

Supreme Court, U.S.  
FILED

MAY 11 2022

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No. 21-1443

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

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EDWARD RONNY ARNOLD, Pro Se,

*Petitioner;*

v.

BOB OGLESBY, Commissioner,  
Tennessee Department of General Services,

*Respondent.*

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

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**PETITION FOR A WRIT OF CERTIORARI**

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Edward R. Arnold  
5036 Suter Drive  
Nashville, TN. 37211  
(615) 999-8044

May 11, 2022

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## **QUESTIONS PRESENTED**

1. The Eleventh Amendment requires the Defendant, as Commissioner of the State of Tennessee Department of General Services, to be acting on the authority of the State to use the defense of sovereign immunity.
2. Whether the district court erred in misunderstanding the Defendant, as Commissioner of the State of Tennessee Department of General Services, cannot use the defense of sovereign immunity until the courts have determined the Defendant was acting on the authority of the state.
3. Whether the district court erred in misunderstanding the Defendant, as Commissioner of the State of Tennessee Department of General Services, was not acting on the authority of the State in withholding earned wages.
4. Whether the district court erred in misunderstanding the Defendant, as Commissioner of the State of Tennessee Department of General Services, violated Public Law 100-379 Worker Adjustment and Retraining Notification (WARN) in circumventing the last work day of November 25, 2015,
5. Whether the United States Court of Appeals for the Sixth Circuit incorrectly dismissed the civil action in conflict with the Defendant, as Commissioner of the State of Tennessee Department of General Services,

circumvented Public Law 100-379 Worker Adjustment  
and Retraining Notification (WARN) Act dates.

## **PARTIES TO THE PROCEEDING**

The party to this proceeding is identified in this petitions caption.

Tenn. R. Civ. P. 4.04(6) requires the Defendant, Bob Oglesby, Commissioner State of Tennessee Department of General Services, to be served through the State of Tennessee Office of the Attorney General and Reporter, Herbert Slatery III. Rachel Jackson Building 320 6<sup>th</sup> Avenue North. Nashville, Tennessee 37243.

## TABLE OF CONTENTS

	Page
Questions Presented .....	i
Parties to the Proceedings .....	iii
Table of Authorities .....	vi
Opinion and Orders Below .....	1
Jurisdiction .....	1
Statutory Provision Involved .....	3
Statement .....	5
Reasons to Grant the Petition .....	10

I. The United States Court of Appeals for the Sixth Circuit erred in dismissing the case based on Plaintiff's claims barred by the doctrines of sovereign immunity.

- A. Plaintiff objection.
- B. Eleventh Amendment, Amendment (1795) to the Constitution of the United States.

II. The United States Court of Appeals for the Sixth Circuit erred in ruling the Plaintiff's claims are barred by claim and issue preclusion.

- A. Plaintiff objection.

TABLE OF CONTENTS - *Continued*

	Page
B. Defendant's claim of sovereign immunity is not valid.	
Conclusion .....	14

**APPENDIX**

Sixth Circuit Opinion ( 02/17/22) .....	App. 1
Order (06/11/2021) .....,	App. 11
Report and Recommendation (04/15/2021) ...	App. 14

## TABLE OF AUTHORITIES

	Page
Cases	
<i>Edward Ronny Arnold v. Bob Oglesby, Et. Al.</i> M2017-00808-COA-R3-CV (Tenn. Ct. App. 2017).....	5
<i>Redwing v. Catholic Bishop for Diocese of Memphis, 363 S.W.3d 436, 445 (Tenn. 2012)</i> . . .	5
STATUTES	
Public Law 100-379 .....	<i>passim</i>
Tenn. R. Civ. P. 4.04(6) .....	iii
Tenn. Code. Ann. § 4-4-105 (a) (1) (3) .....	11
Tenn. Code. Ann. § 8-23-101 .....	7
Tenn. Code. Ann. § 8-30-406 .....	7
Tenn. Code. Ann. § 8-50-801 .....	7
Tenn. Code. Ann. § 8-50-803 .....	7
Tenn. Code. Ann. § 8-50-807 .....	7
Tenn. Code. Ann. § 8-50-110 .....	7
Tenn. Code. Ann. § 8-50-1101 .....	7
Tenn. Code. Ann. § 20-13-102 (a) .....	10
Tenn. Code. Ann. § 50-1-601 .....	11

TABLE OF AUTHORITIES - *Continued*

	Page
28 U.S.C. § 1291 . . . . .	, , 3
29 U.S.C. §§ 2101 to 2109 . . . . .	7

**RULES AND REGULATIONS**

Tennessee Department of Human Resources	
11.20.06-.010 . . . . .	,7
Tennessee Department of Human Resources	
11.20.06-.11 . . . . .	.7
Tenn. R. Civ. P. 4.04 (6) . . . . .	iii

**OTHER AUTHORITIES**

Tenn. Const. Art. I, § 17 . . . . .	2, 5
U.S. Const. Amend 1 . . . . .	2, 5

Edward Ronny Arnold, Pro Se, respectfully petitions for a writ of certiorari to review the judgement of the Sixth Circuit in this case.

