No. 19-8538

IN THE

Supreme Court of the United States

♦

Jeffrey Wayne. Smiles,

Petitioner

v.

BERKS COUNTY, et al.

Respondent

♦

PETITION FOR REHEARING

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♦

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PETITION FOR REHEARING

Petitioner, a living American, comes before this honorable court with this Petition for Rehearing for cause . Petitioner moves this court to strongly consider the "controlling" constitutional parameters of this case, and that Petitioner, in good faith and with as much understanding and belief as he has, believes this falls into the "intervening circumstances of substantial or controlling effect" since this court's own constitutional purposes is being disregarded for unknown reasons.

Pursuant to Supreme Court Rule 44, this petition for rehearing is filed within 25 days of this Court's decision in this case.

However, Petitioner was disheartened to learn that because he is coming before the court as an informa pauperis Petitioner, his cause may have been predetermined or decided in advance for denial:

"Ultimately, the analysis indicates that IFP petitions are at a disadvantage relative to the paid petitions during the agenda-setting process. That disadvantage takes two forms. First, the cue characteristics are more important to the selection of the IFP petitions and yet they are also less common; this interaction effect between the cue characteristics and IFP status is quite significant. Second, IFP status has an independent negative effect on the probability of the Court granting review; although controlling for the interaction effects causes that independent effect to lose statistical significance, the effect is nevertheless impressive when compared with the effect of other known cue characteristics." -THE U.S. SUPREME COURT'S SELECTION OF PETITIONS IN FORMA PAUPERIS *Wendy L. Watson, M.P.P., J.D.*

As Justice Marshall noted, *"with each barrier that it places in the way of indigent litigants, . . . the Court can only reinforce in the hearts and minds of our society's less fortunate members the unsettling message that their pleas are not welcome here"* (In re Demos, 500 U.S. 16, 19 (1991) (Marshall, J., dissenting, joined by Blackmun and Stevens, JJ.)).

Just the idea that the highest court in the land (and other courts) might be participating in a two-tiered platform-one for the rich and corporations and one for the poor- and that cases are being predetermined along socio-economic or agenda-driven lines seems unconscionable to Petitioner, who was already at a disadvantage being Pro se. But when considering that a probable systemic process is being employed against those who cannot afford to pay the costs, this raises the level of unfairness to that which is wholly unjust.

Petitioner moves this court to please consider the substance, please consider the evidence, please consider that he is doing this alone, without assistance of counsel, without help from anyone, and to not focus on or be restrained or controlled by mere discretionary form, or on "status quo" and to go on your conscience, truth, justice, freedom, and ***what the constitution and original intent of this court clearly states***. I ask merely for due process, and to ***restore the credibility of the judicial system*** in defending the Americans it claims to serve and owes a debt of Justice to.

What It Means To Be Human And What It Means To Be Humane

May this Court please consider Petitioner's plight and the plight of tens of thousands of others similarly situated—that behind every case brought by concerned individuals there are real people involved who have real beating hearts and genuine hopes and dreams and who truly love their country and seek a redress of grievances for good and honorable reasons and pray that true justice is restored to the land. They only ask that this court will regard such individuals not as subjects and

creations of the state, or as legal fictions or entities created by the state, or as something less than human deemed unworthy of life, Liberty and happiness, but as living, breathing souls whose rights pre-dates the formation of the state and is far more than material. What does a man have other than his life and his private property? If the state or a political subdivision is allowed to administratively strip a man, who has lost his entire family, of his property, without Due Process, under color of law, which clearly violates our ratified Bill Of Rights and the Supreme Law of the Land, then of what value is a written constitution? Of what value are our courts? Of what value is human life other than to exist as a slave?

REASONS FOR GRANTING REVIEW
Intervening Circumstances

The court has decided the case not based on an issue proposed or briefed by either party, but without rendering any findings of fact or conclusions based in law and would appear to give support to the usurpation of our ratified Bill of Rights, by allowing political subdivisions to continue in their illegal administrative acts by taking private property away from the people, without Due Process, Just Compensation or a Trial by Jury, and whose actions have already wreaked havoc in the lives of tens of thousands, affecting their mental as well as their physical health by depriving the people of their unalienable rights. Additionally, the full court was not in session, having suffered the loss of Justice Ginsburg, therefore Petitioner was not provided with the benefit of a actual full court decision.

***"Closely akin to a due process guaranty is a state constitutional provision to the effect that absolute and arbitrary power over the lives, liberty, and property of freemen exists nowhere in a republic, not even in the largest majority. It has been said that such a constitutional provision inhibits the legislative power of the state from arbitrarily passing a law taking property away from one person and giving it to another without value received or without any contractual basis."* - Illinois C. R. Co. v Commonwealth, 305 Ky 632, 204 SW2d 973, cert den 334 US 843, 92 L Ed 1767, 68 S Ct 1511.**

Clearly, when political subdivisions in Pennsylvania are fabricating debts and taking private property from the people, without Due Process, they are engaging in a self evident criminal racket, under color of statute, which requires the court to intervene.

