

No. 20-1115

In The

Supreme Court of the United States

Christopher R Granton

Petitioner

Washington State Lottery Commission

Respondent

On Petition For Writ Of Certiorari To The United
States Court Of Appeals For The Ninth Circuit

Honorable Judges Murguia, Owens, and
Bennett presided.

PETITION FOR WRIT OF CERTIORARI

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ORIGINAL

QUESTIONS FOR REVIEW

I understand that the Supreme Court only takes the most important cases, but the process seems unequal, as mostly only politically motivated cases, or those entrenched in the media get priority. It would be nice if there was a Supreme Court for average citizens with really important cases, as the current process makes the average citizen seem invisible, or too small to recognize.

The first time I filed a petition in this court, the court conferenced, but did not grant the petition. This time should be different for a couple of important reasons. The first is a solution. The last time this court conferenced on my case, I had no solution for the obstruction of justice that the States 11th Amendment immunity creates against my fair property rights claim. I have provided the framework for that solution in this petition. The second reason is that there has finally been a similar circumstance to mine. The last time this action was brought before this court there had not been a case like it. Florida's lottery recently had a winner whose ticket was lost in the mail. As with my case, Florida Lottery's initial response was no ticket no prize, but they changed their mind as there was no fault on the part of the winner for the lost ticket. The director was on record saying they would bend the rules for her. My case is similar, as I was playing by the rules, and the Washington State Lottery was at fault. Please realize that picking the winning numbers is special.

1. Did the U.S. Court of Appeals for the Ninth Circuit err when it did not recognize that my case has federal subject matter jurisdiction, Standing, and is based on a federal cause of action?

2. Did the Ninth Circuit err when they did not waive Washington State's eleventh Amendment immunity, citing that my case seeks damages when it does not?

3. Did the ninth circuit err when they deemed my case frivolous, due to Washington State's 11th Amendment immunity, when my case does not seek damages, and when there are many serious issues surrounding my case?

4. Did the District Court err when they dismissed my case citing that I did not bring any new information to support my case to the court.

5. Was the Washington State Court of Appeals decision erroneous because; the court did not account for fair play, or that mutual assent had formed a contractual relationship before the violation of the rules/terms on the Lottery's part?

6. Did the Washington State Court of Appeals err by misrepresenting facts and showing bias for the Lottery, when ruling in a case that involves summary judgement, where all reasonable facts and inferences were supposed to be held in a light most favorable to the non-moving party?

7. Should the 11th amendment include a provision to protect fair property rights from State Court judicial bias, and to preserve the protections afforded within the Fifth and Fourteenth Amendments that garner to the inalienable rights of life, liberty, property, and Due process?

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ABBREVIATIONS

TDM- Ticket Distribution Machine

WSLC- Washington State Lottery Commission

AR- Agency Record

OAH- Office of Administrative Hearings

BP- Brief of Petitioner Washington State

Court of Appeals

CP- Court Papers

App.- Appendix

Dkt- Docket

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 judgement below.

OPINIONS BELOW

The order denying Petition for Re hearing En Banc of the
United States Court of Appeals for the Ninth Circuit at
Appendix A-1 to the petition and is unpublished.

The order of the United States District Court for Western
Washington at Tacoma appears at Appendix B-1 to the
petition and is unpublished.

The order denying Petition for Re Hearing En Banc of the
United States Court of Appeals for the Ninth Circuit at
Appendix C-1 to the petition and is unpublished.

The Memorandum of the United States Court of Appeals for
the Ninth Circuit appears at Appendix C- 2 to the petition
and is unpublished.

The order of the United States District Court for Western
Washington at Tacoma appears at Appendix D-1 to the
petition and is unpublished.

The order denying plaintiff's application to proceed in
forma pauperis and dismissing case of the District Court
appears at Appendix D-2 to the petition and is unpublished.

The Order of the Washington State Supreme Court appears
at Appendix E-1 to the petition and is unpublished.

The opinion of the Washington State Court of Appeals appears at Appendix F-1 to the petition and is reported at *Granton v. Washington State Lottery Commission* 143 Wn. App. 225, 177 P.3d 745 rev. denied, 164 Wn.2d 1018 (2008)

The Order of the State of Washington Thurston County Superior Court appears at Appendix G-1 to the petition and is unpublished.

The Initial Order from the Office of Administrative Hearings appears at Appendix H-1 to the petition.

JURISDICTION

The date on which the United States Court of Appeals decided my case was March 16, 2017. A timely petition for rehearing was denied by the United States Court of Appeals on November 30, 2017, and a copy of that order denying rehearing appears at Appendix A-1. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1). 28 U.S.C. § 2403(a) may apply.

CONSTITUTIONAL AND STATUTORY PROVISIONS

WAC 315-30-020(4) Ticket Distribution Machine (TDM). The computer hardware through which an on-line retailer enters the combination selected by the player and by which on-line tickets are generated and claims are validated.

WAC 315-32-020(2) Method of play for on-line games; the player will use play slips to make number selections. The

TDM will read the play slip(s) and issue ticket(s) with corresponding numbers.

