No. 21-230

In The

Supreme Court of the United States

William H. Viehweg,
Petitioner

v.

Sirius XM Radio, Inc.
Respondent

On Petition For Writ Of Certiorari
To The United States Court of Appeals for the
Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

William H. Viehweg
114 W. 2nd South
Mt. Olive, Il 62069
217-999-5061

QUESTION PRESENTED FOR REVIEW

Whether separate attorneys' representing a defendant corporation and attorneys' representing a non-party key witness, mutual claim of a protective legal privilege, in a *pro se* civil action, filed in federal court, based on the legal premise that a *pro se's* previous exercise of his right to self-representation is evidence both of personal bad character and that all of his prior court cases, including petitions for writ of certiorari, were meritless and for improper purpose, is prohibited by 28 U. S. Code §1654, and is in such clear and convincing contempt of the federal judiciary's duty of impartiality, including this Supreme Court of the United States, that the court of first instance, on its own initiative, should sanction the offending attorneys with disqualification, as all subsequent proceedings would be inherently prejudicially tainted, and failure to so sanction, constitutes punishment contrary to Bordenkirker v Hayes, 434 U.S. 357, 363 (1978), and denial of the Constitution of the United States Fourteenth Amendment's guarantee of equal protection of the law.

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TABLE OF AUTHORITIES

DIRECTLY RELATED PROCEEDINGS

The underlying case originated in the United States District Court, Central District of Illinois, docket number 3:17-cv-03140, and was appealed to the United States Court of Appeals for the Seventh Circuit, docket number 20-2166. No other courts or proceedings were involved.

CITATIONS OF REPORTS OF OPINIONS

Petitioner has no knowledge of any official or unofficial report of the opinions and orders entered in this case by courts or administrative agencies.

BASIS FOR JURISDICTION IN THIS COURT

The United States Court of Appeals for the Seventh Circuit, in Viehweg v. Sirius XM Radio, Inc., No 20-2166, entered its order denying Petitioner's appeal on April 13, 2021, and entered its order denying Petitioner's Petition for Rehearing En Bank on May 20, 2021. There was no request for an extension of time to file a petition for writ of certiorari. 28 U.S.C. §1254(1) provides this court jurisdiction to review this petition for writ of certiorari.

PROVISIONS OF LAW INVOLVED IN CASE

28 U.S.C. 1654. Appearance personally or by counsel.

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

STATEMENT OF THE CASE

Petitioner brought this case against Respondent corporation in district court alleging two counts of defamation under Illinois state law, with federal jurisdiction based on diversity of citizenship. Respondent was represented by the law firm of Mac Murray and Shuster LLP [1] . Petitioner, a non-attorney, represented himself, and as he did not have personal internet service, in compliance with Central District of Illinois Local Rule 5.5(B)(1)[2], he did not sign up for electronic filing, and in compliance with Federal Rule of Civil Procedure 5(b)(2)(E), he chose to not consent to service by electronic means.

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[1] Though the lead attorney remained the same, five attorneys from Mac Murray and Shuster LLP have entered their appearances in this case.

[2] Unless the court, in its discretion, grants leave to a *pro se* filer to file electronically, *pro se* filers must file paper originals

Respondent admitted the existence of the first alleged telephone conversation with the wife of a customer but denied it was defamatory. Respondent denied the existence of a second telephone conversation with the wife. Respondent admits that it knowingly consolidated Petitioner's account with the account of another person with a similar name and living within a forty mile proximity, that said consolidation was done without knowledge by either account holder, and that said consolidation resulted in unauthorized transactions, including charging the husband's credit card for services provided to the Petitioner. To resolve the situation, Respondent left the accounts consolidated, made no refunds on the unauthorized credit card charges, changed the husband's account to his wife's name, sold the wife additional services, and unilaterally terminated service and contact with the Petitioner.

During discovery, Respondent produced a transcript of the first telephone conversation which repeatedly includes the words "Privacy Act", "fraud", and "police" and ends with the following dialogue:

> WIFE: "Okay, that's what I needed to know. I am going to make a phone call and the(n) you guys will hear back from us in a little while."
>
> SIRIUS: Not a problem ma'am. I will be

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of all complaints, pleadings, motions, affidavits, briefs, and other documents.

making notation of that on the account. So as of right now there's no changes on the subscription.

