

NO.

IN THE  
SUPREME COURT OF THE UNITED STATES

JAMIE SWARTZ and SANDRA SWARTZ

*Petitioners*

*v.*

HEARTLAND EQUINE RESCUE  
RANDY LEE  
JODI LOVEJOY  
JO CLAIRE CORCORAN  
DEBBIE MOORE  
KELLY JO FITHIAN-WICKER  
MARNIE BENNETT  
MEGHAN COMBS

*Respondents*

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

PETITION FOR WRIT OF CERTIORARI

Dale W. Arnett  
Attorney of Record for Petitioners  
IN Attorney No. 13919-68  
Attorney at Law  
102 E. Hospital Drive  
Winchester, IN 47394  
Phone (765) 584-2507  
Fax (765) 584-2068  
Email: larnett1@frontier.com

## QUESTION PRESENTED ON REVIEW

Did the 7<sup>th</sup> Circuit err by finding the *Rooker-Feldman* doctrine applied when the complained of and appealed violation was a seizure of livestock on false and misleading information and the Appellants have had no opportunity for a meaningful pre-seizure or post-seizure hearing?

## **Parties to Proceeding in Court Whose Judgment is sought to be reviewed**

Parties to the Proceeding in the United States 7<sup>th</sup> Circuit Court of Appeals are:

Jamie and Sandra Swartz – Appellants below and Petitioners in this cause.

Heartland Equine Rescue, Jo Claire Corcoran, Debbie Moore, and Kelly Jo Fithian-Wicker. Corcoran, Moore, and Fithian-Wicker are members of Heartland Equine Rescue and this group is collectively referred to as “Heartland Defendants” and are appellees.

Marnie Bennett, Randy Lee, Meghan Combs, and Jodi Lovejoy are defendants/appellees in this cause.

## **Related Proceedings in State and Federal Courts**

**88D01-1406-MC-00038 – State of Indiana v. Jamie and Sandra Swartz** – On June 13<sup>th</sup>, 2014 Animal Control Officer, Randy Lee, of Washington County Indiana filed a probable cause affidavit in Washington County Superior court alleging neglect of a vertebrate animal. That same day, Superior Court Judge Newkirk issued an “Order to Seize” certain livestock belonging to the Swartzes.

**88C01-1406-CM-000326(325) – State of Indiana v. Jamie and Sandra Swartz** – On June 16<sup>th</sup>, 2014 the Washington County Prosecutor filed an affidavit for probable cause and Circuit Court Judge Medlock issued a summons to the Swartzes affirming probable cause and requiring the Swartzes to answer to criminal misdemeanor charges of neglect of a vertebrate animal.

In the criminal case, the Swartzes asked for a “probable cause” hearing pursuant to I.C. 35-46-3-6 which is the statute that authorizes seizure of livestock in Indiana and would have given the Swartzes opportunity for a post-depri-

vation hearing.

The Washington Circuit Court summarily denied the Swartzes' request for a "probable cause": hearing on January 15<sup>th</sup>, 2015.

On April 14<sup>th</sup>, 2015, the Circuit Court, granted authority to find permanent placement for the animals. That was after a pre-trial hearing on April 2<sup>nd</sup> at which the judge informed the parties that he was going to permanently place the animals and Appellants had no opportunity to hear probable cause for removal. In fact, discovery was not complete, and a continuance of the trial date was approved for 60 days. (see transcript of April 2<sup>nd</sup>, 2015 pre-trial).

On October 29<sup>th</sup>, 2015, the Swartzes signed a pre-trial diversion agreement and on March 3<sup>rd</sup>, 2016 the criminal cases against the Swartzes were dismissed.

**Federal Complaint – Cause No. 4:16-cv-00095-TWP-DML (Southern District of Indiana).** Jamie and Sandra Swartz – Plaintiffs v. Heartland Equine Rescue, Uplands Peak Sanctuary, Randy Lee, Jodi Lovejoy, Michelle Pruitt, Jo Claire Corcoran, Debbie Moore, Kelly Jo Fithian-Wicker, Marnie Bennett and Meghan Combs, Defendants.

