

18-8150

ORIGINAL

In The
SUPREME COURT OF THE UNITED STATES

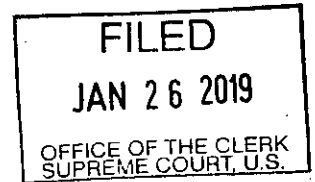
ILYA LIVIZ

Petitioner,

-VS-

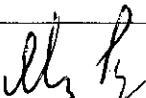
SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Respondent,



On Petition for Writ of Certiorari
to the United States Supreme Court for Redress of
Supreme Judicial Court of the Commonwealth of Massachusetts

PETITION FOR A WRIT OF CERTIORARI


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January 26, 2018

**Pro Se Counsel of Record*

QUESTION PRESENTED FOR REVIEW

1) Is Dad being denied his federally protected due process right to petition for redress and access to a meaningful hearing resulting from state's refusal to answer a question of law concerning sacred right to a jury trial in care and protection proceedings in which the state seeks to terminate parents' legal right to rear their child?

Answer is a matter of public importance.

Problem:

While there is a **split** among the States whether jury trials should be offered as an option for parents in Care and Protection Juvenile Court proceedings. Dad is being deprived of due process access to the court because the state refuses to "answer" whether such right does, or does not exist; state constitution deems it to be a sacred right.

Last word:

I humbly beg this honorable court, on my knees, with my hat in hand stretched out in front of me to grant me the opportunity to please appear before you - God Bless You!

OPINIONS BELOW

On 04/14/17 the state juvenile court has denied the request for jury trial. *See* ADD. 17. On 11/10/17 the Supreme Judicial Court of the Commonwealth of Massachusetts refused to answer Dad's request for a jury right question of law. *See* ADD. 15. On 04/06/2018, federal district court dismissed Dad's civil complaint pursuant to *Younger* abstention. *See* ADD. 6.

JURISDICTION

The jurisdiction of this Court to review the Judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts, the highest court of Massachusetts, is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL BASIS

Dad has the right to; "... petition the Government for a redress of grievances" (amend. I.); "... nor be deprived of life, liberty, or property, without due process of law" (amend. V.); "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people" (amend. IX.); and "... [n]o 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" (amend. XIV).

STATEMENT OF THE CASE

Dad had his son removed on August 22, 2016 in care and protection juvenile court proceedings; and subsequently the court granted the state permanent custody. Dad is claiming the state is exercising usurp authority in violation of the constitution because from the beginning till present, Dad has been asking for a jury trial which the state is unlawfully failing to answer.

A. The Petitioner

Dad, is a U.S. Citizen, a resident of Massachusetts, and a practicing attorney.

B. Massachusetts Legal Landscape

Department of Children & Families ("DCF") pursuant to authority granted by M.G.L. c. 119, §24, removes children from families and places them in *foster care*. At the 72-hour hearing DCF must meet a fair preponderance of evidence standard the child is at risk of abuse or neglect for the state to retain temporary custody until trial on the merits. *See Care and Protection of Robert*, 408 Mass. 52 (1990). At trial on the merits DCF must show by clear and convincing evidence that the parent is unfit and reasonable efforts were provided for reunification in order for custody of the child to be granted to the state permanently. *See Adoption of Katherine & another*, 42 Mass.App.Ct.25 (1997). State can seek permission from the court to dispense with parents' consent to adoption thereafter pursuant to M.G.L. c. 119, §26.

C. State Courts

1. On 08/23/16 DCF takes custody of Dad's son in juvenile court.
2. On 04/14/17 Motion for Jury Trial denied in juvenile court. *See* ADD. 17.
3. On 11/10/17 Supreme Judicial Court refused to answer Dad's question of law concerning right to a jury trial. *See* ADD. 15.
4. About early May of 2018 son placed in permanent custody in juvenile court after trial on the merits without a jury.
5. On 05/11/18 Dad filed his consolidated appeal in Appeals and SJC with a single question of law concerning right to a jury trial. *See* ADD. 12, 13, 14.

