No. 22-1245

In The
SUPREME COURT OF THE UNITED STATES

Brent A. Ristow,

Petitioner,

v.

Douglas R. Peterson, et al.,

Respondents.

On Petition for Writ of Certiorari, to the United States Court of Appeals for the Eighth Circuit, in 22-3029.

PETITION FOR REHEARING

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QUESTIONS PRESENTED

Whether the due process rights described in *Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1963), where Mr. Willner challenged an act of a state agency and this court held that "a state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection clause of the Fourteenth Amendment," are enforceable, through 42 USC § 1983 and/or § 1985, against the bad faith acts of an individual employed at a state agency, and against an individual who submits defamatory information to that agency about an applicant there?

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PETITION FOR REHEARING

1. In 2017 I tried to escape an abusive, controlling, relationship by ceasing contact with and moving hundreds of miles away from my abuser.[1, 2]

2. After my attempted escape, my abuser, defendant Cunningham, followed me to the Minnesota Board of Law Examiners where she told that agency she was searching for me so that she could sue me.[3]

3. My abuser then used a lie, that while we were dating we had an "agreement," to use the courts to continue her abuse of me by suing me multiple times.[4, 5, 6, 7]

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[1] Exhibit L, p. 139, lns. 5-11 (Amanda: "And then you messaged me to cease all communication." Brent: "I messaged you to cease all communication?" Amanda: "Yes").
[2] Exhibit L, p. 125, Lns. 10-14 (Amanda: "This is so hard to try to let you go. I don't mean to upset you and be mean ... my feelings and anger build up").
[3] Exhibit O ("My name is Amanda and I am trying to track down the residential address of [Brent] in order to file a complaint").
[4] Exhibit L, p. 146, ln 14 to p. 147, ln 8-10 (Amanda: "Brent messes with the wrong girl").
[5] FAC, No. 15 (Brent notifying the agency of Amanda's lawsuits: "I consider this suit an attempt to harass me and interfere with my character and fitness review").
[6] Exhibit L, p. 139, ln 16 (Amanda: "I knew [suing you] was going to make you upset").
[7] Exhibit M, p. 5, Order of the Minnesota District Court in 19WS-CO-19-829 ("there was no agreement").

4. After her legal pursuit of me failed my abuser returned to the Minnesota Board of Law Examiners, where I had an application, one year after her initial contact, to continue her abuse of me by creating new lies about me by now telling that state agency that I was a drug addict, an alcoholic, and the, *per se* defamatory, lie that, while dating, I threatened to kill her on two occasions.[8]

5. Trying to control the life, the opportunities, the liberty of another person by spreading lies about them, fueled by anger and hate, is a particularly vile form of abuse.

6. After discovering my abuser's pursuit of me[9], and her attempt at continuing her control of my life by destroying my reputation, I was faced with the difficult decision of whether to continue to run from her or to stop and stand up for myself and drag her lies out into the light.

[8] FAC Nos. 20-25.

[9] FAC Nos, 25-33 (I only learned of Cunningham's affidavit after the denial of my application based on character and only by examining my application file).

7. After many conversations with, and with the support of, those that have professed a love for me, I chose to stand up to my abuser by walking into a town square and scream at the top of my lungs that I was being abused and that what was happening to me was unjust.

8. When I decided to walk into the town square I knowingly, and expressly, left behind me any challenge to any act or rule of the agency,[10] including the denial of my application,[11] but I carried with me two critical things: 1) The memory of Mr. Nathan Willner; and 2) A stone embodying the right, of natural justice,[12] to defend one's name and reputation.

[10] FAC No. 4 ("Plaintiff does not challenge the official actions of ... the Minnesota Board, for the specific purpose of avoiding jurisdictional issues relating to a federal district court review of what amounts to a state supreme court decision").
[11] FAC No. 3 ("Plaintiff does not challenge those Determinations for the specific purpose of avoiding the Rooker-Feldman doctrine").
[12] *Bradley*, 80 US (13 Wall.) 335, 354 (1872)("power of the court should never be exercised without notice to the offending party of the grounds of complaint against him, and affording him ample opportunity of explanation and defense. This is a rule of natural justice, and is as applicable to cases where a proceeding is taken to reach the right of an attorney to practice his profession as it is when the proceeding is taken to reach his real or personal property").

