No. _____

In The
Supreme Court of the United States

THOMAS CHARLES HORNE, ATTORNEY GENERAL;
KATHLEEN A. WINN,

Petitioners,

v.

SHEILA SULLIVAN POLK, IN HER OFFICIAL CAPACITY
AS THE YAVAPAI COUNTY ATTORNEY,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The question presented concerns the *Heck* rule of this Court (*Heck v. Humphrey,* 512 U.S. 477 (1964). In that case, this Court held, in the criminal context, that the statute of limitations for a section 1983 action runs from the reversal of the judgment which is the subject of the 1983 action, not from when plaintiff should have known of the violation of his rights. The rule has been applied in civil administrative cases involving prisoner discipline. The question is whether it should be applied as well in other administrative cases, such as this one, where the policy basis for the rule, articulated in *Heck*, would also apply here, and where defendants were denied property without due process of law.

PARTIES TO THE PROCEEDING

Petitioners are Thomas C. Horne and Kathleen Winn, who reside in Maricopa County, Arizona.

Respondent is Sheila Polk, in her official capacity as the Yavapai County Attorney.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of this Court's rules, Petitioners state that there is no corporate disclosure required as there are no corporate parties.

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The District Court dismissed on statute of limitations grounds **(Appendix at A5 (hereinafter Appendix is referred to as "A")** The Ninth Circuit affirmed **(A1)**.

The Arizona Supreme Court found that defendant, County Attorney Sheila Polk, had violated plaintiffs' constitutional rights. She falsely charged them with a campaign violation, involving a fine of over $1 million against individuals. Polk participated as an advocate in the subsequent hearing before an Administrative Law Judge. Polk lost, in that the Administrative Law Judge found for defendants, and then Polk purported to overrule the Administrative Law Judge, so that she would win. Based on 27 reported cases, the Arizona Supreme Court found that it is unconstitutional to act as advocate, and then as the ultimate judge.

Plaintiffs brought their §1983 action within two years of the Arizona Supreme Court decision. The Ninth Circuit found that the two years began earlier.

That was even though plaintiffs would have been laughed out of court with a §1983 action concerning a decision that had not been reversed and was still the law of the case. Such an action would have been a prohibited collateral attack in a parallel proceeding against a then, still valid, judgment that had not been appealed to conclusion.

Under a logical extension of *Heck, supra*, the statute should have run from the reversal, not from when plaintiffs became aware their constitutional rights had been violated. Because of this erroneous

conclusion, the Ninth Circuit affirmed a dismissal for non-compliance with the statute of limitations.

LIST OF PROCEEDINGS

- *In the Matter of: Thomas Horne, Individually: Tom Horne for Attorney General Committee (SOS Filer ID 2010 000003); Kathleen Winn, individually; Business Leaders for Arizona (SOS Filer ID 2010 00375*), Office of the Yavapai County Attorney Campaign Finance Proceeding, no case No., Sheila Sullivan Polk, Yavapai County Attorney.
    - Polk Order Requiring Compliance (October 17, 2013) **(A117).**
    - Brian M. McIntyre Final Administrative Decision (July 5, 2017) **(A13).**
- *In the Matter of: Thomas Horne, Individually: Tom Horne for Attorney General Committee (SOS Filer ID 2010 000003); Kathleen Winn, individually; Business Leaders for Arizona (SOS Filer ID 2010 00375)*, Administrative Law Proceeding, No.: 14F-001-AAG (Administrative Law Judge Tammy L. Eigenheer).
    - Administrative Law Judge Decision (April 14, 2014) **(A74).**
- *In the Matter of: Thomas Horne, Individually: Tom Horne for Attorney General Committee*

(SOS Filer ID 2010 000003); Kathleen Winn, individually; Business Leaders for Arizona (SOS Filer ID 2010 00375), Maricopa County Superior Court, Case No.: LC2014-00255 (The Honorable Patricia Starr) **(A59).**

- *Tom Horne, individually; Tom Horne for Attorney General Committee (SOS Filer ID 2010 000003); Kathleen Winn, individually; Business Leaders Not for Arizona (SOS Filer ID 2010 00375*), Plaintiffs/Appellants v. Sheila Sullivan Polk, Yavapai County Attorney, Defendant/Appellee, Arizona Court of Appeals, Division One, Case No.: 1-CA-CV 14-0837.

