No. 20-573

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

James M. Kerven
(Your Name) — PETITIONER

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

2nd Circuit Appellate Court / As 19-722
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James M. Kerven
(Your Name)

84 Creek Lane
(Address)

Warren Pa. 16365
(City, State, Zip Code)

315-350-1561
(Phone Number)

QUESTION(S) PRESENTED

1. Do You think Justice Louis Brandeis using his Brandeis Arithmetic could get standing before the court without a particularized injury.?
2. Do you think God herself, could get standing before the court using her superior investigative skills without a particularized injury?
3. Could you envision a situation where God herself, could get standing in a citizen suit using her superior investigative skills, without a particularized injury but instead using an "exceptional particularized grievance",where the court retained the prudential discretion to judge it a generalized grievance if she was faking it?
4. Given Justice Jackson's statement in "West Virginia v. Barnette" about rights guaranteed by the "Bill of Rights" which include majoritarian rights "these rights are not subject to a vote" do you think allowing the situation described in question 3. would be more constitutional than the current prudential rules of standing?
5.my view is inherent in those protected rights particularly when one of them is the right to petition for redress of grievances is the right to petition for redress with a common injury and an exceptional particularized grievance. Kerven believes there is also often a discernible difference between wrongful omission and the Brandeis concept of government as bad actor. However, unlike Justice Brandeis and God herself, the Lesser Kerven has a particularized injury. See reasons for granting the Writ page 12.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

STATUTES AND RULES

OTHER

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 judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**

A

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at CASE 19-722 Doc. 85-1 2774771; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

B

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at CASE 5:18 cv 00742 MAN-ATB Doc 23; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was 02/11/2020.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 5/18/2020, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Given Justice Robert Jackson's in "West Virginia v. Barnette"speaks to rights protected by the bill of rights, majoritarian or not, that are not subject to the vote. Kerven believes that the current prudential rules are less constitutional than they should be. Kerven doesn't dispute prudential considerations in standing. Nor is he opposed to gatekeeping. However, he believes that just by tuning these prudential considerations to the rights of the people and the needs of the government, particularly revenue, rather than judicial philosophies the prudential standing rules would be more constitutional. The deference shown to the legislature rather than the citizens in the current rules has undermined the fiscal stability of the republic. This reached its pinnacle in the TCJA. Kerven notified the government of these transactions before the bill was passed. The due process rules quieted to show deference to the legislature may now need to be amplified by the court to counter the deference showed to the oligarchy with favorable tax benefits.

We were on a worldwide system of taxation til the end of 2017. the statutory rate even for Deferred Income Corporations was 35%. No one disputes the legislatures jurisdiction to set tax rates. However Kerven believes the Legislature does not have the right to vote legislation that in fact violates Vance v. Bradley by voting tax discounts to tax entities like deferred income corporations 965 of the code that anticipate the vote. This seems to me to be an intervention in the Democratic process. But here it is the legislature doing what the court will not do. This is not political question doctrine legislative intent that the court might defer too. This is rigged legislative reflection. Kerven has pursued it since before the TCJA. In the forum of the unknown you might as well try to do what's right. He also believes with rare opportunities to balance the forces in the economy, push back to forces that have participated in that imbalance in violation of tax precedent is warranted.

STATEMENT OF CASE KERVEN V. UNITED STATES

PART ONE*** KERVEN a roofing contractor from Syracuse majored in accounting at the Lubin School of Accounting at Syracuse. He determined early on that the TCJA was rigged. Kerven wrote a letter to then Attorney Yoon in the SDNY noting a rebate in the repatriation section of the bill. Kerven also filed a complaint with the attorney general of New York State. He then mailed his letter to Attorney Yoon to 47 of the C-corps that hold qualifying ownership in what are known as Deferred Income Corporations (26 U.S.Code 965) used to avoid taxes. Kerven believes these transactions to be tax evasion. These three forms of complaints/ grievances were postmarked on 12/30/17 before the bill went in to effect.

Off shore corporations are out of hand. The legislature has provided Wall Street the "legislature" rubber stamp. The court must rethink its deference to the legislature and get some kind of control on this off shore activity.