9. The right to defend one's name and reputation dates back into unknowable time. That right, in the context of an application for a state law license, has been recognized by this court since, at least, the 1860s.[13]

10. Character and fitness investigations into such applications dates back to the earliest days of this country's courts. In the 1800s a notice for comments about applicants was publicly posted at the courthouse. But, with the establishment of the New York board in 1877[14], and Minnesota Board in 1905[15] character and fitness investigations moved out of the public arena and into the closed corridors and rooms of those agencies or, out of the light and into darkness.

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[13] *Id.*; *Randall v. Brigham*, 74 US (7 Wall.) 523, 540 (1868)("Sometimes [courts] are moved by third parties upon affidavit, and sometimes they are taken by the court upon its own motion. All that is requisite to their validity is that when not taken for matters occurring in open court in the presence of the judges, notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defense").

[14] Laws of New York, 1877, Chap. 210, § 1 ("to elevate the standard of integrity ... in the legal profession").

[15] Revised Laws of Minnesota, 1905, § 2278 ("no person shall be admitted to practice as an attorney ... otherwise than under rule prescribed by the supreme court"); Minn. Stat., 2022, § 481.01 ("The ... Board of Law Examiners which shall be charged with the administration of the rules").

11. From 1936 to 1966, in a situation eerily similar to the facts giving rise to my claims, Mr. Nathan Willner fought for his right to confront defamatory statements submitted in his state application.[16, 17] In *Willner v. Committee* this court eventually held that, in this new context of state agency closed door character investigations, in an official capacity action, an action challenging the denial of the application, that an applicant has a right to confront defamatory statements prior to the denial of the application, by the agency, based on character[18].

[16] *Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1966)(@101 "[Willner] alleged that in connection with his hearings before the committee on his 1937 application he was shown a letter containing various adverse statements about him from a New York attorney").

[17] *Willner*, 373 U.S. 96 (1966)(@100-101, "In 1943 Willner applied to the Appellate Division for an order directing the Committee to review its 1938 determination. This motion was denied without opinion ... In 1960 Willner filed a fifth application with the Appellate Division, which application was denied without opinion").

[18] *Willner*, 373 US 96 (1966)(@102, "A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection clause of the Fourteenth Amendment; @107, Justices Goldberg, Brennan, and Stewart concurring, "In all cases in which admission to the bar is to be denied on the basis of character, the applicant, at some state of the proceedings prior to such denial must be adequately informed of the nature of the evidence against him and be accorded an adequate opportunity to rebut this evidence").

12. In this action I have submitted evidence, in the form of the agency defendants own words, of the agency defendants stating they have no duty to recognize my right to receive notice of my abusers *per se* defamation of me, or any duty to provide me any opportunity to defend myself against that *per se* defamation prior to the denial of my application based on character, contradicting this court in *Willner* (see preceding paragraph), and the district court has declared as fact that they did deny me such notice.[19, 20]

[19] FAC No. 37 The board argued they had no duty to provide me notice or opportunity with respect to Cunningham's affidavit prior to the denying my license (Exhibit F, internal p. 3, first new para., "the Board office had no obligation to provide Applicant with the affidavit prior to issuing the adverse determination or give him an opportunity to rebut the allegations therein") even though they determined her affidavit was material to that denial (Exhibit F, internal p. 4, first fill para., "Cunningham' affidavit addresses various Essential Eligibility Requirements and is thus relevant to Applicant's character and fitness to practice law").

[20] USSC Case No. 22-1245, Petition, Apndx. p. 4, Judgment of the District Court, in this case ("The Board did not inform Ristow about [Cunningham's] accusations").

13. Mr. Willner filed an official capacity action by challenging the actions of the state by pursuing an administrative appeal of the decision of the state to deny him a law license.[21, 22]

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[21] *Willner*, 373 U.S. 96 (1966)(@100-101, "In 1943 Willner applied for an order directing the Committee to review its 1938 determination .... Willner in 1948 again petitioned for a reexamination of his application ... In 1951 Willner again made an application to the Appellate Division for an order directing the Committee to furnish him with reasons for its refusal to certify him ... In 1954 Willner filed a fourth application with the Appellate Division requesting leave to file an application for admission ... In 1960 Willner filed a fifth application with the Appellate Division").

