

No. 20-248

**In The
Supreme Court of the United States**

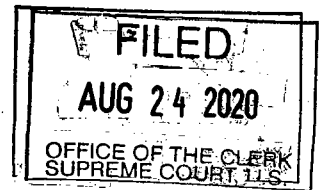
IRVING F. ROUNDS JR.,

Petitioner,

vs.

U. S. DEPARTMENT OF JUSTICE, ET AL.,

Respondents.



**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The First Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Has Irving Rounds, Jr. (hereinafter “Petitioner”) been deprived of his due process rights under the 5th Amendment to the Constitution of the United States where the lower courts:

- A. Failed to provide him with an opportunity to be heard on the facts of his case?
- B. Failed to properly weigh the evidence presented in his Complaints when deciding to dismiss his Petitions?
- C. In the instance of the U.S. District Court (Saylor, J.), failed to recuse himself from the matter before him?

LIST OF PARTIES

Defendants-Appellees

Defendant#1

Charles Koch P.O. Box 2256 Wichita, KS-67201-2256

Defendant#2 David Koch 740 Park Avenue Manhattan
New York 10021

Defendant#3 United States Government Department
of Justice

U.S. Deputy Attorney General Rod Rosenstein

Special Counsel and former F.B.I. Director Robert
Mueller

Congressman Robert Goodlatte Chairman of the DOJ's
oversight committee

Plaintiff-Appellant

IRVING F. ROUNDS, JR.

UNITED STATES COURT OF APPEALS FOR THE
FIRST CIRCUIT

Case Nos. 18-1878 and "19-1094" (consolidated)

Defendants

United States Government Department of Justice

U.S. Attorney General William Barr

U.S. Deputy Attorney General Jeffery Rosen

U.S. Senator Lindsey Graham

LIST OF PARTIES – Continued

Plaintiff

Irving F. Rounds, Jr. PO Box 5241 Framingham, MA
01701-9988

UNITED STATES DISTRICT COURT DISTRICT OF
MASSACHUSETTS BOSTON

Civil Action

NO:1:19-CV-11388-FDS

RELATED CASES

Irving F. Rounds, Jr. v. Environmental Protection
Agency, No. 1:15-CV-13541-MLW, U.S. District Court
Boston, Massachusetts, Judgement entered August 22,
2016

Irving F. Rounds, Jr. v. Environmental Protection
Agency Et al, No. 4:17-CV-40072-TSH, U.S. District
Court Worcester Massachusetts, Judgement entered
February 12, 2018

Irving F. Rounds, Jr. v. Charles Koch Et al, No. 4:18-
CV-40066-DHH, U.S. District Court Worcester Massa-
chusetts, Judgement entered June 22, 2018

Irving F. Rounds, Jr. v. Charles Koch Et al, No. 19-1094,
U.S. Court of Appeals for The First Circuit, Judgement
entered February 27, 2020

RELATED CASES – Continued

Irving F. Rounds, Jr. v. United States Department of Justice Et al, No. 19-11388-FDS, U.S. District Court Boston, Massachusetts, Judgement entered January 30, 2020

Irving F. Rounds, Jr. v. Commonwealth of Massachusetts Governor Charlie Baker Et al, No. 1984CV03692, Commonwealth of Massachusetts Suffolk County Superior Court, Judgement entered December 9, 2019

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, an individual who resides in Clinton, Massachusetts, respectfully petitions this Court for a Writ of Certiorari to review the judgments of the U.S. Court of Appeals for the First Circuit and the U.S. District Courts in Boston and Worcester, Massachusetts as provided in Rule 42 of the Federal Rules of Civil Procedure.

OPINIONS BELOW

Rounds v. Environmental Protection Agency et al

Rounds v. Environmental Protection Agency et al

Rounds v. Koch et al Rounds v. U. S. Department of Justice et al

Rounds v. Baker et al

The decisions by the U.S. Court of Appeals for the First Circuit and the U.S. District Courts in Boston and Worcester, Massachusetts denied the Petitioner's Requests for hearings. These rulings and orders are attached at Appendix ("App.") at 1-4.

