

No. 18-859

---

**In The  
Supreme Court of the United States**

---

EARNEST PEEL,

*Petitioner,*

v.

H.E. BUTT GROCERY COMPANY,

*Respondent.*

---

**On Petition For Writ Of Certiorari  
To The Fourteenth Court Of Appeals Of Texas**

---

**OPPOSITION BRIEF OF RESPONDENT  
H.E. BUTT GROCERY COMPANY**

---

JIM STALEY

*Counsel of Record*

MICHAEL D. MITCHELL

*(US Sup Ct Bar application pending)*

OGLETREE, DEAKINS, NASH, SMOAK

& STEWART, P.C.

One Allen Center, 500 Dallas Street,

Suite 3000

Houston, Texas 77002

Telephone: 713.655.0855

Facsimile: 713.655.0020

Jim.Staley@ogletreedeakins.com

Michael.Mitchell@ogletreedeakins.com

*Counsel for Respondent*

*H.E. Butt Grocery Company*

**QUESTION PRESENTED**

There are no federal questions involved in Petitioner's Petition for a Writ of Certiorari. Petitioner's "Question Presented for Review" simply attempts to identify the elements of a Bill of Review under Texas state law. This Court lacks jurisdiction to decide any issues in this appeal because any potential issue exclusively involves controlling Texas state law.

Accordingly, the only question before the Court is as follows: Should the Court grant Petitioner's Petition for a Writ of Certiorari given that (1) there are no federal questions involved, (2) any possible issues involved in the appeal are Texas state law issues, and (3) there are no compelling reasons to hear the case?

## **LIST OF PARTIES**

The caption of the case contains the names of all the parties.

## **CORPORATE DISCLOSURE STATEMENT UNDER RULE 29.6**

Respondent H.E. Butt Grocery Company is privately held. Its parent company, HEB Grocery Company, LP is privately held. There is no publicly held company owning 10% of H.E. Butt Grocery Company (or HEB Grocery Company, LP).

## TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
LIST OF PARTIES .....	ii
CORPORATE DISCLOSURE STATEMENT UNDER RULE 29.6.....	ii
TABLE OF CONTENTS .....	iii
TABLE OF AUTHORITIES.....	iv
INTRODUCTION .....	1
BRIEF STATEMENT OF FACTS.....	1
ARGUMENT .....	4
THERE ARE NO COMPELLING REASONS TO GRANT THIS PETITION FOR WRIT OF CERTIORARI AND THE COURT LACKS JU- RISDICTION TO ADDRESS ANY STATE LAW ISSUES RAISED IN THE PETITION ....	4
CONCLUSION.....	6

## TABLE OF AUTHORITIES

	Page
CASES	
<i>Gooding v. Wilson</i> , 405 U.S. 518, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972).....	5
<i>Montana v. Wyoming</i> , 563 U.S. 368, 131 S.Ct. 1765, 179 L.Ed.2d 799 (2011) .....	5
<i>United States v. Thirty-Seven Photographs</i> , 402 U.S. 363, 91 S.Ct. 1400, 28 L.Ed.2d 822 (1971) .....	5
<i>West v. American Telephone &amp; Telegraph Co.</i> , 311 U.S. 223, 61 S.Ct. 179, 85 L.Ed. 139 (1940) .....	5
RULES	
SUP. CT. R. 10 .....	4, 5

## INTRODUCTION

Respondent H.E. Butt Grocery Company (hereinafter “Respondent”) hereby files its opposition to Petitioner Earnest Peel’s (“Petitioner’s”) Petition for Writ of Certiorari. For the reasons set forth more fully below, there are no federal questions at issue, the Court lacks jurisdiction to address any Texas state law issue presented in this case, and nothing in this case warrants extraordinary review by this Court.

This case involves Petitioner’s appeal of a Texas state District Court’s denial of Petitioner’s Bill of Review, which is an equitable Texas common law remedy. Petitioner filed a Bill of Review under Texas law seeking to use it to collaterally resurrect a prior state-law based employment discrimination lawsuit that Petitioner had filed against Respondent. That lawsuit was dismissed by a state District Court on summary judgment. The state District Court denied Petitioner’s equitable Bill of Review; the Fourteenth Court of Appeals of Texas affirmed the state District Court’s decision, and the Texas Supreme Court declined discretionary review of the case.



## BRIEF STATEMENT OF FACTS

All legal issues involved in this case are Texas state law issues. The procedural background involved in this case is complex, but only because Petitioner is a vexatious litigant. Petitioner has represented himself *pro se* at various stages of the underlying litigation

(including in his appeals), and now represents himself *pro se* again in connection with this Petition for Writ of Certiorari. Petitioner's litigation against Respondent has spanned approximately five (5) years, and three (3) different sets of attorneys have withdrawn from or have otherwise refused to continue representing Petitioner. At its core, this case involves an unsuccessful attempt by Petitioner to collaterally attack a prior final, unappealed judgment from a separate state-law based employment discrimination lawsuit. Petitioner now asks the Court to consider overruling Texas courts on issues exclusively related to Texas law, presumably in order to force Texas courts to allow him to relitigate the prior final, unappealed judgment.

