DOCKET NUMBER: 19-108

ORIGINAL

SUPREME COURT OF THE UNITED STATES
(Term: October 2019-2020)

PAUL M. POUPART

(Petitioner)

versus

(Respondent)

JEFFREY LANDRY, Attorney General of Louisiana; JAMES LEBLANC, Secretary - Louisiana Department of Public Safety & Corrections; JON GEGENHEIMER, Clerk of Court - 24th Judicial District Court; and CORNELIUS REGAN, Judge - 24th Judicial District Court.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT
No. 19-31017

PETITION FOR WRIT OF CERTIORARI

Louisiana Department of Corrections:
Elayn Hunt Correctional Center
Inmate, Mr. Paul M. Poupart, #357073
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(Counsel of Record)

QUESTIONS PRESENTED FOR REVIEW

A. Whether the standards in Heck v. Humphrey, should continue to apply to state convictions which are deemed unconstitutional and whether the invalidation of a state statute gives a state prisoner a civil right to challenge the state punishment imposed from a federal court under the Supremacy Clause of the United States Constitution?

B. Whether the federal statute of Title 42 U.S.C. S. 1983, is constitutional towards state prisoners in a suit challenging the duration of confinement based on the Supremacy Clause and the federal objective to enforce the First Amendment by the Acts of Congress?

C. Whether the decision of Seals v. McBee, 898 F.3d 587 (2018), is applicable to the State of Louisiana incorporating a violation of the First Amendment to the Constitution?

PARTIES TO THE PROCEEDING

The petitioner is Paul M. Poupart, the plaintiff and the plaintiff/appellant in the Courts below. The respondent is Jeffrey Landry, Attorney General of Louisiana; James LeBlanc, Secretary - La. Department of Public Safety & Corrections; Jon A. Gegenheimer, Clerk of Court - 24th Judicial District Court; and Cornelius Regan, 24th Judicial District Court Judge; of whom are the defendant and the defendants/appellees in the Courts below.

United States District Court
Middle District of Louisiana
Case No. 19-cv-328-BAJ-EWD

United States Court of Appeals
Fifth Judicial Circuit
Case No. 19-31017

CORPORATE DISCLOSURE STATEMENT

I, Paul M. Poupart, do not own any parent corporation nor do I own any publicly held corporation or 10% of any stock in these United States of America.

Paul M Poupart

Mr. Paul M. Poupart
(Petitioner)

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BASIS FOR JURISDICTION

The basis for this jurisdiction in this one Supreme Court is found in Title 28 U.S.C. S. 1254(1), which states:

> Cases in the courts of appeal may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

On June 5, 2020, the Clerk of Court - Honorable, Mr. Lyle W. Cayce, for the United States Court of Appeals - Fifth Circuit, issued the mandate of the Honorables, JOLLY, JONES, & SOUTHWICK, denying petitioner's appeal and affirming the decision of the federal district court on October 24, 2019.

Petitioner has not sought any rehearing due to the decision to stand by precedent.

Now comes the petitioner on his application/petition for writ of certiorari to the U.S. Court of Appeals, Fifth Circuit; respectively.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the Constitution states:

'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech...'

The Fourteenth Amendment to the Constitution states:

'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, without due process of law...'

Article III, Section 1, of the Constitution states:

'The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

Article VI, of the Constitution states:

'The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution...'

Title 42 U.S.C. S. 1983, is set forth in the body of this petition.

CONCISE STATEMENT OF THE CASE

The Plaintiff, Mr. Paul Poupart, filed a 1983, civil action against the Attorney General for the State of Louisiana, the Secretary of the Louisiana Department of Public Safety & Corrections, the Clerk of the 24th Judicial District Court - Parish of Jefferson, and the Judge of the 24th Judicial District Court to challenge the duration of his comfinement based on the U.S. Court of Appeals, Fifth Circuit decision in Seals v. McBee, 898 F.3d 587 (2018), declaring the provisioms of Louisiana's criminal statute R.S. 14:122, Public intimidation, as unconstitutional and in violation of the First Amendment to to the Constitution. Plaintiff sought a writ of release in the United States District Court for the Middle District of Louisiana and was denied release based on this Court's precedent of Heck v. Humphrey, 512 U.S. 477 (1994).