JURISDICTION

The Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1), having timely filed this petition for a Writ of Certiorari within one hundred fifty

(150) days of the judgment of the U.S. Court of Appeals for the First Circuit and within the ninety (90) days of judgment of the U.S. District Court in Boston.



CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment V

“No person shall be . . . deprived of life, liberty, or property, without due process of law; . . .”

Federal Rules of Civil Procedure

Rule 42.

(a) Consolidation. If actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.

(b) Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any federal right to a jury trial.



STATEMENT OF THE CASE

1. **The Petitioner's legal efforts to report ("Blow the Whistle") on his former employer for violations of the Clean Air Act to the U.S. EPA for illegally venting " . . . refrigerants were exercised in good faith."**

In January of 1998 the Petitioner was employed with Airtron Heating and Air Conditioning, Inc., (herein "Airtron") formerly of Oldsmar, Florida in the State of Florida. At this time he reported his employer to Special Agent Daniel Green of the Criminal Investigation Division (CID) of the Environmental Protection Agency (EPA) at the agency's Tampa, Florida field office relative to numerous violations of the Clean Air Act (i.e. illegal venting of refrigerants, mold problems with installations of HVAC systems, etc.). The Petitioner was concerned with his safety and that of his ex-wife having received death threats; he requested witness protection and Agent Green guaranteed it. Over the ensuing months, Agent Green would renege on this promise. Group MAC, the parent company of the Petitioner's employer, Airtron, was partially owned by Charles and David Koch (a/k/a the Koch Brothers). During a period of subsequent years and to the present, the Petitioner has been systematically threatened, harassed and intimidated by agents and employees of Airtron, the Koch Brothers and the U.S. Department of Justice to the extent that his health, his employment career and his privacy (including but not limited to all communications) have been severely compromised (many of these activities are evidenced

by court filings and documents included in the Appendix attached to this Memorandum).

2. United States District Court Petitions

The Petitioner has previously filed Complaints in the United States District Courts in Boston and Worcester, Massachusetts seeking redress against several agencies and representatives of the United States Government as well as private individuals for these threats, intimidation and harassment (see Appendix for Opinions below). Included in these actions are the Petitioner's various Motions seeking Injunctive Relief for which the Petitioner specifically requested hearings before the Court. At no time did the District Courts (Hillman, J. and Saylor, J.) allow the Petitioner an opportunity to be heard and present his substantive and voluminous evidence before the Courts while seeking injunctive relief. Furthermore, these judges summarily dismissed the accompanying Complaints without seriously entertaining the Petitioner's Motions or properly weighing the evidence as outlined in Petitioner's Complaints and as substantiated in his materials included in the attached Appendix (see Plaintiff's Motions for Reconsideration in the attached Appendix at pages 11 & 38).

The U.S. District Court (Saylor, J.) concluded that the case was barred by the doctrine of sovereign immunity, that subject-matter jurisdiction was lacking and therefore the Complaint was dismissed. That the Court should ignore the Complaint of the Petitioner on

narrow immunity and jurisdictional grounds is not sufficient argument which would warrant the outright dismissal of this matter at this juncture.

Admittedly, the Petitioner, as a Pro se Complainant, does not enjoy the legal training and knowledge of the seasoned, legal practitioner prosecuting his claims in the Federal Courts. The Court has made allowances for Pro se litigants in numerous cases throughout our history. The District Court (Saylor, J.) pointed this out in its opinion citing the “less stringent standard” of the Pro se litigant:

“When, as here, a motion to dismiss is filed against a pro se litigant, any document filed by the pro se party ‘is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.’” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Despite this allowance, the District Court goes on to add that the Pro se plaintiff still has the responsibility to state his/her Complaint with factual integrity: “. . . even a pro se plaintiff is required to ‘set forth factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory.’” *Wright v. Town of Southbridge*, 2009 WL 415506 at *2 (D. Mass. Jan. 15, 2009). The Court, when analyzing the Pro se Complainant’s factual allegations, must give the Complainant the benefit of the doubt as to their truthfulness at least in the first instance: “. . . the district court must construe the complaint liberally, treating all well-pleaded facts as true and analyzing all reasonable

inferences in favor of the plaintiff.” *Aversa v. United States*, 99 F.3d 1200, 1209-10 (1st Cir. 1996).