The initial Federal complaint in this matter was filed in the United States District Court for the Southern District of Indiana on 06/14/2016. (Docket #1) Plaintiffs alleged that their 4<sup>th</sup> and 14<sup>th</sup> Amendment rights were violated pursuant to 42 U.S.C. § 1983. Jurisdiction by the District Court was proper under 28 U.S.C. § 1331. Plaintiffs specifically alleged that the defendants acted in concert to cause their livestock to be seized by Washington County Animal Control Officer, Randy Lee on less than probable cause and to be distributed to Heartland Equine Rescue and Uplands Peak Sanctuary based on false and misleading information and improper diagnostic analysis. Plaintiffs' 2<sup>nd</sup> Amended Complaint (January 9<sup>th</sup>, 2017) was the operative complaint in this case (Docket No. 85-1).

On 09/26/2017, the District Court granted:

1) Motion to Dismiss in favor of Jo Claire Corcoran, Debbie Moore, Kelly Jo Fithian-Wicker and Heartland Equine Rescue (collectively “Heartland Defendants”)

2) Motion to Dismiss in favor of Michelle Pruitt and Uplands Peak Sanctuary (collectively “Uplands Defendants”) and

3) Motion for Judgment on the Pleadings in favor of Marnie Bennett. (Docket No. 160)

On 09/27/2018, the District Court entered Summary Judgment in favor of defendants Randy Lee, Meghan Combs, and Jodi Lovejoy and against Plaintiffs Jamie and Sandra Swartz. (Docket No. 192).

On that same day, the District Court entered final judgment and terminated the action. (Docket No. 193). Since that order was final judgment on all issues, Plaintiffs took an appeal as a matter of right pursuant to 28 U.S.C. § 1291 by filing Notice of Appeal filed on 10/22/2018. (Docket No. 194).

### **7<sup>th</sup> Circuit Appeal – Cause No. 18-3260**

Jamie and Sandra Swartz, Appellants v. Heartland Equine Rescue, Randy Lee, Jodi Lovejoy, Jo Claire Corcoran, Debbie Moore, Kelly Jo Fithian-Wicker, Marnie Bennett, and Meghan Combs, Appellees.

After briefing and oral argument, the 7<sup>th</sup> Circuit issued an opinion on October 11<sup>th</sup>, 2019 which vacated the district court’s rulings and remanded the case for dismissal due to lack of subject matter jurisdiction, stating the “Swartzes” claims are inextricably intertwined with state court judgments, requiring dismissal under the *Rooker-Feldman* doctrine. That court did not address the Swartzes 4<sup>th</sup> and 14<sup>th</sup> Amendment Claims.

## TABLE OF CONTENTS

	<b>Page</b>
Question Presented on Review.....	i
Parties to Prior Proceedings.....	ii
Table of Contents.....	iii
Table of Authorities.....	viii
Citations of Official and Unofficial Reports of Opinions in This Case.....	1
Basis for Jurisdiction	
Constitutional Provisions	
4 <sup>th</sup> Amendment.....	1
14 <sup>th</sup> Amendment.....	1
Statement of the Case.....	2
Argument.....	3
Conclusion.....	7
<b>APPENDIX</b>	
Opinion – 7 <sup>th</sup> Circuit Case No. 18:3260 10/11/2019.....	4
Final Judgment – 7 <sup>th</sup> Circuit Case No. 18:3260 10/11/2019.....	15
Order – S. Dist. Indiana Case No. 4:16-cv-00095-TWP-DML 11/6/2019.....	16
Final Judgment – S. Dist. Indiana Case No. 4:16-cv-00095-TWP-DML 11/6/2019.....	17

## TABLE OF CONTENTS **continued**

Amended Order on Defendants’ Motions to Dismiss Plaintiff’s Second Amended Complaint and Motions for Judgment On the Pleadings – S. Dist. Indiana Case No. 4:16-cv-00095-TWP-DML 9/26/2017.....	18
Entry on Defendants’ Motions for Summary Judgment and Motion to Strike Plaintiffs’ Surreply S. Dist. Indiana Case No. 4:16-cv-00095-TWP-DML 9/27/2018.....	37
Final Judgment – S. Dist. Indiana Case No. 4:16-cv-00095-TWP-DML 9/27/2018.....	56
Federal Constitutional Provisions	
4 <sup>th</sup> Amendment.....	57
14 <sup>th</sup> Amendment.....	57
Federal Statutes	
42 USC §1983.....	57
State Statutes	
Indiana Code 2018 I.C. 35-46-3-6	
Impoundment of animals; probable cause hearings; penalties; custody; bond.....	58
Second Amended Complaint S. Dist. Indiana 01/09/2017.....	60
Probable Cause Affidavit Washington County Indiana Circuit Court 06/13/2014.....	67
Order to Seize Washington County Indiana Circuit Court 06/13/2014.....	67