Today the Petitioner challenges whether the standards in Heck are appropriate and should continue to apply to state prisoners whose criminal statutes are invalidated by a federal judiciary. Petitioner also seeks to challenge the federal provisions of Title 42 U.S.C. S. 1983, and whether it is unconstitutional as-applied to state prisoners challenging their duration of confinement. Petitioner in his afterthought also seeks to question this Court whether Seals v. McBee, is applicable to the State of Louisiana, and whether it is retroactive to the Petitioner's cause.

The basis for jurisdiction in the Court of first instance is found in Title 28 U.S.C. S. 1331, which states that the district courts are vested with original jurisdiction over all civil actions arising under the Constitution.

For these reasons Petitioner is at this Court's supreme Bench to review and clarify Petitioner's rights to the First Amendment. May these statements be accepted as the statements of this case.

DIRECT ARGUMENTS

Today, Petitioner - Paul M. Poupart, will argue why this Supreme Court should grant certiorari in this case and to consider whether: (1) the federal appellate court properly ruled on the question of federal law; (2) whether the subject-matter of this action is completely comparable to Heck v. Humphrey, 512 U.S. 477 (1994); (3) whether Seals v. McBee, 898 F.3d 587 is applicable to the State of Louisiana; (4) whether the provisions of Title 42 U.S.C. S. 1983, and its judicial history are constitutional as-applied to state prisoners; (5) whether a state prisoner may challenge the duration of his confinement after his conviction becomes final under an unconstitutionally overbroad state statute (R.S. 14:122); and (6) whether the federal appellate court correctly decided an important question of federal law that has not been decided but should be settled by this Supreme Court.

Question #1: Whether the standards in Heck v. Humphrey, should continue to apply to state convictions which are deemed unconstitutional and whether the invalidation of a state statute gives a state prisoner a civil right to challenge the state punishment imposed from a federal court under the Supremacy Clause of the U.S. Constitution?

To begin this argument Petitioner would like to present the provisions of U.S. Constitution, Article III, Section 1, which states:

> 'The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.'

On August 3, 2018, the U.S. Court of Appeals, Fifth Circuit declared that Louisiana's criminal statute of Public intimidation is unconstitutional towards the First Amendment as opposed to 'threats'. Seals v. McBee, 898 F.3d 587 (2018).

On May 23, 2019, the Petitioner herein after referred to as 'Poupart', filed a complaint in the U.S. District Court for the Middle District of Louisiana pursuant to the March 1, 2019, filing of an Application for Post-Conviction Relief, where the state trial court declared LSA-R.S. 14:122, as constitutional.

Today Poupart seeks judicial review in this one Supreme Court to clarify whether Heck v. Humphrey, supra; should continue to apply to state convictions which are deemed unconstitutional by the federal judiciary and whether Poupart had a viable claim protected by the Supremacy Clause of the Constitution. See, ANR Pipeline Co., v. Michigan Public Service Com., 608 F. Supp. 43 (WD Mich 1984).

The U.S. District Court and the U.S. Court of Appeals decided that Heck was a bar to Poupart's 1983 action against the defendants named as parties.

In the appeal brief Poupart presented Supreme Justice Souter's dictum which stated:

> 'A prisoner caught at the intersection of 1983 and the habeas statute can still have his attack on the lawfulness of his conviction or confinement heard in federal court, albeit one sitting as a habeas court; and, depending on the circumstances, he may be able to obtain 1983 damages... Under the Civil Rights Act of 1871, the Federal Government has a right to set aside...action of State authorities that deprives a person of his Fourteenth Amendment rights; and absent such a statutory policy, surely the common law can give us no authority to narrow the broad language of 1983, which speaks to deprivations of 'any' constitutional rights, privileges, or immunities, by 'every' person acting under color of state law, and to which we have given full effect by recognizing that 1983 provides a remedy to be broadly construed, against all forms of official violation of federally protected rights.'
> (See, Heck v. Humphrey, supra.)

