18-9351

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

CRAIG BASSETT

VS.

GOVERNOR OF FLORIDA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE CIRCUIT COURT OF APPEALS 11TH U.S. CIRCUIT

PETITION FOR WRIT OF CERTIORARI

CRAIG BASSETT
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QUESTION PRESENTED

1. Can a rule of court contradict an act of congress without violating due process of law guarantees?
2. Can 42 U.S.C Sect. 1983 be used to resolve the contradiction using state Governor as respondent superior under his obligation to enforce the law?
3. Does a duly enacted statute convey a valid right protected under the 14th Amendment?
4. Was this case properly dismissed?

THE PARADOX

Florida Criminal Procedure Law chapter 900-925, section 918.10 (1) Instruction to jury must include the penalty for the offense.

Florida Rules of Criminal Procedure 3.390 jury instruction (a) the Judge shall not instruct on the sentence.

U.S. SUPREME COURT
RULE (10)

I. The State Supersession Law is repealed July 1, 2012

II. State Attorneys continue to recognize court rule supremacy

III. Federal Court claims Governor has no liability

IV. U.S. Supreme Court claims liability flows from nature of responsibilities in *Clearinger v. Saxner,* 474 U.S. 193 (1985) and *Exxon Corp. v. Governor of Maryland,*437 U.S. 177 (1978)

LIST OF PARTIES

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

CERTIFICATE OF INTERESTED PERSONS

Desantis, Honorable Ron; Governor

Hinkle, Honorable Robert L.: U.S. District Judge

Jordan: 11th U.S. Circuit Appellate Judge

Moody, Ashley: Florida Attorney General

Pryor: 11th U.S. Circuit Appellate Judge

Stampelos, Charles A.: U.S. Magistrate Judge

Tjoflat: 11th U.S. Circuit Appellate Judge

Smith, David J.: 11th U.S. Circuit Appellate Court Clerk

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Petitioner respectfully prays that a writ of certiorari issue to review the judgments below:

The Northern Florida U.S. District Court opinion appears at Appendix "B"

The 11th U.S. Circuit Court of Appeals opinion appears at Appendix "A"

The U.S. Magistrate's opinion appears at Appendix "C".

OPINION SUMMARY

Petitioner has no standing because Governor has no "Liability"

JURISDICTION

The date the U.S. 11th Circuit Court of Appeals finalized this case was March 19, 2019. A copy of the court's judgment appears at Appendix "A". This court's jurisdiction is invoked pursuant to 28 U.S.C. §§1251-1257 and S. Ct. Rule 10 (c).

STANDING

Federal courts, including the Supreme Court, do not pass on constitutional questions because there is a special function vested in them to enforce the constitution or police other agencies of government. They do so rather for the

reason that they must decide a litigated case that is otherwise within their jurisdiction and in doing so must give effect to the supreme law of the land. That is the least of what *Marbury V. Madison* was all about. See Federal Appellate Jurisdiction: Wechsler, The Courts and Constitution, 65 Colum. L. Rev 1001, 1005-1006 (1965). In this case a duly enacted law conveys a legal right the state Judiciary refuses to acknowledge. The denial of a legal right violates due process under the 14th Amendment. Whoever suffers the deprivation has standing for redress of his grievance.

All duly enacted laws convey rights or protections. In this case a legal paradox exists that violates due process. A rule of court has been amended to render a law meaningless. Executive branch officials, State prosecutors, and judicial branch officials have ignored legislative efforts to resolve the legal paradox by repealing the state supersession law. See F.S. 25.371; H.B. 2012-116 (16). It is the Governor's obligation to resolve the conflict through executive order to assure state laws are faithfully executed. See Art. IV, sect. 1, Fla. Const.

In 1913 Justice Holmes uttered his famous words on Supreme Court Jurisdiction that underscores this petitioners standing to seek federal resolution: "I do not think the United States would come to an end if we lost our power to declare an act of congress void. I do think the union would be imperiled if we could not make that declaration as to the laws of the several states."