WAC 315-30-040(2) The director shall announce for each on-line game, the time for the end of sales prior to the drawings. TDMs will not process orders for on-line tickets after the time established by the director.¹

WAC 315-38-050(3) Under no circumstances will a claim be paid for either the jackpot prize or the second prize without an official Mega Millions ticket matching all gameplay, serial number, and other validation data residing in the selling party Lottery on-line gaming system computer, and such ticket shall be the only valid proof of the wager placed and the only valid receipt for claiming a prize.

WAC 315-06-070 The purchaser of a lottery ticket agrees to comply with the rules promulgated by the Washington State Lottery.

WAC 315-12-110 states: Denial of Request. Each denial of a request for public record shall be accompanied by a written statement to the requestor clearly specifying the reasons for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld. Such a statement shall be sufficiently clear and complete to permit the director or his or her designee to review the denial in accordance with WAC 315-12-120.

RCW 42.56.550 Requires an agency to show cause as to why it refused a public disclosure request.

RCW 42.56.520 Agencies must respond promptly to request for public records. Within five days of receiving a request,

¹ The time established for the Mega Millions game is 7:45 pm to 8:01 pm when a new game begins.

the agency must respond by either (1) providing the record, (2) acknowledging that the agency received the request and provide an estimate of the time it will require to respond to the request, or (3) deny the public record request.

The Eleventh Amendment to the United States Constitution provides “ The judicial power of the States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.”

The Fourteenth Amendment to the United States Constitution provides, in part: No State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person the equal protection of the laws.

The Fourteenth Amendment Privileges and Immunities Clause offers “No State shall enforce any law which shall abridge the privileges and immunities of citizens of the United States.”

Article 1 section 9 Cause 3 of The United States Constitution: “No bill of attainder or ex post facto law shall be passed.”

Article 1 Section 10 Cause 1 of The United States Constitution provides in relevant part: No State shall enter into any law impairing the obligation of contracts.

The Freedom of Information Act, 5 U.S.C. § 552 in relevant part requires an agency to provide public records upon request.

U.S. Code § 701 -706 in relevant parts would allow for review, reversal and complete relief of the agency’s disallowance decision.

STATEMENT OF CASE

This section will detail the circumstances related to the questions for review. I will start off with establishing the contractual nature of the action being brought forth, and a brief history of the interaction with the agency and the court of first instance to give the court some background. I would ask that the court reference (17-1321) for additional information as this is the second time this action is being brought before this court. I'm trying to be as original as possible by not repeating everything.

On April 8, 2005, @ 6:50pm I Christopher was playing the Mega Millions Game, I was paying by the rules, I had filling out the play slip correctly. I had handed my completed play slip with my money for the ticket to the cashier. The cashier took them, and inserted the play slip into the TDM.² Instead of printing a ticket as required in the rules,³ the TDM performed a early break for the Drawing or "Drawbreak" the entire message on the screen read "Drawbreak" "Wager refused by central" this is a proprietary message so only someone who this happened to would know it exists. An early Drawbreak is a violation of the rules as there is a rule regarding a specific time that this function to occur, as this function refuses wager during the time for the end of sales prior to the drawing.⁴ When this function happened early it wrongly refused my wager.

² WAC- 315-30-020(4) Ticket Distribution Machine (TDM). The computer hardware through which an online retailer enters the combination selected the player and by which online tickets are generated and claims are validated.

³ WAC- 315-32-020(2) Method of play for on-line games; the player will use play slips to make number selections. The TDM will read play slip(s) and issue ticket(s) with corresponding numbers.

⁴ WAC- 315-30-040(2) The Director shall announce for each online game, the time for the end of sales prior to the drawings. TDMs will not process orders for on-line tickets

The Lottery is contractual by nature, it is designed to induce many contracts. Some games like the Mega Millions, and Lotto have different methods of play. This allows the player a choice between selecting their own numbers, or having the Ticket Distribution Machine (TDM) select the numbers randomly. There are two methods of play for the Mega Millions game, and acceptance or mutual assent of the contract is different for each.

Mutual assent of a contract happens with offer and acceptance. The offer is easy to see with the method of play that I was using. It is the method of play which allows a player to select their own numbers. A play slip is used for this method. A play slip for the Mega Millions game has some rules or terms on it, and is used expressly for contracting. A play slip is an offer or act of the Lottery's offering, operating to create in the acceptor a power, and having so operated it is exhausted; thereafter the voluntary act of the acceptor alone will operate to create the new relations called a contract. An offer is an act on the part of a person whereby he gives the other the legal power of creating a contract. Acceptance is the exercise of the power conferred by the one offering, by performance of some other act or acts. Both offer and acceptance must be acts expressing assent. When I completed and handed my play slip and money to the cashier, she inserted my completed play slip into the TDM. When this happened I was exercising the operative power conferred on me by the Washington State Lottery Commission (WSLC) to a binding contract, This is so because it is the acceptor's performance obligation action to commence the contract, thereby becoming actively engaged in the terms of the contract, The very next step in the contract required the lottery to print a ticket with number selections corresponding to those I

after the time established by the Director.

selected on my play slip. I had gotten to that point when a violation of the rules on the part of the Lottery, caused me not to have a ticket to provide for validation.