    - Memorandum Decision Affirming Published Decision, 02-23-16, 2016 WL 706376 (App. 2016) **(A38).**

- *Tom Horne, individually; Tom Horne for Attorney General Committee (SOS Filer ID 2010 000003); Kathleen Winn, individually; Business Leaders Not for Arizona (SOS Filer ID 2010 00375), Petitioners/Appellants v. Sheila Sullivan Polk, Yavapai County Attorney, Defendant/Respondent*, Arizona Supreme Court, Case No.: CV 16-0052-PR

    - Arizona Supreme Court Decision, 242 Ariz. 226, 294 P.3d 651 (May 25, 2017) **(A17).**

- *Thomas Charles Horne, Attorney General, and Kathleen A. Winn, Plaintiffs, v. Sheila Sullivan Polk, in her official capacity as the*

Yavapai County Attorney, Defendant, United States District Court, District of Arizona, Prescott, Case No.: 3:18-cv-08010-SPL (The Honorable Steven P. Logan).

- Order re Motion for Reconsideration, 2019 WL 1438249 (April 1, 2019) (Dkt. #26).

- Order Granting Defendant's Motion for Reconsideration, 04-17-19, (Dkt. # 28), 2019 WL 1676016 (D. Ariz. 2019) (Dkt. #29) (**A5**)

- *Thomas Charles Horne, Attorney General, and Kathleen A. Winn, Plaintiffs-Appellants, v. Sheila Sullivan Polk, in her official capacity as the Yavapai County Attorney, Defendant-Appellee; Thomas Charles Horne, Attorney General, and Kathleen A. Winn, Plaintiffs-Appellees, v. Sheila Sullivan Polk, in her official capacity as the Yavapai County Attorney, Defendant-Appellant,* United States Court of Appeals for the Ninth Circuit, Case No.: 19-15942

  - Memorandum, 2020 WL 3469112 (9th Cir. June 25, 2020) **(A1).**

DATE OF DECISION

Memorandum, 2020 WL 3469112 (9th Cir. June 25, 2020) **(A1).**

BASIS FOR JURISDICTION

28 U.S.C. §1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS

5th and 14th amendments to U.S. Constitution; A.R.S. §41-1092.03; and A.R.S. § 41-1092.08

5th Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

14th Amendment

SECTION 1

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.

A.R.S. §41-1092.03(B), and §41-1092.08(B) A.R.S. §41-1093.03(B). Notice of appealable agency action or contested case; hearing; informal settlement conference; applicability:

A party may obtain a hearing on an appealable agency action or contested case by filing a notice of appeal or request for a hearing with the agency within thirty days after receiving the notice prescribed in subsection A of this section. The notice of appeal or request for a hearing may be filed by a party whose legal rights, duties or privileges were determined by the appealable agency action or contested case. A notice of appeal or request for a hearing also may be filed by a party who will be adversely affected by the appealable agency action or contested case and who exercised any right provided by law to comment on the action being appealed or contested, provided that the grounds for the notice of appeal or request for a hearing are limited to issues raised in that party's comments. The notice of appeal or request for a hearing shall identify the party, the party's address, the agency and the action being appealed or contested and shall contain a concise statement of the reasons for the appeal or request for a hearing. The agency shall notify the office of the appeal or request for a hearing and the office shall schedule an appeal or contested case hearing pursuant to section 41-1092.05, except as provided in section 41-1092.01, subsection F.

A.R.S. §41-1092.08(B). **Final administrative decisions; review; exception**:

Within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, the head of the agency, executive director, board or commission may review the decision and accept, reject or modify it. If the head of the agency, executive director, board or commission declines to review the administrative law judge's decision, the agency shall serve a copy of the decision on all parties. If the head of the agency, executive director, board or commission rejects or modifies the decision, the agency head, executive director, board or commission must file with the office, except as provided in section 41-1092.01, subsection F, and serve on all parties a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification of each finding of fact or conclusion of law. If there is a rejection or modification of a conclusion of law, the written justification shall be sent to the president of the senate and the speaker of the house of representatives.

