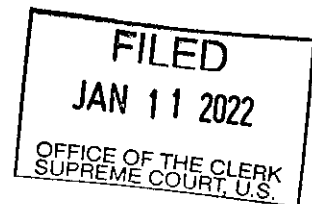


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No. _____

ORIGINAL

In The
Supreme Court of the United States



LEON CODY and DARLENE CODY,

Petitioners,

v.

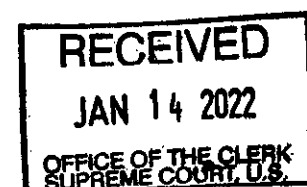
THE TRINITY COUNTY
CALIFORNIA SUPERIOR COURT

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

LEON CODY AND DARLENE CODY
30520 100 Road
Shingletown, California 96088
530-474-9350
In Pro Per



QUESTIONS PRESENTED FOR REVIEW

1. Whether a State has an Eleventh Amendment right to arbitrarily enforce or not enforce a State Law having significant interest to federal Fourteenth Amendment Rights to a fair trial.

2. Whether the Eleventh Amendment bars a federal district court from enforcing Sec. 1983 prospective injunctive relief requiring that a state court clerk comply with a State law enacted to ensure a federal Constitutional Right.

PARTIES TO THE PROCEEDING

Leon Cody and Darlene Cody were the plaintiffs in the district court proceedings and appellants in the court of appeals proceedings.

The Trinity County California Superior Court is the nominal party of record overseeing the real party, the Trinity County California Superior Court's clerk, and captioned as the respondent in this petition and was, in that capacity, the defendant in the District Court and appellee in the Ninth Circuit Court. [*In re Ayers*, 123 U.S. 443, 444 (1887)]

RELATED CASES

- *Cody v. Trinity County California Superior Court*, No. 2:19-cv-02383-JAM-KJN, U.S. District Court for the Eastern District of California. Judgment entered March 24, 2020. [App. 6]
- *Leon Cody, et al. v. California Superior Court in and for Trinity County*, No. 2:19-cv-02383-JAM-KJN PS, U.S. District Court for the Eastern District of California. Judgment entered May 26, 2020. [App. 4]
- *Leon Cody; Darlene Cody v. Superior Court of California Trinity County*, No. 20-16233, U.S. Court of Appeals for the Ninth Circuit. Judgment entered July 29, 2021. [App. 1]
- *Leon Cody; Darlene Cody v. Superior Court of California Trinity County*, N. 20-16233, U.S. Court of Appeals for the Ninth Circuit. Judgment entered November 08, 2021. [App. 20]

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PETITION FOR WRIT OF CERTIORARI

Leon Cody and Darlene Cody petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.



OPINIONS BELOW

The Ninth Circuit's opinion is unpublished but relevant under claim preclusion, *precludi non debet*, Circuit Rule 36-3 and reproduced at App. 1. The Ninth Circuit's denial of petitioners' motion for rehearing *en banc* is reproduced at App. 20. The opinions of the District Court for the Eastern District of California are reproduced at App. 3-19.



JURISDICTION

The Court of Appeals entered judgment on July 29, 2021, (App. 1). The court denied a timely petition for rehearing *en banc* on November 08, 2021, (App. 20). This petition was filed within 90 days of the rehearing denial or before February 06, 2022. This Court has jurisdiction under 28 U.S.C. Sec. 1254(1).



STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves interpretation of constitutional provisions of the Eleventh Amendment and the Fourteenth Amendment.

PREFACE

On November 24, 2019, petitioners Leon Cody and Darlene Cody, (the Codys), in pro per, filed a civil rights complaint pursuant to 42 U.S.C. Sec. 1983 seeking injunctive relief (No. 2:19-cv-02383-JAM-KJN) in the U.S. District Court for Eastern California because of a deprivation by a State Court clerk of a federal right and entitlement provided to the Codys by the Fourteenth Amendment of the United States Constitution.

Plaintiffs claimed that the Trinity County California Superior Court's clerk, in State case No. 13cv011, caused a deprivation to the Codys' federal right to a fair trial, by failing to comply with state law, California Civil Code sec. 170.8. [App. 22]

On a motion submitted by the State Court for a determination in the Federal District Court, dismissal was granted on grounds that it was barred by both the Rooker-Feldman doctrine and the Eleventh Amendment doctrine [App. 4]; and the Ninth Circuit Court likewise affirmed that judgment on July 29, 2021. [App. 1] Rehearing en banc was denied on November 08, 2021. [App. 20]

INTRODUCTION AND STATEMENT OF THE CASE

The issue presented in this case involves a genuine conflict between the Ninth Circuit Court of Appeal and the U.S. Supreme Court that is significant and substantially important because it will determine the standard of review the Ninth Circuit uses when reviewing the pretrial dismissal of an entire cause of action on a claimed entitlement to state Eleventh Amendment immunity to suit. Furthermore, the Ninth Circuit opinion affirming Eleventh Amendment state immunity creates a circuit split regarding the proper standard of appellate review in such cases.

