

No. 21-7823

ORIGINAL

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

APR 22 2022

OFFICE OF THE CLERK

Robert L. Allum,

Petitioner,

vs.

STATE OF MONTANA,

Respondent.

On Petition for a Writ of Certiorari to
the Supreme Court of the State of Montana

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

QUESTION I

Whether or not a 46 year history, of a state court of last resort, through judicial fiat, violating the due process rights of the Fourteenth Amendment, and state constitution, through the acquiesces and complicity, of the other branches, in creating, supervising, and protecting, an executive branch "court," in the arena of workers' compensation, by unduly influencing the judicial pool, with financial gain, while the members of said pool, were lawyers, constitutes a sufficient injury to the integrity to the federal and state judicial system to warrant public interest.

QUESTION II

What are the standards or guidelines for applying the affirmative defense of *res judicata* to both cases involving constitutional challenges and complaints for declaratory judgement on constitutional challenges?

QUESTION III

Whether or not a judge, may grant a motion for summary judgment, based upon the affirmative defense, *res judicata*, when any of the fact elements, of *res judicata*, are challenged, in an action, demanding a jury trial?

LIST OF ALL PROCEEDINGS

Allum v State of Montana, DV-21-162A, District Court of the Eighteenth Judicial District of the State of Montana, in and for the County of Gallatin. Judgment entered December 6, 2021.

Allum v State of Montana, DV-21-0641, The Supreme Court of the State of Montana. Judgment entered March 29, 2022.

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Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

The Order, denying the appeal with prejudice, of the Montana Supreme Court, was filed March 29, 2022.

Opinions Below

The Order, of the Montana Supreme Court, dismissing the appeal with prejudice, was filed March 29, 2022, and is attached at Appendix ("App.") A, at pages 1-3. Allum has no knowledge of whether the Order will, or will not, be published.

The state lower court judgment, was filed, on December 6, 2021, and is attached as App. B, pages 1-5.

Constitutional Provisions Involved

United States Constitution, Amendment XIV:

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.

Montana Constitution Article III, § 1 Separation of Powers.

The power of the government of this state is divided into three distinct branches--legislative, executive, and

judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

STATEMENT OF THE CASE

Allum filed the state lower court case, herein, for declaratory judgment on the constitutional challenges, with a demand for a jury trial. The complaint had no issues of fact, concerning any requests for workers' compensation benefits. The Complaint ¶ 15, for standing purposes, indicated, that there was a judiciable conflict, over benefits, which was in pre-Workers' Compensation Court (WCC) process, which would benefit, from the constitutional challenges, being answered, prior to the actual filing. The action was filed, in the WCC, on February 17, 2022, as Petition for Hearing (Injury), Demand for Jury Trial, and Constitutional Challenges, as Case No. WCC 2022-5873.

The parties, in the lower court action, put the constitutional questions in abeyance, except as to the issue of forum, through *res judicata*, and exclusive subject matter jurisdiction, of the WCC; therefore, the constitutional challenges, germane to this appeal, are: (1) whether WCC is a constitutionally constituted executive branch court, (2) whether the nomination and confirmation of the Judge of WCC, David M. Sandler (Sandler) was constitutional, and (3) whether the direct appeal, from the "office of the workers' compensation judge," or WCC (§ 39-71-

2904 MCA), to the Montana Supreme Court is constitutional. The issues were raised throughout the complaint and the entirety of, Allum's Opposition to State of Montana's Motion for Summary for Summary Judgment, filed May 26, 2021.

The same issues were raised in the Montana Supreme Court in (1) Allum's Motion to Recuse the Justices, filed February 8, 2022, attached in App. C, pages 0-6 and (2) Allum's Motion to Suspend Rules and Consolidate Constitutional Questions from Two Cases, attached in App. D, pages 0-24.