The acceptance part for the second method of play where the player lets the TDM pick the numbers randomly happens with an exchange of money for that quick pick ticket. Because there are no rules, performance obligations, or play slips associated with this method of play it is completely different.

After mutual assent had been established any other actions dealing with that contract including any breach of the rules or terms of the contract, are in contract and are so enforceable. This is the performance part, or final step of the contract process. This is where the parties perform their mutual obligations under the agreement. Few terms are necessary for an enforceable contract. Terms must merely provide a basis for determining the existence of a breach, and for giving an appropriate remedy. The purchaser of a lottery ticket (not game specific, all ticket games) agrees to comply with the rules promulgated by the Washington state lottery commission under WAC 315-06-070,⁵ thus the rules are included terms of the contract.

Instead of printing a ticket as required under WAC 315-32-020(2), the TDM performed an early Draw Break at 6:50pm. Because there is a rule regarding the specific time of 7:45pm for this action to occur according to WAC 315-30-040(2), and because this action refuses wagers, when it happened early it caused a breach of contract. "When an act complained of is a breach of specific terms of the contract, without any reference to the legal duties imposed by law

⁵ WAC- 315-06-070 The purchaser of a lottery ticket agrees To comply with the rules promulgated by the Washington State Lottery.

upon the relationship created thereby, the action is in contract..."⁶. The violation caused a breach of specific terms of the contract after mutual assent had formed a contractual relationship, therefore, therefore the Lottery is responsible for the violation, the breach and its contractual obligations.

At the time I was walking and taking the bus because my driver's license was suspended. I had given myself enough time to get to the store and back, get changed then go to work. The store was 1.1 miles from my home, and work was 1.9 miles from my home. When I got home I was going to ask my sister's boyfriend to give me a ride to work, but he was gone. I got ready for work and hurried there I clocked in at 7:54 pm. for my shift that started at 8pm. (AR 24-27) There was nowhere along the way that I could have played those numbers again.

After an incomplete investigation done by the WSLC, (AR 54, 189) the matter was set to be heard by the Office of Administrative Hearings (OAH). Both the case report and supplemental case report for the investigation are inconsistent with the facts. (AR 31,181-185) After speaking to investigator Jennifer McDaniels, I asked to speak with the Director. On May 18th 2005. I spoke with Deputy Director Julie Martin. I had explained exactly what had happened, and that I had picked the winning numbers. On May 27th 2005 I spoke with Ms. Martin again, where she explained that the early draw break was more than likely caused by an internal time clock error due to daylight savings time. I asked her to investigate that possibility further, and to look for my transaction to show I had picked the numbers. I never heard from her again, instead I

⁶ *Compton v. Evans*, 200 Wash 125, 132, 93 P.2d 341 (1939) (quoting *McClure v. Johnson*, 50 Ariz. 76, 69 P. 2d 573 587 (1937).

received a letter from the Lottery saying that they were discontinuing the investigation,

I appealed my case to the Office of Administrative Hearings. Initially Administrative Judge Jane Habegger was to hear the case, but there was a judge change, and Administrative Judge Robert Kraybill took over. Judge Kraybill showed bias for the lottery in several ways. He did not require the Lottery to honor my notarized Request for Public Record as required in the Freedom of Information Act. I received the request forms from the lottery on Sept. 22, 2005. I completed them had it signed by a notary public and mailed it out the same day. (AR 178-181) I was never even given reason why the request could not be honored⁷. Judge Kraybill did not order a Subpoena Duces Tecum for information from the lottery's vendor that was relevant to my case as he said he would. Judge Kaybill said I would have to fill out the forms and he would order the subpoena. I filled out the forms (AR 148, 152, 153) but he never ordered the subpoena. Judge krabill did not recognize fair play or mutual assent of the contract. Instead of ruling in fairness, Judge Kraybill granted the lottery summary judgment on the grounds that there is a regulation with the effect of law WAC 315-38-050(3) that says without presenting a ticket, I cannot claim my prize. I believe Judge Kraybill showed bias because he allowed the law to be used unfairly. The law itself resembles an Ex Post Facto law as it retroactively changes the legal consequences of the action. Instead of the Lottery being held accountable for the violation, and contract rules, the law retroactively punishes me for a violation created by the lottery. The drafters of the Constitution firmly believed that the power to create ex

⁷ By not doing so put the Lottery in violation of standards set in WAC 315-12-110, RCW 42.56.550, RCW 42.56.550, and The Freedom of Information Act.

post facto laws was one of the hallmarks of tyranny, because they place the citizens at the mercy of the government. The framers put an ex post facto bar into the constitution in two places, it prohibits federal and state legislators from passing retroactively applicable legislation.⁸ Due Process is founded on fairness, in fairness I cannot be expected to provide a ticket to the lottery that was wrongly refused to me, solely as a result of a violation of the rules on the lottery's part. In fairness the lottery should have been held accountable for the violation, and my play should have been honored because I was playing by the rules and had given consideration for the contract before the violation. There were genuine issues of material fact, and the lottery was not entitled to summary judgement.⁹

The remainder of this section references my return to the federal courts, and will detail my questions for review.