1. History of “irregularities” in State case 13cv011

On March 04, 2013, Plaintiffs, Leon Cody and Darlene Cody, (the Codys) acting pro se, filed suit in Trinity County California Superior Court, (13-cv-011) alleging violation of California’s Homeowner’s Bill of Rights (HBOR). [App. 23]

Injunctive relief was granted to the Codys, which under the statutory scheme of the HBOR, made them the prevailing party as a matter of law. [California Civil Code sec. 2924.12(h)] See [*Exxon v. Saudi Basic Indus. Inc.*, 544 U.S. 280 (2005)]. [App. 36]

Thereafter the presiding judge, the Hon. Elizabeth W. Johnson, consented to disqualification; and the

remaining judge on the small Trinity County California Superior Court bench recused himself, thus vacating the entire bench. Which upon happening, a California law (Code Civ. Proc. Sec. 170.8) requires the Superior Court clerk to "forthwith contact the Chairman of the Judicial Council" upon the disqualification of an entire bench. That State Law, (i.e., *to make contact with the Chairman of the State Judicial Council*) was not complied with by the Trinity County California Superior Court's clerk. [App. 24]

As a result of the court clerk's non-compliance with State Law (Calif. Code Civ. Proc. Sec. 170.8), the now disqualified presiding judge, Elizabeth W. Johnson, appointed a retired visiting judge instead of contacting the Chairman of the State Judicial Council.

Summary judgment was granted; to which the Codys appealed to the California Third District Court of Appeals. [App. 21]

During the state appeal, a new wrinkle developed in which the Trinity County presiding judge, the Hon. Elizabeth W. Johnson, was removed from the bench by the State and sanctioned to never hold a judicial position in the state again. The State decision declared that, "[S]he was unable to abide by basic ethical standards and rules of law required of a judge".

The state appellate court termed these extraordinary events as irregularities that the Codys waived for

lack of objection¹ [*Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238 (1944)]. [App. 25]

Rehearing was denied by the appellate court and the state supreme court denied review; a remittitur was issued November 14, 2018. All state remedies were exhausted. [App. 33]

2. History in U.S. District Court for Eastern California.

As a result of these state court irregularities, independent from the state court judgment, the Codys filed a timely civil rights complaint in the U.S. District Court for Eastern California claiming the Trinity County California Superior Court “clerk” did not comply with California Code of Civ. Proc. Sec 170.8; and claimed that the State Decision that removed Judge Elizabeth W. Johnson substantiated that the Codys were deprived of their federal right to a fair trial.

The District Court granted Eleventh Amendment immunity to suit in federal court barring the action and thereby dismissed the entire action without leave to amend. [App. 3]



¹ “Even if Hazel failed to exercise due diligence to uncover the fraud, relief may not be denied on that ground alone, since public interests are involved”.

REASONS FOR GRANTING THE PETITION

In this matter, *precludi non debet*, the U.S. District Court for Eastern California and the Ninth Circuit Court of Appeal have adopted a legal standard in its decision concerning the Eleventh Amendment that is inconsistent with the seminal *Ex parte Young* doctrine, including this Courts' rulings in *Pulliam v. Allen* (1984), *Scheuer v. Rhodes* (1974) and this Court's decision to the Fifth Circuit in (2004) *Frew v. Hawkins*, 540 U.S. 431. [App. 10]

The petitioners contend that the Eleventh Amendment only bars "retroactive damages" and not "prospective relief" citing *Frew* at 436-37. Based on that proposition, petitioners seek leave to file an amended complaint.

In *Frew*, 540 U.S. at 437, the Supreme Court explained the following:

"The Eleventh Amendment confirms the sovereign status of the States by shielding them from suits by individuals absent their consent *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54 (1996). To ensure the enforcement of federal law, however, the Eleventh Amendment permits suits for prospective injunctive relief against state officials acting in violation of federal law. *Ex Parte Young*, [209 U.S. 123 (1908)]. This standard allows courts to order prospective relief, see *Edelman v. Jordan*, 415 U.S. 651 (1974); *Milliken v. Bradley*, 433 U.S. 267 (1977), as well as measures ancillary to appropriate prospective relief, *Green v.*

Mansour, 474 U.S. 64, 71-73 (1985). Federal courts may not award retrospective relief, for instance, money damages or its equivalent, if the State invokes its immunity. *Edelman*, [415 U.S.] at 668.”