D. Federal Courts

1. On 04/06/2018 Dad's federal civil complaint dismissed. *See* ADD. 6.
2. On 11/28/2018 First Circuit Enters Order and Mandate. *See* ADDS. 2 & 3.

REASONS WHY CERTIORARI SHOULD BE GRANTED

Parents have a federally protected fundamental right to rear their children that is held very secret to us all from the beginning of time. *See Troxel v. Granville*, 530 U.S. 57 (2000). There is a split among states of availability of right to a jury trial; Dad would like SCOTUS to apply the seventh amendment to the quasi-criminal proceedings. However, if SCOTUS is not prepared to do, Dad still has the right to have his question answered, and the state can't do so without being in violation of that state law and the constitution.

Because the state highest court already denied to answer a fundamental question of law, do attempt to answer the same question exposes the court to appearance of impartially because there a real possibility the court deprived Dad a sacred right which would warrant disciplinary action and other sanctions for failing to comply with duty to answer questions of law pursuant to state law. *See e.g.*: M.G.L. c. 211, § 5, "[q]uestions of law arising upon exceptions, report, or appeal shall be heard and determined by the full court"; M.G.L. c. 211, § 6, "[q]uestions of law ... so much of the case as is necessary for understanding the question shall be reported"; M.G.L. c. 211, § 7, "**Unless the court for cause shown directs otherwise** ... questions of law in civil cases which are entered upon said docket shall, when reached, be argued in their order if either party is ready." (Boom.)

No cause was provided to Liviz, and fiscal consideration alone, cannot justify a State's abrogation of citizen's fundamental rights. *See Finch v. Commonwealth Health Ins. Connector*

Authority, 461 Mass. 232, 959 N.E.2d 970, (2012). *See also*, *Berry v. Commonwealth*, 393 Mass. 793 (1985) (Holding increase in judicial business and placement of additional burden on the court, must be accepted when important rights are at stake.) *See also*, *Tennessee v. Lane*, 541 U.S. 509, 522-23 (2004) (Infringement of basic constitutional guarantees is "subject to more searching judicial review").

Massachusetts Constitution clearly secures Defendant with the right to know how the laws are applicable to him; "... as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them." *See* Mass. Const. Preamble, at ¶ 2. This point is stressed repeatedly in the constitution; "[i]t is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice." *See* Part The First, art. XXIX.

Of note, the question of law concerned a right to a jury which the constitution of The Commonwealth of Massachusetts gives more protection than the same fundamental right described in the federal constitution. *See e.g.* Part The First art. XII ("... deprived of his life, liberty, or estate, but by the judgment of his peers ..."); Part The First art. XV (" ... in all suits between two or more persons ... the parties have a right to a trial by jury; and this method of procedure **shall be held sacred** ...")(Boom.); The Initiative II, § 2, at ¶ 3; "[n]o proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition: ... the right of access to and protection in courts of justice; the right of trial by jury".

"... right of jury trial is fundamental, courts indulge every reasonable presumption against waiver." *See Aetna Ins. Co. v. Kennedy to Use of Bogash*, 301 U.S. 389 (1937). *See also*,


Parsons v. Bedford, Breedlove & Robeson, 28 U.S. 433 (1830) (holding jury right to be a fundamental guarantee of the rights and liberties of the people).

The state proceedings do not involve equitable division; the question before the court concern legal right to parent which in federal court Dad would be able to assert his right to a jury pursuant to the Seventh Amendment. *See Chauffeurs, Teamsters, and Helpers Local No. 391 v. Terry*, 494 U.S. 558 (1990).

CONCLUSION

Petition for a writ of certioraris MUST be granted, *inter alia*, humane reasons.

Respectfully Submitted
Dad (*pro se*)



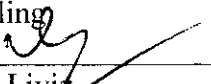
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Dated: 01/26/2019

- *Please Help Us* -

CERTIFICATE OF SERVICE

I, hereby swear copy of the petition will be served on the state attorney general same day of mailing



Ilya Liviz

1/26/19
01/26/2019