In this case Rule 3.390(a) should be rendered void as it was amended outside the process of a revisers bill.

If the people of Florida do not have standing to seek redress of State Judiciary denial of due process, in federal courts, then the 14th Amendment protections are no longer mobile, and the union is imperiled.

Standing in this case is more than implied, it is necessary. Especially when it concerns an easily resolved constitutional question: can conflicting laws exist in a nation of laws without violating the due process of law? Because if not, then any state citizen can seek redress in federal court when state denies relief. This method of seeking federal redress of state deprivations is how state sanctioned racism was defeated in this nation.

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. In 42 U.S.C. §1983, congress provided a specific damages remedy for plaintiffs who's constitutional rights were violated by state officials.
2. Article IV, Section 1, Fla. Const., Governor- (a)... Shall take care that the laws be faithfully executed... (b) ... May initiate judicial proceedings to enforce compliance ....
3. Florida Criminal Procedure Law Chapter 900-925 section 918.10 jury instruction – (1) the jury instruction must include the penalty for the offense charged...

4. Florida Rule of Criminal Procedure 3.390(a)...the judge shall not instruct the jury on the sentence that may be imposed.

Fla. H.B. Ch. 2012-116(9) (i)... laws granting duplicate rule making authority shall be omitted. (16) Supersession law 25.371 is repealed effective July 1, 2012.

5. As of July, 2014, State Attorneys continue to recognize the supersession law.
6. State Legislatures enact rules of court, Alexander Hamilton, The Federalist Papers No. 78 and 81.
7. Art. II, sect. 3, Fla. Constitution: Separation of Power
8. Article V, Sect. 2, Fla. Const: Supreme Court shall adopt rules of court.

The Florida Supreme Court adopted statute 918.10(1) into its corresponding rule 3.390 (a) in its entirety. The court then amended their rule to contradict the law and deny the people its implied legal right. This is legislating in violation of separation of powers. Because the court enjoys absolute immunity the Governor must resolve the legal paradox created through the use of executive order. The federal courts can force him to do so to protect 14th amendment due process of law guarantees.

STATEMENT OF CASE

This case is about federal obligations to enforce state compliance to due process of law principles under recognized 14th Amendment guarantees.

Currently Florida law conveys a legal right the state judiciary is refusing to recognize; a criminal jury penalty instruction under statute 918.10(1). They created a legal paradox by amending their rule to prohibit the instruction. A contradiction that can't respect 14th Amendment principles. Bassett requested the instruction and was denied.

The very essence of civil liberties certainly consist of the right of every individual to claim the protection of the laws, whenever he receives an injury. *Marbury v. Madison,* 1 Cranch 137,163(1803): "The Government of the United States has been emphatically termed a government of laws, and not of men. It would certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right...it behooves us, then, to enquire whether there be in its composition any ingredient which shall exempt it from legal investigation , or exclude the injured party from legal redress."

When this petitioner filed for a declaratory judgment to resolve the conflict the state court ruled he had no standing. When he filed under section 1983 against the Governor as respondent superior the federal court ruled he had no standing.

The legal paradox remains unresolved and the injury suffered by Mr. Bassett unredressable.

The following argument exposes why the dismissal of this case was in error.

REASON FOR GRANTING THE PETITION

I. "It is hard to take seriously the claim that enforcement of legal rules does not affect bystanders. I suffer injury if the police announce that they will no longer enforce the rule against Murder in my neighborhood. A plaintiff need not show a sure gain from winning in order to prove that some probability of gain is better than none, and thus he suffers injury in fact." See: *Easterbrook Forward: The Court and Economic Systems,* 98 Harv. L. Rev. 4, 40 (1984).

"It follows from definition of injury in fact that petitioner has sufficiently alleged both that the city's ordinance is the cause of its injury and that a judicial decree to the city to discontinue its program would redress the injury." See: *N.E. Fla. Ch...v. City of Jacksonville,* 508 U.S. 656(1993).