In this case, the Pro se Petitioner, lacking the level of sophistication of the legal draftsman, buttressed his “bare bones” allegations with Appendix materials which he believed would sustain his case. Consequently, his factual allegations contained in the body of his Complaint are “brought to life” by his voluminous documentation contained in the Appendix. This is how this Petitioner “ . . . set forth his factual allegations and respect(ed) each material element necessary to sustain his recovery under (an) actionable legal theory.” (*Wright v. Town of Southbridge* noted above).

Lacking legal training, the Petitioner has not been able to appreciate the legal niceties of the doctrine of sovereign immunity and an asserted waiver of same, appropriate subject-matter jurisdiction, the necessity of administrative exhaustion of remedies and claims advanced under the Federal Tort Claims Act. His arguments contained in his Complaint are limited to the difference between right and wrong which are advanced in a rudimentary way and guided by a fervent belief in the Constitution of the United States of America and the requisite due process of law thereunder.

As a result, the opinion of the District Court (Saylor, J.) contains language and legal references with which this Petitioner was unfamiliar when filing his Complaint and advancing his Appeals. Here, factual allegations have been substantiated to the best of the Petitioner’s ability with the aid of his Appendix.

The Petitioner's Motion to the District Court to have Judge Saylor recuse himself from the Petitioner's case was warranted and advanced in good faith. Judge Saylor's prior service as an Assistant United States Attorney for the District of Massachusetts from 1987 through 1990 as well as his work as special counsel and Chief of Staff to Robert Mueller, (a party in a matter related to this litigation) Assistant Attorney General of the Criminal Division of the United States Department of Justice (a party in this case) in Washington, D.C. from 1990 through 1993 should have influenced the judge's decision on the Motion.

3. The U.S. Court of Appeals Decision

The Judgment of the U.S. Court of Appeals indicated that the Petitioner had " . . . fail(ed) to provide any developed argumentation or legal authority in support of his position" and alternatively that the lower Court had not abused its discretion.

The Petitioner had filed with the Appeals Court (as well as the District Court) extensive, factual material contained in his Appendix which substantiated his allegations against the defendants. At a minimum, his documentation, when weighed in its best light, supported the need for injunctive relief or alternatively, a hearing where oral argument provided the Petitioner with an opportunity to be heard. The ruling of the Appeals Court, particularly in its finding that the lower Court had not abused its discretion, did lend misplaced credence to the decision of the District Court(s) which

had ignored Petitioner's justified plea for injunctive relief and a hearing on the merits.

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LEGAL RATIONALE FOR GRANTING THE WRIT

The Fifth and Fourteenth Amendments to the Constitution of the United States guarantee that individuals in the United States shall not be unfairly deprived of their basic constitutional rights to life, liberty and property by all levels of government.

Over the course of the evolution of American, constitutional law, the Court has interpreted and defined the substantive and procedural contours and requirements of these due process provisions when confronted with appropriate cases and controversies. In the early years of the twentieth century the Court in *Hebert v. Louisiana* (272 U.S. 312) (1926) declared that the Due Process Clause requires "... that state action ... shall be consistent with the fundamental principles of liberty and justice ... " Eight years later, the Court in *Snyder v. Massachusetts* (291 U.S. 97, 116, 117) (1934) concluded that "Due Process of law requires that the proceedings shall be fair, but fairness is a relative term, not an absolute concept ... What is fair in one set of circumstances may be an act of tyranny in another."