If the Federal Government has a right to set aside action of the State authorities, how come the lower federal courts did not recognize that Judge Regan was enforcing a law that is and was a violation of the First Amendment? This abuse of discretion seems to undermine Supreme Justice Souter's dictum in

Heck.

In Wilwording v. Swanson, 404 U.S. 249 (1971), the court treated a habeas corpus petition by a state prisoner challenging the condition of confinement as a claim for relief under 42 U.S.C. 1983, the Civil Rights Act.

As the District Court could have treated Poupart's 1983 action as a habeas corpus request, consistent with Wilwording and Supreme Justice Souter's dictum in Heck, it did not, therefore, causing Poupart's liberty interests in the First Amendment to be denied again.

Poupart is humbly at this Supreme Court's Bench to clarify his constitutional rights to the First Amendment and his constitutional right to have the District Court sit as a habeas court where the grounds raised in the 1983 action were new to the court. This fact undermines the dictum of this Supreme Court in Heck and Poupart believes that Seals should have been applied retroactively to his case by the state trial court judge. The decisions in Kentucky v. Graham, 105 S.Ct. 3099 (1985), conditions that a trial judge's immunity is immaterial -in 1983 actions.

That being the common law of this nation, it is even more established in Rhewark v. Shaw, 628 F.2d 297 (5th Cir. 1980), that a plaintiff can recover 1983 damages against absolute immunity. Seeing this, it is evident that Poupart has been denied the equal protection of the laws; Rouse v. Benson, 193 F.3d 936 (8th Cir, 1999).

The issue before this Supreme Court is whether Heck should apply to Poupart's action. In Obergefell v. Hodges, (2015), (citations omitted), Supreme Court Justice Kennedy stated:

> 'The nature of injustice is that we may not always see it in our own times. The generation that wrote and ratified the Bill of Rights and the 14th Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the rights of 'all' persons to enjoy a liberty as we learn its meaning. When new insight reveals discord between the Constitution's central pro-

tections and a received legal stricture, a claim to liberty must be addressed.'

If Supreme Justice Kennedy declared that a claim to liberty must be addressed, then Poupart's petition to this Court must be addressed; if our Congress does not have the legislative authority to supersede a Supreme Court decision construing the Constitution, how can Poupart's liberty towards the First Amendment be so ignored by the lower federal courts, who construed that LSA-R.S. 14:122, violates the First Amendment?

Poupart does not wish to relitigate his arguments to the federal appellate court but, Heck did not seek any injunctive relief nor did the petitioner in Heck seek release from custody. The upshot of the Heck decision compared to Poupart's is that the petitioner in Heck was not seeking relief from a state statute that had been invalidated by the federal judiciary; causing Poupart's subject-matter in his 1983 action to be comparably opposite to the decision in Heck. (Please review the appellate brief here.)

This fact is before this Court and Poupart requests that this Supreme Court revisit Heck with Supreme Justice Souter's dictum for the Court and see that Poupart's subject-matter is quite different and should be resolved by this Court's Bench today.

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Continuing on, Poupart would like to take a moment and present certain common law decisions that sponsor his standing in this Court. May this Supreme Court follow Poupart's argument with the decisions presented:

In 1824, it was opined that the Supremacy Clause invalidates state laws that interfere with, or are contrary to federal law. See, Gibbons v. Ogdon, 22 U.S. 1, 9 Wheat. 1, 6 LEd 23 (1824). (Poupart's question to this Court is if this Clause invalidates state laws that interefere with federal law, where is the interest in federal laws by state judicial officers who contradict the federal judiciary construction?)

In Ableman v. Booth, it was declared that the state is sovereign within its territorial limits to certain extent, but that sovereignty is limited by the Constitution; at 62 U.S. 506, 21 How. 506, 16 LEd 169 (1859).
(If Louisiana's trial courts sovereignty is limited by the Constitution, should it recognize that its laws were federally construed to violate the Constitution? And its duty is to apply federal ,law on collateral reviews?)

In 1927, This Suprume Court determined that the Federal Constitution and laws enacted under it prevail over laws of a state in Florida v, Mellon, 273 U.S. 12, 47 S.Ct. 265, 71 LEd 511.
(If this decision is law, then how come the state trial court judge chose to enter an order that violates the First Amend- and the Fourteenth Amendment, although these provisions prevail for Poupart on collateral review?)

