

18-8272

No. \_\_\_\_\_

Supreme Court, U.S.

FILED

OCT 06 2018

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

JULIETTE FAIRLEY, *Petitioner-Appellant*

v

DON FORD, FORD BERGNER LLP, and

KENNETH KROHN, *Defendant-Appellee*

On Petition for a Writ of Certiorari

to the U.S. Court of Appeals 5th Circuit

from the Western District of Texas

PETITION FOR WRIT OF CERTIORARI

Juliette Fairley  
Petitioner-Appellant  
P.O. Box 1497  
New York, NY 10276  
646-709-7828  
JulietteFairley@gmail.com

September 30, 2018

ORIGINAL

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QUESTIONS PRESENTED

1. Did the 5th Circuit Court of Appeals violate the 14th Amendment when it upheld Petitioner Juliette's dismissal which was based on the District Court's added provision to 28 U.S.C. § 1332 that she prove entitlement to disgorgement of the more than \$75,000 in controversy?

## **LIST OF PARTIES**

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

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Juliette Fairley respectfully petitions the Supreme Court of the United States (SCOTUS) for a Writ of Certiorari to review the decision of the 5th Circuit Court of Appeals (A1) denying Petitioner's appeal of the Western District of Texas decision. (A2)

## OPINIONS BELOW

Appellant, Juliette Fairley (“Juliette”), a resident of New York, filed this lawsuit on October 23, 2017 in the Western District of Texas. Named as defendant appellee is Don Ford, Kenneth Krohn, Ford Bergner LLP.

The case before the Supreme Court of the United States (SCOTUS) involves Juliette’s efforts to bring suit in district court. In her November 8, 2017 Amended Complaint to the Western District of Texas, Juliette alleged that Don Ford, Kenneth Krohn and Ford Bergner LLP (“Defendant-Appellee”) unjustly enriched themselves at her expense by breaching their fiduciary duties, breach of contract and with deceptive trade practices. Juliette brought the cause of action under 28 U.S.C. § 1332.

Defendant Appellee filed a motion to dismiss for lack of jurisdiction to which Juliette responded. The Western District of Texas then improperly granted the Defendant Appellee’s Motion to Dismiss for Lack of Jurisdiction and entered a decision dismissing Juliette’s claims on January 24, 2018.

After Juliette filed a Notice of Appeal on January 25, 2018, the District Court issued an Order on March 6, 2018 re-asserting that the controversy is in excess of \$75,000. On July 17, 2018, the 5th Circuit Court of Appeals entered a decision affirming the district court’s dismissal despite Juliette’s satisfaction of jurisdiction pursuant to 28 U.S.C. § 1332. (A1) (A2)

For the reasons stated below, Petitioner Juliette herein seeks a review by the Supreme Court of the United States.

## **JURISDICTION**

The decision of the United States Court of Appeals for the Federal 5th Circuit was entered on July 17, 2018. (A1) Appellant Juliette files this Petition for Writ of Certiorari within 90 days of the deadline pursuant to Rule 13 of the Rules of the Supreme Court of the United States, which is therefore timely. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## CONSTITUTIONAL PROVISIONS

14<sup>th</sup> Amendment-All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the U.S. 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 U.S.; 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.<sup>1</sup>

Juliette was within the jurisdiction of the District Court and yet it deprived her of equal protection and due process by adding a provision to 28 U.S.C. § 1332. (A2)

When the 5th Circuit supported the District Court's imposition of proving entitlement to the disgorgement of the more than \$75,000 in controversy to satisfy diversity jurisdiction, it abridged the U.S. Constitution, which is unlawful pursuant to the 14th Amendment as it applies to Juliette or any other American citizen. (A1)

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<sup>1</sup> <https://www.law.cornell.edu/constitution/amendmentxiv>

## CONCISE STATEMENT OF THE CASE

In the past, Supreme Law required that a bill pass both houses of Congress by a majority vote before being sent along to the President. Notice of any new regulation would be published and promoted to much fanfare. The 5th Circuit Court of Appeals was subject to this process too until July 17, 2018 when, suddenly without any advance notice, it upheld the District Court's implementation of a new provision to 28 U.S. Code § 1332 without undergoing the legislative process.

The 5th Circuit Court of Appeals permitted the imposition of the new provision that Juliette prove entitlement to the disgorgement of the more than \$75,000 in controversy without the authorization of U.S. Congress or the President of the United States.

In allowing the District Court's unlawful provision to stand, the 5th Circuit Court of Appeals revoked Juliette's and the public's legal right to access 28 U.S. Code § 1332 with no notice and no opportunity for comment or input.

The 5th Circuit Court of Appeal's July 17, 2018 decision fails to assert any good cause to allow the addition of a provision to the existing requirements with respect to 28 U.S. Code § 1332.

In its present form, 28 U.S. Code § 1332 only demands a party prove out of state residency and that the amount in controversy exceeds \$75,000. But, on July 17, 2018, when the 5th Circuit Court of Appeals upheld the

District Court's added provision to 28 U.S. Code § 1332, it effectively rescinded Juliette's and the public's long-held and continuously exercised legal right to invoke federal jurisdiction by way of 28 U.S. Code § 1332.

The 5th Circuit Court of Appeals also provided no end date for the restoration of Juliette's and the public's legal right to invoke 28 U.S. Code § 1332 in its original form, which states that federal diversity jurisdiction may be invoked by merely proving out of state residency and establishing that more than \$75,000 is in controversy.