"A party affected by a city ordinance does not have to allege that he would benefit but for the barrier in order to establish standing to challenge it."

The court in this case recognizes no liability for the Governor to resolve a due process dispute that violates the 14th Amendment. Yet this court has recognized the Governors liability in resolving a commerce clause violation. See; *Exxon Corp. v. Governor of Maryland,* 437 U.S. 117(1978). And 34 years ago

Justice Blackmun explained that; "Immunity flows not from rank or title but from nature of responsibilities." See part "C" of *Cleavinger v. Saxner,* 474 U.S. 193(1985).

In Florida the constitution places the responsibilities of law enforcement square in the Governors lap. See: Art. IV, Sect. 1 (a).

Under Art. III of the U.S. Constitution congress established courts to adjudicate cases and controversies as to claims of infringement of individual rights whether by unlawful action of private persons or by the exertion of unauthorized administrative power. See: *Laird v. Tatum,*408 U.S. 1, 15 (1972); *Allen v. Wright,*468 U.S. 760 (1984); cited by Antonin Scalia at final paragraph of Sect. IV, in *Lujan v. Defenders,* 504 U.S. 555 (1992), stating; " The injury required by Article III, may exist solely by virtue of statutes creating legal rights." At issue here is when the exertion of unauthorized administrative power is perpetrated by the judiciary itself, where does the victim go to redress the injury? Who will enforce his statutory legal right?

This issue was brought here for certiorari in case no. S. ct. 16-6061 and was denied review. The state courts denied Bassett's petition for a declaratory judgment to resolve the paradox and this court refused review. The legal contradiction remains unresolved and 14th Amendment protections unenforced. Bassett has now been taxed $850.00 to return via a civil suit under section 1983 in

an attempt to resolve the conflict through executive order. The law is valid and must be enforced; " If the legislature pursue the authority delegated to them, their acts are valid, they exercise the discretion vested in them by the people, to whom alone they are responsible for the faithful discharge of their trust. "Justice Iredell in *Carter v. Bull,* 3 U.S. (3 Dall) 386 (1798).

Late Justice Antonin Scalia often cited John Locke's 2nd treatise on civil government, recognizing that legislators are elected to make laws, not legislators. They cannot delegate rule making authority. Nor can enacted laws be amended outside the process of reviser's bills. The amended Rule 3.390(a) is invalid. Anyone denied due process by an unconstitutional law, rule, or ordinance has standing to seek redress in our system of government's checks and balances. For a comprehensive review of respondent superior liability See: *Monell v. Dept. of Social Services,* 436 U.S. 658 (1978).

"The province of the court is, solely, to decide on the rights of individuals." Chief Justice Marshall Instruction in *Marbury v. Madison,* 1 Cranch 137, 170 (1803).

THE GRAVAMAN OF THE ABROGATION

II. The purpose of the penalty instruction was to encourage jurors to engage their conscience when dealing in the liberty interests of their neighbors. This prevents unwarranted and excessive punishments not dictated by the

circumstances of the criminal episode. A practice long ago determined valid by this court in *Chaffin v. Stynchcombe,* 412 U.S. 17(1973) at U.S. 22. It was also established long ago by this court that every criminal defendant in the U.S. is entitled to a verdict of conscience. See *Sparf v. U.S.,* 15 S.Ct. 273 (U.S. Cal. 1895). But in 1984 a panel of Florida Supreme Court Judges decided that it was unfair for prosecutors when a law encouraged the jury to engage the, "deplorable phenomenon known as a jury pardon." And even though the chief judge warned against it, because it was adopted from a statute, he was out voted and the judicial rule, 3.390(a), was amended to forbid a penalty instruction. Since then Florida citizens have been denied the verdict of conscience they are entitled to. Defendants like 22 year old Mark Gibson who stood trial for a non-violent crime that carried a mandatory life without parole sentence. As the jury departed post-verdict and overheard the sentence they stopped and confronted the judge. The foreman averred; "your honor if I had known that sentence I would not have voted guilt for it." See; *Gibson v. State,* 721 So.2d 363 (1998). Justice was not served and the people are saddled with an excess of 20,000 a year to imprison Gibson until either he dies or this court decides to review the constitutionality of the legal contradiction involved.