The Montana Supreme Court states, in its Order, filed March 29, 2022, page 1:

Anticipating Allum's potential arguments in his response, the State argues that Allum has litigated his claims previously before multiple courts, including this Court. The State refers to Allum's issue about the constitutionality of the Workers' Compensation Court. *Allum v. Montana State Fund*, 2020 MT 159N, ¶ 4, 400 Mont. 561, 464 P.3d 1012 (*Allum I*). The State points out that it is prejudiced when there is a lack of finality to litigation and contends that dismissal is appropriate. M.R.App.P. 13(3)

IT IS ORDERED that the State's Motion to Dismiss Appeal is GRANTED and this appeal is DISMISSED with prejudice.

Allum I states in ¶ 1:

Pursuant to Section I, paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited

and does not serve as precedent (emphasis added).

Allum I states in ¶ 2:

. . . Allum asserts the WCC violates Montana's Constitution.

Allum I states in ¶ 3:

Allum never raised a constitutional challenge in the WCC. He now argues that this Court and the WCC lack subject matter jurisdiction because the WCC is unconstitutional.

Allum I states in ¶ 4:

We decline to address the constitutionality of the WCC under the guise of subject matter jurisdiction. The judgment of the WCC is affirmed (emphasis added).

Montana Supreme Court, in the case at bar, tries to legitimize, *Allum I*, as the basis, for the affirmative defense, of *res judicata*, knowing ¶ 1, thereof, disqualified *Allum I*, in its entirety, from being cited, as a basis, for *res judicata* in any court, because *Allum I* presented constitutional challenges. The "Internal Operating Rules," in subsection 3 (c):

(i) **If an appeal presents no constitutional issues**, no issues of first impression, does not establish new precedent or modify existing precedent, or, in the opinion of the Court, presents a question controlled by settled law or by the clear application of applicable standards of review, the Court may classify that appeal as one for a memorandum opinion.

(ii) The decision of the case will provide the ultimate disposition without a detailed statement of facts or law.

The decision shall not be citeable as binding precedent, but may be cited when relevant to establishing the application of law of the case, *res judicata* . . . (emphasis added)

All of the subsequent courts, including (1) Judge Brian Morris (former member of the Montana Supreme Court 2005-2013), in the Federal District Court of Montana, in Case No. cv19-12-BU-BMM-KLD; (2) Circuit Judges Silverman, Christen, and Lee of the Court of Appeals, for the Ninth Circuit, in Case No. 20-35835; (3) Judge Peter B. Ohman, in the lower court, herein, in Case No. DV-21-162A; and (3) most egregiously, the Montana Supreme Court, above, from ignoring, both the written clear and concise language of *Allum I*, and subsection 3(c)(i), that *Allum I* consisted of constitutional challenges, and was not suitable for meeting the requirements of the affirmative defense, of *res judicata*, and invoking *res judicata* as a partial basis of their decisions, in violation of Allum's Fourteenth Amendment and state constitutional rights to due process, in each case.

Federal Judge Morris, additionally, violated the Code of Conduct for United States Judges, Canons 2 and 3 (disqualification of a judge), FRAP 24 (dismissing Allum's appeal, as frivolous, when Allum did not perfect the motion to proceed *in forma pauperis*), thus, denying Allum's right to a fair and impartial trial.

The violations of Circuit Court Judges Silverman, Christen, and Lee, of the Court of Appeals, for the Ninth Circuit, of Allum's constitutional rights to due process, included:

1. In their Order, dated August 19, 2021 (Doc. # 19) Dismissing Allum's Appeal, pursuant to 28 U.S.C. 1915(a)(e)(2), when Allum, is not, and was not, an incarcerated prisoner litigant; and Allum had paid the original filing fee, in the district court, attached as App. F, page 1.

2. Ignoring FRAP Rule 24, by treating Allum's failure to complete the procedure, in district court, as justification to deny Allum, the right to reapply, in circuit court, but dismiss Allum's appeal, as frivolous, without addressing, the merits of the case, attached as App. F, page 1.

3. Ruling as moot, the notice of Federal District Court Judge Morris' violation of the Code of Conduct for United States Judges, Canons 2 and 3 (disqualification of a judge), filed February 26, 2021 (CA9 Doc. # 15, attached as App G, page 1).

