

No. 22-109

In the
Supreme Court of the United States

BARRY J. SMITH SR.,

Petitioner,

v.

COMMUNITY CARE INC. AND GUARDIANTRAC LLC,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

FILED

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SUPREME COURT, U.S.

ORIGINAL

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QUESTIONS PRESENTED

1. Is the first question to be answered by both the district courts and the courts of appeals, when a civil complaint is presented to them, whether they have subject-matter jurisdiction, and when the answer is NO, does either court have judicial authority to reach the merits of the case and to grant any motion other than pursuant to Fed. R. Civ. P. 12(h)(3) Lack of Subject-Matter jurisdiction?
2. Is petitioner, who is a born in America Fourteenth Amendment citizen, who has been convicted of a crime and sentenced to a Thirteenth Amendment punishment of public/government enslavement, upon payment in full of that judicially pronounced debt to American society, restored to his status of Fourteenth Amendment citizenship, which guarantees to him equal protection of the law?
3. Do the due process of law clauses of the Fifth and Fourteenth Amendments allow the federal judiciary to bar petitioner out of federal civil court based solely on his ethnicity, "Black descendant of American slaves", and his race, "American Negro"?

COMPLIANCE WITH RULE 29.4(b)–(c)

Pursuant to Supreme Court Rule 29.4(b)–(c), petitioner recites that 28 U.S.C. 2403(a)–(b) may apply and this document shall be served on the Solicitor General Of the United States, Room 5616, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC. 20530-0001; Wisconsin Attorney General Josh Kaul, Room 114 East Capitol, Madison, Wisconsin 53702. To the best of petitioner's knowledge, neither the district nor the appeal court certified to the Solicitor General of the United States that the Constitutionality of an Act of Congress was drawn into question; nor has either court certified to the Wisconsin Attorney General that the Constitutionality of a statute and Legislatively referred Amendment to Wisconsin's constitution has been drawn into question. The notifications required by Rule 29.4(b)–(c) have been made.

LIST OF PROCEEDINGS

Direct Proceedings

United States Court of Appeals for the Seventh Circuit
No. 20-3363

Barry J. Smith, Sr., *Plaintiff-Appellant*, v.
Community Care Inc. and Guardiantrac LLC,
Defendants-Appellees.

Date of Final Judgment: May 6, 2022

Date of Rehearing Denial: June 3, 2022

United States District Court for the
Eastern District of Wisconsin

Case No. 20-CV-1482-JPS

Barry Joe Smith and Francillya Blake, *Plaintiffs*, v.
Community Care, Inc. and Guardiantrac, LLC, doing
business as GT Independence, *Defendants*.

Date of Final Order: December 1, 2020

Prior Related Proceedings

United States Court of Appeals for the Seventh Circuit
No. 20-2988

Barry J. Smith, Sr., *Plaintiff-Appellant*, v.
United States Congress, *Defendant-Appellee*

Date of Final Judgment: March 16, 2021

Date of Rehearing Denial: April 13, 2021

United States District Court for the
Eastern District of Wisconsin

Case No. 21-CV-1001-PP

Barry J. Smith, Sr., *Plaintiff* v.
United States Congress, *Defendant*

Date of Final Order: September 8, 2020

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OPINIONS BELOW

The Judgment and Order of the United States Court of Appeals for the Seventh Circuit dated May 6, 2022 is included at App.1a and 2a. The Order denying petition for rehearing dated June 3, 2022 is included at App.40a. The Order of the United States District Court for the Eastern District of Wisconsin, dated December 1, 2020 is included at App.5a. These opinions were not designated for publication.



JURISDICTION

In a prior related proceeding, The 7th Circuit in appeal No. 20-2988 affirmed the district court order March 16, 2021, and the U.S. Supreme Court denied petition for Writ of Certiorari on November 18, 2021.

In the present matter, the district court issued the orders appealed from here on November 17, 2020 (App.7a) and December 1, 2020 (App.5a), in Case No. 20-CV-1482, *Barry J. Smith, Sr. v. Community Care, Inc. and Guardiantrac, LLC.*, the appeal in this Case is No. 20-3363, and the Appeal court issued its order affirming the district court orders on May 6, 2022 (App.1a, 2a); in that order the 7th Circuit also recites petitioner's criminal conviction in Judge Stadtmueller's court for "threatening to kill a federal judge." The appeals court order denying rehearing and rehearing en banc was issued June 3, 2022 (App.40a). Jurisdiction is conferred upon this Court by the First Amendment [1791], Sup. Ct. R. 10(a), and 28 U.S.C. § 1254.



