

20-1318

USCA No. 20-55921

SUPREME COURT OF THE UNITED STATES

Vincent W. Shack,

Petitioner,

vs.

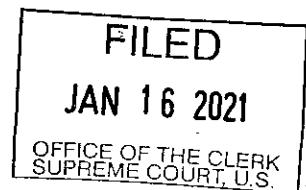
ORIGINAL

NBC UNIVERSAL MEDIA, LLC et al,
IMG WORLDWIDE, INC,
LADIES PROFESSIONAL GOLF ASSOCIATION,
SAMSUNG ELECTRONICS AMERICA INC., AND DOES 1 TO 10

Respondents.

On Petition for a Writ of Certiorari to
ORDER of the United States District Court for the Central District California

PETITION FOR A WRIT OF CERTIORARI



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I. Question Presented

Does the law afford the means to prevent and redress alleged civil right abuse by public officers and agencies? " The court allowed the use of United States Constitutional Rights to be granted to one at the expense of another"

Does governmental privileges extend to federal agents who clearly violate constitutional rights and act outside their authority? Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics.

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IV. Petition for Writ of Certiorari

Vincent W. Shack, a resident a Desert Hot Springs, California respectfully petitions this court for a writ of certiorari to review the judgment of the United States District Court Central District of California.

V. Opinions Below

The decision by the United States District Court Central District of California denying Mr. Shack's direct appeal is reported as the Court of Appeals of California Fourth District Division Two. The United States District Court Central District of California Court denied Mr. Shack's petition on April 29, 2020. That order is attached at Appendix.

VI. Jurisdiction

Mr. Shack's petition for hearing to the United States District Court Central District of California was denied on April 29, 2020. Mr. Shack's invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the United States District Court Central District of California's judgment.

VII. Constitutional Provisions Involved

United States Constitution, 42 First Amendment: Annotated Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Fourteenth Amendment: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens

of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VIII. Statement of the Case

Plaintiff, Mr. Vincent Shack expresses his spiritual justice duties as he submits this writ of certiorari. Shack considers his spirit as a fighter with a heartfelt desire and effort to demonstrate there is no better engagement than to fight for the truth than the pursuit of truth, freedom and unalienable rights granted or afforded to all Americans. This is the premise of this case. Shack the Plaintiff has relied on the judicial system as the best way to resolve this civil matter. The Plaintiff does so after being dealt a Civil Death within his native State of California.

Similar in the case of Mr. Stephen Gatto. Mr. Gatto a patron who was ejected out of a county fair ejected for refusing to remove his vest bearing a motorcycle club insignia. His (Gatto) Government Claims Act claim got rejected. He (Gatto) sued under the Unruh Civil Rights Act, Cal. Civ. Code § 51(b), and Cal. Const. art. 1, § 2, enforceable through a Cal. Civ. Code § 52.1(b) action for damages. The Sonoma County Superior Court (California) awarded him damages and attorney fees. The fair had a dress code against provocative apparel and "gang insignia." The trial court dismissed the city as a party, as it had not adopted the dress code. The

appellate court found that, as the § 51(b) claim derived from common law principles, and as the § 52.1(b) claim sounded in tort they were subject to the Cal. Civ. Proc. Code § 340 one-year statute of limitations. But the Government Claims Act extended the limitations beyond the one-year. Enforcement of the dress code did not deprive the patron of full and equal access to accommodations in violation of the Unruh Act. The legislature intended to confine the scope of the Unruh Act to types of discrimination it listed. Any judicial expansion of coverage was to be done carefully, subject to a three-step inquiry. The dress code was, however, void for vagueness and facially overbroad, and its enforcement against the patron deprived him of his Due Process Clause liberty interest in personal dress and appearance. The definition of "gang," in general, was notoriously imprecise. The dress code did not contain ascertainable standards. There was no showing that wearing of such insignia would lead to violence.

For the foregoing reasons, the trial court correctly concluded that the Government Claims Act applied to this action and extended the limitations period beyond the one year specified in section 340 of the Code of Civil Procedure. Because Gatto filed his complaint in the superior court within six months from the date of the notice he received of the rejection of his claim (Gov. Code, §§ 911.8, subd. (b), 913, subd. (b)), it was not time-barred.

The decision of the California Supreme Court answer in the case of Benitez v. North Coast. Do the rights of religious freedom and free speech, as guaranteed in both the federal and the California Constitutions, exempt a medical clinic's

physicians from complying with the California Unruh Civil Rights Act's prohibition against discrimination based on a person's sexual orientation? Their answer was no. On August 18, 2008, in a unanimous decision, the California Supreme Court reversed an appeals court's that allowed an improper *affirmative defense*. And, that improper defense was[an] affirmative defense...stating that defendants' "alleged misconduct, if any" was protected by the rights of free speech and freedom of religion set forth in the federal and state Constitutions.

