No. 19-1367

In the

Supreme Court of the United States

~

VERNON LEE HAVENS, II
Petitioner

v.

CHIEF JUSTICE MAUREEN O'CONNOR,
Ohio Supreme Court;
HONORABLE STEVEN BEATHARD,
Fayette County Court of Common Pleas
Respondents

~

On Petition For A Writ Of Certiorari
To The U.S. Court Of Appeals
For The Sixth Circuit

~

PETITION FOR A WRIT OF CERTIORARI

~

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ORIGINAL

QUESTIONS PRESENTED

1. Do *Mireles v. Waco, Brookings v. Clunk,* and associated case law combine to grant absolute judicial immunity to all other regulation, Section 1983 suits, the authority of superior Courts, and federal law based on jurisdiction alone as implied by the Sixth Circuit's decision?

2. By extension, do absolute judicial immunity, *Rooker-Feldman* Doctrine (relied upon in the District Court's decision), and 28 U.S.C. Section 1257 unconstitutionally combine to abridge the right to Due Process and Equal Treatment by effectively barring access to higher Courts for remedy to State Courts' of last resort, or to intermediate courts', violations of constitutional guarantees?

PARTIES TO THE PROCEEDING

Petitioner is Vernon Lee Havens II, Plaintiff in District Court and Appellant in Circuit Court.

Respondents are Judge Steven Beathard, Defendant in District Court, Appellee in Circuit Court, AND,

Ohio Supreme Court Chief Justice, Maureen O'Connor, Defendant in District Court, Appellee in Circuit Court.

CORPORATE DISCLOSURE

Per Rules 14.1(b)(ii) and 29.6, the Petitioner is not a corporation nor represents one.

RELATED PROCEEDINGS

Havens v. O'Connor et al, 19-3475

U.S. Court Of Appeals For The Sixth Circuit.

Judgement entered March 20, 2020

Havens v. O'Connor et al, 2:19-cv-00481

U.S. District Court / Southern District of Ohio.

Judgement entered May 15, 2019

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PETITION FOR WRIT OF CERTIORARI

Vernon Lee Havens II, respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Circuit Court's opinion (Pet. App. la-5a) is unpublished.

The District Court's opinion (Pet. App. 6a-13a) is unpublished.

JURISDICTION

The Sixth Circuit's panel opinion (Pet. App. la-5a) was filed on March 20, 2020.

This Court's jurisdiction is timely invoked under 28 U.S.C. § 1254(1).

The U.S. Solicitor General has been notified that 28 U.S.C. 2403(a) may apply per R. 29.4(b).

The Petitioner is uninformed whether the 6th Circuit and the Southern District Courts notified the Solicitor General that 28 U.S.C. 2403(a) may apply.

CONSTITUTION & STATUTORY PROVISIONS

The following pertinent provisions are reproduced in (Pet. App., infra, 14a-19a).

First Amendment - Due Process

Fifth Amendment - Due Process

Fourteenth Amendment - Equal Protection

28 U.S.C. Section 1257

28 U.S.C. Section 1367

28 U.S.C. Section 1441(a.),(d.)

42 U.S.C. Section 1983

FRCP Rule 42(a.)

Judiciary Act of 1925, 43 Stat. 936 SEC. 237 (b)

STATEMENT OF THE CASE

I. Introduction.

Conflicting interpretations of jurisdiction, judicial immunity, and *Rooker-Feldman Preclusion,* as applied by the U.S. Sixth Circuit Court, (hereinafter, the 6th), and the U.S. Southern District Court of Ohio, (hereinafter, the District), have converged with other law to effectively create inviolate judicial autonomy in every Court, eclipsing U.S. constitutional guarantees. While both Courts differ from other Courts acting in similar cases, a question of whether both Court's application of such law converges with a lack of adequate remedy to State Courts' of last resort deprivations of due process to effectively violate the 1st, 5th, and 14th Amendment rights to Due Process and Equal Protection. The gulf between the 6th's and the U.S. Supreme Court's,

(hereinafter, This Court), application of the same law exemplifies these conflicts.

II. Class Of One Complaint

Three cases in lower Courts, with bias from one tainting the others, two involving Judge Steven Beathard and each involving Chief Justice Maureen O'Connor, (hereinafter, the Chief Justice), produced outcome-determinative due process violations. Because Ohio does not provide for independent review of its Supreme Court Chief Justice's actions, animus, or bias, acting as sole trier of fact in applying Ohio law of automatic judicial disqualification, or in reviewing appeals to the Ohio Supreme Court featuring constitutional questions, the only avenue to remedy is in Federal Courts which have rejected jurisdiction. Judge Beathard denied due process by, (1.) granting summary judgment against the

Petitioner when well-evidenced perjured documents and material facts were still in dispute. (2.) refusing to comply with Ohio law when conditions automatically triggered his disqualification. (3.) acting in a case after it was removed and joined to a suit in Federal Court.

