

18-9101 ORIGINAL

No.

Supreme Court, U.S.  
FILED

APR 10 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Pierre A. Montanez — PETITIONER

(Your Name)

vs.

Illinois Supreme Court — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Illinois Supreme Court

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

PETITION FOR WRIT OF CERTIORARI

Pierre Anton Montanez

(Your Name)

P.O. Box 99

(Address)

Pontiac, Illinois 61764

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Does Illinois Supreme Court Rule 434(d) offend separation of powers, due process, and the supremacy clause in that it has found that the subject of peremptory challenges are under judicial control to regulate, contrary to the jurisprudence of this Court in Ross v. Oklahoma, Swain v. Alabama, Stilson v. United States, and Mayes v. Missouri, to which affirm peremptory challenges are under legislative control.
2. If answered in the affirmative, is Illinois Supreme Court Rule 434(d) invalid.

## 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:

Pierre A. Montanez - Petitioner

vs.

Illinois Supreme Court,  
J. B. Pritzker, Governor,  
The People of the State of Illinois  
Respondents.

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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 is unpublished.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 is unpublished.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 C 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 is unpublished.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 Illinois Supreme 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 1/29/19.  
A copy of that decision appears at Appendix C.

[ ] 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).

## Constitutional And Statutory Provisions Involved

1.) Article I (U.S. Const.):

Legislative Power is vested in Congress \*\*\*.

2.) Article VI, cl. 2 (U.S. Const.):

The laws of the United States shall be the supreme Law of the Land; \*\*\* any Thing in the Constitution or Laws of any State to the contrary notwithstanding.

3.) Article 2 § 1 (J.I.L. Const. 1970):

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.

4.) Article 3 § 1 (J.I.L. Const. 1970):

The legislative power is vested in a General Assembly consisting of a Senate and House of Representatives, \*\*\*.

5.) 725 I.C.S 5/115-4(e):

A defendant tried alone shall be allowed 20 peremptory

challenges in a capital case, 10 in a case in which the punishment may be imprisonment in the penitentiary, and 5 in all other cases; \*\*\*.

(e.) T.I. S. C. Rule 434(d) :

A defendant tried alone shall be allowed 13 peremptory challenges in a capital case, 7 in a case in which the punishment may be imprisonment in the penitentiary, and 5 in all other cases; \*\*\*.

## Statement of the Case

Petitioner, Pierre A. Montanez, an inmate in the Illinois Correctional system, filed a pro se complaint for a writ of mandamus against the Honourable Ursula Walkowski, and the People of the State of Illinois, in the Illinois Supreme Court on November 14, 2018. Appendix A ; Appendix B.

In Cook County case number 02CR31134-01, petitioner was found guilty of aggravated kidnapping, aggravated vehicular hijacking, and two counts of first-degree murder. Petitioner was sentenced to natural life plus 27 and 20 years. Petitioner's convictions was affirmed on direct appeal. People v. Montanez, 2014 IL App (1st) 122369-U.

On November 14, 2018, petitioner sought mandamus relief on the ground that Illinois Supreme Court Rule 434(d) offend separation of powers, due process, and is preempted by Federal law under the Supremacy clause of the U.S. Constitution.

On January 29, 2019, the Illinois Supreme Court denied petitioner leave to file a petition for an original writ of mandamus. This appeal followed. Appendix C.

## Reasons For Granting The Petition

The supremacy clause of Article VI of the United States Constitution provides that the laws of the United States "shall be the supreme law of the Land; \*\*\* any Thing in the Constitution or Laws of any State to the contrary notwithstanding." U.S. Const., art. VI, cl. 2. Thus, any statute, ordinance, administrative regulation, or other law is null and void if it conflicts with federal law. Hines v. Davidowitz, 312 U.S. 52, 63 (1941); Ex parte Siebold, 100 U.S. 371, 395, 399 (1879). Illinois Supreme Court Rule 434(d) is such an administrative regulation, or other law which contravenes well established principles of separation of powers and due process as determined by this Court's clear jurisprudence.

The United States Supreme Court has clearly established and maintained that the subject of peremptory challenge is under legislative control. (See Ross v. Oklahoma, 487 U.S. 81, 89 (1988); Swain v. Alabama, 380 U.S. 202, 217 (1965); Sullivan v. United States, 250 U.S. 583, 586 (1919); Hayes v. Missouri, 120 U.S. 68, 70 (1887)). In Illinois, the legislative branch has entitled the accused under Section 115-4(e) with 20 peremptory challenges in a capital case (though the death penalty has been abolished in Illinois), 10 in a case where punishment may be imprisonment in the penitentiary, and 5 in other cases. 725 ILCS 5/115-4(e) (Formerly Ill. Rev. Stat. 1991, ch. 38, par. 115-4(e)).

However, on March 27, 1985, the Illinois Supreme Court amended Illinois Supreme Court Rule 434, and altered an accused right to peremptory challenge by reducing such peremptory challenges from 20 to 14 in capital cases, 10 to 7 in cases where an accused faces imprisonment in the penitentiary, and 5 in all other cases. (see Illinois Supreme Court Rule 434(d)). Petitioner, pursuant to this rule (Ill. S. Ct. Rule 434(d)) received the entitlement of 7 peremptory challenges. (see People v. Whittleck, 174 Ill. App. 3d 749, 769 (1988); People v. Colelaure, 200 Ill. App. 3d 1038, 1042-1043 (1990); People v. Harbold, 220 Ill. App. 3d 611, 619 (1991)). These cases have held that the judicial branch and not the legislative branch has sole control of the number of peremptory challenges an accused is entitled.

In fact, Whittleck, Colelaure, and Harbold all hold that the Illinois legislature in enacting 725 ILCS 5/115-4(e) encroached on the judiciary's right of power, and is thus void, i.e., unconstitutional.

Petitioner contends that consistent with this Court's clear jurisprudence under Ross v. Oklahoma, 487 U.S. at 89; Swain v. Alabama, 380 U.S. at 212-219; Wilson v. United States, 250 U.S. at 586; and Hayes v. Missouri, 120 U.S. at 70, the subject of peremptory challenge is under legislative control and not judicial, and requests this Supreme Court to grant this petition.

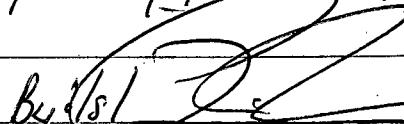
and invalidate Illinois Supreme Court Rule 434(d) on its face and/or as-applied to petitioner. Additionally, because Illinois Supreme Court Rule 434(d) has caused harm to petitioner's due process rights, in that it denies and impairs an accused "right" to peremptory challenge, petitioner requests he be granted a new trial, and in keeping with State law be provided with 10 peremptory challenges.

### Conclusion

Wherefore, for the above and foregoing reasons, petitioner respectfully request his petition for a writ of certiorari be granted.

Respectfully Submitted,

Dated: April 4, 2019

By   
Pierre A. Montanez

M30561

P.O. Box 99

Pontiac, IL 61764