19-7202 ORIGINAL

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

TERENCE C. POWELL

Petitioner

v.

LAB CORP., MR. & MRS. KEVIN NAPIER,
NEW YORK STATE UNIFIED COURT SYSTEM
NATIONAL GRID AND IBEW LOCAL 1049

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT CERTIORARI

Terence C. Powell, Pro Se
116-14 218th Street
Cambria Heights, NY 11411
(718) 527-3645
(347) 539-2539

QUESTION PRESENTED

Whether the Court of Appeals correctly affirmed the District Court's granting the defendant's Motions to Dismiss violates the protections of the Seventh and Fourteenth Amendments of the Constitution of the United States by denying a Plaintiff a trial by jury in a chain conspiracy claim?

PARTIES TO THE PROCEEDING

Petitioner Terence C. Powell was the plaintiff in the District Court proceedings and Appellant in the Court of Appeals proceedings. Respondents Lab Corp., Mr. & Mrs. Kevin Napier, New York State Unified Court System, National Grid and IBEW Local 1049 were the defendants in the District Court proceedings and Appellees in the Court of Appeals proceedings.

- Powell v. LAB Corp., Napier, NYS Unified Court System, National Grid and IBEW Local 1049, No. 17-CV-3632, U.S. District Court for the Eastern District of New York. Judgement entered Dec. 27, 2018.
- Powell v. LAB Corp., Napier, NYS Unified Court System, National Grid and IBEW Local 1049, No. 19-215, U.S. Court of Appeals for the Second Circuit. Judgement entered Oct. 4, 2019.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutory Provisions and Rules

Constitutional Provisions

Other Authorities

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.

OPINION BELOW

The opinion of the United States District Court appears at Appendix B to the petition and is reported at Eastern District of New York. The opinion of the United States Court of Appeals appears at Appendix C to the petition and is reported at Second Circuit.

JURISDICTION

The date on which the United States Court of Appeals decided my case was entered on October 4, 2019. No petition for rehearing was timely filed in my case. The jurisdiction of this court is invoked under 28 U.S.C. §1254 (1).

CONSTITUTIONAL PROVISIONS INVOLVED

The relevant portions of the following authorities are set forth in the Appendix A to this brief:

(1) U.S. Const. amend. VII;

(2) U.S. Const. amend. XIV, §1, 5.

APPENDIX A: CONSTITUTIONAL PROVISIONS

U.S. Const. amend. VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

U.S. Const. amend. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the Privileges and Immunities of citizens of the United States; 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.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

STATEMENT

Following motions to dismiss in United States District Court for the Eastern District of New York, Petitioner was denied a trial by jury in a chain conspiracy claim which the Petitioner was misled by serious scientific testing (DNA) that took an inordinate amount of time to debunk scientific fraud. Petitioner's rights as a father were terminated from this intentional deception. This was a Breach of Contract of the highest degree. Also common law torts claims such as Conflict of Interest, negligence, fraud, discrimination under GINA, unconstitutional drug testing, retaliation, false police reports and arrests also malicious prosecution and bad faith to name some of this conspiracy's continuing offenses seeking money damages. Judgment. The court of appeals affirmed.

The 7th Amendment to the Constitution guarantees the right to a trial by jury across the nation. The New York Constitution agrees Article 1 § 2 stating, "Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever."

Summary of the Argument

1. In 1875, the Court failed to find the civil jury trial right protected in the Seventh Amendment applicable to states through the Fourteenth Amendment. Walker v. Sauvinet, 92 U.S.90 (1875). But this is 2019, not 1875. Since then, this court has incorporated nearly all provisions of the Bill of Rights as against the states through the Fourteenth Amendment, recently in 2010. See McDonald v. City of Chicago, 130 S. Ct. 3020 (2010)

(holding the Second Amendment right to keep and bear arms is a fundamental right incorporated as against the states under the Fourteenth Amendment).