WIFE: No changes. There's going to be a police report. Because if you guys had him confirm the email address he fraudulently knew that that wasn't his. So that, that's what I've been trying to get to the bottom of."

The telephone recordings produced by Respondent, evidence that Viehweg had repeatedly stated that he did not have an email address, and never confirmed an email address. The records produced by Respondent contain no evidence of any account notations made regarding the words Privacy Act, fraud, or police, any notation that the wife was contacting the police, or that the wife stated that she would be calling back.

Petitioner subpoenaed documents from a municipal police department which produced a dispatch log stating that the wife was advised by the police chief to contact the county sheriff and mention the term identity theft. Petitioner subpoenaed documents from the county sheriff's office which produced an incident report stating that the wife had contacted them, and that the deputies had immediately contacted the Petitioner.

Respondent propounded interrogatories requesting that Petitioner identify "each and every criminal case" and "each and every civil case" to which he had been a party. After Petitioner

successfully moved the court to order Respondent to set deposition dates, Petitioner served wife and husband with a deposition subpoena *duces tecum*. When neither the husband or wife appeared for their depositions, Petitioner suspended the depositions, and at the subsequent continuance, both husband and wife appeared represented by the law firm of Duane Morris, LLP[3]. At this time, the scheduling order prohibited adding parties.

During said depositions, both deponents testified that an unknown party was paying their legal fees, and that neither had concerns about Petitioner suing them. The husband testified that he had never called the police and further testified: "I believe she made a call to Sirius .... I believe she followed up ..... I believe Sirius gave her some directions on how to handle the problem...." The transcripts of said depositions contain no evidence of any questionable conduct by Respondent.

After the deposition, Petitioner obtained a copy of the husband's telephone call to county sheriff's department dispatch. Petitioner also moved to compel the husband and wife to produce documents. Both Respondent and the husband and wife objected, claiming the privilege of common interest.

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[3]The law firm of Duane Morris is national, with over 600 attorneys, with an office in Washington D.C., and regularly practices before the Supreme Court of the United States.

Respondent, in a memorandum in objection, stated:

> "anyone subpoenaed by this Plaintiff would be understandably concerned about having any involvement .... It is understandable, then, that the Other Viehwegs would be concerned about the Plaintiff and his conduct and the possibility that he might bring some lawsuit against them, too. Sirius' interest is to defend this case and bring it to a conclusion as soon as possible. Their interests are aligned and communications between then should therefore be protected by the common interest doctrine."

[See Appendix Page 10]

The wife and husband, in a memorandum in opposition, stated:

> "Mr. Viehweg is a sophisticated *pro se* litigant who has initiated at least ten other lawsuits in addition to the present action ..... Mr. Viehweg has lodged more than one writ of certiorari with the Supreme Court of the United States."

Said memorandum then listed, by title and citation only, Petitioner's previous law suits going as far back as 1987. [See Appendix Page 13]

Magistrate Judge Tom Schanzle-Haskins, in denying Petitioner's motion to compel, stated that "the subpoenas did not command production of their attorney's communications" and "The matter of privilege is not at issue." Respondent moved for

summary judgment.

Petitioner moved for an order to show cause alleging, in reference to the Respondent's and the wife and husband's mutual claim of the common interest claim, "that there was no recognizable legal claim for common interest, as the law does not recognize bias and prejudice against a pro se; and that their purpose for asserting the doctrine was improper." Respondent objected stating "Plaintiff wants sanctions against Sirius XM because the Married Viehwegs fear he will bring groundless litigation against them based on his reputation for doing same."

On March 22, 2020, Judge Richard Mills granted Respondent's motion for summary judgment, and stated, "The remaining motions will be denied" and "The Plaintiff's Motion for Order to Show Cause [d/e 155] is DENIED." On March 25, 2020, judgment was entered in favor of Respondent.

