as well as caused mental anguish, injury, and suffering to Petitioner.

Under United States Code, Section 652E: by Respondents having Petitioner escorted out of CalPERS offices by security and law enforcement, in full view of co-workers and the public, without cause, as Petitioner was neither angry, nor hostile, and was merely attempting to start an interactive process with CalPERS manager, Eric Baggesen, as well as report the attack on her; in

filings restraining orders that lacked adequate basis; CalPERS and their agents, created the false information that Petitioner was dangerous and created “publicity to a matter concerning the private life of another” that is of a kind that “would be highly offensive to a reasonable person” and, “is not of legitimate concern to the public.” In fact such conduct on the part of CalPERS toward Petitioner, or anyone, is highly damaging to such person’s reputation.

Such conduct, as above, by CalPERS, under United States Code, Section 652E: created “publicity to a matter concerning another that places the other before the public in a false light.” Not only is such, “false light” “highly offensive to a reasonable person,” Respondents, “***acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.***”

As above, under Section 652E, CalPERS, violated Petitioner’s civil rights to privacy and is liable for the invasion of her privacy, which resulted in reputation damage as well as caused mental anguish, injury, and suffering to Petitioner. Such a false presentation would be highly offensive or embarrassing to any reasonable person.

Policy of law favors trial on merits; the policy of the law is that controversies should be heard and disposed of on their merits (*Fasuyi v. Permatex, Inc.* (2008) 167 Cal. App. 4th 681, 694–703, 84 Cal. Rptr. 3d 351; *Berman v. Klassman* (1971) 17 Cal. App. 3d 900, 909, 95 Cal. Rptr. 417).

See also, *California Casualty Ins. Co. v. Appellate Department* (1996) 46 Cal.App.4th 1145, 1147, 1149, while a small case, it raises a significant principle: judges, including appellate judges, are required to follow the law.

Violation of Petitioner’s Civil Liberties - Rights to Autonomy

As discussed previously, Petitioner is entitled to her privacy. Also under Section 1, of the US 14th Amendments, which states that, “no State shall make any law abridging the citizens’

privileges and rights to life, liberty, and pursuit of happiness, without due process.”

As above, persons have the right to autonomy, self determination, bodily integrity, freedom from battery, freedom from any unwanted bodily intrusions, no matter how well intentioned.

(If CalPERS had bothered to discuss the situation with Petitioner prior to taking action against her, on April 3, 2013, as required by the civil rights to due process, Petitioner could have readily and easily provided assurance that not only was she in perfect health, she could also have substantiated this via the complete evaluation and physical conducted by competent professionals and her own physician the end of 2012.)

Since CalPERS’ conduct precluded this reasonable approach, Petitioner requested a visit to her own doctor instead of attending CalPERS’ IME. However, Petitioner was told, via her Union Representation, that CalPERS required her attendance at their scheduled IME and if she failed to attend, Petitioner would be medically terminated. CalPERS requirement to attend their IME violated Petitioner’s civil rights to self-determination and to refuse medical treatment.

See also, *Union Pacific Railway Co. v Botsford*, 141 U.S. 250,251 (1891), “No right is held more sacred, or is more carefully guarded by common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others.”

In re Brown, 478 So.2d 1033 (Miss. 1985). “The Informed consent rule rests upon the bedrock of this state’s respect for the individual’s right to be free of unwanted bodily intrusions no matter how well intentioned. Informed consent further suggest a corollary: the patient must be informed of the nature, means and likely consequences of the proposed treatment so that he may ‘knowingly’ determine what he should do, one of his options being rejection.”

Thor v. Superior Court, 855 P.2d 375 385 (Cal. 1993). “For self determination to have any meaning, it cannot be subject to the scrutiny of anyone else’s conscience or sensibilities.”

A person may refuse medical treatment even if risky, foolish, to one's detriment, or will result in the significant shortening of one's own life.