The Chief Justice denied due process by, (1.) denying the existence of the Petitioner's material claims, determinative under case law which she cited to justify not enforcing automatic judicial disqualification. (2.) acting in a case after it was removed and joined to Federal Court. (3.) rejecting an appeal based upon 42 U.S.C. Section 1983, while the Ohio Constitution requires the Ohio Supreme Court to hear all appeals concerning constitutional questions.

The Petitioner filed a 'CLASS OF ONE' Complaint in the District under 42 U.S.C. Section

1983 and 28 U.S.C. Section 1367, seeking prospective declaratory and equitable relief without seeking personal liability for punitive or money damages against either Judge. Judge Beathard pled absolute judicial immunity and the Chief Justice pled *Rooker-Feldman* preclusion as defenses. The District dismissed the case against both defendants and all motions to join and consolidate under *Rooker-Feldman* preclusion.

III. Appeal to the U.S. Sixth Circuit Court.

Appealing to the 6th with motions to enforce the joining and consolidation of like cases and to void ab initio lower Court actions taken after case removal and joinder under FRCP Rule 42(a.), the 6th ruled against the removal, joinder, & consolidation of like cases, citing 28 U.S.C. 1441(a.), without addressing state Court actions

taken without jurisdiction. It side-stepped the District's decision based on *Rooker-Feldman* to uphold the District's dismissal based on "absolute judicial immunity" for both judges, citing *Mireles v. Waco* and *Brookings v. Clunk.*

REASONS FOR GRANTING CERTIORARI

I. Conflicting Interpretations and Applications of Law At Issue Undermine Judicial Normalcy, and, the Authority and Legitimacy of Superior Courts and the U.S. Congress.

A. Mireles v. Waco Predicates Absolute Immunity Upon A Liability Suit For Damages, But The 6th Extends It To All Suits.

In its decision, the 6th stated, ["A Judge performing his or her judicial functions is

entitled to absolute immunity. See generally *Mireles v. Waco,* 502 US 9 (1991) (per curiam).”] In *McAlester v. Brown,* 469 F.2d 1280 (5th Cir. 1972), the Court opined, “That judicial immunity is sometimes used as an offensive dagger rather than a defensive shield must not justify derogating its inviolability. Even though there may be an occasional diabolical or venal judicial act, the independence of the judiciary must not be sacrificed one microscopic portion of a millimeter, lest the fears of section 1983 intrusions cow the judge from his duty.”

‘The essence of judicial immunity law is to ensure that a judge can perform his duties “without apprehension of personal consequences to himself.”’ *Bradley v. Fisher,* 13 Wall. 335 (1872). The character of “personal consequences” was distinguished as immunity from “liability for

damages" in *Forester v White,* 484 U.S. 219 (1988), and *Pierson v. Ray,* 386 U.S. 547 1967). In *Mireles v. Waco,* 502 U.S. 9 (1991), the Court further qualified that immunity, stating, ["Respondent Waco, ..., filed this action 42 U.S.C. § 1983, -seeking damages-], PAR. 1, Line 1, and, begins its 'Per Curiam', stating, ["A long line of 'This Court"s precedents acknowledges that, -generally-, a judge is immune from a suit for -money damages-...., at 10, PAR 1, Line 2.], summarizing this principle when citing, [..".the essence of absolute immunity is its possessor's entitlement not to have to answer for his conduct in a civil damages action," *Mitchell v. Forsyth,* 472 U.S. 511, 525, 105 S.Ct. 2806, 86 L.Ed.2d 411.] Thereby, the Mireles Court established caveats to judicial immunity, stating, "The Court, however, has

recognized that a judge is not absolutely immune from ... a suit for prospective injunctive relief," *Pulliam v. Allen,* 466 U.S. 522, 536-543 (1983), Id at 10, and, "A state Court judge does not have absolute immunity from a damages suit under § 1983...," citing *Forrester v. White,* 484 U.S. 219 (1988), and, "Petitioner is not absolutely immune from suit for damages arising out of his allegedly unconstitutional conduct...," again citing *Mitchell,* while adding, "Like other forms of official immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages," and, "Qualified immunity, similar to absolute immunity, is an entitlement not to stand trial under (certain circumstances)." Here, the Mitchell Court axiomatically predicated an "ultimate assessment of damages" upon a suit for

damages. The Petitioner seeks the prospective injunctive relief of permitting his Complaint to go forward which imposes no liability for punitive or monetary damages upon a Judge. With no claim for damages at issue in the Petitioner's Complaint, there is no suit for damages and no subsequent cause for a Judge to stand trial for liability to damages, and no resulting trigger to absolute judicial immunity, in other Circuits.