Deciding the opposite, the Ninth Circuit has erroneously held:

“[T]hat State Courts are immune from suits pursuant to the Eleventh Amendment and 42 U.S.C. Sec. 1983 does not affect this immunity,” and,

“The Eleventh Amendment precludes federal jurisdiction over suits by individuals “*against a state*” unless the state consents to waive its sovereign immunity or Congress abrogates it” [citing *Pennhurst State School & Hospital v. Haldeman*, (1984) 465 U.S. 89, 99-100 and *Simmons v. Sacramento County Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003)]

To the contrary although, for over a hundred years, it has been commonly accepted that under the doctrine of *Ex parte Young*, the Eleventh Amendment does not absolutely preclude federal jurisdiction nor prevents a federal district court from issuing an injunction against a state official who is violating federal law or failing to comply with a state law of federal significance. [*Ex parte Young*, (1908) 209 U.S. 123; *Puliam v. Allen*, (1984) 466 U.S. 522.]

THE NINTH CIRCUIT STANDARD IS IN CONFLICT WITH THIS COURT'S RULINGS

A Writ of Certiorari is required because the U.S. District Court for Eastern California's decision and the U.S. Ninth Circuit Court's affirmation are clearly in conflict with this Court's precedent set in the *Ex parte Young* doctrine; *Pulliam v. Allen*, (1984) 466 U.S. 522, *Scheuer v. Rhodes*, (1974) 416 U.S. 232 and *Frew v. Hawkins*, 540 U.S. 431 (2004).

The Ninth Circuit Court's inconsistent decisions with the other Circuit Courts' concerning the Eleventh Amendment undermines the public's confidence of receiving a fair trial even though this Court clarified:

"There is no support for a conclusion that Congress intended to limit the injunctive relief available under Sec. 1983 in a way that . . . prevent federal injunctive relief against a state judge". [*Pulliam v. Allen*, (1984) 466 U.S. 522]

The United States Ninth Circuit Court of Appeal has decided an important question of federal law concerning the Eleventh Amendment in a way that conflicts with over one hundred years of the *Ex parte Young* doctrine; and relevant decisions of the U.S. Supreme Court, as in *Lewis v. Clarke*, (2017); *Pulliam v. Allen*, (1984); *Edelman v. Jordan*, (1974); *Scheuer v. Rhodes*, (1974) and sanctioned a departure from these Supreme Court rulings, in such a way as to call for an exercise of the Supreme Court's supervisory power to

require conformity in granting Eleventh Amendment rights.

THE ELEVENTH AMENDMENT IS NOT ABSOLUTE NOR WITHOUT EXCEPTIONS

Ex parte Young, 209 U.S. 123 (1908) is the seminal United States Supreme Court case that allows suits in federal courts for injunctions against officials acting on behalf of states of the union to proceed despite the State's sovereign immunity when the State acts contrary to the Constitution. The *Ex parte Young* doctrine strips a person of Sovereign immunity and is unavailable to state officials who act unconstitutionally, even though the state may have authorized their actions. [*Scheuer v. Rhodes*, 416 U.S. 232 (1974)]

In *Scheuer v. Rhodes*, this Court held that:

"The Eleventh Amendment does not in some circumstances bar an action for damages against a state official charged with depriving a person of a federal right under color of state law, and the District Court acted prematurely, and hence erroneously, in dismissing the complaint as it did . . ."

A Sec. 1983 Civil Rights action is properly brought against a person not a State. Whereas the Eleventh Amendment grants a federal entitlement to the States, that entitlement is subject to waiver, and without standing in suits against a person stripped of immunity.

In the Connecticut Supreme Court decision, *Lewis v. Clarke*, 137 S. Ct. 1285, judgment was reversed 8-0 on a writ of certiorari in which this Court held in 2017:

“[A]n indemnification provision cannot as a matter of law, extend sovereign immunity to individual employees who would otherwise not be protected”.

The Supreme Court should therefore grant this petition for writ of certiorari in order to clarify the standard of appellate review for Eleventh Amendment entitlement in civil rights actions under 42 U.S.C. Sec. 1983 and correct the Ninth Circuit’s erroneous holding in this case.

CONCLUSION

For the foregoing reasons, the Court should grant a writ of Certiorari.

Respectfully submitted,
LEON CODY

January 11, 2022