On April 21, 2020, Petitioner moved to amend the judgment. On May 29, 2020, Judge Richard Mills denied said motion. On June 29, 2020, Petitioner filed his notice of appeal.

Petitioner's brief on appeal argued that his right to self-representation was oppressed and cited 28 U. S. Code §1654; Bordenkirker v Hayes, 434 U.S. 357, 363 (1978); 18 U. S. C. §241; 18 U. S. C. §1512; and 18 U. S. C. §1503. Respondent's brief on appeal stated that the cases Petitioner cited were "wholly inapposite".

On April 13, 2021, the Seventh Circuit, Judge

Diane S. Sykes, Judge Michael S. Kanne, and Judge Diane P. Wood, affirmed the district court's ruling, stating "To be held in civil contempt, a person must have violated an unambiguous court order" and "Viehweg provided no evidence of wrongdoing, nor was misconduct apparent from the record". [See Appendix Page 1]

On April 26, 2021, Petitioner filed a motion for extension of time to file a petition for rehearing en banc. On April 26, 2021, the appellate court granted said motion extending the due date to May 6, 2021. On May 4, 2021 Petitioner filed his petition for rehearing en banc. On May 20, 2021 the appellate court denied said petition. [See Appendix Page 8]

Petitioner petitions for a writ of certiorari.

ARGUMENT

- Opening Statement -

This case stands for the legal premise that a *pro se* can represent himself in the federal courts, asserting all rights, privileges, claims, and defenses, without negative inference as to his personal character, and without implication that his pleadings are inherently meritless and for improper purpose.

This case is about a non-attorney *pro se* exercising his right to seek relief through the courts, and asserting all his rights and privileges, including the right to self-representation, appeals, and

petitioning for writ of certiorari, and the opposing corporate party, (which is prohibited from self-representation), and the key witness, (represented by a prominent legal firm paid for by some unknown benefactor) mutually claiming a protective privilege on the legal basis that the *pro se's* previous and instant exercise of his right to seek redress in the courts, is evidence of personal bad character and meritless pleadings made in bad faith.

This case is important, as said claim, mutually made by two law firms, one a nationally prominent law firm which regularly practices before this Supreme Court, should be considered as representative of the pervasiveness of such wrongful prejudice within the entire legal profession, and the failure of the lower courts to sanction said claim should be considered as representative of the reluctance of all the lower courts to affirmatively address such misconduct by officers of the court.

- LAW -

28 U. S. Code §1654, permitting individuals to proceed personally in all federal courts without counsel, though not expressly, inherently prohibits negative assumptions based solely on the exercise of said right.

Bordenkirker v Hayes, 434 U.S. 357, 363 (1978), holding that "for while an individual certainly may be penalized for violating the law, he just as certainly may not be punished for exercising a protected statutory or constitutional right",

certainly includes the statutory right per 28 U. S. Code §1654.

As a matter of law, the mere possibility of future litigation does not constitute a common legal issue as required by the common interest doctrine as the possibility of future litigation is inherent in the legal process. Further, as a matter of law, appeals and petitions for writ of certiorari are continuations of the underlying case, and do not constitute, regarding the common interest doctrine, future litigation. As a matter of law, case titles do not evidence merit or intent. Therefore the claim of common interest was without legal merit.

Statements such as "anyone subpoenaed by this Plaintiff would be understandably concerned about any involvement", "Mr. Viehweg is a sophisticated *pro se* litigant who has initiated at least ten other lawsuits ..." and "Mr. Viehweg has lodged more than one writ of certiorari with the supreme Court of the United States", have no possible legal merit regarding any possible legal issue in support of a claim of common interest, and clearly infer bad personal character and meritless pleadings due to Petitioner's exercise of his right of self-representation.

Representation by an officer of the court, even if inferred, that citations of previous case titles warrant the federal courts to consider persons exercising their right to self-representation to be of bad moral character and his pleadings meritless and for improper purpose, constitutes oppression of the

pro se's right to self-representation and contempt of the duty of the judicial system to be impartial. If an attorney's professional conduct evidences his own clear and convincing bias and prejudice against the right of self-representation, said attorney warrants disqualification from case involving a *pro se* plaintiff.