## TABLE OF CONTENTS **continued**

Order Affirming Probable Cause and Issuance of Summons Washington County Indiana Circuit Court 06/20/2014.....	68
CCS for Cause No. 88C01-1406-CM-000325, <i>State v. Sandra Swartz</i> ; minutes Washington County Indiana Circuit Court 07/24/2014.....	69
Entry on Hearing January 15, 2015 Washington County Indiana Circuit Court 01/30/2015.....	70
Order Granting Authority Washington County Indiana Circuit Court 04/14/2015.....	71
Order on Pretrial Diversion Agreement Washington County Indiana Circuit Court 11/04/2015.....	72
Order Granting Motion to Dismiss (Jamie Swartz) Washington County Indiana Circuit Court 03/21/2016.....	73
Order Granting Motion to Dismiss (Sandra Swartz) Washington County Indiana Circuit Court 03/21/2016.....	74
Transcript in the Washington County Circuit Court Cause No. 88C01-1406-CM-000325 & 88C01-1406-CM-000326 04/02/15.....	75

## TABLE OF AUTHORITIES

	Page
<b>U.S. CONSTITUTION</b>	
4 <sup>th</sup> Amendment.....	iii,iv,1,2,3,4
14 <sup>th</sup> Amendment.....	iii,iv,1,4
<b>FEDERAL CASES</b>	
<b>U.S. SUPREME COURT</b>	
<i>Mathews v. Eldridge</i> – 424 U.S. 319(1976).....	3,4
<i>Patsy v. Board of Regents</i> 457 U.S. 496(1982).....	3,7
<b>FEDERAL APPELLATE COURTS</b>	
<i>Bailey v. Andrews</i> 811 F.2d 366 (7 <sup>th</sup> Cir. 1987).....	6
<i>Coley v. Abell</i> 682 Fed. Appx. 476 (7 <sup>th</sup> Cir. 2017).....	5
<i>Jensen v. Foley</i> 295 F.3d 745 (7 <sup>th</sup> Cir. 2002).....	6
<i>Swartz v. Heartland Equine Rescue</i> , 940 F. 3d 387 (7 <sup>th</sup> Circuit 2019).....	1
<b>FEDERAL DISTRICT COURTS</b>	
<i>Chalmers v. Ballos</i> , 2015 U.S. Dist.	
LEXIS 150438, 2015 WL 6812437.....	6
<b>FEDERAL STATUTES</b>	
28 U.S.C. § 1254.....	1
28 U.S.C. § 1291.....	iv
28 U.S.C. § 1331.....	iii
42 U.S.C. § 1983.....	iii,2,6,7
<b>STATE STATUTES</b>	
I.C. 35-46-3-6.....	ii,4,5

## **Citations of Official and Unofficial Reports of Opinions in This Case:**

### **7<sup>th</sup> Circuit**

*Swartz v. Heartland Equine Rescue*, 940 F. 3d 387 (7<sup>th</sup> Circuit 2019) (2019 U.S. App. Lexis 30494)

#### **Basis for Jurisdiction**

The 7<sup>th</sup> Circuit Court of Appeals issued an Opinion in this case on October 11<sup>th</sup>, 2019.

28 U.S.C. § 1254 allows review by the Supreme Court by Writ of Certiorari upon petition.

### **Constitutional Provisions Involved**

#### **1) 4<sup>th</sup> Amendment**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

#### **2) 14<sup>th</sup> Amendment**

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 or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, with-

out due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...

### **Statutes Involved – Federal – 42 U.S.C. § 1983**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

### **State Statutes - IC 35-46-3-6 Impoundment of animals; probable cause hearing; penalties; custody; bond**

... (b) Any law enforcement officer or any other person having authority to impound animals who has probable cause to believe there has been a violation of this chapter or IC 15-20-1-4 may take custody of the animal involved....