Justice Frankfurter's opinions during the 1950's demonstrated a valiant attempt to outline several factors for courts to balance when dealing with due

process questions (e.g. *Joint Anti-Fascist Refugee Commission v. McGrath* (341 U.S. 123) (1951)) as well as the evolving nature of the concept itself (see *Griffin v. Illinois* (351 U.S. 12) (1956)): "Due Process is the least frozen concept of our law" which can "... absorb the progressive social standards of modern society." Justice Harlan described due process as "fundamental fairness" in *Duncan v. Louisiana* (391 U.S. 145) (1968) at a time when the country faced significant unrest and social upheaval.

It was the Court in *Londoner v. City of Denver* (210 U.S. 373) (1908) which had declared that sometimes the right to a fair hearing implies the right to oral argument. In *Societe Internationale v. Rogers*, 357 U.S. 197 (1958), the Court noted the impact of the Due Process Clause particularly within the sphere of civil litigation: "The Court traditionally has held that the Due Process Clause protects civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances." Furthermore, the Court found in the same case that the Fifth Amendment's Due Process Clause imposed "... constitutional limitations upon the power of courts, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his case."

The Seventh Circuit Court of Appeals found in *Webster v. Redmond* (599 F.2d 733, 801-802) (7th Cir. 1979) that there must be a showing of a deprivation of a liberty or property right to constitute a due process violation under the Constitution. The Supreme Court

in *Logan v. Zimmerman Brush Co.* (455 U.S. 422) (1982) declared that a legal cause of action was a kind of property protected by the Due Process Clause.

In the case before the Court, the Petitioner has incurred the deprivation of a property right (i.e. a fair hearing of his legal cause of action). As a consequence of that deprivation his right to due process under the Constitution has been violated. He was denied an opportunity to be heard on his Motion for equitable relief as well as the underlying cause of action. When the Court failed to properly weigh his evidence, he suffered from yet another due process omission. Finally, when the Court refused to recuse (himself), the Petitioner was again denied a fair hearing via due process before an impartial tribunal.

We know from the case law that “Bias or prejudice of an appellate judge can (also) deprive a litigant of due process” as was the finding in *Aetna Life Ins. Co. v. Lavoie* (475 U.S. 813) (1986).

Furthermore, “. . . under our precedents, the Due Process Clause may sometimes demand recusal even when a judge has no actual bias.” (*Aetna*) In order to satisfy the demands of due process under the Fifth Amendment, there must be a finding that there exists a distinct probability that bias will infiltrate the proceedings. The Court has declared that “Recusal is required when, objectively speaking, the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable.” (*Withrow v. Larkin*, 421 U.S. 35, 47) (1975). Given Judge Saylor’s

background, it should be clear that recusal was warranted at the District Court. The probability that such a failure to recuse could result in a lack of due process fairness to the Petitioner before the Court would appear to have called for an allowance of his Motion.

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CONCLUSION

The Petitioner has been effectively stigmatized by his pursuit of justice in this matter despite the fact that he has a right to avoid such an intrusion by the actions of the defendants (*Vitek v. Jones*, 445 U.S. 480) (1980). Where governmental activity has caused the stigma to occur, the intrusion is particularly egregious and the need for due process is paramount. As the Court mentioned in *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971), "Where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." In the instant case, even the appearance of impropriety should have been enough for the Court to avoid the designation of a (civil) "one-man grand jury" (see *In re Murchinson*, 349 U.S. 133) (1955).

The Court should reconsider the decisions of the U.S. Court of Appeals as well as those of the U.S. District Courts in Boston and Worcester, Massachusetts

denying the Petitioner Due Process under the 5th Amendment by not allowing him a hearing, failing to properly weigh the evidence and failing to recuse.

Respectfully submitted,

IRVING F. ROUNDS, JR.
Petitioner