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The above decisions cause Poupart to question whether the U.S. District Court and the U.S. Court of Appeals properly ruled on the 1983 action and the question of federal law.

In Article VI, of the Constitution it states:

> 'The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution...'

If by oath, the judicial ,officers of the United States are bound to support the Constitution, it is confusingly odd that a U.S. Court of Appeal who invalidated a state statute did not properly construe Poupart's action as a federal constitutional right. If it invalidated the state statute for violation of the First Amendment, then it too, could have sat as

a habeas court under Supreme Justice Souter's dictum in Heck. Because the appellate court chose not to sit as a habeas court the decision to affirm the District Court's ruling undermines the protections under 1983 actions.

:In Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2 LEd2d 80 (1957), it was determined that a dismissal for failure to state a claim cannot be justified if the plaintiff could prove a certain set of facts which would consider that genuine issues are in dispute and these facts could support his claim and entitlehim to relief. The District Court and the Court of Appeals not once allowed Poupart this opportunity to prove without objection that there were some genuine issues of the Constitution in dispute at the state trial court level. In Title 42 U.S.C. S. 1983, it states:

> 'Every person who, under color of any statute, ordinance, regulation, custom, or usuage, 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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable..'

This statute according to Supreme Justice Souter in Heck, speaks to deprivations of 'any' constitutional right by every person acting under color of state law. In the decision by Judge Cornelius Regan, He subjected Poupart to a deprivation of his liberty interests in the First Amendment and this Court recognized that 1983 provides a remedy to be broadly construed.

Was the U.S. District Court and the U.S. Court of Appeals' decision to deny Poupart his First Amendment right broadly construed or erroneously decided to be made comparable to Heck's decree?

Again, in Supreme Justice Souter's dictum, He states that a prisoner can have his attack on the lawfulness of his confinement heard on a 1983 action if, the Court, in its discretion, sits as a habeas court. This was not done.

In Harris v. Nelson, 394 U.S. 286 (1969), this Supreme Court stated:

> 'The habeas corpus jurisdiction and the duty to exercise it being present, the courts may fashion appropriate modes of procedure, by analogy to existing rules or otherwise in conformity with judicial usuage.'

The duties of the U.S. District Court require this, and it is an inescapable obligation of the federal courts to not sit as a habeas court under the All Writs Act, Title 28 U.S.C. S. 1651. In Preiser v. Rodriguez, 411 U.S. 475 (1973), this Court determined :

> 'Habeas corpus rules are applicable to petitions by persons in custody pursuant to a judgment of a state court...'

and,

> '...the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure 'release' from illegal custody.'

Albeit that Heck filed a 1983 complaint seeking monetary damages from a wrongful conviction, Poupart was seeking to secure his release from an unlawful confinement claiming he is in custody in violation of the First Amendment. See, Seals, supra.

The question before this Supreme Court today is whether Heck comparably applies to Poupart's confinement after a federal judicial court declared that LSA-R.S. 14:122, is unconstitutional and violates the First Amendment.

If Supreme Justice Souter opined that the common law can give no authority to narrow the broad language of 1983 actions, then it is imperative that this Court recognize its member's statements and consider the circumstances in Poupart's complaint, the avoidance of abusing the writ of habeas corpus, and the decisions of the lower federal courts to not sit as a habeas court. See, Wilwording, supra.

If this Supreme Court will now see, Sanders v. Bennett, 148 F.2d 19 (DC Cir. 1945), according to the caption of the 1983 action, it could have been treated asa claim for relief under Rule 9(b), of Rules Governing Section 2254 Cases. Notwithstanding other statutes, this petition sought habeas relief, yet this government was reluctant to apply Supreme Justice Souter's dictum and compare Poupart's First Amendment claim to a meritless Heck claim.

In Fisher v. Baker, 203 U.S. 174 (1906), it was settled that habeas corpus proceedings are civil in nature. If this one federal government can treat a habeas petition as a 1983 petition, was it not unfair of the lower federal courts to not treat Poupart's 1983 petition as a 2254 petition? See, Wilwording v. Swanson, supra.