Hence, the Judges lose nothing even if he/she makes no defense. Further, a favorable outcome of having the Complaint adjudicated in Federal Court, should the Complaint go forward, while possibly informing the Judge, neither taxes or penalizes the judge. The 5th and 6th Circuits' holdings would transform judicial immunity into judicial autonomy, thus exemplifying the disparity between them and other Courts which impose

standards upon judicial immunity. The 6th erroneously ignored these distinctions and laws in ruling that absolute judicial immunity adhered to this suit. In conflating a suit for declaratory relief with a suit for damages, the 6th boldly defies This Court's jurisprudence.

B. The 6th Wrongly Predicates Absolutely Immunity Upon Jurisdiction Alone.

In citing *Brookings v. Clunk,* 389 F.3d 614, 617 (6th Cir. 2004), the 6th splits with other Courts by applying absolute judicial immunity to suits contingent upon jurisdiction alone. Citing *Mireles,* "Absolute judicial immunity can be overcome only where: (1) the judge acted in a non-judicial capacity: or (2) the judge acted in the complete absence of jurisdiction," Id. at 11-12," without more, the 6th presumed

'absolute judicial immunity' irrespective of the suit's character. While *Mireles*, *Mitchell,* and the Courts they cited indicated that jurisdictional disputes in overcoming absolute judicial immunity arises after immunity is otherwise established, the 6th dissected the necessary trigger, a liability suit for damages, from all suits.

Erroneously, the 6th effectively predicates judicial immunity upon jurisdiction alone, stating, the Petitioner "has failed to allege facts showing that the defendants acted in a non-judicial capacity or in the complete absence of jurisdiction." While not the proper 'pre-qualifier,' this attribution is erroneous. The Petitioner claimed that enforcing automatic judicial disqualification, per Ohio Judicial Code, is an administrative action to which judicial immunity does not apply. As stated in *Davis v. Burris,* Ariz.

220, 75 P.2d 689 (1938), "A judge must be acting within his jurisdiction as to subject matter and person, to be entitled to immunity from civil action for his acts." Petitioner claims that Ohio law divested the Defendants of jurisdiction over the Petitioner and his Complaint when conditions triggered their automatic disqualification, and, that the defendants' actions in suits joined to the Petitioner's Complaint in Federal Court were without jurisdiction. Further, "When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost." Rankin v. Howard, (1980) 633 F.2d 844, cert den. Zeller v. Rankin, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326.

'This Court' stated in *Stump v. Sparkman,* 435 U.S. at 356, ..".absolute immunity does not

apply when a judge acts "in the clear absence of all jurisdiction," and the *Bradley* Court stated, "a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." Id., at 356-357. The *Forester* Court held, "Truly judicial acts ... must be distinguished from the administrative, ... or executive functions that judges may occasionally be assigned by law to perform." Page 484 U. S. 220. Though not dispositive to the greater Section 1983 issues hereto, the question of whether Ohio law, in concert with Federal law, automatically divested the judges of jurisdiction remains unanswered.

The 6th said, "whenever an action taken by a judge is not an adjudication between the parties, it is less likely that it will be deemed judicial." *Cameron v. Seitz,* 38 F.3d 264, 271 (6th Cir. 1994). As judicial disqualification is not an

action between the parties to the Petitioner's suits, it is "(un)likely" judicial, and dispositive issues of jurisdiction and judicial immunity -as pled- have not been adjudicated in this case.

C. The 6th Erroneously Applies 28 U.S.C. 1441(a.) To Restrict Plaintiff Rights Under FRCP Rule 42(a.) & 28 U.S. Code §1367

The Petitioner removed like cases from state Court to enjoin & consolidate them under FRCP Rule 42(a.). Defendants opposed claiming that 28 U.S.C. 1441(a.) prohibited plaintiffs from so removing to join. Petitioner pled that 1441(a.) speaks affirmatively to defendants' rights only, without speaking restrictively to plaintiffs' rights. Before ruling on the Appeal, the 6th denied all motions to remove, join, & consolidate like cases, citing 1441(a.), without addressing Petitioner rights under 28 U.S. Code §1367 and 28 U.S.C.

1446(d) violation claims, leaving judicial actions taken without jurisdiction, thereunder, in limbo.