Guadalupe "Lupita" Benitez was denied infertility treatment by her Southern California healthcare providers because she is a lesbian. The trial court rejected the doctors' claim that they do not have to follow California's anti-discrimination law because they have religious objections to serving lesbian patients. On December 5, 2005, the Court of Appeal reversed this decision and said that the doctors must be given an opportunity to demonstrate that their refusal to treat Benitez was not based on her sexual orientation. Benitez appealed the decision to the California Supreme Court, and NCLR filed an amicus brief in support of Benitez, who was represented by Lambda Legal.

The California Supreme Court reversed the Court of Appeal, and upheld the trial court's original decision. The Supreme Court held that non-discrimination laws regulate discriminatory conduct, not speech or beliefs, and that medical providers cannot violate those laws based on asserted religious objections to providing services to LGBT people. The opposition's petition for rehearing was denied on in October, 2008.

The Shack Complaint alleges similar, there is no evidence presented of him violating anyone's first amendment right but a clear display of his civil rights being violated as well as his fourth amendment of the denial of State to deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In Shack's initial Complaint, he alleged intentional torts, violent criminal act of physical battery at the hands of the defendant, infliction of emotional distress, deceit, and nuisance, all of which resulted in a "violation of his Civil Rights ('Singled Out'). The intentional torts were dismissed as a result of the utilization of the SLAPP motion. The element of battery and personal injury was never properly disposed of. Shack moved to request his Complaint be reviewed by the Victim Government Claim Board. The Board advised him the requirement would consist of receiving Leave from the Fourth (4th) District Court of Appeal which would have permitted the State California General Counsel to gain proper jurisdiction to review Shack's Victim Government Claim filing. Shack made the request five times and was denied. Shack had a final choice to exercise the option of initiating a new civil case or to have the case transferred to Federal court. Shack requested a transfer of his case to the honorable Federal Court.

On April 29, 2020 the Honorable Percy Anderson with the United District Court Central District of California entered an analysis stating "Shack clearly documents being denied leave from the Fourth (4th) District Court of Appeal which would have permitted the State Attorney of California General Counsel to gain

proper jurisdiction to review his Victim Government Claim"). Shack's request would require the Court to review his state action and reverse the California Court of Appeal for Shack's benefit. The Court lacks the power to issue such a ruling. The Honorable Judge further indicates the denial was solely based on "Rooker-Feldman which bars federal adjudication of any suit in which a plaintiff alleges an injury based on a state court judgment and seeks relief from that judgment." *Bianchi*, 334 F.3d at n.4. See opinion Appendix 1.

On October 11, 2007, Mr. Vincent Shack purchased tickets to attend a professional golfing event at the 2007 Samsung World Championship at the Bighorn Country Club in Palm Desert, California.

Mr. Shack alleges on the 18th hole of the green after an errant tee-shot he moved one or two steps to clear the path so the play could continue. As Shack moved out of the path of the errant ball, Dan Beard struck Shack with either his camera or forearm and "spewed derogatory language toward" Shack. Shack was "visibly shaken and suffered immediate and serious injury" to his "neck area, among other physical and mental injuries."

Shack further alleged that at the end of the day tournament security personnel approached him and informed him that Beard had filed a complaint alleging Shack had threatened him. Beard initially provided a false statement to the police, *Dkt 1. P.22* where he indicates the plaintiff stated he would cut him. Beard pointed to Shack as he walked towards the clubhouse to report he had been battered by Beard. The police immediately pursued Shack and asked that he

empty his pockets. Shack willingly emptied all his pockets and no weapon was observed. The police returned to Beard and informed him Shack did not have a weapon. Beard then changed his story and said he really didn't hear Shack say he had a knife.

Shack then sought out and spoke with the head of security for the tournament, who informed him that no charges would be filed and he was free to attend the tournament on the following day, October 12.

On October 12 when Shack attempted to purchase a ticket and to enter the tournament, he was denied.

The police officers "removed" him from the tournament "in a manner that was unnecessarily aggressive, demeaning and demoralizing. These humiliating and debasing acts were committed in front of the golf community," which Shack relied upon for "professional opportunities."

Shack alleged his forcible removal from the tournament on October 12 caused him "great embarrassment and emotional distress," and described defendants' conduct on October 12 as "equally if not more outrageous" than Beard's act of striking him in the neck and spewing derogatory comments toward him on October 11.