## ARGUMENT

1. The 5th Circuit Court of Appeals violated the 14th Amendment when it upheld Petitioner Juliette's dismissal which was based on the District Court's added provision to 28 U.S.C. § 1332 that she prove entitlement to disgorgement of the more than \$75,000 in controversy.

According to diversity jurisdiction under 28 U.S. Code § 1332, the district courts shall have original jurisdiction over all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.

Pursuant to *Irwin v. Veteran's Administration*, 874 F.2d 1092, 1096 (5<sup>th</sup> Cir. 1989), Juliette submitted documentation in the form of billing statements, emails, a lease and utility bills proving by a preponderance of the evidence that she met the existing standard for diversity jurisdiction with residency in New York and payment in excess of \$75,000 to the

Defendant-Appellees. *Paterson v. Weinberger*, 644 F.2d 521, 523 (5<sup>th</sup> Cir. 1981).

Neither the District Court nor the 5th Circuit Court of Appeals makes an issue of the fact that Juliette is an out of state of Texas resident and that the amount in controversy is beyond \$75,000.

In this case, Juliette sued for the more than \$75,000 she paid to the Defendant-Appellees and the District Court in its March 6, 2018 Order acknowledged that Juliette paid more than \$75,000. (A2)

The key question, therefore, is whether proving an entitlement to the disgorgement of the more than \$75,000 in controversy is a requirement to invoke federal jurisdiction pursuant to 28 U.S. Code § 1332.

The District Court specifically states in its March 6, 2018 order the following:

The Court noted in its previous Order that, although the record reflects that Plaintiff paid Defendants an amount that exceeds \$75,000, this does not satisfy the amount in controversy requirement because the majority of that amount was payment for services that Plaintiff does not dispute were rendered.

Juliette is properly seeking review of the 5th Circuit Court of Appeal's decision because when the District Court dismissed Juliette, all while acknowledging she had met diversity jurisdiction, it violated her constitutional right to Due Process under the 14th Amendment by unequally adding a condition to jurisdiction that is unsupported by law.

Juliette argued she was suing for the more than \$75,000 she paid and although the District Court agreed in its March 6, 2018 that Juliette had paid more than \$75,000, it required that she prove entitlement to disgorgement without the benefit of discovery as a provision for diversity jurisdiction.

The fact that the district court dismissed Juliette even though it acknowledged in its March 6, 2018 Order that Juliette paid more than \$75,000 and lives out of state sets a new legal standard under 28 U.S. Code § 1332 that has not been approved by Congress, the President or the legislative process. (A2)

The Court should remand and reverse the 5th Circuit Court of Appeal's affirmation of the district court's decision because it unequally applied 28 U.S. Code § 1332 to Juliette by requiring her to prove entitlement to disgorgement, a provision which other Americans are not required to prove for jurisdiction.

## REASONS FOR GRANTING THE PETITION

SCOTUS should grant Juliette's petition for Writ of Certiorari because it presents an important question of constitutional law pertaining to district courts and circuit courts of appeal violating the 14th Amendment by adding to existing provisions without the authorization of Congress or the President.

When the 5th Circuit Court of Appeals upheld the district court's dismissal requiring that Juliette prove an entitlement to the disgorgement of the more than \$75,000 in controversy as a provision to diversity jurisdiction without the benefit of discovery, it robbed Juliette of her 14th Amendment right to equal protection under the law as well as due process.

In requiring Juliette to prove entitlement to disgorgement as part of subject matter jurisdiction, both the lower court and higher court abridged the U.S. Constitution, which is improper pursuant to the 14th Amendment.

Establishing an entitlement to disgorgement of \$75,000 is not a requirement of 28 U.S. Code § 1332 for any American. In singling Juliette out for this added provision, the 5th Circuit Court of Appeals in collusion with the District Court set a new legal standard and created a law that deprives Juliette of due process and equal protection of 28 U.S. Code § 1332, which states that the only requirement for diversity jurisdiction is an amount in controversy that exceeds \$75,000 and out of state residency.

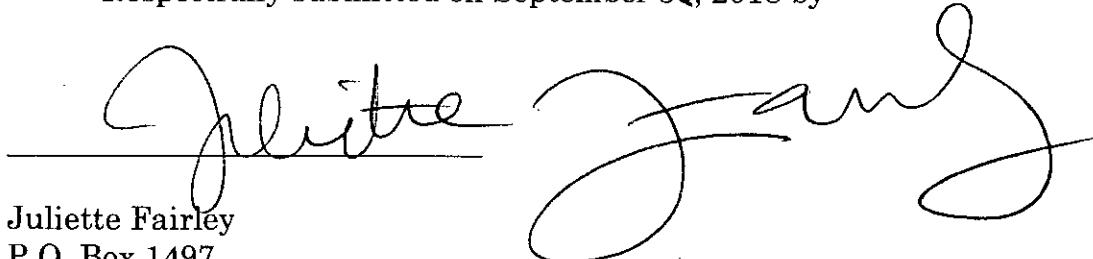
The Court should reverse the judgment of the 5th Circuit because it overstepped its authority in affirming the District Court's added provision

that has been unequally imposed upon Juliette without note of good cause and without approval of the legislature.

## CONCLUSION AND PRAYER FOR RELIEF

For all of the reasons set forth above, Appellant Juliette Fairley, prays that this Court grant her Petition for Writ of Certiorari, vacate and remand the decision of the 5th Circuit Court of Appeals (A1) and reinstate the claims against Don Ford, Ford Bergner LLP, Kenneth Krohn.

Respectfully submitted on September 30, 2018 by



Juliette Fairley  
P.O. Box 1497  
New York, New York 10276  
JulietteFairley@gmail.com  
646-709-7828