[22] Ristow Memo. of Law opposing agency defendant's Motion to Dismiss, p. 4 ("A defendant is sued in their official capacity where the official is named by position or title, or the agency the official serves is a named defendant, the complaint calls out the defendants as being sued in their "official" capacity, or where a plaintiff is asking for an agency decision to be overturned or set aside or the plaintiff is asking for relief other than compensatory damages," citing *Kentucky v. Graham*, 473 U.S. 159, 167-168 (1985) (an official capacity suit is, in all respects other than name to be treated as a suit against the entity); *Gorman v. Bartch*, 152 F.3d 907, 914 (8 th Cir. Ct. App. 1998) ("claims against individuals in their official capacities are equivalent to claims against the entity for which they work.")).

14. Not wanting to wait 30 years for justice and no longer wanting a license that would subject me to being regulated by such people, I expressly filed an individual capacity action[23, 24] because the defendants, as individuals, have acted to violate my rights: Ms. Cunningham acted to submitted *per se* defamatory statements about me after being asked by that agency to do so and therefore she acted under the rules of that agency or, the color of law; and individuals at that agency made the decision to deny me an opportunity to confront those statements contradicting *Willner* (see paragraph **11**) and the processes of the agency[25, 26].

[23] FAC No. 1 ("the Defendants ... are sued here in their individual and/or personal capacity, and not in their official capacity ... Plaintiff demands from the Defendants only compensatory damages").

[24] Ristow Memo. of Law opposing agency defendant's Motion to Dismiss, p. 6 ("A defendant is sued in their individual capacity where only the individual is named, the complaint calls out the defendants as being sued in their "individual" and/or "personal" capacity, and the plaintiff is only seeking money damages from the defendants," citing. Kentucky [v. Graham 473 US 159 (1985)], @ 167-168 ("unless a distinct cause of action is asserted against the entity itself, the entity is not even a party to a personal-capacity lawsuit and has no opportunity to present a defense," and "a victory in a personal-capacity action is a victory against the individual defendant rather than against the entity that employs him")).

[25] FAC No. 18 ("Through Plaintiff's application portal the Defendants asked Plaintiff a total of 125 clarifying questions").

[26] USSC Case No. 22-1245, Petition, Apndx. p. 4, Judgment of the District Court, in this case ("The Board did not inform Ristow about [defendant Cunningham's] accusations").

15. So, recalling the story of Mr. Nathan Willner and grasping the stone, I walked into the town square and screamed, as loudly and clearly as I could and knew how, that individuals were abusing me, by defaming me, and discriminating against me, by denying me a right to stand up and defend my name against that defamation before having it used against me.[27]

[27] FAC Count 11 ("The Defendants by intending to submit, false and intentionally salacious, information, in secret to a state licensing agency, including accusations that Plaintiff is an alcoholic and a drug addict and that Plaintiff threatened to kill a defendant on multiple occasions, and encouraging and facilitating the submission of such information, even after being notified by Plaintiff of the potential for the submission of such false information, and submitting such information in the form of a sworn affidavit and deceiving the sworn affidavit, for the intent of having the sworn affidavit included in plaintiff's application file and used against Plaintiff during the character and fitness investigation of Plaintiff, and using the sworn affidavit against Plaintiff in making the First Determination without providing Plaintiff with notice of the existence of the affidavit of the opportunity to respond to the salacious accusations made therein the Defendants have acted to violate Plaintiff's rights under the Constitution and Plaintiff's right to the equal protections of the law. For the Foregoing violations carried out with fevered willingness of a zealot, and an unbridled desire to shirk their obligations under the Constitution, executed with callous indifference, Plaintiff demands from the Defendants only compensatory damages").