The issue before this court is not whether the Fourteenth Amendment abolishes federalism and requires total incorporation of the Bill of Rights. Instead, the question is whether the Fourteenth Amendment requires states to respect the fundamental right to a civil jury trial, a right that the framers of the Constitution recognized in the Seventh Amendment. The answer is "yes." Refusing to incorporate the fundamental right to a civil jury trial would not only signal a retreat from this court's selective incorporation doctrine of the last several decades, but would also undermine basic constitutional principles in the American system of justice.

ARGUMENT

Denying a trial by jury in a chain conspiracy claim is unconstitutional because the Seventh Amendment protection of the right to a trial by jury in civil cases is incorporated as against the states under the Privileges and Immunities Clause and Due Process guarantees in the Fourteenth Amendment.

"In suits at common law... the right of trial by jury shall be preserved." U.S. Const. amend. VII. This court considered whether the Seventh Amendment should be incorporated as against the states over 125 years ago in walker, holding that the Fourteenth Amendment to the United States Constitution did not incorporate the Seventh Amendment upon the states. Walker v. Sauvinet, 92 U.S. 90 (1875), but that was 1875. Since then, new fields of law and new forms of legal systems

have evolved, leaving Walker antiquated. This court should reconsider whether the Seventh Amendment's guarantee of a jury trial in civil matters is – or should be – incorporated against the states by the Fourteenth Amendment. This court can and should rule that the right to a jury in civil matters is a privilege and immunity of citizenship required of the states by the Fourteenth Amendment. Additionally, this court should rule that the Fourteenth Amendment's right to trial by jury in civil matters.

A. Because the controlling precedent's value has been vitiated by over a century's worth of changes to our legal systems and laws. Walker should be reversed.

In 1890, the court found that the Eight Amendments had not been incorporated as against the states through the Fourteenth amendment; the court reversed that ruling in 1962. In re Kemmler, 136 U.S. 436 (1890), overruled by Robinson v. California, 370 U.S. 660 (1962). In 1937, the court found that the Fifth Amendment's right against double jeopardy was not incorporated, only to reverse that ruling in 1969. Palko v. Connecticut, 302 U.S. 319 (1937), overruled by Benton v. Maryland, 395 U.S. 784 (1969). In 1942, the court found that the Sixth Amendment's right to counsel was not incorporated, only to reverse that ruling in 1963. Betts v. Brady, 316 U.S. 455 (1942), overruled by Gideon v. Wainwright, 372 U.S. 335 (1963). In 1947, the court found that the Fifth Amendment's right against self-incrimination was not incorporated, only to reverse that ruling in 1964. Adamson v. California, 332 U.S. 46 (1947), overruled by Malloy v. Hogan, 378 U.S. 1 (1964). And, in 1886, the court found that the Second Amendment's guarantees were not incorporated as against the states by the Fourteenth Amendment; only a few years ago, this court reversed. Presser v. Illinois, 116 U.S. 252 (1886), overruled by McDonald v. City of Chicago, 130 U.S. 3020 (2010).

The trend is clear. Prior to the 1950's, the Supreme Court was loathe to incorporate any of the Bill of Rights as against the states using the Fourteenth Amendment. For the last half century and counting, however, the court has reconsidered past decisions and instead held that the Fourteenth Amendment incorporates various guarantees from the Bill of Rights as against the states. Stare decisis does not justify relying on a decision that predates for example, the Federal Rules of Civil Procedure or women's suffrage, without examining the decisions logic. See McDonald v. City of Chicago, 130 S. Ct. 3020, 3063 (2010) (Thomas, J., concurring) ("Stare decisis is only an 'adjunct' of our duty as judges to decide by our best lights what the Constitution means.") This court should rely on Walker as precedent only if the reasoning from Walker remains sound. It does not.

B. The Fourteenth Amendment's Privileges and Immunities Clause incorporates the Seventh Amendment right to a jury in a civil trial as against the states because the clause protects rights enumerated in the Constitution and the Bill of Rights.

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." U.S. Const. amend. XIV. Even though the Privileges and Immunities Clause in the Fourteenth Amendment may incorporate rights enumerated in the Constitution and the Bill of Rights as against the states, see Slaughter-House cases, 83 U.S. 36, 79 (1872), the Seventh Amendment civil jury trial right has not been incorporated as against the states through the Privileges and Immunities Clause. See Walker v. Sauvinet, 92 U.S. 90, 92 (1875).

