

No. 20-248

In The
Supreme Court of the United States

IRVING F. ROUNDS JR.,

Petitioner,

vs.

CHARLES KOCH, ET AL.,

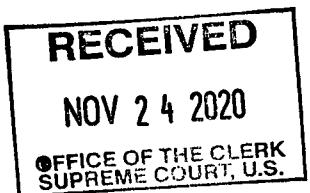
Respondents.

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

PETITION FOR REHEARING

IRVING F. ROUNDS, JR.
Petitioner (Pro Se)
246 Beacon St.
Apt. 1
Clinton, MA 01510
781.504.8974

Email: roundsmechanical5@protonmail.com



QUESTIONS PRESENTED

Has Irving Rounds, Jr. (hereinafter "Petitioner") been deprived of his right to a Jury Trial where the lower courts:

- A. Failed to provide him with said Jury trial on the facts of his case under the 7th Amendment to the United States Constitution?
- B. Failed to provide him with said Jury Trial in accordance with Rule 65(a)(2) of the Federal Rules of Civil Procedure when deciding to dismiss his Petitions?
- C. Failed to provide him with said Jury Trial in accordance with Rule 65(b)(2) of the Massachusetts Rules of Civil Procedure when deciding to dismiss his Petitions?

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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
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Rounds v. Koch et al 1, 2, 3, 5, 6, 7, 9

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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 for Injunctive Relief as well as his demand for a Jury Trial.

These rulings and orders are attached at Appendix ("App.") at 1-3.

JURISDICTION

The Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254, having timely filed his original 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, within ninety (90) days of judgment of the U.S. District Court in Boston and within twenty-five (25) days of the decision of the U.S. Supreme Court relative to his original Petition for a Writ of Certiorari.

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment VII

“In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common 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, cross-claims, 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. 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 as well as his demand for a jury trial. 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 nor did the Courts honor his demand for a jury

trial. Furthermore, these judges summarily dismissed the accompanying Complaints without seriously entertaining the Petitioner's Motions, granting his request for a jury trial 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 Motion for Reconsideration in the attached Appendix at pages 11, 12, 15-17, 38-40).

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.

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, a hearing on the merits and a Jury Trial on the facts of the case.

LEGAL RATIONALE FOR GRANTING THE WRIT

The Seventh Amendment to the Constitution of the United States was originally designed by James Madison to restrict official or arbitrary power while protecting the individual in the context of litigation against political corruption. The Amendment requires civil jury trials only in the federal courts; it has often been said that it protects the people from tyranny within the judicial system. Consequently, trial by jury has always been integral to our democratic society.

The Petitioner in this case filed his Complaint, a civil common law action, in the United States District Courts seeking monetary damages as well as injunctive relief. He did so in accordance with the matter of Parsons v. Bedford, Breedlove and Robeson, 28 U.S. (3 Pet. 433) (1830), where the U.S. Supreme Court had determined that the term "common law" in the Seventh Amendment meant at the time the common law of England (It would be decreed approximately one hundred (100) years later that the Amendment was to be interpreted according to the common law of England at the time the Amendment was ratified, that is, in 1791) (Dimick v. Shied, 293 U.S. 474) (1935)). Furthermore, the Court found during the same year in

Baltimore & Carolina Line, Inc. v. Redman, 295 U.S. 654 (1935) that the Seventh Amendment “preserves” the “substance of the right, not mere matters of form or procedure.”

Here, the Petitioner’s Complaint contains mixed questions of law and equity (see *Beacon Theaters v. Westover*, 359 U.S. 500 (1959)). The underlying rationale of the Seventh Amendment addresses the historic line which separates the responsibilities of the jury from that of the judge in civil cases. The basic function of judges and juries are made clear in the Amendment: questions of law are within the province of the judge while questions of fact belong with the jury. That is, at the very least, the directive of the Amendment although at times the two have been known to cross over one another.

What is unmistakable, though, is that “Together with the due process clause of the Fifth Amendment, the Seventh Amendment guarantees civil litigants the right to an impartial jury” (*McCoy v. Goldstein*, 652 F.2d 654 (6th Cir.) (2008). (Note: The Petitioner’s initial prayer for a Writ of Certiorari along with his Petition for Rehearing of same encompass these two constitutional requisites). His demand for a jury trial specifically included in his Complaint must be preserved and honored in accordance with the Seventh Amendment and the Bill of Rights (see FRCP, Rules 38 & 39).

* * *

The Petitioner’s demands for a hearing relative to his claims for injunctive relief were summarily

dismissed in the District Courts. The Courts' failure to honor claims for a jury trial "fly in the face" of Rule 65 (Injunctive Relief) of the Federal Rules of Civil Procedure (FRCP) as well as the Massachusetts Rules of Civil Procedure (MRCP). FRCP at Rule 65 (a)(2) protect(s) the right to Jury Trial in this circumstance:

"But the Court must preserve any party's right to a jury trial."

Similarly, MRCP (b)(2) addresses requests for injunctive relief and more specifically the Petitioner's right to a jury trial:

"This subdivision (b)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury."

These Rule provisions of both State and Federal Civil Procedure within the Courts incorporate the mandate of the Seventh Amendment. There can be little doubt that those who drafted these Rules were keenly aware of the need to emphasize and highlight the right to a Jury Trial and the Seventh Amendment.

CONCLUSION

There are very few provisions of the United States Constitution which are more sacrosanct than a citizen's right to a Jury Trial in those instances where the law allows. Over two hundred years of the evolution of our constitutional law, this right has played a key role in distinguishing American jurisprudence from that of

virtually the entire world. The Seventh Amendment and all that it entails are not to be taken lightly nor is the historical significance of the right to a Jury Trial to be ignored.

Here, the Petitioner has been effectively stigmatized by his pursuit of justice 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." The Petitioner has been denied his constitutional right to a Jury Trial by the Judicial branch of the American government: it would be a further injustice should the highest Court in the land follow the decisions of the Courts below.

Wherefore, 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 his right to a Jury Trial.

Respectfully submitted,
IRVING F. ROUNDS, JR.
Petitioner

CERTIFICATE OF PETITIONER

I, Irving F. Rounds, Jr. do hereby certify that I present the within Petition for Rehearing for Writ of Certiorari in good faith, not for delay and restricted to the grounds in Rule 44 of the Rules of the Supreme Court of the United States.

Dated: November 19, 2020.



IRVING F. ROUNDS, JR. / *Irvin*
Petitioner