... (d) If the owner requests, the court having jurisdiction of criminal charges filed under this chapter or IC 15-20-1 shall hold a hearing to determine whether probable cause exists to believe that a violation of this chapter or IC 15-20-1 has occurred. If the court determines that probable cause does not exist, the court shall order the animal returned to its owner, and the return of any bond posted by its owner...

### **Statement of the Case**

This case was brought by Plaintiffs, (Appellants) *pro se* as a 42 U.S.C. § 1983 case alleging a violation of their 4<sup>th</sup> Amendment rights to not have their livestock seized without valid probable cause. A § 1983 Conspiracy was also alleged

by the Swartzes. In conjunction with the alleged 4<sup>th</sup> Amendment claims, Plaintiffs contend that they should be allowed to litigate probable cause in the federal courts because the probable cause to seize their livestock was ex-parte and Indiana Law provides specifically that a livestock owner has the right to a probable cause hearing to decide whether or not the probable cause was valid. Plaintiffs contend they were wrongfully denied that statutory mandate by the State Court judge and their livestock was placed with new owners without plaintiffs having the opportunity to litigate probable cause to seize their livestock. Criminal charges were filed against Plaintiffs but were eventually dismissed pursuant to a pre-trial diversion agreement, after the State Court judge had already divested them of their livestock. The Swartzes claim they never had the opportunity for a meaningful post-deprivation hearing.

The Federal District Court failed to address the constitutional claims and instead dismissed all the Swartzes claims either for insufficient pleadings or on summary judgment.

The Swartzes appealed these issues to the 7<sup>th</sup> Circuit, and rather than addressing the issues on their merits, the 7<sup>th</sup> Circuit used the *Rooker-Feldman* Doctrine to clear the case on the docket by stating there was lack of subject matter jurisdiction because the Swartzes claims are inextricably intertwined with the state court judgments.

## Argument

This court should allow a writ of certiorari as the 7<sup>th</sup> Circuit has ruled in a way that conflicts with *stare – decisis* in this court – specifically:

*Mathews v. Eldridge* – 424 U.S. 319(1976) and *Patsy v. Board of Regents* 457 U.S. 496(1982).

*Mathews* requires that when a citizen is deprived of personal property that he must be afforded either a

pre-deprivational hearing or a post-deprivational hearing at a meaningful time in a meaningful manner. *Mathews supra* at 333.

On pages 6, 7, and 8 of the 7<sup>th</sup> Circuit's opinion in this matter, the court infers that the Swartzes were "state court losers" and the injury complained of was caused by the State Court's orders and is thus inextricably intertwined with the State Court's Orders.

The 2<sup>nd</sup> Amended complaint specifically states in pertinent parts:

Plaintiffs herein allege that the defendants and all of them, acted in concert to cause....livestock...to be seized...on less than probable cause...based on false information.... contrary to the 4<sup>th</sup> and 14<sup>th</sup> Amendments....Dr. Lovejoy's report falsely stated the animals were in immediate jeopardy and Randy Lee, Meghan Combs and Heartland confiscated the livestock pursuant to a court order...on a probable cause based on false and misleading information....

The injury alleged was a 4<sup>th</sup> Amendment seizure of property. *Mathews supra* tells us that persons deprived of personal property are entitled to a meaningful pre or post deprivational hearing. Obviously, there was no pre-deprivational hearing.

The Swartzes livestock was seized pursuant to IC 35-46-3-6(b). The post deprivation remedy that is statutorily provided is the mandatory probable cause hearing, if requested, pursuant to I.C. 35-46-3-6(d) which reads as follows in its pertinent parts:

**IC 35-46-3-6 Impoundment of animals; probable cause hearing; penalties; custody; bond**

... (b) Any law enforcement officer or any other person having authority to impound animals

who has probable cause to believe there has been a violation of this chapter or IC 15-20-1-4 may take custody of the animal involved....

... (d) If the owner requests, the court having jurisdiction of criminal charges filed under this chapter or IC 15-20-1 shall hold a hearing to determine whether probable cause exists to believe that a violation of this chapter or IC 15-20-1 has occurred. If the court determines that probable cause does not exist, the court shall order the animal returned to its owner, and the return of any bond posted by its owner...