After submitting a Petition for Writ of Certiorari to this Court April 23rd 2018, the Court conferenced about my case. No details of the conference were given, so I don't know why the court decided not to hear my case. After conferencing this court denied my petition .

⁸ See *U.S. Const. Art. I § 9 Cl. 3* (No bill of attainder or ex post facto law shall be passed.); *U.S. Const. Art. 1 § 10 cl.1*(No state shall pass any bill of attainder, ex post facto law, or law impairing contracts.)

⁹ *Key Tronic Corporation v Aetna* 124 Wn.2d 618, 881 p.2d (1994) "Summary Judgement is only appropriate if reasonable minds..." *Delisle v FMC Corp.*, 57Wn App 79, 84, 786 p.2d 839 (1990) "The petitioners burden in responding to a summary judgement motion is to create an issue of fact, not carry the burden of persuasion." *Celotex v Cattret* 477 U.S. 317, 323 (1986) "An issue is genuine when it effects the outcome of the case."

Still wanting justice I tried the Court of Federal Claims, though the judge there seemed to want to help, it was the wrong court to pursue justice. From there I felt reinvigorated and went through all the decisions made against my case. When I got to the District Court's decision, I realized that the District Court had dismissed my case without prejudice. Seeing it as a second chance, I set out to address all of that court's original concerns.

Upon my return to the District Court I was better prepared, but still seriously disadvantaged. I would have to say that my biggest disadvantage was in the area of Jurisdiction, specifically an unfair State 11th Amendment immunity, which was modified in 1890 in a way that the founders would not have wanted and would not recognize as American by the standards they set for the country. I will go into further detail about that later in the petition. The only jurisdiction I knew for sure that I had was Federal question jurisdiction U.S.C. § 1331 because the Lottery violated Article 1 Section 10 Cause 1. For a violation of the Contract Clause.

I wasn't exactly sure about having jurisdiction under 5 U.S.C. § 701- 706 for review and reversal of the agency's decision. There were so many similarities in *Bowen v. Massachusetts*, and *Dept. of income and maintenance v. Heckler* that showed what I was seeking was specific relief of a monetary award, and not damages. I understand that 5 U.S.C. is for the APA's use for federal agencies, but it is not without Merit. The case of *Clark v. Library of Congress* shows that § 702's waiver of sovereign immunity is not restricted to suits under the APA, and it effects a general waiver of the governments sovereign immunity no matter what the cause of action. It was held that even though the Library of Congress was not a Federal agency, for the purpose of suit under the APA, the APA nevertheless

waived the Library of Congress's sovereign immunity, thereby subjecting it to suit based on alleged violation of the 1st Amendment.

I also believed that the District Court had Diversity jurisdiction. I know that this was a bit of a stretch, but it also was not without merit. I explained that normally an action concerning the Washington State Lottery Commission would not warrant Diversity Jurisdiction, except that the Mega Millions game is a multi-state game operated by a consortium of 12 states. These 12 states as a whole, sets and enforces the rules of operation for the Mega millions game. The qualifications for Diversity Jurisdiction are that the dollar amount exceeds \$75,000 and where the parties are diverse in citizenship or state of incorporation, which generally indicates that they differ in state or nationality. Because I am claiming entitlement to a specific monetary award with a value of \$102,000,000 and because I do not have residency in 11 of the 12 consortium states I believed that Diversity Jurisdiction could apply.

The issues covered by my District Court complaint included: honest contracting, fair play, federal question jurisdiction and state court judicial bias. Also I have consistently appealed that my claim is for the April 8, 2005 Mega millions jackpot prize, and that my plight has been the reversal of the decision to deny my claim, and not damages as there is a distinct difference.

In the area of fair play and honest contracting, I explained to the court that because I was actively playing by the rules, and that because the rules of the game are the terms of the contract, mutual assent had occurred prior to the violation by the lottery. I explained to the District Court that the Washington State Attorney General's office representing the Washington State Lottery Commission,

filed for summary judgement using a law that gives the lottery an unfair immunity from circumstance. I explained how the law is unfair and unconstitutional as applied in several ways. The law or regulation WAC 315-38-050(3) requires me to provide a ticket in order to receive my prize. It offers an under no circumstances provision within it, that creates an unfair immunity from circumstance even when the lottery is in violation, and any fair property right of the person playing by the rules is unjustly forfeit. This law, or regulation with the power of law, as applied is a violation of due process because it offends principals of justice so rooted in the traditions and conscious of Americans as to be ranked as fundamental. It violates the principals of fairness, and equality in an equitable action for relief, as it retroactively nullifies honest contracting. I explained that the use of this law or regulation as applied against my claim violates the contract clause of Article 1 Section 10 Cause 1 of the U.S. Constitution. Lastly, I explained that the law or regulation is deficient or flawed because it treats both methods of play the same when they are completely different as explained earlier. This is because there is no accountability afforded within this law to the contractual performance obligations that exist with the method of play where a player selects their own numbers. I explained that this law allows the lottery to be unaccountable to persons playing by the rules, in a situation where they should be held accountable. "All contract and property right is subject to its fair exercise." *Atlantic Coast Line R.R. v Goldsboro* 222 U.S. 548, 558 (1914). I use this quote to show the importance of fairness, not just in the context of fairness itself, but also for the equality of fairness in an equitable example.