Not only does Slaughter-House permit the Bill of Rights to be incorporated through the Privileges and Immunities Clause in the Fourteenth Amendment, the legislative history of the Fourteenth Amendment, which this court has revisited, compels the same conclusion. The Walker decision, made over 125 years ago, must be reversed. The Seventh Amendment should be incorporated as against the states through the Privileges and Immunities Clause in the Fourteenth Amendment; to continue to hold otherwise would be contrary to the intent and purpose of the Privileges and Immunities Clause.

1. Congress intended the Privileges and Immunities Clause to incorporate the rights in the Constitution and Bill of Rights.

Congress intended the Fourteenth Amendment, adopted in 1868, to incorporate the rights enumerated in the Bill of Rights. During the Fourteenth Amendment debates, Representative John Bingham, who drafted the Privileges and Immunities Clause, explained that its purpose was not to encroach on states' rights, but rather "to arm the Congress of the United States, with the power to enforce the Bill of Rights as it stands in the Constitution today." Cong. Globe, 39th Cong., 2d sess. 1088 (1866). Similarly, Senator Jacob Howard expressed concern that, without the Fourteenth Amendment, "there is no power given in the Constitution to enforce and to carry out" the privileges and immunities in the Constitution and its first eight amendments. Cong. Globe, 39th Cong., 1st sess. 2765 (1966). Senator Howard argued that the "personal rights guaranteed and secured by the first Eight Amendments of the Constitution" should be protected under the Fourteenth Amendment. ("Such as the freedom of speech and of the press; the right of the people to peaceably to assemble and petition the government for a redress of grievances...."). The American public understood the Privileges and Immunities Clause to include at least the

fundamental rights of the Constitution and its amendments. See McDonald v. City of Chicago, 130 S. Ct. 3020, 3071 (2010) (Thomas, J., concurring) (arguing that the Privileges and Immunities Clause is a "more faithful" means of incorporating the Second Amendment than the Due Process Clause).

C. The Seventh Amendment is incorporated as against the states under the Due Process guarantees in the Fourteenth Amendment because the right to a trial by jury in civil matters is a fundamental right. The right is implicit in the scheme of ordered liberty and is deeply rooted in American history and tradition.

States are prohibited from depriving a person of property of "life, liberty, or property, without due process of law." U.S. Const. amend. XIV. Corporation are "persons" afforded due process protections in property under the Fourteenth Amendment. See First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765 (1978). Due Process protects fundamental rights that are implicit in the scheme of ordered liberty or deeply rooted in American history and tradition. See McDonald v. City of Chicago, 130 S. Ct. 3020, 3036 (2010). Fundamental rights that are explicitly protected in the Bill of Rights are applied equally in State courts, as in Federal courts. See Malloy v. Hogan, 378 U.S. 1, 10-11 (1964) (rejecting the proposition that states can provide "only a watered down, subjective version" of the Bill of Rights).

The right to a jury in a civil trial is a fundamental right. See Parklane Hosiery Co. v. Shore, 439 U.S. 322, 338 (1979) (Rehnquist, J., dissenting) ("The right to trial by jury in civil cases at common law is fundamental to our history and jurisprudence."). The right to a jury in civil trial – a right that predates this nation's creation – is so fundamental that the right was

explicitly protected in the Seventh Amendment. As a fundamental right, the right to a jury in a civil trial is incorporated as against the states under the Due Process guarantees of the Fourteenth Amendment.

1. The right to a jury in civil trials is implicit in the scheme of ordered liberty because juries have long protected Americans against unfairness and abuse.

Fundamental rights include those that are "of the very essence of a scheme of ordered liberty." See Palko v. Connecticut, 302 U.S. 319, 325 (1937). Fundamental rights protected against State infringement by the Fourteenth Amendment include trial rights enumerated in the Bill of Rights. See Duncan v. Louisiana, 391 U.S. 145 (1968); see also Benton v. Maryland, 395 U.S. 784 (1969) (holding that the Fifth Amendment right against double jeopardy is a fundamental right because to permit the government to repeatedly attempt to convict a person for a crime runs counter to this nation's sense of justice).