Kerven's original intention in his suit was the return of 200 to 400 billion dollars to the U.S. Treasury for illegal transactions allowed in the repatriation section of the TCJA.

PART TWO**** Kerven found late in the case he needed a level playing field and likely a citizen suit to bring his case. He clearly hadn't been taken seriously by the Appellate court. He believed the court's theory of standing to be unconstitutional or less constitutional than it could be. The court's current prudential standing fails to protect citizen rights, majority or minority guaranteed in the Bill of rights. Justice Jackson has noted in "West Virginia v. Barnette" 319 U.S.624 (1943) "these rights are not subject to any vote". Kerven believes the court's requirement of an individualized injury applied to a citizen suit is is a canard used by the architect of current prudential standing to eliminate citizen suits. He realized this about the time of his petition for en banc hearing in the Appellate court.

From the time of his decision in the NDNY till the en banc rehearing in the Appellate court he had been trying to get standing. It was a waste of time.

Kerven believes the constitution requires a completing theory of standing which allows the citizen suit. Kerven does not have a constitutional difficulty with the generalized grievance. You

probably get a lot of generalized grievances. I've written a couple. Kerven believes to honor the constitution and not abridge the citizens rights to the extent the current prudential standing rules do, a requirement of a "sufficient particularized grievance" or the "exceptional particularized grievance" could be used for the rare citizen suit that passes muster. The court would still hold the prudential discretion to determine whether a "sufficient particularized grievance" or an "exceptional particularized grievance" whichever term the court chooses is a run of the mill generalized grievance.

OK LET US STOP AND REVIEW. THERE IS A LOT GOING ON HERE. Kerven brought a suit against the TCJA. Like many before him, Kerven who voluntarily donned the green robe of the rookie pro se litigant met up with the brick wall of standing in Judge D'Agostino's NDNY decision. Kerven appealed to the 2nd circuit. They didn't give him the time of day.

Judge D'Agostino of the NDNY who is required to apply the same current prudential standing theory as the 2nd circuit appellant court had been more careful. The truth that stuck out in her decision was the "incident to" of standing versus "bedrock" of controversy. She cites "Valley Forge Christian College v. Americans United for Separation of Church and State Inc."454 U.S. 464,471(1982). She also cited "Lujan v. Defenders of Wildlife',504 U.S. 555,560(1992). The 68 year old Kerven was suspicious of Lujan's from the start. It's a too exotic. It seemed like a hollow vessel. It's plane tickets concurrences were a denial of standing in that case.

Kerven wonders if Justice Blackmun was familiar with the "Doctrine"

Kerven sensed the 2nd circuit thought of his case, as a pro se case of a type and wanted to roll him for standing. In my reply brief I included a highly particularized grievance of my specific repatriation grievance. Heeding Justice D'Agostino's accents i emphasized my "controversy" over Court's "as incident to". (see reply brief Appendix A) My old pal Mike was in from the west coast vacationing in Syracuse with his wife Heather. Mike's a dual Newhouse grad and life long editor. I would call this riding shotgun as much as editing. After a sit down and a couple more email exchanges he emailed my reply brief back to me. I had what I wanted. What I wanted was a distinct particularized grievance of my controversy. My point is it wasn't a generalized

grievance of the type claimed in the Appellate decision.

Reviewing once again with a little hindsight including an interest of mine that I didn't yet know i would use. I focused on the repatriation grievance in my reply brief. My point was to distinguish it from from run of the mill generalized grievance in a particularized grievance in my reply brief. Early on, I had made some generalized grievances that I now don't think should have given me standing.

The repatriation grievance in my reply brief is where I thought I should have been considered for standing. Presented as an "exceptional particularized grievance" or a "sufficient particularized grievance" the court still would retain the prudential discretion to judge it a generalized grievance (or an insufficient grievance or an unexceptional grievance). This way it remains in the real world of grievance. It's not an illogical specified unspecified allotment of injury from "Lujan's "on its way over to be coming a generalized grievance at "Warth" to fulfill someone's judicial philosophy. There was a clear distinction between the particularized grievance in my reply brief and my earlier generalized grievances. I believe the particularized grievance requires a judgement. The court didn't think so, or more accurately made no comment about my particularized grievance. I'm aware that it didn't have to.