In addition, on October 12, tournament personnel and security "specifically told" Shack that IMG and Bighorn "did not want him" at the tournament.

Shack alleged that, in refusing him entry to the tournament on October 12, defendants "failed to act reasonably, prudently and in good faith." Shack also

alleged that Beard and the other defendants, including IMG, the LPGA, NBC, and Samsung, falsely reported to police and/or tournament security personnel that Shack threatened Beard as a result of these reports. Shack was refused entry into the tournament on October 12 and was forcibly removed by police officers in a manner that was "unnecessarily aggressive, demeaning and demoralizing"; and, finally, these actions humiliated Shack in front of the golfing community upon which he relies for "professional opportunities.

On February 04, 2009 after three attempts to resolve the issue with the defendants including one attempt by letter of performance written by California barred Attorney Terry Lehr which was flatly ignored. Mr. Shack then filed a lawsuit against six defendants (Dan Beard (camera man) IMG Worldwide, Inc. (IMG), Ladies Professional Golf Association (the LPGA), NBC Universal, Inc. (NBC), Samsung Electronics America, Inc. (Samsung), and Bighorn Properties, Inc. (Bighorn).

Shack alleged the six defendants were the agents or employees of each other, and the five "entity defendants" were in some manner responsible for Beard's "outrageous battery" and for their own actions in reporting to police and tournament security personnel that Shack threatened Beard.

Shack indicates during a Superior Court hearing with Judge Evans. Judge Evans gave Shack leave to amend the first complaint to clarify the liability of the defendants.

During Shack's leave Beard's attorney filed SLAPP a motion.

The motion went unopposed by the plaintiff while on leave as given by the Courts to submit a second amendment civil complaint clarifying the liability of the defendants (Demurrer of the defendants).

During the time of Shack's permitted leave; the court granted Beard's (the 6th defendant) motion for SLAPP.

Shack requested an ex parte hearing to address Beard's SLAPP suit motion which had been granted by the Superior Court Judge.

The courts denied the plaintiff's request for the ex parte hearing although the SLAPP motion ruling was rendered while the plaintiff was placed on leave to demurrer.

After realizing the court's granting the defendant Bearden SLAPP motion all other defendants filed and were granted.

IMG and the LPGA filed a SLAPP motion which was granted as to Shack's first amended complaint, while NBC and Samsung later filed separate SLAPP motions. Clearly showing all parties were acting in concert to avoid liability of the defendant Beard SLAPP motion.

Judge Evans advised the defendants their SLAPP motion was premature in that it should not be filed against a Cause of Action.

Shack argued IMG, the LPGA, NBC, and Samsung failed to meet their initial burdens of demonstrating that his causes of action against them for "general negligence" and "intentional tort" arose from protected activity.

Shack pointed out that Beard's alleged act of striking him in the neck did not

constitute protected speech or petitioning activity. The SLAPP motion was granted under false pretense.

Shack filed a response indicating his first and second amended complaints, Shack generally alleged that IMG, the LPGA, NBC, and Samsung were responsible in some manner for Beard's "outrageous battery" or act of striking him in the neck.

**2. DIRECT APPEAL TO THE COURT OF APPEAL-STATE OF CALIFORNIA
FOURTH DISTRICT DIVISION TWO**

(why court erred in upholding SLAPP suit)

July 21, 2010 Shack filed a motion to the State of California Fourth District Court of Appeal requesting extension of time to file a brief against NBC Universal, Inc et al.

July 29, 2010 the State of California Fourth District of Appeal denied the extension request. The rationale was the following: no further extensions will be granted on the grounds of this application, the length of the record, the number and complexity of issues, counsel's newness to the case, the existence of other time-limited commitments, or any vacation.

March 04, 2011, Shack received a response from the State of California Fourth District of Appeal upholding the trial courts SLAPP suit decision. During oral argument the appellant judge (Justice King) asked the respondents, "why is this not a case for battery?"

May 11, 2011, the plaintiff received a response from the Supreme Court of California with his petition for review being denied. *Dkt. 1, p.37*

**3. DIRECT APPEAL TO THE COURT OF APPEAL-STATE OF
CALIFORNIA FOURTH DISTRICT DIVISION TWO**
(why court erred in not granting leave)

September 01, 2011 Shack filed the VCGCB and was advised the Victim Government Claim is to be filed with the offending government entity the, Fourth District Court of Appeal, Division two (2) Riverside, California who will forward it to the state general counsel. *Dkt. 1, p. 39*

September 29, 2011 Shack received a response from the Victim Compensation and Government Claims Board (VCGCB) with the determination they had no jurisdiction over the Superior Court of Superior Court Judges. *Dkt. 1, p. 39*

August 1, 2012, Shack filed a motion with the 4th District Court requesting leave as advised by the state General Counsel to permit the Victim Claim to be reviewed.