The right to a trial by jury in serious criminal cases is a fundamental right protected by the Sixth Amendment and incorporated as against the states through the Fourteenth Amendment. See Duncan, 391 U.S. at 158. In Duncan, the accused was charged with simple battery but was denied a jury trial because Louisiana State law granted jury trials only for crimes with harsher penalties. Id. at 146. The court held that the jury trial right for serious criminal cases is a fundamental right because it is necessary to prevent the miscarriage of justice and to provide a fair trial. Id. at 158. The framers of the Constitution intended to protect citizens from the risk of "unfounded criminal charges brought to eliminate enemies." Id. at 156. The court noted that

criminal juries usually make sound decisions and, even if a jury decides differently than a Judge, the jury is serving its purpose in protecting the accused. Id. at 157. The court concluded that the simple battery constituted a serious crime because of the severity of the penalty, and the court held the accused entitled to a jury trial under the Sixth and Fourteenth Amendments, Id. at 162. Although the case at bar is not a criminal matter, Terence Powell seeks damages that could exceed millions of dollars, a severe penalty not unlike a criminal sentence. See Id. at 162; R. at 4, 5; see also New York Times v. Sullivan, 376 U.S. 254, 277 (1964) ("The fear of damage award... may be markedly more imbibing than the fear of prosecution under a criminal statute."). Because of the significant amount of money at stake, Terence Powell's claim against the defendant's is a serious matter that entitles a jury trial. A right to a jury trial is fundamental and in Terence Powell's case, necessary to protect against the defendant's intentional abuse of the judicial system, which is repugnant to the American Scheme of ordered liberty.

2. The right to a jury in a civil trial is deeply rooted in American history and tradition because the right it articulated in the Seventh Amendment.

Fundamental rights include those deeply rooted in American history and tradition. See Moore v. City of Cleveland, 431 U.S. 494, 503 (1977). The American right to a trial by jury in civil matters reaches back to colonial times. The right was found in the 1606 charter to the Virginia Company, recognized in the New Plymouth Colony in 1623, in the Massachusetts Bay Colony in 1628, in the Colony of West New Jersey by 1671, and in Pennsylvania by 1682. See Neil Vidmar + Valerie P. Hans, American Juries: The Verdict 47 (2007).

Indeed, the civil jury was so prevalent and relied upon by colonial Americans that it may have been the "greatest threat to imperial authority," used by merchant to sue tax collectors acting on behalf of the King. See id. at 52.

Governor Morris, the "penman of the Constitution," described the John Peter Zenger trial by jury for libel in 1735 as the "germ of American freedom, the morning star of that liberty which subsequently revolutionized America." See William Putnam, John Peter Zenger and the Fundamental Freedom 4 n. 1 (1997). The Zenger trial, which advanced the freedom of the press, sprang from a larger debate over whether the New York Governor could vitiate the right to a trial by jury in civil matters. See Vidmar + Hans at 41-43. Zenger was arrested for printing articles that argued the jury had always been a stalwart feature of trials civil and criminal in the colonies. See id. at 47 (2007); Livingston Rutherford, John Peter Zenger: His Press and His Trial 31 n. 1 (Johnson Reprint Corporation, 1968) (1904) (quoting the Weekly Journal headline as "Deservedly therefore is this trial by juries, ranked among the choicest of our fundamental laws, which whosoever shall go about openly to suppress, or craftily to undermine, does ipso facto, attack the government, and bring in an arbitrary power and is an enemy and traitor to his country").

The civil jury trial right is so firmly rooted in American traditions that the framers of the Constitution explicitly protected the right in the Seventh Amendment. During the ratification debates, the Anti-Federalists, led by Thomas Jefferson, argued that civil juries protected the people in disputes against the government, protected against unjust legislation, and protected against biased and corrupt Judges. See Vidmar + Hans at 52-54. The civil jury right is

fundamental because the civil jury right existed from this nation's inception. The legislative intent to protect the right to a trial by jury in civil matters could not be more clear.