Such claims are in clear and convincing violation of Federal Rule of Civil Procedure 11, which prohibits claims not legally warranted, factual contentions without evidentiary support, and presentations for improper purpose. Said attorneys could not have had any reasonable expectation that the court would legally recognize said claim. Said attorneys clearly intended to prejudice the court against Petitioner by using said claim as a vehicle to present to the court citations of Petitioner's previous law suits, including his previous petition for writ of certiorari. Said Rule empowers the court, on its own initiative, to sanction said claim as contempt of court.

Attorneys' who mutually claim a protective privilege by attacking a person's character due to his choice of self-representation, should be considered to have wrongfully influenced their client and other witnesses [4] , to have attempted to wrongfully

[4]Per 18 U.S.C. §1512(b)(1), "Whoever knowingly ..... engages in misleading conduct toward another person, with intent to influence .... the testimony of any person in an official proceeding ..... shall be fined .... or imprisoned not more than 20 years, or both."

influence the court [5], and to have wrongfully conspired to oppress the *pro se*'s exercise of his statutory right of self-representation[6]. No previous court order should be required when a *pro se* seeks relief from professional misconduct that is prohibited by federal criminal codes, as, absent sanctions, all subsequent proceedings are inherently tainted by the appearance of bias and prejudice by the court itself. The remedy is to disqualify said attorneys from the case.

The federal courts should have the first duty to protect litigants appearing before it under 28 U.S.C §1654 from misconduct by the court's own officers. Knowing failure of the court to sanction such conduct evidenced by the record itself, should

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[5]Per 18 U.S.C. §1503, "Whoever corruptly ..... endeavors to influence ..... any .... officer in or of any court of the United States ..... in the discharge of his duty ... the punishment is .... imprisonment for not more than 10 years, a fine ...., or both."

[6]Per 18 U.S.C. §241, "If two or more persons conspire to ..... oppress ..... any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same ..... they shall be fined under this title or imprisoned not more than ten years, or both."

constitute punishment, prohibited by BordenKirker v Hayes, 434 U.S. 357.

- Equal Protection -

Attorneys enter their appearance in the federal courts based on current good standing.[7] Yet, in this case, said attorneys' mutual claim for common interest presented character evidence against the *Pro se* Petitioner over twenty years old.

Attorneys, as members of the legal profession, enter their appearance in the federal courts to exercise their clients' rights and privileges, including the right to seek redress in the federal courts, to appeal, and to petition for writ of certiorari. Yet, in this case, said attorneys' mutual claim for common interest seeks legal protection from the Petitioner's personal exercise of his rights and privileges, including the very same rights to seek redress in the federal courts, to appeal, and to petition for writ of certiorari.

A reasonable person, such as a juror, could readily conclude that if officers of the federal courts can officially claim that a person is of bad moral character based on his choice of self-representation, without being sanctioned by the court, that that person must be of bad moral character as a

[7]Per Supreme Court Rule 5, this court only looks back three years.

self-representation, was presumed to be, as a matter of law, of bad moral character, and his voice meritless.

It should shock the conscience of this court that a law firm of national prominence has, with another law firm, made a mutual legal claim, based on unlawful bias and prejudice. Failure of the lower courts to sanction such prejudicial claims can imply sympathy, or agreement, and encourages similar claims by other attorneys, threatening the integrity of the entire judicial system. This court should use this case to clearly state that 28 U. S. Code §1654 prohibits negative inferences based solely upon its assertion, that Bordenkirker v Hayes includes unsanctioned oppression based upon the assertion of the right of self-representation per U. S. Code §1654, and that the federal courts, with the power to supervise its officers of the court, have the first duty to sanction such conduct. A ruling by this Court would ensure conformity by providing the lower courts guidance, the attorneys appearing before the lower courts a warning, and the *pro se* seeking justice, a citation, directly on point.

Respectfully submitted,

William H. Viehweg - Petitioner
114 W. 2nd South
Mt. Olive, Il 62069
1-217-999-5061