Poupart addresses these issues in the utmost respect for the Constitution, and is aware that he has not obtained any declaratory relief from state or federal courts concerning his liberty interests in the First Amendment. With these decisions and arguments Poupart believes that Heck should not continue to apply to state prisoners whose state punishments were invalidated by the federal judiciary on common law decisions, not of their own making, and encourage this Court to revisit Heck and clarify to the lower courts that Poupart has brought a 'new' constitutional question of federal law to its benches and that this case should be settled by affording Poupart the liberty engrossed in the Fifth Amendment's Due Process Clause.

May this Court see the prejudice that has been afforded Poupart in the proceedings leading to this application and

clarify whether Heck should apply to Poupart's confinement today.

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As stated earlier, Poupart is questioning whether a U.S. Court of Appeals decision to declare a state statute unconstitutional towards the First Amendment (invalidating the punishment for a state statute) gives a state prisoner a civil right to challenge the confinement imposed under the Supremacy Clause of the U.S. Constitution.

In Article III, of the Constitution, it states that judicial power can be vested in inferior courts to this Supreme Court. Congress ordained and established in Title 28 U.S.C. S. 1291, that the U.S. Court of Appeals, Fifth Circuit shall have jurisdiction and judicial power over all appeals from all final decisions of the district courts of the United States. This judicial power of the U.S. Court of Appeals has been recognized as a construction of the Supremacy Clause of the Constitution.

In this establishment, Poupart today, questions whether the U.S. Court of Appeals, Fifth Circuit decision in Seals v. McBee, (2018) - invalidated his punishment for LSA-R.S. 14:122, and whether this invalidation gives him a civil right to challenge his state imposed punishment under a 1983 action, stemming from the Supremacy Clause.

Again, in ANR Pipeline Co., v. Michigan Public Service Com., 608 F.Supp. 43 (WD Mich. 1984), this federal court declared that the Supremacy Clause is not cognizable on 1983 claims, but, those rights are protected under the 1983 action. If, in the present case, the 1983 action preserves rights protected by the Supremacy Clause, was it proper to deny Poupart's allegations that the state court is subjecting him to a violation of a federally protected right by considering that the Seals decision is not binding on state courts although its constitutional doctrine was interpretated by an inferior court to this Supreme

Court.

Poupart is at the intersection in the law that demands a clarification of his federally protected interests because 1983 actions give him a civil right to protection against official violations of federal law. If the U.S. Court of Appeals determined that LSA-R.S. 14:122, is unconstitutional and violates the First Amendment, Poupart presents the case of Mackey v. United States, 91 S.Ct. 1160 (1971), where this Court established that the matters of 'constitutional interpretation' are beyond the powers of the criminal-law making authorities to proscribe. If the state legislature cannot proscribe a constitutional interpretation, then neither can the judicial officer of the state. Poupart seeks to clarify his civil right to redress the subjection of a deprivation of his federal rights by the state court. Also with Mackey, in Griffith v. Kentucky, 107 S.Ct. 708 (1987), this Court held that a 'new' constitutional rule must be applied retroactively to all cases, whether state or federal.

In the state court's decision to uphold the constitutionality of its criminal statute it subjected Poupart to a violation of his First Amendment rights as this Court would see in Seals; and therefore, created a civil right under 1983 actions, to challenge the official violation of federally protected rights, as with Supreme Justice Souter's dictum in Heck.

Poupart's question to this Court is not one of ignorance of the law but, of constitutional doctrine, and the requirement enforced on this government's judicial powers. (See, U.S. Const., Article I, Section 8.)

May this Court see this prejudice and clarify Poupart's position today consistent with the 1983 protections

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Question #2: Whether the federal statute of Title 42 U.S.C. S. 1983, is constitutional towards state prisoners in a suit challenging the duration of confinement based on the Supremacy Clause and the federal objective to enforcethe First Amendment by the Acts of Congress?

To begin this argument and contention Poupart would like to present the case of United States v. Supreme Court of NW, 824 F.3d 1263 (2016), where it was determined that an appellant may challenge the constitutionality of a statute by asserting a facial challenge, an as-applied challenge, or both.