4. Ruling, "[n]o further filings will be entertained in this closed case[,]" thus denying Allum any rehearing, as provided in FRAP Rules 35 and 40.

5. CA9's Clerk's Office accepted Allum's timely petition for rehearing, on September 2, 2021 (CA9 Doc. # 20), but did not file same, per Order (Doc. # 19), attached as App. G, pages 2.

6. Filing the mandate, on November 9, 2021 (CA9 Doc. 21), in violation of FRAP Rule 41(b):

b) When Issued. The court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7

days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later.

The failure, to file the mandate, on August 27, 2021 ("7 days after the time to file a petition for rehearing expires"), deprived Allum of timely notice, to file any petition for a writ with the Supreme Court, attached as App. G, page 2.

Thus, every judicial court, hearing Allum's constitutional challenges, to the 46 year history, of the Montana Supreme Court's practice, of violating the Montana Constitution and laws, has violated Allum's rights to due process, instead of addressing, the merits of the constitutional challenges.

The instant Montana Supreme Court Order, filed on March 29, 2022, and *Allum I*, contain additional evidence, demonstrating Montana Supreme Court's violations, of the separation of powers clause (Mont. Const., Art. III, § 1), by exercising, judicial supervisory control, over executive branch entities, in footnote 1, on page 2, herein, and in ¶ 3, in *Allum I*.

Allum raised the issue of the Montana Supreme Court, unduly influencing (polluting) the judges and potential judicial candidates, for positions, as judges, by openly and blatantly, authorizing, the violation of Montana law, § 37-61-420 MCA, through judicial fiat, in *Kelleher Law Office v. State Comp. Ins. Fund*, 213 Mont. 412, 691 P.2d 823 (1984). The Montana Supreme Court unconstitutionally authorized, and the State of Montana, through the Executive Branch, Department

of Labor and Industry, and Workers' Compensation Court, sanctioning, attorneys to file, Department approved, contingency forms, contrary to Montana State law, above, that authorized the attorneys to receive contrary to Montana statutory law (steal) uninformed injured workers' settlement funds. This 36 year history of past act(s) of state sponsored stealing, taints said attorneys abilities, as judges, to be impartial, when adjudicating injured worker's cases, such as Allum's; thus, denying Allum his Fourteenth Amendment due process rights, including a fair and impartial tribunal.

The incestuous relationship between the Montana Supreme Court and WCC was exposed in the Order, filed April 11, 2022, in the "Office of Workers' Compensation Judge, Helena, Montana," signed by Sandler, as Judge, WCC, with "Workers' Compensation Court State of Montana" Seal, attached as App. H, page 2, stated, in ¶ 1:

And, on March 29, 2022, the Montana Supreme Court dismissed with prejudice Allum's appeal . . . which "bars a party from litigating a matter that a party already had the opportunity to litigate." "This includes claims that were or *could have been* litigated in the first action."

[Footnote 7]

For example, Allum contends that the Workers Compensation Court is unconstitutional because the Legislature did not grant it any jurisdiction. However, § 39-71-2905(1), MCA states the **workers' compensation judge has "exclusive jurisdiction"** (emphasis added) . . . Thus, as stated by the Montana Supreme Court, "The

Workers' Compensation Court is a court with limited but exclusive jurisdiction . . . (emphasis added).

REASONS FOR GRANTING THE WRITS

The reasons for granting the writ of certiorari:

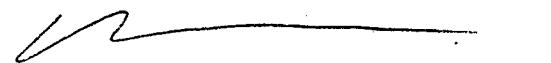
1. Only this Court, can clarify, and correct, the misuse, of the affirmative defense, of *res judicata*, in federal and state cases, involving constitutional challenges.
2. Only this Court, can immediately halt, and discontinue the due process violations of the Fourteenth Amendment.

CONCLUSION

The petition for a writ of certiorari should be granted.

DATED this 22nd day of April, 2022.

Respectfully submitted,



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