OTHER REQUIREMENTS OF RULE 14

(e) (iii)) N/A.

CONCISE STATEMENT OF FACTS.

A. Decision of The Administrative Law Judge in Favor of Horne and Winn and Its Unlawful Reversal by County Attorney Polk.

Defendant Polk, as Yavapai County Attorney, brought an action against Plaintiffs Horne, Winn, and two campaigns. It alleged that Winn had coordinated with Horne in an independent campaign, run by Plaintiff Winn, with Tom Horne's election as Arizona Attorney General in 2010. Polk issued an order that the campaign amend its financial reports, and repay donors approximately $396,000, or if that amount were not paid within 20 days, that Tom Horne and Kathleen Winn, as individuals, would be liable to the state for three times that amount, or approximately $1.2 million. **(A117).**

Horne, Winn, and the two campaigns appealed this charge to an Administrative Law Judge. The Administrative Law Judge, after judging witness credibility in an adversary hearing, found in favor of Horne and Winn, and against Polk. Polk, who had lost, acting under color of State power, unlawfully overruled the decision of the Administrative Law Judge, ruled in favor of herself, and reinstated the original order. **(A74).**

In a Response Brief at the Arizona Court of Appeals, Polk admitted the following: "Admittedly, the Yavapai County Attorney was involved with the prosecution of the case, by assisting with preparation

and strategy." *Horne v. Polk*, 242 Ariz. 226, 229, 394 P.3d 651, 654 (2017)

Although, by her own admission, Polk had personally participated in advocacy in the adversary proceeding before the Administrative Law Judge, she also personally made the decision to overrule the Administrative Law Judge.

There are 27 cases, all coming to the same result, that what Polk did (acting as both advocate and final decision maker) constitutes a violation of plaintiffs' due process rights: *Comeau v. Ariz. State Bd. Of Dental Exam'rs,* 196 Ariz. 102, 108 ¶¶ 26-27, 993 P.2d 1066, 1072 (App. 1999); *Rouse v Scottsdale Unified Sch. Dis.,* 156 Ariz. 369, 371, 374, 752 P.2d 22, 24, 27 (App. 1987); *Taylor v Arizona Law Enforcement Merit System Council*, 152 Ariz. 200, 731 P.2d 95 (App. 1987); *Hamilton v City of Mesa*, 185 Ariz. 420, 916 P.2d 1136 (1995); *Williams v. Pennsylvania,* 136 S. Ct. 1899 (2016); *Botsko v Davenport Civil Rights Comm'n,* 774 N.W.2d 841, 851 (Iowa 2009); *Howitt v Superior Court,* 3 Cal.App.4th 1575, 5 Cal.Rptr.2d 196 (App. 1992); *Nightlife Partners, Ltd. v. City of Beverly Hills*, 108 Cal. App. 4th 81, 133 Cal.Rptr.2d 196 (App. 1992); *Annie Carr's Pub, Inc., v. New York State Liquor Authority*, 194 A.D.2d 785, 599 N.Y.S.2D 617 (App. 1993); *Osuagwu v Gila*, 938 F.Supp.2d 1142 (D. N.M. 2012); *Wolff v McDonnell*, 418 U.S. 539, 572 n 20, 94 S. Ct. 2963, 41 L.Ed.2d 935 (1974); *Withrow v Larkin*, 421 U.S. 35 (1975);*Schmidt v Independent School District No. 1 Aitkin*, 349 N.W.2d 563 (Minn. App. 1984); *Appeal of Trotzer*, 143 N.H. 64, 719 P.2d 584 (1998); *Taylor v Arizona Law Enforcement Merit*