There are two comments (below) singled out from the appellate court decision. Both point to glaring flaws in current prudential standing. The first one exposes the need for the citizen suit. There is no shared generalized grievance in my repatriation grievance. It isn't a"I'm a taxpayer" generalized grievance. The public doesn't understand my repatriation grievance (presented after the court comments below). They don't share the "grievance" with me. They don't know the nature of their injury. As to the second comment from the court's decision, it suggests the court must protect the majority rights discussed by Justice Jackson in "West Virginia", including a reasonable ability to bring a citizen suit.. The court can't abdicate protections of the majority because of the vote. A particularized injury is not a requirement for the protection of the court. A Popper Falsification from the Justice Brandeis concept of "government as bad actor" suggest that the legislature can even be the cause of many "un particularized" injuries.

The legislature shouldn't get immunity from everything because of the vote. It may just be a violation of the court's jurisdiction by the legislature but the court has to call them on it. If Kerven happens to be right and the legislature violated "Vance v. Bradley" in writing the TCJA, they should be called on it.

When i received the Summary Order I was irate. I'm not an irate guy. I don't fault the appellate court for applying what they applied. I fault what they applied. After reading the order, I didn't think the prudential standing rules were flawed. I knew the prudential standing rules were flawed. Call it muscle memory at this point. That doesn't mean the theory won't be sustained. That doesn't mean I can do anything about it. But the standing rules are wrong. There are two lines in the decision that particularly stand out . Page 3. And "when the harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone doesn't normally warrant jurisdiction, "Warth v. Seldin" 422 U.S. 490, 499, (1975). And the last line in the order. "Further, Kerven's argument that the injury he asserts was applicable to everyone undermines that he suffered a particularized injury. See "Warth" 422 U.S. at 499."These were the quotes discussed above.

Now I want to look at my look at my particularized grievance on the repatriation originally presented more clearly from earlier attempts in my reply brief. The repatriation was a rigged transaction in the TCJA that lowered the taxes of 26 U.S. code 965 entities known as deferred income corporations after the fact . Involved in that transaction kerven believes was a debt rebate that should have had a debt reconciliation based on their reporting standard ASC 740. (We're not off to what the rest of the world calls a generalized grievance. the court could still deem it a generalized grievance but the shouldn't be allowed to ignore it.

Kerven now believes, and he makes this legal claim only as of this writ - it took him a long time to figure it out - that the repatriation is a violation of "Vance v. Bradley". It's a strange twist. "Vance v. Bradley" 440 U.S.93,97 (1979) States: "The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will be rectified by the democratic process and judicial interventions are generally unwarranted, no matter how unwisely a political

branch has acted". Here we get a different twist on the the separation of powers argument championed by Justice Scalia in his thesis. He believed the legislature and the executive vindicated the public interest. Unfortunately, armed with Justice Scalia's non intervention in the legislature, Wall Street ate the public's lunch with these offshore corps.. In my view Wall Street equipped with the Rubber Stamp of the Legislature made the Legislature unwittingly intervene in the jurisdiction of the court by intervening in the in place tax law up to the end of 2017 a violation of "Vance v. Bradley. These offshore entities called deferred income cooperates are entities that anticipate the vote. That is what the deferred income corporations (section 965 of the code) do. The legislature has the jurisdiction to establish a new STR any time it wants based on the vote. Yet It doesn't have the right to retroactively grant these entities a discount that await the vote because these entities are in violation "Vance v. Bradley" in my opinion. In accounting's favorite legal concept "substance v. form" the structure of these entities allow them to wait for the right political configuration of the executive and congress to vote them a discount against their statutory rate of 35%. Even if you want to claim that the tax provision is retroactive with the absurd distinction of giving money back, there should be a required debt reconciliation whether the government pays any debt or not. If the government is accruing debt during the time these Deferred income corporation's DTA (Deferred Tax Asset) is active when the U.S. government was a on world wide system of taxation (it was til the end of 2017), where the STR of these 965 entities was 35%, reporting yearly under their accounting convention ASC 740 then a certain amount of that accruing debt (to the national debt) applies to them at their STR as it does to every other entity at their STR's whether the government pays the debts or not. If every entity including Rudy the Roofer and Chief Justice Roberts is paying their tax at their STR, if you lower the statutory rate of these favored repatriation entities after the fact, instead of the amount accrued to their account at 35%. their share becomes 15.5%,with the other 19.5% put back into the pot and picked up by Rudy, Chief Justice Roberts and all other tax entities at their STR's going forward. And of course the Parent corporations where the discounted profits of these deferred foreign income went when nit was