The Fourth District Court of Appeal responded in order to grant leave there must be motion filed to recall the court remittitur.

September 29, 2011, Shack filed a motion to recall remittitur. Shack indicated the court responded to his motion to recall the remittitur was based on judicial error twice.

Shack responded back indicating his motion was not based on judicial error but a request to be granted leave to allow his claim to be reviewed by the State of California General Counsel (Lyle Nishimi).

August 21, 2012, the plaintiff received a response from the State of California General Counsel indicating his claim was being returned because it was not presented within six (6) months after the event or occurrence (OPINION) as

required by law. *Dkt. 1, p. 41-42*

Shack clearly documented the time was not exceeded. On September 01, 2011 Shack filed a complaint with the Victim Compensation and Government Claims Board which was continuously delayed as he waited on the State of California Fourth District Court of Appeal to respond to his request for receiving leave.

November 19, 2012 the State of California Fourth District Court of Appeal denied Shack's motion filed to recall remittitur from August 6, 2012 request. *Dkt. 1, p. 45*

May 18, 2015 Shack filed another motion to recall remitter for good cause and not judicial error.

July 1, 2015 Shack received a response from the State of California Fourth District of Appeal denying his request to recall remittitur indicating there were no legal grounds for its recall.

July 12, 2019, Shack received a response from the State of California Fourth District of Appeal with a denial of his fifth motion to recall the remittitur.

July 12, 2019, Shack received a response from the fourth Appellate District Court indicating Shack filed his fifth motion to recall the remittitur which was being denied on the same grounds as the denial of his fourth recall motion filed August 16, 2016 where he sought leave from the courts to have the government claims reviewed which were submitted with an earlier recall motion and forwarded to the Office of General Counsel order filed November 19, 2012. *Dkt. 1, p. 46*

September 25, 2019 the Supreme Court of California denied Shack's petition

for review was denied (motion to recall remittitur due to time restrictions beyond 30 days of the ORDER of the Court of Appeals 4th District Riverside, California.

3. DIRECT APPEAL TO THE UNITED STATES DISTRICT COURT OF CALIFORNIA (why case transfer to state court was denied)

December 27, 2019, Shack filed a case transfer to the United States District Court Central District of California. Shack alleged misuse of the United States Constitutional First Amendment "freedom of speech" through the utilization of the Strategic Lawsuits Against Public Participation," (SLAPP) civil code 425.16 by the named defendants. Shack alleged violations of his rights based on the first and fourteenth amendment with connective elements to various California state laws.

The Courts ultimately dismissed the request for transfer of the Court for lack of subject matter jurisdiction under the Rooker-Feldman doctrine. (Dkt. 89.)

HOW DID THIS IMPACT MR. SHACK (statement of claim)?

Shack was the Executive Director of the Green House Golf Academy located in Palm Springs, California during the time of the incidence.

The mission of the Green House Golf Academy was to introduce a healthy lifestyle alternative to the local community who otherwise might not get the exposure through the game of golf. Golf is a game played in a refined social environment which is often a healthy change of pace for many living in tough situations, sometimes surrounded by adverse conditions.

Shack's desire to host such an academy was to aid the underserved children in the target area an opportunity to maximize their athletic abilities which could increase the possibility of financial support through scholarships in pursuit of a

higher education degree.

The area that Shack focused on was quite different from the area in which he was reared. He was reared in an upper middle-class community where he was privileged to be introduced to the game of golf. It was through his experience as a junior golfer that led him to higher education. He received financial support in the form of scholarships to attend college.

Palm Springs is a location where the game of golf is a big part of the Coachella Valley economic make up. The specific target area of Palm Springs where his academy was located (North Palm Springs) the median household income is \$25,707 compared to \$83,269 in Indian Wells which is only 27 miles away. The educational attainment of the adults in that area without a high school diploma age 25 and older is 20.3% and the high school graduation rate is only 23.9% in comparison to the high school graduation rate for Coachella Valley Unified School District which is 85.2%. The area is known for being one of the highest per capita rates of HIV/AIDS in the nation. Between 2000 and 2008, about 365 per 100,000 population enrolled in drug rehabilitation. Of those who entered treatment, 75% reported that their first use of any illicit substance was before the age of 21, including 60% who reported the first use of drugs or alcohol before the age of 18.