Today Poupart presents an as-applied challenge to the federal statute of Title 42 U.S.C. S. 1983; this challenge will conceed that it may be constitutional in many of its applications, but that it is not constitutional under the particular circumstances of this case. Poupart acknowledges that this statute may have some permissable applications, but will argue that its provisions are unconstitutional as it is applied to state prisoners.

Title 42 U.S.C. S. 1983, provides:

> '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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.'

Your Honor(s), it is not Poupart's intent to sew discord among the Justices of this Court or to petition for something that is not directly allowable to him by rule. See, FRAP, Rule 44(a).

The 1983 statute, as-applied to state-prisoners seems unconstitutional towards Poupart's First Amendment right to petition the government for a redress of his grievance against the Attorney General of Louisiana and the State trial court.

The judicial histories of this nation's precedents and policies are too vast for Poupart to express to this Court today. Poupart does however contend that the decision to bar a state-prisoner from the 1983 action, whose action is civil as is a 2254 action (See, Fisher v. Baker, supra.), is unconstitutional as-applied to state-prisoners.

In the First Amendment, Congress is prohibited from abridging the freedom to petition the government for a redress of grievances. In the 1983 provision, Congress excepted petitions by stating:

'...or other proper proceeding for redress...'

This provision bars a state-prisoner from petitioning the federal government for a redress of federally protected rights. The most common, common law decision that supports this provision is Heck v. Humphrey, 512 U.S. 477 (1994); barring state-prisoners from seeking a redress under the 1983 protections.

This Court has given the decision that state-prisoners are barred from seeking 1983 relief if that state-prisoner cannot show that his conviction or sentence has been reversed or invalidated by a state or federal court; thus, interpreting 1983, as-applied to Poupart's case, to be in violation of the First Amendment.

The First Amendment does not include a provision that excludes state-prisoners from seeking relief, however, the 1983 interpretation excludes state-prisoners from petitioning the

Government.

In the Fifth Amendment, it states that no person shall be deprived of liberty without the due process of law. If this is supreme law, 1983 and its interpretations has deprived Poupart of his liberty to challenge his confinements, outside the dictum of Supreme Justice Souter's statements in Heck,

> 'A prisoner caught at the intersection of 1983 and the habeas statute can still have his attack on the lawfulness of his conviction or (confinement) heard in federal court, albeit one sitting as a habeas court...'

If a state-prisoner is barred from seeking a 1983 action action because he cannot show that his sentence has been reversed, but can show that the federal judiciary invalidated his sentence by declaring in another case that LSA-R.S. 14:122, violates the First Amendment, must Poupart abuse the great writ of habeas corpus to petition the government; according to Heck?

Section 1983 was coded by Congress to enforce the law against those who subject persons to the deprivations of any federal rights and to provide a liability for these actions, even official violations of protected rights; yet, 1983 has been construed to bar state-prisoners from petitioning the government if they cannot show their conviction was reversed. Where is the right to petition? This act seems to wholly violate the due process clause of the Fifth Amendment.

In Zivotofsky v. Clinton, 132 S.Ct. 1421 (2012), this Court declared that:

> 'When an Act of Congress is alleged to conflict with the Constitution, it is emphatically the province and duty of the judicial department to say what the law is.'

Seeing this, Congress never required the government to entertain a state-prisoner's suit when his sentence was invalidated by the federal judiciary, nor did Congress restrict a suit at law if this sentence was obtained in violation of the Constitution. But, Congress is prohibited from abridging the freedom to petition the government, therefore, giving the pro-

vision of: 'or other proper proceeding for redress'; to be unconstitutional as-applied to state-prisoners.

Bearing this logic and violation of the Fifth Amendment, is 1983 unconstitutional as-applied in this case?

Although federal res judicata rules govern most applications to this Supreme Court, Poupart presents a 'new' constitutional question of federal law that Heck does not proscribe; whether 1983 is being constitutionally proscribed by the lower courts upon a subject-matter that is protected in 1983 actions. See, ANR Pipeline Co., supra.

In Linkletter v. Walker, 85 S.Ct. 1731 (1965), this very Court declared that:

> 'Insofar as the general principles of retroactive and prospective applications of an overruling decision are concerned - no distinction is to be drawn between civil and criminal litigation.'