The late Honorable Justice Antonin Scalia once said; "If the courts are free to write the constitution anew, they will, by God, write it the way the majority of

the Supreme Court Justices want; this of course is the end of the Bill of Rights, who's meaning will be committed to the very body it was meant to protect against; the majority." See; Antonin Scalia's best seller "strict originalism." In essence the Florida Supreme Court Justices have determined that the Sparf court reference to "the courts of the United States "do not include the courts of the individual States. Apparently the principles of due process are not universal in application.

When court Rule Supersession was discussed federally it was recognized by Justices Frankfurter, in the Supreme Court order of Dec. 26, 1944, and by Black and Douglas, in the order of Feb.28, 1966, to be an unconstitutional use of legislative power. See also Fed. H.B. report 100-889, pg 3 and 27-28, Aug. 26, 1988; 374 U.S. 865 –866; 346 U.S. 946; 368 U.S. 1011-1012. Concluding; "Judicial rules must be consistent with acts of congress." See 28 U.S.C. Ch 131 sect. 2071; 2072 (b); 2074(b). This seems to be a recognized legal principle of due process of law within federal jurisprudence.

The method used by Florida's Supreme Court to abrogate the procedural law was recognized as constitutionally prohibited by this court in *U.S. v. Butler,* 297 U.S. 1, 62 (1936), and the legislatures right to enact watershed rules of criminal procedure validated in *Teague v. Lane,* 489 U.S. 298(1989); and *Chaffin v. Stynchcombe,*412 U.S.17 (1973).

As American Statesman Daniel Webster advised; " when the mariner has been tossed for many days in thick weather, and on an unknown sea, he naturally avails himself of the first pause in the storm, the earliest glance of the sun , to take his latitude, and ascertain how far the elements have driven him from his true course. Let us imitate this prudence, and before we float further on the waves of this debate, refer to the point from which we departed, that we may at least be able to conjecture where we are now."

All legislators, both federal and state, face the same risks when crafting laws. Write too narrowly and risk not providing the intended protections. Write too broadly and risk snaring the innocent and untargeted. These risks were considered when the Florida Criminal Procedure Law was crafted. Legislators felt a fully informed jury was the necessary defense against overzealous prosecutions and misapplication of law.

A good example is the burglary statute. A misdemeanor trespass is elevated to a felony burglary by the text" with the intent to commit an offense therein." A law meant to protect a man's castle from intruders is being applied to violations of domestic restraining orders. Men are being imprisoned for entering their own homes to gather personal property. The penalty instruction would encourage the jury to only find guilt for the charge of trespass. Instead they are instructed to only determine what the facts prove according to law, with no knowledge that trespass

is 6 months in jail and burglary is 15 years in prison. See *In Re 3.390 (a)* 272 So.2d 65 (Fla. 1871); 416 So.2d 1126 (Fla. 1882); 463 So.2d 386(Fla. 1984).

Where we are now is an expanding prison population surpassing 98,000, with an excess 13,466 serving life sentences. Many of which are unwarranted; first time offenders of non-violent crimes like Mark Gibson. We can only guess how many of the 12,600 sex offense convictions were miscarriages of justice. With a growing corrections budget exceeding 2 billion dollars annually the fiscal stability of the state can be affected by the courts misuse of power to alter laws. And that is the gravamen of this issue.

CONCLUSION

WHEREFORE, by the rationale articulated herein and above, amply supported by fact and law, Craig Bassett respectfully asserts that his issue has merit and he has standing to seek redress. He prays this court will grant a writ of certiorari and review the decisions of the lower court. Find the dismissal unwarranted and either return the case for a ruling on the merits or decide the constitutional question presented: Can judicial rules contradict acts of congress in the manner presented without violating due process principles.

Respectfully Submitted

/s/ Craig Bassett

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