D. The Lower Courts Unconstitutionally Apply Rooker-Feldman To Suppress Violation Of Due Process Claims.

Petitioner claimed pre-deprivation denial of procedural due process and pled that *Rooker-Feldman* does "not apply to challenges of the legal conclusions found in the state Court action if there is no challenge to the state Court judgment, and, that clear violations of federal regulations lend themselves to attacks on legal conclusions found by a state Court without attacking the underlying judgment itself." *Exxon Mobil v. Saudi Basic Industries.*, 544 U.S. 280 (2005). The 6th silently side-stepped the District's

dismissal upon *Rooker-Feldman* preclusion. Yet, in *Van Hoven v. Buckles & Buckles,* P.L.C., 947 F. 3d 889, 892 (6th Cir. 2020), it noted that *Rooker-Feldman* "applies only when a state Court ... 'investigates, declares, and enforces liabilities' ..." Id. at 892], and, "*Rooker-Feldman* does not apply to 'ministerial' actions." Petitioner claims that enforcing automatic judicial disqualification is ministerial, prospective, not involving liabilities, and makes no positive demands on a judge.

The District erroneously asserts that the Petitioner only seeks to overturn state Court judgements. Yet, there was no judgment on a conflict between parties to the subject suits to satisfy the 6th's criterion. The Complaint is about prejudiced denial of material process, alleging that subject claims were not meaningfully heard

and prospectively seeks to have those claims be heard by an unbiased trier of fact which imposes no burden upon the defendants. Hence, there is no material judgment to reverse at issue to invoke *Rooker-Feldman*.

E. The Laws As Applied Converge To Create Constitutional Deprivations.

Petitioner pled convergences of judicial immunity, *Rooker-Feldman* Doctrine, and 28 U.S.C. Section 1257 are unconstitutional by now combining to violate the 1st, 5th, and 14th Amendments' respective Petition, Due Process, and Equal Protection Clauses. With no state remedy to a biased Chief Justice acting as sole trier of fact denying constitutional rights, or, to other State Courts' of last resort constitutional deprivations, without adequate remedy in lower

Federal Court, and, with statistical preclusion to remedy in the U.S. Supreme Court, the 'Petition Clause' of the First Amendment is abridged. "(T)he opportunity to be heard "must be granted at a meaningful time and in a meaningful manner."" *Armstrong v. Manzo,* 380 U.S. 545 (1965). Heritage Foundation statistics reveal, proportionately, 99.99% of complainants are barred from having state induced constitutional abuse claims be meaningfully heard in the only Court available. To be meaningful, a petition to be heard must have an impartial, 50/50, chance of being accepted and adjudicated. As Congress did not provide for an ever-increasing number of appeals of State Courts' of last resort constitutional abuses to be heard somewhere, when it barred lower Federal Courts from

hearing them and enacted 28 U.S.C. Section 1257, the afore-cited laws combine with unconstitutional preclusion to Federal Court remedy 99.99%, a practical entirety, of the time.

When 99.99% of complaints with standing are legislatively precluded from being adjudicated, proportionately per category, without changing the Constitution, the right to 'meaningfully petition' and to be 'meaningfully heard' is denied.

F. The 6th's Decision Is Precedent For Absolute Judicial Autonomy From Any Other Legal Authority, Empowering Absolute Judicial Tyranny To Metastasize If Unchecked.

The 6th's construction of judicial immunity compounds this legislated deprivation of rights, creating 'absolute' judicial autonomy that would bar any Court from hearing any

Complaint against any action by any other judge with original jurisdiction, promoting judicial tyranny in every Court. If let to stand, any other Court could cite this Case to justify granting non-reviewable absolute immunity to any judicial act, however heinous, based on jurisdiction alone.

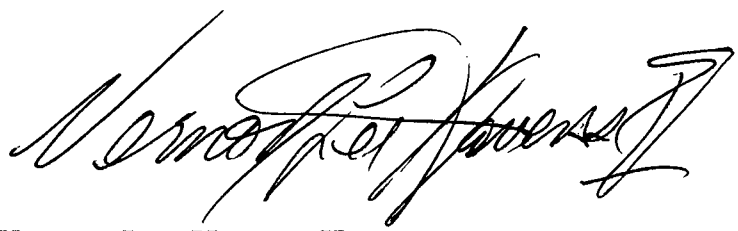
G. The 6th's Ruling Undermines the Legitimacy of the U.S. Government.

Because Article III anticipated and provided for Congress to expand the Courts as needed, there's no constitutional public purpose for legislatively 'abridging' the Petition and Equal Protection Clauses to remedy busy Courts. This legislated preclusion fosters a public perception that Congress and the Courts are at war with the People and their constitutional rights, thereby compromising public belief in the legitimacy of the U.S. Government.

> justified if there were a significant benefit. But, as it stands, the extension of absolute immunity serves none but the particularly malicious." Emory Law Journal Volume 66, Issue 1., III A.

Considering all, heretofore, granting certiorari would be a prospective measure to preserve the sanctity of the U.S. Constitution, the legitimacy of the U.S. Congress and the Courts, and should, therefore, be granted.

Respectfully submitted,



Vernon Lee Havens II, pro se

May 08, 2020