System Council, 152 Ariz. 200, 731 P.2d 95 (App 1987); *Oates v United States Postal Service, New York*, 444 F. Supp. 100 (S.D.N.Y. 1978); *Lyness v Commonwealth*, 529 Pa. 535, 605 A.2d 1204 (Pa. S. Ct. 1992); *Wong Yang Sung v McGrath*, 339 U.S. 33, 70 S.Ct. 445, 94 L. Ed. 616 (1950); *Camero v United States,* 375 F.2d 777 (Ct. Cl. 1967)*; Davenport Pastures, LP v Morris County Bd.*, 291 Kan. 132, 238 P.3d 731 (2010); *Hamilton v City of Mesa*, 185 Ariz. 420, 916 P.2d 1136 (1995); *Newton Tp. Bd. of Sp'rs v. Great Media Radio Co.*, 138 Pa.Cmwlth. 157, 587 A.2d 841 (1991); *Horn v Hilltown Township*, 461 Pa. 745, 337 A.2d 858 (1975); *Nova Services, Inc. v Village of Saukville*, 211, Wis.2d 691, 565 N.W.2d 283 (1997); *Matter of Robson*, 575 P.2d 771 (Alaska 1978); *Colorado Republican Federal Campaign Committee v Federal Election Com'n.,* 518 U.S. 604, 116 S.Ct 2309 (1996); *State Commission on Human Relations v Kaydon Ring & Steal, Inc.*, 149 Md. App. 666, 818 A.2d 259 (2003); *In re Estate of Newman*, 219 Ariz. 260, 271, 196 P.3d 863 (App. 2008), as amended (July 17, 2008)

There are no cases to the contrary.

B. Decision of the Arizona Court of Appeals.

The Arizona Court of Appeals upheld Polk's decision. *Horne v. Polk*, 2016 WL 706376 (App. 2016) **(A38)**.

C. Decision of the Arizona Supreme Court.

In *Horne v. Polk*, 242 Ariz. 226, 394 P.3d 651, (2017) **(A17)**, the Arizona Supreme Court reversed and ruled as follows:

> These cases [citing some of the cases listed above] instruct that the combination of accusatory, advocacy, and adjudicative roles in a single agency official violates due process.
> […]
> We hold that due process does not allow the same person to serve as an accuser, advocate, and final decision maker in an agency adjudication.
>
> Specifically, we hold that when Polk also assumed an advocacy role during the ALJ proceedings, the due process guarantee prohibited her from then serving as the final adjudicator."[1] 242 Ariz. at 233, 234 (emphasis added).

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[1] Polk had claimed the power to do this based on A.R.S. §41-1092.08 (quoted above) which permits an agency head to overrule an Administrative Law Judge. But, as 27 unanimous cases cited above held,

Polk participated fully in the above-referenced appeal, and is therefore collaterally estopped from denying that Polk violated the plaintiffs' due process constitutional rights.

D. Final Decision on the Merits.

Following the decision by the Arizona Supreme Court, the matter was remanded to the Arizona Attorney General, for a decision on the merits. The Attorney General had a conflict and assigned it to the Cochise County Attorney. The Cochise County Attorney reversed Polk's decision and reinstated the decision of the Administrative Law Judge. **(A74).** The Cochise County Attorney's decisions had, for our purposes, some important passages, including:

> 110. … The record, unfortunately, supports a conclusion that the investigation being conducted was not a search for the truth, but rather, only intended to shore up conclusions already drawn.
>
> In the present matter, the ALJ found Winn and Horne to be

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and the Arizona Supreme Court held, in this case, the Agency head can only do this if she had not personally participated as an advocate in the hearing before the Administrative Law Judge. As Polk's admission, quoted in the Arizona Supreme Court's Decision confirms, Polk had participated as an advocate.

> credible in their testimony. This reviewer can find no substantial evidence to overturn those findings. Indeed, if anything, the record reveals further support for those determinations."

(A15)

Polk participated fully in the procedure before the Cochise County attorney, and is collaterally estopped from denying the truth of the above-quoted findings.

E. Proceedings Before the Federal District Court.

Plaintiffs brought this action in the United States District Court for the violation of their constitutional rights, pursuant to 28 U.S.C. §1983. The action was brought on January 29, 2018, within 8 months of the Arizona Supreme Court reversal on May 25, 2017. Defendant moved to dismiss on four grounds:

(1) Prosecutorial Immunity.

(2) Absolute Judicial Immunity

(3) Qualified Immunity of Government Employers.