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably to assemble, and to petition the Government for redress of grievances.

U.S. Const., amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const., amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, or shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const., amend. XIII

Section 1. Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Section 2. Congress shall have power to enforce this article by appropriate legislation.

U.S. Const., amend. XIV § 1

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. Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

U.S. Const., amend. XV § 1

The right of Citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Article I section 9 clause 3 of the United States Constitution

The 1938 Federal Fair Labor Standards Act

42 U.S.C. § 1981

Equal rights under the law (a) Statement of Equal Rights All persons within the jurisdiction of the United States shall have the same right In every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. (b) "Make and Enforce contracts" defined For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship. (c) Protection Against Impairment The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

F.R.C.P. 12(h)(3) Lack of Subject-Matter jurisdiction. *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 506 (2006). *Mansfield Coldwater & Lake Mich. Rv. Co. v. Swan*, 111 U.S. 379, 382 (1884). *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1218 (10th Cir. 2006). *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934). *Arizonans for Official English v. Arizona*, 520 U.S. 43, 73 (1997). *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83 (1998). *State of Illinois v. City of Chicago*, 137 F.3d 474, 478

(7th Cir. 1998). *Meyers v. Oneida Tribe of Indians of Wisconsin*, 836 F.3d 818, 821 (7th Cir. 2016). *Dred Scott v. Sanford*, 60 U. S. (19 How.) 393, 15 L.Ed. 691. *District of Columbia v. Heller*, 554 U.S. 570, 626-627 (2008). Title 18 U.S.C. § 922(d)(1)(g)(1).

STATEMENT OF THE CASE

Petitioner's United States Constitutional rights as a United States citizen have been evidently violated by the United States judiciary. This petition arises from the Seventh Circuit court of Appeals affirming District court Judge Joseph P. Staudtmueller's *sua sponte* Order dismissing petitioner's civil complaint, in case No. 20-CV-1482, against Community Care Inc., and Guardiantrac LLC for violating his statutory rights under the 1938 federal fair labor standards act, and under 42 U.S.C. section 1981, based solely on Judge Pamela Pepper's order in case No. 19-CV-1001 restricting petitioner from filing any "claims arising out of his status as a descendant of slaves." Judge Staudtmueller's dismissal of case No. 20-CV-1482 is based on the order of District Court Judge Pamela Pepper, in case No. 19-CV-1001, granting the motion of the United States Congress "to preclude the plaintiff from initiating further pro se suits arising out of his status as a descendant of slaves", which she had no judicial authority to grant because she lacked subject-matter jurisdiction over the case.

For reasons known only to Judge Pepper, at page 3 of her subject order, she quotes a paragraph from the Seventh Circuit's affirmation of petitioner's criminal

conviction, in Appeal No. 90-2368, before Judge Staudtmueller in case No. 90-CR-19; the substance of that quote is: Smith called the F.B.I. and told them he was thinking of killing a federal judge with a 16th century Jewish sword because he was angry with him for dismissing his suit, with the intent to cause the F.B.I. to come to his address and arrest him. Petitioner truly said, in reaction to the F.B.I. telling him that they do not investigate federal judges: "What do I have to do to get justice, cut his head off on the steps of the courthouse with a sixteenth century Jewish sword?"

More importantly, the F.B.I. entered petitioner's home without an emergency, without a search warrant, without his consent, and seized petitioner and his 16th century Jewish sword. The 7th Circuit court of Appeals should have affirmed that petitioner has a Fourth Amendment right not to have his illegally seized 16th century Jewish sword on the jury room table during its deliberations; Judge Staudtmueller's blatant violation of petitioner's Fourth Amendment right, to prejudice the jury against him, was not "harmless error". Smith's criminal trial was evidently unfair. Judge Staudtmueller dismissed petitioner's case No. 20-CV-1482 because petitioner identified himself by his ethnic group, "black descendant of American slaves", and denied petitioner's motion to reopen the case and allow petitioner to amend his complaint removing the restricted ethnic group identifying words "descendant of American slaves" and replacing them with words identifying him by his race, "American Negro". The 7th Circuit Court of Appeals affirmed the district court's ethnic and racial discriminatory dismissal of petitioner's Title 42 section 1981 complaint. District Judge Pamela Pepper did not have subject-matter jurisdiction over the case, and

did not have either subject-matter jurisdiction over the case or personal jurisdiction over defendant Wisconsin legislature. It appears the judicial branch of the Government is enforcing against petitioner its ruling in *Dred Scott v. Sanford*, 60 U.S. (19 How.) 393, 15 L.Ed.691.