One of the District Court's original concerns was that Washington State's statute of limitations for contracts had

expired. I knew that if it weren't for judicial bias in the State courts, I would have won my case. I believe in some ways all of the State Courts were bias for the Washington State Lottery Commission, I believed that by explaining how the bias occurred in the last State Court that heard my case, then it would have negated the fact that the statute of limitations had expired. I have explained the judicial bias in other courts including this one. I have never explained it better than I did in my final amended complaint to the District Court (DK-22). I wrote four pages of how The Washington State Court of Appeals Division 2 showed bias and backed it up with excerpts of the record. If The Supreme Court were to review this, it would be easy for you to see the bias.

I addressed the District Courts original concerns which were; that I had not properly articulated the contractual nature, that Washington's 11th amendment immunity prevented suits seeking damages, and that the statute of limitations for contracts had expired. Part of my reasoning for Judge Bryan to reopen my case, was that previously I did not know how limited jurisdiction worked, and that I did not know how to properly articulate the contractual relationship. This led me to amend my complaint multiple times and ultimately fail my first time through the District Court. Though I believed getting these things right the first time would have let the Court hear my case, it was not my only reasoning for reopening the case as Judge Bryan suggests. Judge Bryan left out two of the most important parts, he left out the part where I showed that I was not seeking damages which would negate the states immunity, and he did not address the state court judicial bias, which would have shown that I got it right before the statute of limitations for contracts had expired. In fact the Federal Court system as a whole has avoided these issues

like these kinds of things can't happen. Judge Bryan claimed that; "The issues raised here have been raised before this court, and on appeal with no avail." This is misleading, as not everything that I presented in my final amended complaint was heard in the first, second, or third amended complaints back in 2016 where I was really struggling to get things together. For example, besides addressing all the courts original concerns which I did not the first time, I brought up Diversity jurisdiction, showed how my case does not seek damages, showed how the law used against my claim violates due process, and detailed Judicial bias from Washington State Court of Appeals Division 2. Furthermore not everything that I appealed in the federal courts was addressed before I presented my final amended complaint. The fact that I am/was not seeking damages, but an equitable action for specific relief in the form of a reversal of an agency's final order has not been recognized by the federal courts even though it is explained clearly and correctly, using case law examples from decisions of this Court. Judge Bryans ruling did not seem right to me, because my complaint was progressive. With every appeal I have addressed the concerns of the previous Court's ruling in a progressive fashion, so that I'm not just repeating everything.

One of the things that show the courts did not recognize the progressive nature of my case is, that the Ninth circuit did not recognize the difference between damages" and an equitable action for specific relief. I've read that judges often have a difficult time recognizing the difference. The telling difference, is that damages", is a compensatory relief for an injury suffered. An equitable action for specific relief, which can be declaratory and injunctive relief such as a reversal of a final order, is different because any moneys awarded would be monies

already entitled. Because I was actively playing the game, and had given consideration, mutual assent of the contract had happened. If all contract and property right are subject to its fair exercise, then I should be entitled to that prize upon reversal of the State Lottery's Final Order, and damages do not apply because it's not compensatory relief. The significance of this should have given cause for the Court of the United States to take action, and to discard the States 11th Amendment immunity. The fact that the Supreme Court could not make room on the docket for my case the last time I petitioned for a Writ of Certiorari, does not make my case or its issues any less important. The Supreme Court does not give answers when it decides it doesn't have room on the docket for a case. My reasoning here is that if the Ninth Circuit Court of Appeals gets it wrong, and the Supreme Court doesn't have room on the docket to get it right, then the appeal still stands to be righted. Judge Bryan's ruling states that everything said in my final amended complaint was addressed on appeal. This does not hold weight, because the important issues were not properly addressed on appeal. My case bares a heavy burden in lower federal courts, because the supreme court did not act, or did not have room on the docket to act the first time. The Supreme Court only has 9 Justices, that's 9 for a county of 300,000,000 people or so. Only so many cases get in, so if there is a lot of high profile political, or a flood of pandemic related cases, other important cases will get the bump. Also How many important cases could have been heard by the Supreme Court if the court wasn't tied up with President Trump, or other strictly political agendas. The fact is that many important cases fall through the cracks of the Supreme Court. I feel as if Judge Bryan did not do his job with enough detail, he failed to address the tough issues, and adopted a complacent attitude against my case. He originally closed the case without prejudice for me to

address unresolved issues, and in coming back to the District Court that is exactly what I did.