This decision by this Court undermines the subject-matter of Poupart's 1983 claim and has caused Poupart to be subjected not once but twice to a violation of his federally protected rights.

Does this Court not see the lower rulings as a double-standard to deny a 1983 action and require a state-prisoner to seek a 2254 action, after he has exhausted his first application, when habeas proceedings are wholly prospective and should be deemed incapable of involving any issues of retroactive operation of an overruling decision? See, Meador, "Habeas Corpus and the Retroactivity Illusion", 50 Va.L.Rev. 1115 (1964).

Although Petitioner is seeking a writ of certiorari on his own as a citizen of the United States, he humbly presents the fact that 1983 is unconstitutional as-applied to his case and this 'new' question of federal law demands that this Court clarify, amend, or modify the decision in Heck, to bring 1983 back into constitutional adherence for state-prisoners whose

sentence was prohibited by a federal appellate court. Seals; supra.

In Seals, the U.S. Court of Appeals prohibited the State of Louisiana from enforcing the punishments for LSA-R.S. 14:122, and this fact is wholly operative to the state trial court judge and the Attorney General of Louisiana, today.

May this Supreme Court revisit Heck and apply Poupart's subject-matter in his 1983 complaint and find that 1983 is unconstitutional to state-prisoners. See, Appellate Brief, Case No. 19-31017, U.S. Court of Appeals, Fifth Circuit.

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Question #3: Whether the decision in Seals v. McBee, 898 F.3d is applicable to the State of Louisiana incorporating a violation of the First Amendment to the Constitution?

To begin this final argument, Poupart would like to present the question of whether Seals v. McBee, is applicable to the State of Louisiana on 1983 complaints.

Poupart presents this action to this Court to clarify where Seals would be applicable to state-prisoners. In the Seals decision, the U.S. Court of Appeals for the Fifth Circuit, under Title 28 U.S.C. 1291, has jurisdiction over all appeals from federaldistrict courts. Congress has established this supremacy and their rulings are recognized throughout history. (See, Article III, S.1 - U.S. Constitution.)

After filing a PCR application in the state district court under La.C.Cr.P., Article 930.8(A)(2), establishing that Seals should be retroactive in his particular situation, the state district court denied relief and the Attorney General's Office gave the opinion that all applications are untimely filed. In Article 930.8(A)(2), it states that there is an exception to the PCR time-bar; Section (A)(2) states:

'The claim asserted in the petition is based upon a final ruling of an appellate court establishing a theretofore unknown interpretation of constitutional law and petitioner establishes that this interpretation is retroactively applicable to his case, and the petition is filed within one year of the finality of such ruling.'

If by provisional authority Poupart makes a claim that a court of appeal has given a new constitutional doctrine unknown to the State, the petition is excepted on time limitations. (The Louisiana Supreme Court has decided that Poupart has filed his last untimely application for PCR. This fact is not in direct question, but argued subjectively.)

Poupart's PCR judicial officer in the state district court denied an evidentiary hearing and a counseled and pro se brief in support of PCR. Poupart initiated a 1983 action against the Attorney General's Office and the state district court for subjecting him to a violation of his federally protected rights. The lower federal courts denied all Poupart's grievances as batred under Heck v. Humphrey, (1994).

Today, Poupart questions whether the Seals decision is applicable to state-prisoners whose convictions and punishments were indirectly affected.

The first case at law Poupart intends to argue is the decision of Penry v. Lynaugh, (1989), where this Court held that State courts must give retroactive effect to a new substantive rule of constitutional law. Since the state court did not give Seals a retroactive effect on Poupart's PCR application, the state court subjected Poupart to a violation of his rights enshrined in the Constitution; First Amendment.

Before Penry was decided, the state appellate court in Barron v. La. Dept. of Public Safety, (La. App. 2 Cir 1981), decided that procedural and interpretative laws apply both prospectively and retroactively unless they violate vested rights or obligations of contracts. The state court viewed the criminal

statute of LSA-R.S. 14:122, as constitutional after a federal judiciary declared that it violates the First Amendment. With Penry and Barron, in Mackey v. United States, (1971), this Court declared that the matters of constitutional interpretation are beyond the powers of the criminal-law making authority to proscribe. If, it is a state court's duty to determine what the legislature creates as law and those powers are restricted on constitutional interpretations then, the state court subjected Poupart to a violation of a federal right that the state court could not proscribe after Seals was issued.