REASONS FOR GRANTING THE PETITION

WILL THIS HONORABLE COURT RESPECT PETITIONER AS A NATURAL BORN FOURTEENTH AMENDMENT UNITED STATES OF AMERICA CITIZEN? Where it is evident that certain district court judges, and certain circuit court judges, seek to keep petitioner in the status of a Thirteenth Amendment slave, even after he has paid in full his judicially pronounced debt to American society.

Petitioner, according to the FOURTEENTH AMENDMENT to the UNITED STATES CONSTITUTION, is an EX-FELON who is entitled to Equal Protection of the Law. In other words, because petitioner was BORN IN AMERICA and is NOT SERVING A THIRTEENTH AMENDMENT SENTENCE, HE IS ENTITLED TO FOURTEENTH AMENDMENT CITIZENSHIP, WHICH ENTITLES HIM TO EQUAL PROTECTION OF THE LAW. In the Criminal trial before Judge Joseph P. Staudtmueller, petitioner's Fourth Amendment right was clearly violated where he and his 16th century Jewish sword were seized from his home without a search warrant, without consent, without an emergency, and both presented to the jury,

which violated his Fifth and Fourteenth Amendment rights to DUE PROCESS OF LAW.

In district court case No. 19-CV-1001, before Honorable Judge Pamela Pepper, the first question the court was required by law to answer was whether or not the court had subject-matter jurisdiction, without which the court could proceed no further than dismissal. According to the Seventh Circuit Court of Appeals: “[A] court is not free to decide the merits when there is no justiciable controversy. Subject-matter jurisdiction is the first question in every case, and if the court concludes that it lacks jurisdiction it must proceed no further.” *State of Illinois v. Chicago*, 137 F.3d 474 (7th Cir. 1998).

Honorable Judge Pamela Pepper states in her order at page 2, “Because the court finds that the plaintiff’s claims against the legislature are obviously frivolous, the court will dismiss those claims *sua sponte* for lack of subject-matter jurisdiction.” At page 9 of the court’s order, it states: “Sovereign immunity is jurisdictional in nature, . . . which means that if the Congress has not waived sovereign immunity, this court does not have jurisdiction over the claim against it.” At page 12 the court states, “The court will dismiss the United States Congress as a defendant because the complaint fails to state any claims against it for this court may grant relief.” At page 9 of its subject order, the court states, “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) challenges the sufficiency of the complaint, not its merits. Fed. R. Civ. P. 12(b)(6); *Gibson v. City of Chi.*, 910 F.2d 1510, 1520 (7th Cir. 1990).” At page 12 of Judge Pepper’s subject order, she states, “The court will dismiss the United States Congress as a defendant, because the complaint fails to state any

claims against it for which this court may grant relief.” The court does not have subject-matter jurisdiction where the subject-matter stated in the complaint does not confer upon the court either 28 U.S.C. § 1331 Federal question jurisdiction or 28 U.S.C. § 1332 Diversity jurisdiction. Where the complaint fails to satisfy either of the two subject-matter jurisdiction requirements, the court is without subject-matter jurisdiction.

Pursuant to F.R.C.P. 12(h)(3) Lack of Subject-Matter jurisdiction: If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action. “[E]very federal appellate court has a special obligation to ‘satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review,’ even though the parties are prepared to concede it. *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934). While the court has jurisdiction to determine its own jurisdiction, it cannot exercise any ‘judicial action’ other than dismissal when the court lacks jurisdiction. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94 (1998). In this case, Honorable Judge Joseph P. Staudtmueller based his dismissal of case No. 20-CV-1482 on Honorable Judge Pamela Pepper’s “restricted filer” order against petitioner in case No. 19-CV-1001; where Judge Pepper was without subject-matter jurisdiction to issue that punishment order against petitioner, Judge Staudtmueller was without subject-matter jurisdiction to enforce that order against petitioner. Moreover, both courts have undeniably barred petitioner out of federal court based solely on his ethnicity, “Black descendant of American slaves, and his race, “American Negro.” Will this Honorable Court allow its subordinate courts to practice such

clearly prohibited ethnic and racial discrimination
against petitioner?

Respectfully submitted,

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August 30, 2022