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### **OPINION AND ORDERS BELOW**

The Sixth Circuit's February 15, 2022 panel opinion for 21-5667 filed 08/19/2021 is not published and reproduced at App. 1-10.

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### **JURISDICTION**

This Court has jurisdiction under Rule 10 - Considerations Governing Review on Certiorari compelling reason (a), (c).

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important question in a

way that conflicts with relevant decisions of this Court.

In this case, the United States District Court for the Sixth Circuit dismissed a civil action. The issue before this court is the right of individuals to redress public officials who knowingly do not comply with federal and state statute as provided by the United States Constitution, U.S. Const. amend. I, and the Constitution of the State of Tennessee Tenn. Const. Art. I, § 17.

In this Civil Action, the Defendant, as Commissioner of the State of Tennessee Department of General Services, circumvented Public Law 100-379 Worker Adjustment and Retraining Notification (WARN) Act dates. The Defendant used the last working day of a 30-day Administrative Leave of Pay, November 24, 2015, violating the Worker Adjustment and Retraining Notification (WARN) Act last date of November 25, 2015. This action circumvented Public Law 100-379 Worker Adjustment and Retraining Notification (WARN) Act to which the Plaintiff was denied two days wages.

Case 21-5667 was dismissed February 17, 2022 this Petition On Writ of Certiorari in the Supreme Court of the United States was filed within the time period of ninety (90) days before the judgment of the United States District Court for the Sixth Circuit was mandated on May 17, 2022.

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## STATUTORY PROVISIONS INVOLVED

28 U.S.C § 1291 provides, in part, courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

(June 25, 1948, ch. 646, 62 Stat. 929; Oct. 31, 1951, ch. 655, § 48, 65 Stat. 726; July 7, 1958, Pub. L. 85-508, § 12(e), 72 Stat. 348.)

In addition to the jurisdiction conferred by this chapter, the courts of appeals also have appellate jurisdiction in proceedings under Title 11, Bankruptcy, and jurisdiction to review: *see* App. 42-49.

One issue before this court is whether the district court erred in misunderstanding the Defendant, as Commissioner of the State of Tennessee Department of General Services, violated Public Law 100-379 Worker Adjustment and Retraining Notification (WARN) in circumventing the last work day of November 25, 2015,

The Plaintiff received a 30-day WARN notice and a 30-day notice of Administrative Leave with Pay on the date of October 26, 2015. The two notices were to have the same end date of November 25, 2015 but the 30-day notice of Administrative leave with Pay's end date was November 24, 2015.

In essence, the Sixth Circuit Court of the 20<sup>th</sup> Judicial District, Nashville-Davidson County, Tennessee ruled the 30-day notice of Administrative Leave with Pay superseded Public Law 100-379 Worker Adjustment and Retraining Notification (WARN).

The United States District Court for the Sixth Circuit erred in dismissing the case as the ruling of the Sixth Circuit Court of the 20th Judicial District, Nashville-Davidson County, Tennessee affects every employee of a businesses with 100 or more employees. This ruling includes employees of the State of Tennessee, Metropolitan Nashville Government of Nashville and Davidson County, Tennessee and private industry with 100 or more employees.

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## STATEMENT

1. Citizens and residents of the State of Tennessee have a legal right to redress public officials for knowingly violating federal and state statute U.S. Const. amend. I, Tenn. Const. Art. I, § 17. In this case, employees of the State of Tennessee's job classifications were reclassified. Employees were provided a WARN notice to which the WARN notice included a last day of the job classification to which employees were terminated.

The Plaintiff received a 30-day WARN notice and a 30-day notice of Administrative Leave with Pay on the date of October 26, 2015. The two notices were to have the same end date of November 25, 2015 but the 30-day notice of Administrative Leave with Pay's end date was November 24, 2015.

In civil action *Edward Ronny Arnold v. Bob Oglesby, Et Al.*, M2017-00808-COA-R3-CV (Tenn. Ct. App. 2017), the Court of Appeals of Tennessee at Nashville's opinion was the Defendant was not acting on the authority of the state in withholding earned wages and the opinion was the Defendant had to be acting on the authority of state to use the defense of sovereign immunity.