It is clear in Yates v. Aiken, (1988), that if a state collateral proceeding is open to a claim controlled by federal law, the state court has a duty to grant the relief that federal law requires; and the state court has the inherent authority to consider Seals retroactive on state collateral review. Danforth v. Minnesota, (2008).

The strictness of duty is a tort and cognizable on 1983 actions, yet, the prisoner is at this Court's Bench today seeking a review of Seals and whether its standards should have been applied by the state district court in the first instance.

Earlier Poupart cited Griffith v. Kentucky, (1987), and exclaimed that a 'new' constitutional rule must be applied retroactive to all cases, state or federal. In the particular case today Poupart is at the intersection of the abuse of the writ of habeas corpus and the subjection of a federally protected right by a state district court whose punishments were prohibited by a federal judiciary. If the Acts of Congress in Title 28 U.S.C., 1291, gives the U.S. Court of Appeals Circuit this jurisdiction then, the state district court not only caused a violation of federal law, but chose not to adher to imperative precedents set by this Court (recognizing an action under the 1983 protections) in Penry, Yates, Danforth, & Griffith.

Again, Article VI of the Constitution states that all state judicial officers are bound by oath to support the Constitution; this article requires these officials to act in their official

capacities as does the 1983 provision. The argument to this Court is did the state district court refuse to give retroactive effect to a new constitutional rule outside the precedents of this Court and is that new constitutional rule inescapably retroactive on state collateral review? Yates.

The Fourteenth Amendment states that no State can deprive a person within its jurisdiction the equal protections of the law. How is it that two federal courts are answering a grievance with a double-standard and also not allowing Poupart the equal protections of the Seals decision?

The Seals decision was created on a 1983 action against state officials, and yet these prisoners are roaming free in society while Poupart is at the crossroads of abusing a writ application and petitioning for a redress of his grievances. The subject-matter in Poupart's complaint involved a new question of federal law that Heck did not proscribe directly. The lower federal courts have not settled its issue and this fact somewhat demands that this Supreme Court grant 'certiorari' and determine the questions presented to it today.

Although Poupart is unaware of the final decision of this Court, he cannot seem to overcome the PCR denial by the La. Supreme Court declaring an untimely PCR application although filed under Article 930.8(A)(2), and the fact that the state district court chose to disregard a constitutional interpretation by a federal judiciary. The plaintiff in Seals did not petition to this Court to affirm the 2018, interpretation of LSA-R.S. 14:122, neither did the Attorney General's Office petition this Court to reverse that decision. Seeing that, the supremacy of the inferior court in Title 28 U.S.C., 1291, is exacted and the state district court negligently subjected Poupart to a violation of his federally protected interests in the First Amendment.

These facts are evident that Seals should apply to state collateral reviews because Poupart's PCR was controlled by

federal law, and the state district court ignored what federal law requires. The state court does not have inherent authority to proscribe what the U.S. Constitution interprets over the federal judiciary and that fact leaves Poupart imprisoned and punished for a statute that, by definition and words of this Court, is unlawful.

May this Court review the Seals decision today in light of the failing parties to seek this Court's discretionary review and rule in favor for the Plaintiff/Petitioner today upon a granting of certiorari with a writ of false judgment, a writ of release, and staying the federal mandate, respectively. All done cognizable with ANR Pipeline Co., (1984), and the First Amendment of the Constitution.

May it so be by the Supreme Minds of these Lands.

CONCLUSION W/ RELIEF SOUGHT

WHEREFORE, Petitioner, Paul Poupart, now concludes this application for writ of certiorari and submits these new contentions according to the First Amendment of the U.S. Constitution and Article 1, Sec. 7, of the La. Constitution, giving him a dignified right to write his xsentiments on this subject-matter. May all equitable relief be afforded him this day. Thank You.

Respectively Filed:

Paul M Poupart

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