(4) Statute of Limitations.

In the first decision, the District Court ruled that the statute of limitations did not begin to run until the initial action was reversed by the Arizona Supreme Court on May 25, 2017. This action was

filed within the two-year statute of limitations for a §1983 action. The statute of limitations, therefore, did not run, and the Motion to Dismiss was denied.

After a motion for reconsideration by defendant, the District Judge changed his mind regarding the statute of limitations. He ruled that it ran not from the reversal, but from when plaintiffs became aware that their rights had been violated. At that time, Polk's decision was the law of the case. Plaintiffs would have been suing for a finding that a decision, ruled valid by the Arizona Court of Appeals, was a violation of their constitutional rights.

Horne and Winn did not believe they could sue under §1983 for violation of their civil rights as long as Polk's decision was the law of the case and had not been reversed. Consequently, the §1983 case involved here was filed within the statute of limitations if measured from the reversal by the Arizona Supreme Court, but not if measured from when they first became aware that Polk had violated their civil rights.

DIRECT AND CONCISE ARGUMENT

In *Heck v. Humphrey*, 512 U.S. 477 (1964), this Court ruled that the statute of limitations in a §1983 action runs from reversal of the judgment which is the subject of a §1983 action, not from when the plaintiff knew or should have known his rights had been violated. That is because, as this Court discussed in *Heck*, a §1983 action prior to reversal would have constituted an unacceptable collateral attack on a final judgment.

On reconsideration defendant persuaded the trial judge that *Heck* applied only to criminal cases, not to a final administrative judgment, because *Heck* involved a conviction. However, a close reading of the policy considerations in *Heck* compels the conclusion that *Heck* should apply to both criminal and, as here, administrative judgments, that deprive a defendant of liberty or property without due process of law.

That is because in both the criminal and the administrative context, a final judgment should not be collaterally attacked in a §1983 action until after reversal. The cases where the *Heck* rule does not apply are cases, such as a claim of false charges, a false arrest, a false imprisonment, etc., where there is no final judgment with preclusive effect to be collaterally attacked. In that case, a §1983 case can be brought right away, without violating the policy against collateral attacks on final judgments. In our case, an action brought before reversal by the Arizona Supreme Court would have been a forbidden collateral attack on a final judgment. This statute then would not have begun to run until reversal.

The second, seventh, ninth, and tenth circuits, have applied (or assumed the applicability of) the *Heck* rule in the context of civil administrative cases involving prison discipline. There is a sixth circuit case which appears to go the other way.

The Ninth Circuit, in this this case, held that the tolling of the statute of limitations under *Heck v. Humphrey* is reserved for criminal cases only, and cannot apply to administrative proceedings. However, under the policy analysis in this Court's decision in *Heck* a final judgment in an administrative case, such as ours, plays the same

role as a conviction, to apply the *Heck* rule tolling the statute of limitations until there is a reversal of the conviction or final judgment. [2]

In the *Heck* case and our case, an earlier statute of limitations would require a prohibited collateral attack on a final judgment.

Four circuits have applied (or assumed applicability of) *Heck* tolling to both conviction and

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[2] By way of analogy, the *Younger* abstention doctrine, developed by this Court in the criminal context, has been applied in the civil context, because the public policy considerations apply equally in the criminal and civil context.

In *Younger v. Harris*, 401 US 37 (1971), the United States Supreme Court held, in the criminal context, that a federal court could not issue a stay or injunction of a state court action. 401 US at 40.

In *AmerisourceBergen Corp. v Roden*, 495 F.3d 1143 (9th Cir. 2007), the Court applied the *Younger* abstention doctrine in a civil case. 495 F.3d at 1147. The Court held that it did not apply in that case because the federal action was for damages, rather than an injunction or stay. But it is clear that the Court considered that, in a proper case, the doctrine was applicable in a civil context. The *Younger* abstention doctrine is not directly applicable in our case because a §1983 action is not a request for a stay or injunction. However, the point is that a doctrine developed in the criminal context was equally applicable in a civil context where the policy considerations applied in both cases.

final civil administrative judgments, in the prison discipline context. That is because in both cases, the policy is to discourage a collateral attack (through a §1983 case), on a conviction or final administrative judgment. A conviction or final administrative judgment should be appealed to a reversal before a §1983 action can be filed.