16. But, at the same time that I walked into the town square a judge from the eighth circuit walked in with me. And as I squeezed the stone and screamed, again as loudly and as clearly as I could and knew how, that I was not challenging any action or rule of the agency,[28] that judge stood next to me and screamed more loudly than I that I in fact was challenging those acts[29] and that my abuser's defamation of me was not done by way of the agency rules.[30]

[28] FAC Nos. 1-3("defendants are sued in their individual capacity"; "plaintiff is seeking only compensatory damages").
[29] USSC Case No. 22-1245, Petition, Apndx p. 11, Judgment of the District Court, in this case ("He attempts to avoid the application of the *Rooker-Feldman* doctrine by asserting constitutional challenges and limiting his damages to monetary relief. Limiting his remedy, however, does not avoid the application of the doctrine. This is because Ristow is effectively appealing the Board's decision").
[30] USSC Case No. 22-1245, Petition, Apndx p. 11, Judgment of the District Court, in this case ("Ristow alleges that Cunningham spoke with Defendant Wacker when called on the telephone. He also alleges that Wacker asked Cunningham to submit a "secret" and "salacious" affidavit, which she allegedly did ... The Court finds that these allegations fail to demonstrate, as a matter of law, that Cunningham acted under color of state law"); *contrast with Monell v. Dept. of Social Services*, 436 U.S. 658, 691 (1978)(Executing rules of state agencies constitutes *custom or usage* for § 1983 purposes, "practices of state officials constitute a 'custom or usage' with the force of law").

17. But I remained in the square, standing, clutching the stone to my chest, and screamed louder to the eighth circuit, again as loudly and as clearly as I could and knew how, and then across all the land that no, what the judge said was not true, that what the judge did was not just, that my action is expressly against the individual,[31] that the defense of the sovereign is not available to the individual,[32] that there are no kings or queens here, and received back only echoes.[33]

18. So, now, exhausted, clinging desperately to the stone, across these pages I scream a final plea and ask this court only this question: Is the stone in my hand real?

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[31] FAC No. 1 ("the Defendants ... are sued here in their individual and/or personal capacity, and not in their official capacity ... Plaintiff demands only compensatory damages"); Ristow, Appeal Brief, Nos. 32 & 33 ("the defendants, as individuals, have acted ..., Mr. Ristow has asked only for money damages"); USSC Case No. 22-1245 Petition, para. no. 3 ("Dr. Ristow expressly chose not to contest the denial of his application in order to sue the defendants in their individual capacity" (cert denied Oct. 2, 2023)).

[32] Ristow, Memo. of Law opposing the agency defendant's Motion to Dismiss, p. 8, § Sovereign Immunity ("Individuals are separate from the state and, as a consequence, sovereign immunity is not available to a defendant sued, as the Defendants are here, in their individual capacity" citing *Ex Parte Young*, 209 US 123 (1908); *Dubuc V. Michigan Bd. of Law Examiners*, 342 F.3d 610 (6th Cir. Ct. App. 2003); *Kentucky v. Graham*, 473 US 159 (1985)).

[33] On appeal the cases have been dismissed without comment.

19. If the stone is real, and a person has a right to defend their name, a right that has been denied me by both state[34] and now federal courts, I ask only that you please issue an order, reversing the order of the district court that dismissed this action, stating this action is against the individual, that absolute immunity is not available in an individual capacity action, that, for § 1983 and § 1985 purposes, submitting documentation to a government agency, for inclusion in an application there, is acting under the color of law and allow me an opportunity to defend my name against my abusers' defamation of me and an opportunity to assert the right to notice and opportunity described by this court in Mr. Nathan Willner's official capacity action but now against the bad faith acts of the individual; Without your help my abusers' defamation of me is becoming my written history.[35]

20. But, if the stone is not real, if the right to defend your name does not in fact exist, and if it is true that individuals at state agencies can hide evidence and use it against citizens while hiding behind the defense of a sovereign then there is nothing more this court can do.

[34] Ristow v. Cunningham, USSC Case No. 22-302 (state common law absolute immunity applied to Cunningham's defamation of Ristow (cert. denied Dec. 5, 2022)).

[35] *"Would-Be Minnesota Lawyer Can't Revive Defamation Row Against Ex,"* By David McAfee, Staff Correspondent, Bloomberg News, published online, April 19, 2022.

And,

I, Petitioner, Brent Alan Ristow, of 1027 Ottawa Avenue, West Saint Paul, Minnesota, 651-260-0970, brentristow@brightonashford.com declare, under the penalty of perjury, that the foregoing is true and correct.

Respectfully,

10/27/23

Brent A. Ristow

Executed on: 10/27/23

In the County of: Dakota

In the State of: MN