The opinion was partially based on *Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436, 445 (Tenn. 2012) and the appeal clarified Tenn. Code. Ann. § 20-13-102 (a) to which the courts must apply three tests to determine if the Defendant can use the defense of sovereign immunity.

1. The Defendant must be an employee of the state.
2. The Defendant must be acting on the authority of the state.
3. The remedy sought must be a possession of the state.

In the appeal, the opinion was the Defendant was not acting on the authority of the state in withholding earned wages.

2. State and federal courts erred. The state and federal courts erred in not understanding the issue before the court was the Defendant's violation of Public Law 100-379 Worker Adjustment and Retraining Notification (WARN) Act in using the last date of Administrative with Pay which circumvented Public Law 100-379.

The state trial court erred in ruling the Defendant was acting on the authority of the state by using the last working date of Administrative Leave with Pay, November 24, 2015, as opposed to the last working date of the WARN notice November 25, 2015.

The court's ruling presents a situation where employers can circumvent Public Law 100-379 Worker Adjustment and Retraining Notification (WARN) Act by issuing a conflicting leave notice which shortens the employee's opportunities to obtain employment within, or without, the employer.

3. Defendant cannot use the defense of sovereign immunity until the courts have determined the defendant was acting on the authority of the state. The Defendant / Appellee has presented a false narrative that a thirty (30) day notice of Administrative Leave with Pay supersedes the state and federal mandated WARN notice in that the thirty day (30) notification of Administrative Leave with Pay violated Tennessee Rules of Administration: Tenn. Code Ann. §§ 8-23-101, 8-30-406, 8-50-801, 8-50-803, 8-50-807, 8-50-110, 8-50-1101 and the Rules of the Tennessee Department of Human Resources 1120-06-.10 and 1120-06-.11 in that the Defendant / Appellee Bob Oglesby et al., was not acting on the authority of the state to extend Administrative Leave with Pay beyond ten (10) working days.

As stated, before the court, the thirty (30) day Administrative Leave of Pay notice issued October 26, 2015 violated State of Tennessee rules of the Department of Personnel: Tenn. Code Ann. §§ 8-23-101, 8-30-406, 8-50-801, 8-50-803, 8-50-807, 8-50-110, 8-50-1101 and Rules of the Tennessee Department of Human Resources 1120-06-.10 and 1120-06-.11.

These statutes and rules limit the number of days a person can be placed on Special Leave to ten (10) working days. Any time after ten (10) working days must be approved by the Commissioner of Human Resources (Rule 1120-06-.10, 1120-06-.11).

The Defendant/Appellee was unable to present, before the court, evidence the Defendant / Appellee requested and received authorization to extend Special Leave beyond ten (10) working days.

The trial court erred in not requiring the Defendant / Appellee to present evidence, before the court, the Defendant/Appellee requested and received authorization to extend Special Leave from ten (10) working days to thirty (30) calendar days.

In this case, the trial court further erred in ruling a clerk of the State of Tennessee Department of Human Resources had the authority to overturn a state and federal mandated Worker Adjustment and Retraining Notification Act (WARN) Notice, Public Law 100-379 (29 U.S.C. 2101, et seq).

4. Legislatures' intent was to protect both the Employee and the employer. In August 1988, Congress passed the Worker Adjustment and Retraining Notification Act (WARN) to provide workers with sufficient time to seek other employment or retraining opportunities before closing their jobs. The act protects employees, their families, and communities by requiring most employers with 100 or more employees to provide advance notification of plant closings and mass layoffs of employees/

The U.S. Government Accountability Office (GAO) reviewed the WARN Act in 1993[ and 2003. The GAO found that certain definitions and requirements of WARN are difficult to apply when employers and employees assess the applicability of WARN to their circumstances.

The GAO recommended amending the WARN Act to simplify the calculation of thresholds, clarify the definition of employer, clarify how damages are calculated, and establish a uniform statute of limitations. The GAO did not address specific dates

and it is reasonable to conclude, the end dates are specific.

Highlights of GAO-03-1003, A Report to Congressional Requesters <sup>1</sup>

As shown in Table 2: Required Elements in the Notices, Expected Date of First Separation, Dislocated Worker units and chief elected officials, Worker representative, and Worker (p. 28).

The date of separation is necessary to provide the employee and employer with notice of separation.

At this point, the Legislature has not addressed the issue of alternate dates for Public Law 100-379 Worker Adjustment and Retraining Notification (WARN) Act.