On April 25, 2016, Petitioner filed a Bill of Review action in Cause No. 2016-26177, seeking to overturn the 215th Texas District Court's previous decision to grant Respondent summary judgment in Cause No. 2014-58069. In the underlying case (Cause No. 2014-58069), Petitioner had asserted claims of alleged employment discrimination against Respondent under the Texas Labor Code. There were no federal claims or issues involved. On August 28, 2015, the 215th District Court dismissed Petitioner's Texas Labor Code discrimination claims with prejudice and granted Respondent summary judgment. Petitioner did not timely file a notice of appeal or a motion for new trial in Cause No. 2014-58069, and the deadline to do so expired on September 28, 2015. Given that Petitioner did not timely appeal the dismissal of his case on summary judgment, even the Texas state law issues involved in

his discrimination lawsuit are not preserved for appeal.

Approximately seven (7) months after the appellate deadline expired, Petitioner filed a Bill of Review action against Respondent in Cause No. 2016-26177, asking the 215th District Court to overturn its August 28, 2015 decision to grant Respondent summary judgment in Cause No. 2014-58069 (i.e., Petitioner's state law employment discrimination lawsuit). In his Bill of Review Action (i.e., Cause No. 2016-26177), Petitioner did not submit evidence that satisfied (or that even could satisfy) any of the required elements of a Bill of Review under Texas law.

After an oral hearing on September 23, 2016, the 215th District Court entered an Order denying Petitioner's Bill of Review. On appeal, the Texas Fourteenth Court of Appeals affirmed the 215th District Court's decision to deny Petitioner's Bill of Review on March 13, 2018. The Texas Supreme Court subsequently denied Petitioner's Petition for Review and denied Petitioner's Motion for Rehearing. Petitioner now asks this Court to consider hearing an appeal of the Fourteenth Court of Appeals' decision, which exclusively addressed and was exclusively grounded in Texas state law.

Petitioner's Petition for a Writ of Certiorari presents no federal questions. Even if the Court could make determinations on Texas state law issues, Petitioner's Petition for a Writ of Certiorari (1) asserts no viable grounds for overturning the District Court's



September 23, 2016 denial of the Bill of Review under Texas law, (2) asserts no viable grounds for reversing the Fourteenth Court of Appeals' decision to affirm that ruling under Texas law, and (3) asserts no viable grounds for reversing the Texas Supreme Court's refusal to hear the case or consider the Texas law issues involved.

---

◆

## ARGUMENT

### **THERE ARE NO COMPELLING REASONS TO GRANT THIS PETITION FOR WRIT OF CERTIORARI AND THE COURT LACKS JURISDICTION TO ADDRESS ANY STATE LAW ISSUES RAISED IN THE PETITION**

Supreme Court Rule 10 provides that “[a] petition for writ of certiorari will be granted only for compelling reasons.” SUP. CT. R. 10. Generally, the considerations governing review on certiorari are:

- (1) a conflict among circuits, a conflict with a Court of Appeals decision regarding a federal question and a decision by a state court of last resort, or when a Court of Appeals has departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by a lower court;
- (2) a conflict among state courts of last resort deciding a federal question or a conflict between a state court of last resort and a Court of Appeals regarding same; and

- (3) a state court or Court of Appeals decision on an important question of federal law that has not been, but should be settled, by this Court or such a decision that conflicts with relevant decisions of this Court.

SUP. CT. R. 10. This Petition does not touch upon any of these areas of consideration. Instead, the underlying facts and claims of this Petition involve solely Texas law issues, Texas state law proceedings and remedies, and Petitioner’s attempt to use Texas state law procedures to resurrect a prior Texas state law employment discrimination lawsuit that was dismissed on summary judgment and not timely appealed.

“The highest court of each State, of course, remains ‘the final arbiter of what is state law.’” *Montana v. Wyoming*, 563 U.S. 368, 377 n.2, 131 S.Ct. 1765, 1773 n.5, 179 L.Ed.2d 799 (2011) (*quoting West v. American Telephone & Telegraph Co.*, 311 U.S. 223, 236, 61 S.Ct. 179, 85 L.Ed. 139 (1940)). The Supreme Court “lack[s] jurisdiction authoritatively to construe state [law issues].” *Gooding v. Wilson*, 405 U.S. 518, 520, 92 S.Ct. 1103, 1105, 31 L.Ed.2d 408 (1972) (*quoting United States v. Thirty-Seven Photographs*, 402 U.S. 363, 369, 91 S.Ct. 1400, 1404, 28 L.Ed.2d 822 (1971)). Simply stated, the Court lacks jurisdiction to decide any issues involved in the Petition. There is nothing in this case that remotely touches a federal question, let alone a special one that would warrant the Court granting the Petition.



**CONCLUSION**

In sum, and for all the foregoing reasons, Respondent submits that Petitioner's Petition for Writ of Certiorari presents no federal issues and no issues that warrant consideration by this Court. Accordingly, Respondent respectfully requests that the Court deny the Petition.

Respectfully submitted,

JIM STALEY

*Counsel of Record*

MICHAEL D. MITCHELL

*(US Sup Ct Bar application pending)*

OGLETREE, DEAKINS, NASH, SMOAK  
& STEWART, P.C.

One Allen Center, 500 Dallas Street,  
Suite 3000

Houston, Texas 77002

Telephone: 713.655.0855

Facsimile: 713.655.0020

Jim.Staley@ogletreedeakins.com

Michael.Mitchell@ogletreedeakins.com

*Counsel for Respondent*

*H.E. Butt Grocery Company*