Upon returning to appeal to the Ninth Circuit Court of Appeals, I wrote a Preliminary Statement. In this statement I told the Appeals Court that I believed they did not give me equal protection under the law, and that the ruling they gave was inappropriate, or wrong. The court's initial decision, saying that I was seeking damages was incorrect. Being pro se this was a difficult thing to do. I did not want to show disrespect, I wanted to be clear and detailed about how they failed me. I believe I failed at this, as they took exception to being called out, and threatened to dismiss my case as frivolous. They had me write a statement of how the court erred, and why my case should proceed. I was very clear in my reasoning in this statement. The Court disregarded a lot of facts in my statement, and relied solely on the State's 11th amendment immunity to judge my case as frivolous. My questioning the integrity of that decision, should be the same as anyone with reason to find justice. If a law, amendment, or provision causes an obstruction of justice, shouldn't that law, amendment or provision be thrown out, or be changed in a way that it doesn't give cause for abuse, or obstruction? Isn't it the responsibility of the court to make these changes to preserve the integrity of justice and liberty?

I knew that I was going to have to take another tact with this court the second time around, so I focused my issues for review to show the Ninth Circuit that it has jurisdiction for review. Those questions were: 1) Does the court in which the suit was filed have jurisdiction? 2) Should Washington States sovereign immunity be waived? 3) Does my case have standing? 4) Is the suit based on a Federal cause of action? I felt this was a better tact for the situation because it gets right to the meat and potatoes of

whether the ninth circuit could hear my case. All my answers were clear, and I showed good cause for review of my case by the court.

For the first issue for review, I explained that the District Court has original jurisdiction under 28 U.S.C. § 1331 Federal Question Jurisdiction, because the law used to deny my property claim violates Article 1 Section 10 Cause 1 of the United States Constitution for impairing the obligation of a contract. I also explained how the use of the law against my claim violates due process standards of the 5th and 14th Amendments in regard to denying citizens their property rights without due process.

The second issue for review, “Should Washington State’s 11th Amendment immunity to suit be waived?” Washington’s 11th amendment immunity was used to deny me access to the Federal Courts and has been an impossible obstacle to overcome. When this Amendment was altered by the court in 1890, it was done incompletely. The court that changed this amendment, failed to see that changing this amendment to include citizens suing their own state without making provisions to protect citizens property right from state court bias was wrong. This should not have happened for several reasons.

The 11th Amendment provides: “The judicial power of the states shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.” As the amendment originally stood it said nothing of sovereign immunity, and there was no text to support the notion that a state could not be sued by its own citizens in federal court. The founders knew that state judicial bias could exist. That is part of what diversity jurisdiction was all about. I believe the founders knew the

states would grow to be powerful, I believe they did not include citizens suing their own state in the 11th amendment because they recognized the imbalance of power it would create. It basically gives the state the power to deny citizens their fair property right without due process. Because of this, it makes the change fundamentally flawed as it strips the power of the Constitution to protect citizens rights, solely for the dignity of the state. Does this sound familiar, it should because that is the same power of a king.

The change to the 11th Amendment without provisional protections to protect property rights goes against the ideals this country was founded on, and those ideals resonate the most in one sentence of the Declaration of Independence. "But when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. I explained how the 1890 case of *Hans v. Louisiana* 134 U.S. 1 (1890) ruling was narrow minded, and how the court misinterpreted what was originally written in the 11th Amendment. The court relied heavily on Hamilton's remarks in the Federalist No. 81 "It is in the nature of sovereignty not to be amenable to the suits of an individual without its consent." This has to be taken into context. The country was still young, and relatively unpopulated. The reason behind sovereign states was the notion that state courts would not be bias against its citizens, and that states could govern their laws through their courts in a fair and equitable manner. When I say the court's ruling was narrow minded, it mainly relates to the growth of State power or State government, and the imbalance of power that current State governments hold over citizens in all

civil action because of this change, but especially in property right disputes. Hamilton would have agreed that it creates an imbalance of justice and power, when a State court shows bias for a state agency in a property rights case, and the state agency receives immunity for actions that violate a citizen's rights and Constitutional law. The court's misinterpretation of the 11th Amendment was a gross disservice to citizens and the Constitution. The founders will" for our nation was loud and clear in the Declaration of Independence, they did not want a government that would devise a way to eliminate a State's responsibility for violating a citizen's inalienable rights. The rights that they fought for, are rights against any government action that causes a long train of abuses and wrongdoing against U.S. citizens. In The Declaration of Independence, in appealing to the Supreme Judge of the world, the founders declared their power, and the power of the nation to include the power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts or things which independent states may of right do, "and for the support of this Declaration, with a firm reliance on the protection of divine providence, we mutually pledge to each other our lives, our fortunes and our sacred honor." By changing the 11th Amendment to include citizens not being able to sue their own state, even in property right cases, is the opposite of support for the Declaration, as it dissolves the principals on which it was created. The change essentially gives every state the power of a king, and all the protections afforded in the Constitution to protect citizens rights are rendered powerless.