It should be well understood that it is Our ratified Bill of Rights which *is* the intervening circumstances of a substantial or controlling effect for this cause, and will be until this Republic rots out, self-destructs or is dissolved by the people *"to effect their Safety and Happiness."*

The opinion of the Court of Appeals omits and misstates the issue and ignores material facts.

When a federal District Court Judge interferes with an Appeal process and does so to such an extent that it may cause the Court of Appeals to hold a bias against an Appellant and so unduly influences them as to cause them to convert his Appeal into a "determination" for an Appeal, we have a serious problem.

"A fair trial in a fair tribunal is a basic requirement of due process under the Federal Constitution; a necessary component of a fair trial is an impartial judge." Weiss v United States (US) 127 L Ed 2d 1, 114 S Ct 752

First, There was no impartial Judge in Petitioner's case. The court of Appeals

mischaraterized Petitioner's Compliant based on the District court's interjections, resulting in the denial of an actual Appeal that is owed Petitioner, and then converted his case from a civil rights case to a tax case, which it was not. No briefing schedule was ever issued and nothing was filed by the Respondents.

Second, The Court of Appeals misapplied Federal statute 28 USC § 1341 to conform to the tax case scenario, which was advanced by the lower court to dismiss this case.

There are fundamental errors in the opinion of the Court of Appeals which skews the analysis and result, and an erroneous finding of procedural default by the Court, and there is a reasonable possibility of a cure by means of a rehearing petition

The court of Appeals by invoking 28 USC § 1341 as a basis for its dismissal clearly erred by failing to provide any example of a "plain, speedy and efficient remedy" existing in written form and contained within a statute, as required. Under the rule of law, any acts by government must be in written form, readily available to the People and not a matter of presumption. Instead, the court skirted its responsibility and referred to other case law to support its opinion, which upon research and investigation provides absolutely no remedy for a political subdivision's stealing of a man's private home and selling it to someone else without Due Process. Indeed, the case law so cited was applied only to "taxpayers," who by statutory definition are engaged in commerce with the state, through agreement, and who are required to file tax and property reports periodically with the state or political subdivision. A person can never become a "taxpayer" just because he owns his private home or owns something. The definitions required by law to be placed

into the state statutes concerning this term is very narrowly defined so as not to confuse the meaning of the word and its usage with similar terms. This is a mere presumption or assertion made by the Appellate court, without facts in evidence to support their opinion. Petitioner need not seek a remedy in a state court system to vindicate his Constitutional rights, as this court has already affirmed. Presumptions by the court are not law, not applicable, not binding. For no statute, no act of the legislature, no proclamation or opinion by any governmental actor can abridge, suspend or annul or exert jurisdiction over our individual Bill of Rights. They are superior to and outside of the reach of government. Further, the federal courts were so designed to uphold them no matter what the circumstances.

"The constitutional provision that all courts shall be open and every person having injury done him in his lands, goods, person, or reputation, shall have remedy by due process of law, and right and justice administered without sale, denial, or delay, when construed in the light of the constitutional provision which guards against transgression of powers which were delegated and excepts everything in the Bill of Rights from the general powers of government, prohibits the legislature from invading the province of the judiciary, and the prohibition of the above section applies to the legislative branch of the government as well as to the judicial. Commonwealth ex rel. Tinder v Werner (Ky) 280 SW2d 214.

"A court may not, under the guise of protecting private property, extend its authority to a subject of regulation not within its competency, but is confined to ascertaining whether the particular assertion of the legislative power to regulate has been exercised to so unwarranted a degree as, in substance and effect, to exceed regulation and to be equivalent to a taking of property without due process of law or a denial of the equal protection of the laws. Atlantic C. L. R. Co. v North Carolina Corp., 206 US 1, 51 L Ed 933, 27 S Ct 585; Budd v New York, 143 US 517, 36 L Ed 247, 12 S Ct 468 (fees chargeable by grain elevators); Durgin v Minot, 203 Mass 26, 89 NE 144; People v Luhrs, 195 NY 377, 89 NE 171.

Petitioner has established that his rights have not been regarded in the least by the courts and that the issues raised in this case are certainly "in law and equity" and are "*arising under the Constitution*" and "*Laws of the United States.*" He has also established that this adversely affects Americans as it is being applied by Respondent, and is contrary to standing case precedent of this court. Petitioner's (a living man) constitutional due process rights have been denied in all lower courts and his evidence as provided to this court has been dismissed as "frivolous" as originally ruled upon. "Substantial and Controlling" constitutional authority clearly exists, as well as the damage being done to our ratified Bill of Rights, that certainly needs intervention.

The general test as to whether a right is so included in the due process clause of the Fourteenth Amendment was said to be: "Is it a fundamental principle of liberty and justice which inheres in the very idea of free government and is the unalienable right of a citizen of such a government? If it is, and if it is of a nature that pertains to process of law, this court has declared it to be essential to due process of law." Shortly thereafter, affirming in principle what it had intimated before, this Court laid down the rule which is now the accepted and settled principle, that the due process clause requires that state action, through one agency or another, shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions. These fundamental principles are at the heart of Petitioner's (a living man), common law rights and require the court's intervention.