As presented before the trial court, the Defendant's use of a 30-day Administrative Leave with Pay violated Worker Adjustment and Retraining Notification Act (WARN) Notice, Public Law 100-379 (29 U.S.C. 2101, et seq). The Defendant, as Commissioner of the State of Tennessee Department of General Services used the date of the Administrative Leave with Pay over the date of the WARN notice. The result was the Plaintiff was owed two days wages – Thanksgiving and the substituted

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<sup>1</sup> United States General Accounting Office. (2003, September 3). Report to Congressional Requestors. The Worker Adjustment and Retraining Notification Act. Revising the Act and Providing Educational Materials Could Clarify Employer Responsibilities and Employee Rights. <https://www.gao.gov/assets/gao-03-1003.pdf>.

Columbus Day holiday, the Friday after Thanksgiving.

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## **REASONS TO GRANT THE PETITION**

### **I. The United States Court of Appeals for the Sixth Circuit erred in dismissing the case based on Plaintiff's claims barred by the doctrines of sovereign immunity.**

#### **A. Plaintiff objection.**

The merits of the civil action remain the same that the District Court cannot determine immunity from civil action until the court can determine the Defendant / Appellee has the legal authority to circumvent Public Law 100-379 (29 U.S.C. 210l, et seq.) in using the last work date of a 30-day Administrative Leave with Pay.

#### **B. Eleventh Amendment, Amendment (1795) to the Constitution of the United States.**

The Eleventh Amendment is only valid in this civil action if the court determines the Defendant / Appellee, as Commissioner of the State of Tennessee Department of General Services, was acting on the authority of the state in violating Public Law 100-379 (29 U.S.C. 210l, et seq.) in using the last work date of a 30-day Administrative Leave with Pay.

**II. The United States Court of Appeals for the Sixth Circuit erred in ruling the Plaintiff's claims are barred by claim and issue preclusion.**

**A. Plaintiff objection.**

The main issue in the Civil Action *Edward Ronny Arnold v. Bob Oglesby, et al.* M2017-00808-COA-R3-CV. (Tenn. Ct. App. 2017) is the Plaintiff/Appellant's last work day.

The Plaintiff/Appellant was issued a Worker Adjustment and Retraining Notification (WARN) Act pursuant to Public Law 100-379 (29 U.S.C. 2101, et seq.) and Tenn. Code. Ann. § 50-1-601 on October 26, 2015. The WARN notice gave the Plaintiff/Appellant's last workday as Wednesday October 25, 2015, one day before the federal and state holiday of Thanksgiving and two days before the modified state office closing for Columbus Day as codified in Tenn. Code. Ann. § 4-4-105 (a) (1) (3).

The Plaintiff/Appellant was issued a contradictory thirty-day (30) notice of Administrative Leave with Pay at the same time he was issued the WARN notice on Monday October 26, 2015 with a last workday as Tuesday November 24, 2015, two days before the federal and state holiday of Thanksgiving and three days before the modified state office closing for Columbus Day as codified in Tenn. Code. Ann. § 4-4-105 (a) (1) (3).

The State of Tennessee Attorney General and Reporter's legal opinion is the thirty (30) day

Notice of Administrative Leave with Pay  
supersedes federal and state law.

The trial court agreed with the State of Tennessee Attorney General and Reporter.

The Tennessee Court of Appeals for the Middle District at Nashville erred in agreeing with the trial court a clerk of the Department of Human Resources for the State of Tennessee Department of General Services has the authority to override dates of federal notifications.

**B. Defendant's claim of sovereign immunity is not valid.**

As stated, before the court, the thirty (30) day Administrative Leave of Pay notice issued October 26, 2015 violated State of Tennessee rules of the Department of Personnel: Tenn. Code Ann. §§ 8-23-101, 8-30-406, 8-50-801, 8-50-803, 8-50-807, 8-50-110, 8-50-1101 and Rules of the Tennessee Department of Human Resources 1120-06-.10 and 1120-06-.11.

These statutes and rules limit the number of days a person can be placed on Special Leave to ten (10) working days. Any time after ten (10) working days must be approved by the Commissioner of Human Resources (Rule 1120-06-.10, 1120-06-.11).

In this case, the Plaintiff / Defendant was placed on Administrative Leave with Pay for the period of ten (10) workdays – October 26 – November 6, 2015. The Plaintiff / Appellant returned to full-employee status November 9, 2015.

## CONCLUSION

To protect and preserve the rights of workers employed by entities, public and private, with 100 or more employees, the United States Supreme Court should accept this Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit to clarify the Eleventh Amendment to the United States Constitution.

Respectfully submitted,



EDWARD RONNY ARNOLD  
*Pro Se*  
5036 Suter Drive  
Nashville, Tennessee 37211  
(615) 999-8044  
edwardarnold@mindspring.com

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