I understand that it would be a huge mess if everyone started suing their own state, it would invite a long list of frivolous suits that the courts shouldn't have to

deal with. What should have happened, is there should have been a provision added to protect property right. In my Motion for Rehearing En Banc to the Ninth Circuit I outlined a resolution to correct that imbalance. I explained that cases that involve property right dispute between a citizen and their state of residence where the amount in dispute exceeds \$75,000 could be heard in federal court. This proposed provision would protect said property rights from state judicial bias, and protect the dignity of the citizen's rights when said property is so entitled. This should only be allowed where a state, or state agency, is denying a citizens fair property rights, in excess of \$75,000 or whatever limit this Court deems fit. It should also be required that any such action being brought before Federal Courts be from a State's Final Order. Furthermore i think that it would also be fair to require that any transferable case at least goes through a State's Court of Appeals, to give the State a fair chance to hear the case before being brought before the Federal Courts. This is an outline for a solution, the specific details of the solution should be worked through by the members of this Court.

Using the landmark case of *Cohens v. Virginia* (1821), I explained to the Ninth Circuit "that, as the constitution originally stood, the appellate jurisdiction of this court, in all cases arising from the constitution, laws, or treaties of the United States, was not arrested by the circumstance that the State was a party." The ruling Court recognized, "that a defendant that seeks appellate review of an adverse decision does not commence or prosecute a suit against a State." This could also be said of a person seeking review of an adverse decision from a State agency when the decision involves the denial of property right, and when the regulation used by the agency has the effect of law and violates constitutional standards. The court also said that "The 11th Amendment would not apply because the Cohens

were Citizens of Virginia, and thus their appeal against Virginia was not by a citizen of another state, or by a citizen or subject of any foreign State.” The State of Virginia had already arrested, jailed, and prosecuted the Cohens. If it were not for the constitutional protections provided as the constitution originally stood, the convictions would have stood. This case is a great example of the protections provided by the original version of the 11th Amendment and shows how the ruling in *Hans v. Louisiana* some 69 years later was narrow minded, as the change doesn’t hold the values written by our founders. As the 11th amendment originally stood it served as a check and balance to protect against State Judicial Bias in cases involving Constitutional right. I don’t think the judges involved in *Hans v. Louisiana* gave consideration to this, or to how big and powerful State governments would become, or how that power’s influence could effect state court decisions, especially in high dollar property right cases against a State. States know that they don’t have to honor the Constitution in property right disputes, because there is immunity that lets them trample citizen’s rights if need be. That has been the single most obstruction of justice in my case. It has caused the district court to dismiss my case, and was only reason the Ninth Circuit dismissed my case as frivolous. As for the content of the appeal itself there is nothing frivolous about my case, all of the issues are serious. Everything; from the Lottery’s handling of my case, the way the Attorney General office used a law to dismiss my case that violates constitutional and due process provisions, the way the State courts showed bias for the State Lottery, to the fact that the power of the constitution designed to protect my rights has no backbone in the federal courts, are important and serious issues. Just because the Ninth Circuit doesn’t have the power to make the necessary changes, doesn’t make my case frivolous or

malicious, nor have they shown cause for frivolity otherwise.

The third issue for review, "Does my case have Standing or "injury in fact"? My explanation for this question was strait forward. The constitution requires under Article III for the existence of standing, are that the plaintiff must personally have: 1) suffered some actual or threatened injury; 2) that the action can fairly be traced to the challenged action of the defendant; 3) that the injury is likely to be redressed by a favorable decision.

I explained that my case meets the requirements for standing because the injury is the product of "a wrong which directly results in the violation of legal right." Because it is "one of property, one arising out of contract." I explained that "With review and reversal of the agency's final order the injury is likely to be redressed. "Redress is possible because any monies awarded is an adjustment for what was already entitled and not damages. The fact that I am not seeking damages, plus the fact that 702's general waiver of sovereign immunity is not restricted to Federal agencies see *Clark v. Library of Congress.*, should give me great standing to be heard under the APA.

The fourth question for review in this court, "Is the suit based on federal cause of action?" I explained that "the suit is based on the federal cause of action for the violation of Article 1 Section 10 Cause 1 of the U.S. constitution, and for the violation of Due Process."

REASONS FOR GRANTING THE PETITION

Reasons for granting this petition go beyond reversing the Lottery Commission's decision to deny my prize claim. There is a broken system of justice that needs to be addressed and fixed. By not having a check and balance to ensure State courts don't violate citizen's rights, or allow them to be violated by State agencies is wrong. Citizen's constitutional rights must be protected from arbitrary state law, and from any State Court judges who would uphold such law despite the Constitution? The part that is broken lies with the change that was made to the 11th Amendment, as there was no provision to protect citizens property rights against state judicial bias. The Ninth Circuit Court of Appeals dismissed my case as frivolous, which means unimportant, or not serious because of this immunity, even though I showed state court bias. The eleventh amendment immunity acts as an obstruction of justice, and a divisive tool used in property rights cases against states, It causes a long train of abuses as its use disregards the principals of actual justice.

