

No. _____

In the
Supreme Court of the United States

LEE W. YEAGER,
Petitioner,
v.

FIRSTENERGY GENERATION CORP.,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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October 25, 2021

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QUESTION PRESENTED

Whether a federal district court's outright dismissal of a stayed action without having first lifted that stay, to permit ruling on plaintiff's pending motion to amend his pleading to substitute the proper party defendant, offends the Fifth Amendment's Due Process Clause by effectively denying plaintiff the right to redress his grievance via some effective legal procedure that includes notice and the opportunity to be heard.

STATEMENT OF RELATED PROCEEDINGS

- United States District Court (ND Ohio ED)
Docket No. 5:15-CV-399
Yeager v. FirstEnergy Generation Corp
Judgment Entered 9/18/20
- United States Court of Appeals for the Sixth Circuit
Docket No. 20-3678
In Re Lee W. Yeager
Judgment Entered 9/17 /20
- United States Court of Appeals for the Sixth Circuit
Docket No. 20-4042/4043
Yeager v. FirstEnergy Generation Corp.
Judgment Entered 6/22/21
Petition for Rehearing Denied 7/29/21

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TABLE OF AUTHORITIES

CASES

<i>A. Backus Jr. and Sons v. Fort Street Union Depot Co., 169 U.S. 557, 42 L.Ed. 853 (1897)</i>	3
<i>Crane v. Hahlo, 258 U.S. 142, 66 L. Ed. 514 (1921)</i>	3
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<i>Iowa C.R. Co. v. Iowa, 160 U.S. 389, 40 L. Ed. 467 (1895)</i>	3

STATUTES

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11 U.S.C. § 524	2
28 USC §1254(1)	1

OTHER AUTHORITIES

Supreme Court Rule 13.1	1
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OPINIONS BELOW

The Sixth Circuit Court of Appeals Order entered June 22, 2021 is unreported. The District Court (ND Ohio ED) Judgment entered September 18, 2020 is also unreported.

JURISDICTIONAL STATEMENT

The Court of Appeals judgment of affirmance was entered June 22, 2021; and its Order denying Appellant's Petition for Rehearing was filed July 29, 2021.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1); and the timeliness of Petitioner's filing is governed by Supreme Court Rules 13.1 and 13.3.

CONSTITUTIONAL PROVISION INVOLVED

In pertinent part, the U. S. Constitution's Fifth Amendment provides that "No person shall be...deprived of life, liberty or property without due process of law..."

STATEMENT OF THE CASE

Under Title VII of the Civil Rights Act of 1964 and in the U. S. District Court (ND Ohio ED), Petitioner, Lee W. Yeager ("Yeager") brought this action against his presumed former employer, Respondent, FirstEnergy Generation Corp. ("FirstEnergy Generation") to remedy its unlawful religious discrimination in employment.

Lis pendens, FirstEnergy Generation filed a voluntary petition for bankruptcy relief while Yeager moved the district court for leave to amend his Amended Complaint to substitute FirstEnergy Corp for FirstEnergy Generation as the proper party defendant.

Along the way, the district court took cognizance of the FirstEnergy Generation bankruptcy proceeding and entered an order in pertinent part reciting:

“Accordingly, proceedings in the matter herein are hereby PERPETUALLY STAYED and the matter is CLOSED, subject to reopening upon the written motion of Plaintiff, Defendants, or any proper party in interest, after the bankruptcy proceeding is closed, dismissed, or discharge is granted or denied, or relief from the stay imposed by 11 U.S.C. § 362 and/or any injunction pursuant to 11 U.S.C. § 524 is granted.” (Emphasis added)

Thereafter, Yeager moved the Court to lift its stay, to permit ruling on his pending motion to amend his pleading, on grounds that FirstEnergy Generation had been granted discharge in bankruptcy. FirstEnergy Generation countered with a motion to dismiss the action. Per final judgment later entered, the Court denied Yeager’s motion to lift the stay; granted FirstEnergy Generation’s motion to dismiss; and dismissed the action with prejudice.

Therefrom, Yeager appealed to the U. S. Court of Appeals for the Sixth Circuit where the district court judgment was affirmed and petition for rehearing

denied. Here, Yeager seeks plenary review on petition for certiorari.

**ARGUMENT OF IMPORTANT QUESTION OF
FEDERAL LAW**

At first blush, the district court's prejudicial dismissal of Petitioner's action, without having first lifted its stay to permit such disposition only after considering and disposing of Petitioner's pending motion for leave to amend his pleading to substitute the proper party defendant, appears as a harmless procedural non sequitur. Such is not the case, however. At bottom, it is an arbitrary exercise of judicial power without regard for the due process principles of notice and the opportunity to be heard, and of one's right to redress via some effective legal procedure. *Iowa C.R. Co. v. Iowa*, 160 U.S. 389, 393, 40 L. Ed. 467, 469 (1895); *A. Backus Jr. & Sons v. Fort Street Union Depot Co.*, 169 U.S. 557, 571, 42 L. Ed. 853, 859 (1897); *Crane v. Hahlo*, 258 U.S. 142, 147, 66 L. Ed. 514, 517 (1921); *Hardware Dealers Mut. F. Ins. Co. v. Glidden Co.*, 284 U.S. 151, 158, 76 L. Ed. 214, 219 (1931); and *Gibbes v. Zimmerman*, 290 U.S. 326, 332, 78 L. Ed. 342, 347 (1933).

Absent this Court's allowance of certiorari to reverse and remand with instructions, trial courts across the land remain free to pell-mell disrupt the very course of civil actions, whether it be the dismissal of an action, or the entry or vacation of judgment without motion therefor or reason given. Such is not a mere matter of error for which appeal is provided. It's a refusal to participate in the process provided to redress grievance, a refusal that offends due process.

CONCLUSION

For these reasons, the Court of Appeals affirmance should be REVERSED and the case REMANDED to the District Court for further proceedings.

Respectfully Submitted,

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