Allegations of criminal activity are matters of public concern. See Silvester v. Am. Broad Co., 839 F. 2d 1491 (11th Cir. 1988). In Silvester, television network ABC aired a program that focused on corruption in gambling, making allegations that certain individuals were involved in related arson, insurance fraud, and conspiracy. Silvester, 839 F. 2d at 1493. The court held that the program's content was a matter of public concern because corruption could cost taxpayers millions of dollars.

3. Juries judge the law as well.

Is the law whatever the Judges say it is? Where in the Constitution does it say that? No doubt that it is the duty of Judges to say what they believe the law is, but that does not mean they are the only ones who do so. Thomas Jefferson wrote that "To consider the Judges as the ultimate arbitrators of all constitutional questions is a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy." The so called "power" of a Judge to "strike down" a statute, is nothing more than the recognition by the Judge that any statute passed contrary to the Constitution is not the law and should not be respected as law by the Judge. Respect should be shown to the determination by the Judge that the statute is constitutional, but that is merely a presumption in favor of respect for reasoned judgment of an independent person who had examined the statute as applied to the facts in this case. For instance, in 1794, in the case of Georgia v. Brailsford in which the facts were not in dispute and the Supreme Court unanimously held that one party should win on the law, the case was still sent to jury. Chief

Justice John Jay – the first Chief Justice of the United States – instructed the jury as such; "It may not be amiss, here, Gentlemen, to remind you of the good old rule, that on questions of fact, it is the province of the jury, on the questions of law, it is the province of the court to decide. But it must be observed that by the same law, which recognizes this reasonable distribution of jurisdiction, you have nevertheless a right to that upon yourselves to judge of both, and to determine the law as well as the fact in controversy." Have we adopted a new constitution? No. Is there a constitutional amendment that changed this? No. The power of Judges and juries is as it was at the founding of this country, and the courts in my cases have recognized the power of jury to decide the law as well the facts in this case. These Judges do not like the diminution of their own power and are trying to hide this fact, but they are wrong to do so.

As the jury has the right to determine the law, that includes the determination that a given statute violates the constitution and to refuse to consider that statute the law. There is also a question of if the Constitution itself is the highest law. No doubt that it is the highest law of the American government, but is it truly the highest law there is? The Declaration of Independence says otherwise, it spoke of the "Laws of Nature" that even have the power to dissolve the obligation to follow any statutes. The rights of Life, Liberty and the pursuit of Happiness are rights derived from natural law – higher than the law of any nation on earth. Any nation violating these rights is committing a wrong against their own people.

Can a person truly be said to have violated the law by violating a statute which itself violates these natural rights?

There may be only few statutes that a jury would find that grossly unjust today, but the jury acts as a safety valve preventing tyrannical government. I trust, as the founders did, in the American people serving on the jury to find true justice. The ability to have a jury of your peers decide your case is guaranteed by the Constitution for things like criminal and civil matters.

4. Rule 38. Right to a jury trial; demand.

The right of trial by jury as declared by the Seventh Amendment to the Constitution. – or as provided by a Federal statute. – is preserved to the parties inviolate. Plaintiff served the Defendants a written demand for a jury in my pleadings. A party waives a jury trial unless its demand is properly served and filed. A proper demand may be withdrawn only if the parties' consent. This rule provides for the preservation of Constitutional right of trial by jury as directed in the enabling act (act of June 19, 1934, 48 stat. 1064, U.S.C., Title 28, §723c [see 2072]), and it and the next rule make definite provision for claim and waiver of jury trial, follow the method used in many American states and in England and the British Dominions.

Conclusion

The petition for a writ of certiorari should be granted. For the foregoing reasons, the petitioner respectfully requests that this court finds that the Seventh Amendment is incorporated as against the states and Respondents through the Fourteenth Amendment, and remand this matter for a jury trial.

Respectfully submitted,

Terence C. Powell

Date: December 23, 2019

Terence C. Powell