The dire need of Shack's academy was evident and self-explainable... to make every effort to encourage the youth to engage in experiences that would lead them to avoid many of the issues that saturates their community.

Shack's academy functioned from 1997 to 2007. He trained 350 students of

various ages. The participants have grown into responsible members of the community and are now raising junior golfers of their own in our desert community.

How does this differ from Shack? Shack's academic support consisted of him being one of five recipients of the Western State Golf Association (WSGA) scholarship (Bill Dickey Scholarship Association) for Southern California. He won several junior golf events which included but is not limited to 2nd place at the 2nd place in the 1981 WSGA Junior Golf Tournament, 1st Place in the 1982 WSGA Junior Golf tournament, and 1st Place in the NAACP tournament in Los Angeles.

While serving as the Executive Director, the Academy was recognized by the Golf Journal as one of the nation's top junior golf programs.

During the tenure of being the Executive Director, the Green House Golf Academy received financial support from Calient Band of Cahuilla Indians Tribal Council, the United States Golf Foundation, and the USGA Good of the Game Matching Funds Grant. The academy received golf equipment and other support from the American Golf Association, Calloway Golf, the legendary singer Nancy Wilson, Congresswoman Mary Bono, The Disney Foundation, Desert Regional Med, Center Foundation (Healthy Communities) The Ford Foundation, Palm Springs Police, Fire dept. The Variety Club of the Desert, Meisel Senior Center. The academy hosted golf tournaments at the O'Donnell Golf Course, Palm Springs California for 3 consecutive years 1999-2002. The Green House Academy produced two Community Cable T.V. programs (2002, 2004), a Tribute to the late Mr. James Jessie, Director at the City of Palm Springs for his work with The Black History

month program and the 2nd cable T.V. program was History of The Knight, Tribute to Mr. Joseph Beaver for his work with the Coachella Valley Black Cultural Society. The academy also made a tribute to two African American National Golf Champions Alton Duhon and Bill Wright.

Shining a light on the day of the incident and thereafter, the purpose of the plaintiff attending the 2007 Samsung World Championship at the Bighorn Country Club golf tournament was two-fold. To engage in the enjoyment of the golf community, network with the golf industry from around the world, and gather information that ranged from latest equipment and training, administration, media and promotion.

After being attacked and remaining in continued litigation with the defendants. Shack's engagement in the golf community has greatly diminished and the Green House Golf Academy closed shortly after the said incident.

In addition to the closing of Shack's academy, he has experienced considerable emotional stress. The experiences included but are not limited to anxiety, shame, humiliation, periods of guilt, insomnia, fear, and loss of long-term friendships. Shack lost confidence in the ability to secure funds or establish partnerships within the golf community or some of its supporters after his experience thus resulting in the closure of his academy.

REASON FOR GRANTING WRIT

The question of law raised by this petition is one that even this Court has recognized needs to be decided, when the time is right and the issue is properly presented by the facts of the case. The time is right now. This case fairly presents

the issue.

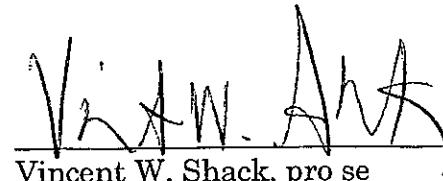
Shack alleges misuse of the United States Constitutional First Amendment "freedom of speech" through the utilization of the Strategic Lawsuits Against Public Participation," (SLAPP) civil code 425.16 by the named defendants. Although the Superior Court tentative ruling warned the defendants the SLAPP motion was premature and should not be filed against a Cause of Action. Shack indicates being denied Leave from the Fourth (4th) District Court of Appeal which would have permitted the State California General Counsel to gain proper jurisdiction to review the plaintiff's Victim Government Claim filing. Shack also alleges intentional torts, violent criminal act of physical battery at the hands of the defendant, infliction of emotional distress, deceit, and nuisance, all of which resulted in a "violation of Plaintiff's Civil Rights ('Singled Out'). The intentional torts were dismissed as a result of the utilization of the SLAPP motion. The element of battery and personal injury was never properly disposed of.

CONCLUSION

For the foregoing reasons, Mr. Shack respectfully requests the Court to issue a writ of certiorari to review the constitutionality of the defendant's pleadings. The OPINION of the 4th District Court upheld the decision of the lower court even "in view" of no evidence in support of a Constitutional misuse of defendants 1st Amendment rights or SLAPP suite.

DATED this 7th day of July 2020.

Respectfully submitted,



Vincent W. Shack, pro se