repatriated got from the legislature or its rubber stamp a 40% discount on their corporate tax rate from 35% to 21%. Now maybe I'm wrong or missed something but if I had an individualized particularized injury at least the court could ask around. My proposal is that in some cases a citizen suit a "sufficient particularized grievance" or an "exceptional particularized grievance" with a common injury to the petitioner could be used. Kerven figures this one cost the government 200 to 400billion dollars. 53 billion from Apple alone.

I was beginning to fight standing. It was likely to be a futile attempt. I decided to use the Justice Brandeis concept of government as bad actor in my en banc petition. I wasn't able to fully develop it in time for the en Banc petition rehearing. But my point was this. By using government as bad actor i would be able to scramble and rattle the number of injuries where there were many common injuries and the requirement of an individualized injury was illogical. Are those with a common injuries not injured? It is called a Popper falsification. Standing theory meet a case it couldn't handle. My petition for rehearing was denied.

I couldn't believe i used the term Popper Falsification and still didn't know where I was. In aways I got it.

Very soon after that I reviewed to initiate my writ. I metaphorically hired Brandeis. I determined he couldn't get standing either with his Brandeis Arithmetic. Then it occurred to me that God herself, with her superior investigative skills couldn't get standing. I'm beginning to think the court's prudential standing rules are a little too precious.

I reread the Appellate decision. I remember my first reading of "leading the calf to slaughter"- running the gauntlet from "Lujan"s to "Warth Seldin".

But I finally knew where I was. It is one of those strange situations we all find ourselves in at some point. We come around the last corner and we're in familiar territory. I was well aware of Justice Scalia's opinion in "Lujan v. Defenders of Wildlife" 504 U.S.555, 560 (1992) " and his affinity for it. I finally asked where did this all come from. This is somebody's theory. I had a good idea whose and quickly found it. I've had a 40+ year passion for reading science theory. I'm sorry. It is a theory built to fit Justice Scalia's judicial philosophy.

The current prudential theory unnecessarily abridges majoritarian rights. The use of the individualized injury in a citizen suit is a canard to fulfill Justice Scalia's judicial philosophy of "over judicialization" and to eliminate citizen suits. It uses "LuJans" which is too exotic to hold the key to standing. It misdefines terms. An injury is individualized by definition. a grievance is a claim to injury. When common injuries are suffered they are all individualized. His individualized injury is an injury he wants to take somewhere like "Warth v. Seldin."422 U.S. 490,499 (1975). His theory fails to protect the rights of the citizens rationalizing his version of standing theory claiming it is "Essential to the Separation of Powers". But even here his separation of powers has a bias toward the legislature. We may well be more endangered by oligarchy using the Legislature rubber stamp or a Plutarchian redistribution of wealth that kills republics. My repatriation claim is the legislature intervening in court's jurisdiction.

Theories often become the passion of their originators. Sometimes an obdurate passion. They can burden those in the field.

By far my greatest criticisms are: 1. the original one lodged by Blackmun in his dissent in "Lujans", the elimination of the citizen suit, 2. the failure to assess the efficacy of standing theory in the era of debt. It has been well pointed out by The U.S. tax economist Martin Sullivan when writing tax law, corporations are not the legislature's partner. The legislature gave Wall Street rubber stamp. The doctrine then over sells the idea that the legislature and the executive vindicate the public interest. 3. it allows theoretical deficiencies of prudential theory as theory, to fulfill someone's judicial philosophy over the guaranteed rights of the constitution. The individualized injury is redundant and a false witness in a citizen suit where there are common injuries. common injuries are individualized injuries. injury is defined in injury and individualized by nature. a grievance is a claim to injury. We understand what he means but his limitation on injury is to serve his purpose not the complete reality of either grievance or injury 4. Present but not cited and the justices will be better on this than I, the doctrine seems borrow from Holmes II down to the idea of judges voting with their class, a previous but more tempered theme from Holmes II. His whole theme of minority rights and the vote seems to

have the feel of Bi-Metallic Investments v. State Board of Equalization." i think Justice Jackson's comments above raise questions about current prudential theory with regard to guaranteed rights and protection of all citizens. Justice Brandeis and his concept of government as bad actor have real authority in standing theory and raise the need for the occasional citizen suit in a more complete theory.