When you break my case down to the basics, you should see; 1) I was playing the game by the rules. 2) The rules of the game are the terms of the contract. 3) The Lottery violated the rules, as I was actively playing the game, and after consideration was given. 4) The only reason I did not present a ticket for validation was for the violations of the rules on the Lottery's part. 5) The Lottery used a law against my claim that says without a ticket I can't claim my prize, even though it was a violation of the rules on their part that wrongly refused me a ticket to present. 6) State courts upheld the State agency's ruling against my claim, even though it doesn't support actual

justice or dignity, and flies in the face of constitutional provisions that protect fair contract, and property rights. 7) Federal Courts have their hands tied because the original 11th Amendment was changed without provisions for protecting citizen's fair property rights from State Court Judicial Bias.

Until recently there has not been a case similar to mine. In August 2020, Sue Burges of Hernando County Florida won a second chance lottery drawing. And had to mail her ticket into the lottery headquarters. The lottery notified her three days late. She mailed in her ticket, but her ticket was lost in the mail. By the no ticket no prize rule she would have had to forfeit her winnings. The Florida lottery stated: "Burgess is too late to turn in her ticket, and another winner received her \$1,000 _the Florida lottery is willing to bend the rules." When her ticket arrived late she was still awarded her prize. This was more than likely because it was partly the Florida lottery's fault, and Sue Burgess had done nothing wrong. The principals of my case are the same. The Washington State lottery was at fault in my case, and I had done nothing wrong. Shouldn't the same principals of resolution apply? I'm not some nice lady from Florida, but I am a person, and a citizen. To that end justice should be equal. For this The Declaration of Independence offers "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness."

It was wrong that the Washington State Lottery Commission used WAC 315-38-050(3) to deny my claim, because the immunities of this law extend to impair contractual obligations as applied. Article 1 Section 10 Cause 1 of the United States Constitution says that no law

shall be entered that impairs the obligation of contracts. Also my right to contract is protected under Liberty of contract, applied repeatedly in subsequent cases as a restraint on Federal and State power. Freedom of contract was also alluded to as property right as evident in the language of *Coppage v. Kansas* 236 U.S. 1,14 (1915). “Included in the right of personal liberty and the right of personal property- partaking in the nature of each- is the right to make contracts for the acquisition of property.” Liberty implies the absence of arbitrary restraint. The privileges and immunities clause of the 14th Amendment offers “No State shall enforce any law which shall abridge the privileges and immunities of citizens of the United States.” If the right to contract is afforded to me under the 5th Amendment, then relief should be available under the privileges and immunities clause of the 14th amendment because it protects the rights “which owe their existence to the Federal Government, its national character, its constitution, or its laws.”¹⁰

I have learned a lot fighting for my prize, but mostly about dignity. I mentioned on page 14 of my second opening brief to the Ninth Circuit, that the founders didn’t care so much about dignity, that they wanted the fairness that freedom provides. In that I was only partially right, I now understand now that dignity encompasses law and order, justice, equality and fairness. In no way is it, or should it become a one way street. To whom should dignity matter the most in this case? Shouldn’t it be mine since I am fighting for all of those things? The founders fought for more than the dignity of the States that would represent our country, they were fighting for their neighbors, friends, family and self-dignity. Property right was a big part of that dignity, as well as fundamental fairness in the courts,

¹⁰ *McDonald v City of Chicago* 561 U.S. 742 (2010)

upholding principals of right, and making changes where it is needed to reflect fair and equitable action. They didn't want to trade one dictator for 50, or have changes to the constitution that would encumber the rights, and dignity of the citizens it was created to protect. I would urge this court to grant this petition, not just so I can finally get the justice and dignity I deserve, but to set provisions in the 11th Amendment to protect property rights against adverse State action that would violate the Constitution, and or, receive bias from the State courts. There has to be some protective provision within this amendment to prevent State judicial bias, or States will continue to use it in high dollar property disputes continuing a long train of abuses and usurpations. When questioning whether the change to the 11th amendment in 1890 violates the Constitution, one only needs to be able to define the principals of the Constitution. By determining that the Constitution is the power of the people, and that the government was instituted by the people for the people. Then the principals of the Constitution would be founded on the rights of the people. Those rights are founded on equality and common good and are embodied in six words of the Constitution, those words are "with liberty and justice for all." The change to the 11th amendment does not support these principals, as it encumbers the protections of the rights granted in the Constitution.

I have fought for a long time for fairness, only for fairness to be obstructed by an immunity that doesn't allow cause cause for justice and to prevail. At first I was just fighting for my prize, in doing so, my fight has given rise to other important issues that need this court's immediate attention to preserve the integrity of the Constitution, and dignity of the citizens that rely on it for justice. Why would due process be founded on the principal of fundamental


fairness, if not to be used progressively in changing laws and amendments to reflect that principal? I have given this court the framework to correct this imbalance, by adding a provision to the 11th Amendment to protect citizen's fair property right from State judicial bias, and arbitrary State law. I believe this court could use this framework, add the necessary details, and secure this right for the people. The Declaration of Independence offers to this "That to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed, --That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new Government, laying its foundation on such principals and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Christopher R Granton Pro Se.


Date 1/20/2021