The distinction should not be between criminal and administrative proceedings, but between a final judgment, criminal or administrative, that has preclusive effect, and an earlier action (such as a false arrest) that does not have preclusive effect, and therefore can be collaterally challenged.

If the action can, from a policy standpoint, be collaterally challenged, the statute starts to run when plaintiff knew or should have known his civil rights were violated. If it is a final judgment or conviction, it should not be collaterally challenged, so the statute does not begin to run until reversal. *Heck* should apply to the administrative order in this case, which had preclusive effect, until overturned by the Arizona Supreme Court.

Heck was a civil rights action based on a conviction, which should have preclusive effect, although earlier events were also involved in the action. This Court wanted to avoid a collateral attack on a conviction that should have preclusive effect on any subsequent actions:

> One element that must be alleged and proved in a malicious prosecution action is termination of the prior criminal proceeding in favor of the

> accused. [Citations] This requirement "avoids parallel litigation over the issues of probable cause and guilt ... and it precludes the possibility of the claimant succeeding in the tort action after having been convicted in the underlying criminal prosecution, in contravention of a strong judicial policy against the creation of two conflicting resolutions arising out of the same or identical transaction. [Citations] Furthermore, "to permit a convicted criminal defendant to proceed with a malicious prosecution claim *would permit a collateral attack on the conviction through the vehicle of a civil suit*." [Citations]. This Court has long expressed similar concerns for finality and consistency and has generally declined to expand opportunities for collateral attack. [Citations]

(512 US at 484, 485 (Emphasis added)).

Under the above quoted analysis of this Court, a final administrative decision should not be collaterally attacked in parallel proceedings. Therefore, the statute should not run until there has been a reversal.

The Ninth Circuit, in this case, held that prison disciplinary cases are not administrative actions, so the prison disciplinary cases cited here do not apply to this case. It is therefore relevant to this analysis that this Court has referred to prison

disciplinary proceedings as "administrative actions", not as criminal cases.

In *Muhammad v. Close*, 540 U.S. 749 (2004), the plaintiff brought a §1983 action for having been found guilty in a prison disciplinary proceeding of insolence. He had to serve an additional seven days of detention and was deprived of privileges for 30 days. (540 U.S. at 752-753.) This Court referred to these "prison disciplinary proceedings" as "these administrative determinations". (540 U.S. at 754, emphasis added.)

The administrative judgment in this case, in which defendant Polk sought to impose a penalty of over $1 million dollars on individual defendants, should be in in the same category as penalties imposed in prison disciplinary proceedings, because both should not be collaterally attacked in parallel proceedings.

In prison discipline administrative decisions, the 2nd, 7th, 9th and 10th circuits, have all held that the running of the statute of limitations in the case of a final judgment, in an administrative proceeding, which we have in our case, is tolled until there is a reversal.

2nd Circuit:

In *Black v. Coughlin*, 76 F.3d 72 (2nd Cir. 1996), the Court stated:

> We see no reason why *Heck,* which dealt with constitutional challenges to a criminal conviction, is not also

> controlling with respect to due process challenges to prison disciplinary hearings.

(706 F.3d at 75.)

The second circuit stated:

> In *Heck v. Humphrey,* 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994) ("*Heck* "), the Supreme Court ruled that a § 1983 claim which, if successful, would necessarily invalidate the plaintiff's conviction does not accrue until there has been some vindication of the asserted right, for example by way of reversal on direct appeal from the conviction or by the granting of relief on collateral attack.
>
> . . .
>
> … the Court stated that "while the state challenges are being pursued, ... the §1983 claim has not yet arisen.

(706 F.3d at 75 (Emphasis added)).

7th Circuit:

In *Graham v. Deutscher,* 106 F.3d 403 (1997), the Court stated:

> Our decision in *Miller v. Indiana Dep't of Corrections,* 75 F.3d 330 (7th Cir.