This is not criticism but an observation. There are those of us that have cheated and had to face it. There are others that think it's a skill. The tax precedents and the anti injunction in tax cases were written to guarantee income to the government. The preferred method of tax avoidance now is to get your tax avoidance and sometimes evasion written into tax law. Those that practice this strategy are well aware of the difficulty of getting standing. This one of the places where an occasional citizen suit might be helpful. Those with iniquitous intent sometimes remain iniquitous. I thought I'd give Justice Alito another quote.

it is worth noting that Justice Brandeis was dismissed by the Boston Fruit and Produce Exchange. He appeared in court as a citizen representing the citizens of Massachusetts.

REMEMBER O. STRANGER, ARITHMETIC IS THE FIRST OF THE SCIENCES AND THE MOTHER OF SAFETY.

REASONS FOR GRANTING THE PETITION

The current prudential standing rules are unconstitutional. Taken from Antonin Scalia's "The Doctrine of Standing as an Essential Element of the Separation of Powers" page 894 SUFFOLK UNIVERSITY LAW REVIEW; Vol.XVII:881. "Thus when the individual who is the very object of a law's requirement or prohibition seeks to challenge it, he always has standing. This is the classic case of the law bearing down on the individual himself, and the court will not pause to inquire whether the grievance is a "generalized" one." The key to Kerven's claim of unconstitutionality lies in what Justice Scalia is trying to sell in his half premise. The fact the court pauses, doesn't turn all grievances into a generalized grievance that back adheres to his mis-defined individualized injury. His theory is incomplete. It's unconstitutional in abridging redress. Kerven isn't asking the court to give up its discretion over grievances.

There is no requirement in the constitution for an individualized injury in the way Justice Scalia wants to define it. One simply would have go through the awkward process of challenging the standing law prior to lodging his grievance against the TCJA. That's what I'm doing. The standing law then "individually' bears down on him. The standing law is unconstitutional because it tries to limit constitutional access to redress by creating a specified unspecified number of injuries over which redress doesn't apply, which is really the current prudential standing rules definition of injury. When an individualized injury goes to administration they allow an unspecified more. The classic case is Justice Holmes II's feeling the need to come out and justify "Londoner" after "Bi-Metallic Investments". An injury and its individualization are defined in injury. You don't get to leave the real world of the rest us to create definitions that fit your judicial philosophy. It sanctions bad actions by those that reverse engineer your theory. It is possible you taking standing away from their adversaries.

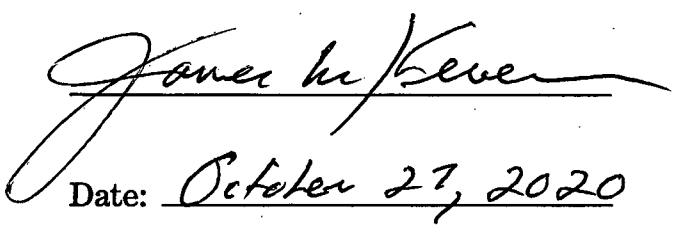
Injuries initiated by bad actions don't lose their redress at a certain number. You can't drive your concocted individualized injury over to your generalized grievance. You don't get to abridge redress to cut off access. Access can be difficult, unfair, but the fundamental purpose of access doesn't get altered. The Brandeis concept of government as bad actor also blew a whole in standing theory. The TCJA was government as bad actor. The theory is incomplete.

GRANT THE WRIT BECAUSE I'M ARGUING STANDING FOR GOD HERSELF. OF COURSE OTHERS MAY NOT HOLD MY TRANSGRESSIONS.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: October 27, 2020