When the Swartzes asked for that remedy, Judge Medlock denied their request. The issue of probable cause has never been litigated as both prior findings of probable cause were *ex parte*. The initial finding was *ex parte* by the Superior Court, and was the order to seize, which the Swartzes had no opportunity to challenge. The second finding was *ex parte* by the State Circuit Court on criminal charges which are always *ex parte* and do not afford defendants the opportunity to challenge the bringing of charges. You see, the Indiana scheme of confiscation of livestock blurs the civil and criminal distinctions by placing the opportunity for meaningful post-deprivational hearing with the court having jurisdiction over any criminal charges through I.C. 35-46-3-6(d). Obviously, the State Circuit Court judge didn't understand that scheme when he refused the Swartzes their probable cause hearing which would have given them the opportunity for a meaningful post-deprivational hearing.

A recent 7<sup>th</sup> Circuit case sheds light on a “full and fair opportunity to litigate probable cause.” In *Coley v. Abell* 682 Fed. Appx. 476 (7<sup>th</sup> Cir. 2017), Coley was represented by counsel at a hearing where probable cause was found to remove her children after her children had been removed. Even though she was acquitted of criminal charges, the 7<sup>th</sup> Circuit found she had received procedural due process because she had a prompt post removal hearing. *Id.* at 477, 478. That scenario is far different from the present situation

where there were two *ex parte* findings of probable cause and the statutorily provided probable cause hearing was denied.

In *Chalmers v. Ballos*, 2015 U.S. Dist. Lexis 150438, the parents alleged a procedural due process claim in that the defendants misrepresented facts to a state court judge to justify removal of children. The *Chalmers* Court distinguished between substantive and procedural due process claims. There, substantive due process violations were said to be those in which removal was not justified whereas a procedural due process claim is one where the procedural error is the constitutional violation. *Id.* p. 4;5.

The Swartzes alleged in their 2<sup>nd</sup> Amended Complaint that Dr. Lovejoy's report falsely stated the animals were in immediate jeopardy and the livestock was confiscated on a probable cause based on false and misleading information.

Plaintiffs have a due process right to not have facts misrepresented to a State Court. *Id.* at 5,6.

Collateral Estoppel doesn't apply to a § 1983 action challenging the integrity of evidence presented at a probable cause hearing nor is a challenge to the integrity of evidence supporting probable cause precluded by a state court's probable cause determination. *Bailey v. Andrews* 811 F.2d 366,369-70 (7<sup>th</sup> Cir. 1987).

In *Bailey*, the challenged probable cause was an *ex parte* hearing at which Bailey was there, but the arresting officer was not so Bailey had no opportunity to cross examine. How much more egregious is the situation of the Swartzes where they were not present at either probable cause finding thus having no opportunity to challenge?

It is well settled that if no probable cause existed for the seizure then the Swartzes § 1983 claim may succeed (*Jensen v. Foley* 295 F.3d 745,748-49 (7<sup>th</sup> Cir. 2002)) and if they can show falsely represented facts used for the *ex parte* probable cause findings, *res judicata* principles are not ap-

plicable to this case.

On pages 10 and 11 of the Appellate Court's opinion, the 7<sup>th</sup> Circuit maintains the Swartzes had multiple opportunities to litigate whether the animals should have been confiscated. The Court of Appeals simply erred because there is no where in the record that any such opportunity existed. When the State initially moved to place the livestock, Judge Medlock summarily denied that request in the order of January 15<sup>th</sup>, 2015 at the same time he denied the request for a probable cause hearing. No where in the state court record is there any place where there was an opportunity for an adversarial hearing to challenge probable cause to seize.

The 7<sup>th</sup> Circuit on page 11 of its opinion infers that the Swartzes should have exhausted their State remedies through appeal or otherwise. However, any appeal until the final dismissal of charges would have been an interlocutory appeal. Further, exhaustion of State remedies is not a prerequisite to § 1983 action. *Patsy v. Board of Regents* 457 U.S. 496, 500-01 (1982).

### **Conclusion**

This court should grant a Writ of Certiorari and reverse the 7<sup>th</sup> Circuit Court of Appeals and remand for further review on the merits of the § 1983 claims.

Respectfully Submitted,

/s/ Dale Arnett  
Dale W. Arnett #13919-68  
102 E Hospital Drive  
Winchester, IN 47394  
Phone (765) 584-2507  
Fax (765) 584-2068  
Email: larnett1@frontier.net