The rights of the people are not derived from governmental agencies, either

municipal, state or federal, or even from the Constitution. They exist inherently in every man, by endowment of the Creator, and are merely reaffirmed in the Constitution, and restricted only to the extent that they have been voluntarily surrendered by the citizenship to the agencies of government. The people's rights are not derived from the government, but the government's authority comes from the people. The Constitution but states again these rights already existing, and when legislative encroachment by the nation, state, or a political subdivision invade these original and permanent rights, it is the duty of the courts to so declare, and to afford the necessary relief.

Petitioner has been repeatedly denied any relief by the lower courts and this requires the Court's intervention.

Closely akin to a due process guaranty is a state constitutional provision to the effect that absolute and arbitrary power over the lives, liberty, and property of freemen exists nowhere in a republic, not even in the largest majority. It has been said that such a constitutional provision inhibits the legislative power of the state from arbitrarily passing a law taking property away from one person and giving it to another without value received or without any contractual basis. - Illinois C. R. Co. v Commonwealth, 305 Ky 632, 204 SW2d 973, cert den 334 US 843, 92 L Ed 1767, 68 S Ct 1511.

But the framers of our constitution foresaw this a very simple question in the state of things, and provided for it, by declaring the supremacy not only of itself, but of the laws made in pursuance of it. The nullity of any act. 211*211 inconsistent with the constitution, is produced by the declaration, that the constitution is the supreme law. The appropriate application of that part of the clause which confers the same supremacy on laws and treaties, is to such acts of the State Legislatures as do not transcend their powers, but, though enacted in the execution of acknowledged State powers, interfere with, or are contrary to the laws of Congress, made in pursuance of the constitution, or some treaty made under the authority of the United States. In every such case, the act of Congress, or the treaty, is supreme; and the law of the State, though enacted in the exercise of powers not controverted, must yield to it.
Gibbons v. Ogden, 22 US 1 - Supreme Court 1824

Due process of law is the primary and indispensable foundation of individual freedoms; it is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may exercise. The fundamental guaranty of due process is absolute, and not merely relative. It does not have regard merely to enforcement of the law, but searches also the authority for making the law, and it is not merely a political right, but is a legal right assertable in the courts. By reason of this guaranty it has been stated as a general principle that everyone is entitled to the protection of those fundamental principles of liberty and justice which lie at the basis of all our civil and political institutions and have long been recognized under the common-law system, and which are not infrequently designated as "law of the land." The right is of such importance that the people have never delegated to either the state or federal government the power to deprive a person of property except by observing its requirements. A state's obligations under the Fourteenth Amendment are not simply generalized ones; rather, the state owes to each individual that process which, in light of the values of a free society, can be characterized as due and owing.

"Among the historic liberties protected by due process under the United States Constitution is the right to be free from, and to obtain judicial relief for, unjustified intrusions on personal security." Vitek v Jones (1980, US) 63 L Ed 2d 552, 100 S Ct 1254.

The due process clause of the Fourteenth Amendment does not deny a state the power to legislate against what are found to be injurious practices in their internal and business affairs, so long as its laws do not run afoul of some specific federal constitutional prohibition or of some valid federal law. Ferguson v Skrupa, 372 US 726, 10 L Ed 2d 93, 83 S Ct 1028, 95 ALR2d 1347.

A law professor once reportedly asked his graduate students a very simple question: *"WHAT IS LAW?"* One student replied: *"It is a system of rules which a particular country or body recognizes as regulating or controlling the actions of its members."* "WRONG!" the professor screamed! Another student responded: *"Law is a formality recognized as binding or enforced by a controlling authority."* *"WRONG AGAIN!"* the professor yelled! A third student attempted to answer the question: *"Law is the whole body of such customs, practices, or rules which the courts exist to uphold, interpret, and apply."*

The professor shook his head in disgust and tilted his head to the floor...*"Have you learned nothing these past years? Have I wasted my time on a bunch of opportunists and legalists? Do you even know who you are or what you are going to become or the damage you are going to inflict once you are set loose on society? No! No! No! I will not permit it!"*

"IN OUR SYSTEM,* the professor exclaimed, *"LAW IS THAT WHICH PROTECTS THE RIGHTS OF THE INDIVIDUAL FROM THE TYRANNY OF GOVERNMENT! NOTHING MORE! IF IT DOES NOT ACCOMPLISH THAT END, IT IS NOT LAW"

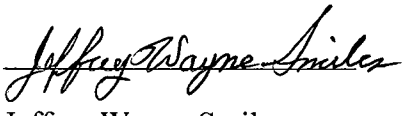
CONCLUSION

For the foregoing reasons, this Court should grant the petition for rehearing, vacate the order dismissing the writ of certiorari, and restore this case to its merits docket.

Respectfully Submitted,

Date: October 30 , 2020

By;



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