Steele v. Hamilton Cty. Community Mental Health Board, 736 N.E.2d 10 (Ohio 2000) (At 20: "If a court does not find that the patient lacks capacity [to give or to withhold informed consent regarding treatment], then the state's parens patriae power is not applicable and the patient's wishes regarding treatment will be honored, no matter how foolish some may perceive that decision to be." At 21: "*Only when a court finds that a person is incompetent to make informed decisions do we permit the state to act in a paternalistic manner, making treatment decisions in the best interest of the patient.*")

As there is a large body of judicial history supporting such individual's right to self-determination, and etc., and it is inconceivable that Respondent would usurp the courts' role in making such determinations for others or for Petitioner. In so doing, CalPERS violated Petitioner's civil liberties: rights to autonomy, self-determination, and freedom to make to medical decisions on her own behalf.

STATEMENT OF THE CASE

This petition is from an order made after the judgment, which deprived Petitioner of her substantial rights and civil liberties.

Without any good faith interactive (due) process, prior notice, or any expression whatsoever of concern with regard to Petitioner, while Petitioner was on vacation from April 2 – 5, 2013, CalPERS distributed a letter, dated April 3, 2013, which disseminated private information regarding Petitioner, placing her on FMLA/CFRA Leave, regardless of the fact that Petitioner had no medical condition of any kind. This treatment of Petitioner constitutes discrimination and harassment.

Thereafter, due to Petitioner's respectful and peaceful attempts to contact Senior Management, Eric Baggesen, to initiate a good faith interactive process, to understand why action was taken against her, and to report Julie Morgan's attack, CalPERS retaliated against Petitioner; filing for and receiving restraining orders against Petitioner. Her great "crime" was emailing Mr. Baggesen asking to meet, coming into the office, sitting in public areas or at her desk, not bothering anyone, and being cheerful. CalPERS managers; Julie Morgan, Leslie Just, and John Cole; acting in concert, defamed Petitioner and committed perjury claiming that she got angry and pointed a finger; John Cole also falsely represented that he was Petitioner's supervisor. This treatment of Petitioner constitutes discrimination, harassment, and retaliation.

Even though Petitioner had a complete physical and thorough medical evaluation in the fall of 2012 and was in perfect health, CalPERS required their own independent medical evaluation (IME). Based on this IME, where the opinion was expressly speculative and based on numerous errors and misstatements, CalPERS commenced an employer initiated disability retirement on behalf of Petitioner and removed her from payroll, resulting in her construction termination. As required, at her own substantial expense, Petitioner submitted to another medical evaluation, conducted by a competent professional, and effectively substantiated her fitness for duty.

On September 1, 2013, prior to the completion of Petitioner's fitness for duty evaluation on September 30, 2013, CalPERS actually canceled their employer initiated disability retirement. However, instead of reinstating Petitioner's employment, CalPERS declared that Petitioner had voluntarily retired.

Petitioner had a protected property interest in her continued employment and can maintain such a claim; Petitioner cannot be deprived of such property interest without due process of law. This is a civil right guaranteed under the Fifth and Fourteenth Amendments to the U.S. Constitution.

CalPERS defamed Petitioner's reputation and violated Petitioner's rights to privacy as well as her rights to be free and independent in determining and making her own informed medical choices. Under the California Constitution, Petitioner has the rights to be "free and independent," "enjoying and defending life and liberty," and "pursuing and obtaining safety, happiness, and privacy."

REASONS FOR GRANTING THE PETITION

We hold that the federal mandated civil rights to bring claims in court to seek redress under the First Amendment and to due process are so vital and inherent to the fundamental and effective operation of law as to warrant two Amendments, the Fifth and the Fourteenth Amendments, to the United States Constitution, which states only this one command twice; stipulating that no one shall be "deprived of life, liberty or property without due process of law." In this case, the lower court has so far departed from the accepted and usual course of proceedings as to necessitate the Court's supervisory power. This case presents important issues and provides the opportunity to provide clarity and consistency in application of law on important points: consistent application of civil liberties, due process, and requirements for application of relief for violations thereof.

CONCLUSION

Accordingly, for the foregoing reasons, petitioner requests that this Court grant the petition for certiorari.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sheila Halousek".

Sheila Halousek, in Pro Se

Dated: August 29, 2018