> 1996), bars a prisoner from obtaining damages through a § 1983 action when the alleged violation has been rejected in a habeas corpus proceeding. *Id.* at 331 (holding that *Heck v. Humphrey* applies to prison administrative proceedings); *see also Heck v. Humphrey,* 114 S. Ct. 2364, 2372 (1994) ("We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment ... a § 1983 plaintiff must prove that the conviction or sentence has been reversed ... or called into question by a federal court's issuance of a writ of habeas corpus.")

(106 F.3d at 2 (Emphasis added)).

In *Miller v. Indiana Dept. of Corrections*, 75 F.3d 330 (1996), the Seventh Circuit stated:

> The issue remains open in this circuit, although three other courts of appeals have held or assumed that *Heck v. Humphrey* applies equally to administrative rulings. *Schafer v. Moore,* 46 F.3d 43, 45 (8th Cir.1995) (per curiam); *Armento–Bey v. Harper,* 68 F.3d 215 (8th Cir.1995) (per curiam); *Gotcher v. Wood,* 66 F.3d 1097, 1099 (9th Cir.1995); *Best v. Kelly,* 39 F.3d 328, 330 (D.C.Cir.1994). We think this is right.

(705 F.3d at 330 (Emphasis added)).

9th Circuit:

As stated in Miller v. Indiana Dep't of Corrections, 75 F.3d 330 (7th Cir. 1996), the 9th Circuit held that "Heck v. Humphrey applies equally to administrative rulings." (Emphasis added.)

10th Circuit:

In *Slack v. Jones,* 348 Fed. Appx. 361 (10th Cir. 2009) the 10th Circuit stated:

> In his response to defendants' motion to dismiss, he complained that he could not earn good time credits. These allegations necessarily implicate the validity of the disciplinary charges and sanctions imposed, including placement in segregated housing. *Heck* and *Edwards* make clear that Mr. Slack does not have a cognizable § 1983 claim unless he can show that the prison proceedings have been invalidated. *See Heck,* 512 U.S. at 486–87, 114 S.Ct. 2364; *Edwards,* 520 U.S. at 646–48, 117 S.Ct. 1584 (applying *Heck* to judgments in prison disciplinary proceedings); *Muhammad,* 540 U.S. at 751, 124 S.Ct. 1303 (reciting holdings of *Heck* and *Edwards*).

6th Circuit:

The only Circuit apparently going the other way is a Sixth Circuit case *Printup v. Director, Ohio Department of Job and Family Services*, 654 Fed. Appx. 781 (6th Cir. 2016). This is contrary to the other Circuits cited above, which creates a conflict among Circuits, justifying a Writ of Certiorari.

Finally, it makes no sense to have a statute of limitations running when the Plaintiff could not bring the action. If the ability to bring the action comes after the statute of limitations has passed, that destroys the right guaranteed by the 5th and 14th amendments, not to be deprived of property without due process of law.

Plaintiff's' attorneys would have violated Rule 11, prohibiting lawyers form filing baseless actions, if they had filed this lawsuit during the time period between when the Court of Appeals ruled against Plaintiffs, before the Arizona Supreme Court vacated the Decision (May 25, 2017).

Imagine if Plaintiffs had brought a §1983 action alleging that Sheila Polk's decision violated Plaintiffs' constitutional rights at a time when the Court of Appeals had ruled that her decision was correct, and before the Supreme Court vacated that decision. Plaintiffs would have been laughed out of court. The Judge would have asked: "How could you bring an action alleging that Polk's decision violated your civil rights, when the Court of Appeals ruled that it was a correct decision?"

The Judge would have reported any lawyer who would bring such an action to the State Bar for

discipline and would have imposed sanctions for a Rule 11 violation.

The cause of action for depriving Plaintiffs of property without due process of law could only be brought after the reversal on appeal. It was brought on January 29, 2018, well within the two-year statute of limitations after the Arizona Supreme Court decision, May 25, 2017, reversing Polk's decision.

CONCLUSION

It is therefore respectfully requested that a Writ of Certiorari issue, that the decision of the Ninth Circuit be vacated, and that the case be remanded for trial.

Respectfully Submitted October 14, 2020.

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