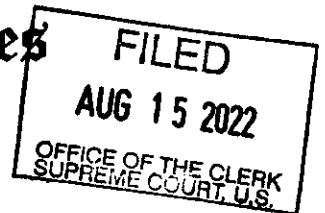


No. **22-5423**

IN THE

ORIGINAL

Supreme Court of the United States



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ELISE LAMARTINA, PETITIONER

v.

JASON P. JOHNSON, ET AL., RESPONDENTS

----- □ -----

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE MISSISSIPPI SUPREME COURT
CASE NO. 2022-TS-00282

----- □ -----

PETITION FOR A WRIT OF CERTIORARI

----- □ -----

FILED ON BEHALF OF
ELISE LAMARTINA, *Petitioner*
5847 CATINA STREET
NEW ORLEANS, LOUISIANA 70124
(985) 807-6655

AUGUST 15, 2022

QUESTION PRESENTED

Petitioner is a disabled resident of Louisiana. In December 2018, Defendant, a Mississippi resident, visited Petitioner at her Louisiana home. While she was bedridden, recovering from surgery, and unable to monitor his whereabouts, the Defendant robbed your Petitioner and fled to Mississippi. Defendant and his father/Co-Defendant, also a Mississippi resident, stored Petitioner's stolen property at their family-owned storage facility. Because the storage facility is incorporated in Mississippi, Petitioner was forced to file a civil action, *in forma pauperis*, in the only court of competent jurisdiction and venue, Mississippi's Hancock County Court.

Her suit was assigned to Judge Trent Favre. Without disclosing the court's, or its wife's, relationship to the Defendants, Favre labored to shield these Mississippi citizens from liability. Against all law and evidence, Favre, *sua sponte*, violated black letter law and dismissed Petitioner's claims *with prejudice*. Petitioner promptly appealed this *sua sponte* dismissal of her suit and, simultaneously moved to proceed *in forma pauperis*.

Citing Miss. Code Ann. §11 -53-17, the appellate court dismissed your Petitioner's case holding that litigants who are not "citizens" of the State of Mississippi, even those who are both indigent and disabled, are not allowed to proceed *in forma pauperis* on appeal or at any stage of litigation. Likewise, the Mississippi Supreme Court denied Petitioner's motion to proceed *in forma pauperis* and dismissed Petitioner's case for failure to prepay the costs of her appeal.

The question presented is:

Whether the State of Mississippi may unconstitutionally discriminate against interstate commerce to shield and protect its citizens and businesses from civil liability for torts and crimes perpetrated in other states by denying due process, equal protection of the law, and privileges and immunities enjoyed by Mississippi citizens to indigent, disabled, non-citizen litigants.

PARTIES TO THIS PROCEEDING

<i>Plaintiff/Petitioner:</i>	Elise LaMartina, <i>pro se</i>
<i>Defendant/Respondent:</i>	Jason P. Johnson
<i>Counsel for Jason Johnson:</i>	Clement S. Benvenuti, Esq.
<i>Defendant/Respondent:</i>	Charles H. Johnson, Jr.
<i>Counsel for Charles Johnson:</i>	Christopher Smith, Esq.
<i>Defendant/Respondent:</i>	Universal Storage, Inc.
<i>Counsel for Universal Storage, Inc.:</i>	Christopher Smith, Esq. Adam Harris, Esq.

RELATED PROCEEDINGS

- *LaMartina v Johnson, et al.*, Case Number 2022-TS-00282, Mississippi Supreme Court. Dismissal entered on June 2, 2022.
- *LaMartina v Johnson, et al.*, Case Number 2021-CV-00099, Hancock County Circuit Court for the State of Mississippi. Dismissal entered on February 28, 2022.
- *LaMartina v Johnson, et al.*, Case Number CC 2019-0295, Hancock County Court for the State of Mississippi. Dismissal entered on June 18, 2021.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the dismissal of her appeal to the Mississippi Supreme Court. Petitioner's appeal, which challenges the unlawful *sua sponte* dismissal of her lawsuit against Mississippi citizens, was dismissed on grounds that as a "non-citizen", despite being a disabled, indigent litigant who is unable to prepay costs and is otherwise entitled to pauper status, she is not entitled to commence, pursue, or appeal any adverse decisions in, any civil action *in forma pauperis* in Mississippi. This Court should grant review to address the State of Mississippi's unconstitutional discrimination against interstate commerce by denying disabled, indigent "non-citizens due process, equal protection of the law, and the privileges and immunities enjoyed by Mississippi citizens.

OPINIONS BELOW

The decision by the Mississippi Supreme Court to dismiss your Petitioner's case is reprinted in the Appendix at 1a. The decision of the Hancock County Circuit Court for the State of Mississippi is reprinted in the Appendix at 2a. The order rendered by the Hancock County Court for the State of Mississippi is reprinted in the Appendix at 7a.

JURISDICTION

Petitioner's appeal to the Supreme Court of Mississippi was dismissed on June 2, 2022. Petitioner invokes this Court's jurisdiction under 28 U.S.C. §1257, having timely filed her petition for a writ of certiorari within 90 days of the Mississippi Supreme Court's dismissal of her suit.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- **Article I, Section 8, Clause 3 of the U.S. Constitution**
(The Commerce Clause)

"The Congress shall have power... to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

- **Article IV, Section 2, Clause 1 of the U.S. Constitution**
(The Privileges and Immunities Clause)

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

- **Amendment V to the U.S. Constitution in the Bill of Rights**
(The Due Process Clause)

"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 offense to be twice put in jeopardy of life or limb; nor 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."

- **Amendment XIV, Section 1 to the U.S. Constitution in the Bill of Rights**
(Privileges and Immunities, Due Process, and Equal Protection Clauses)

"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."

STATEMENT OF THE CASE

In December 2018, Petitioner, Elise LaMartina ("**Elise**"), was disabled and bedridden after falling off a roof. On December 30, 2018, under the guise of assisting with her postoperative care, Defendant, Jason Johnson ("**Junior**"), a Mississippi resident, visited Elise at her home in Louisiana. Because injuries prevented Elise from monitoring Junior, he was able to steal cash and property, including, without limit, pain medication prescribed to her after her operation. Junior immediately fled to Mississippi.

Demand was made on Junior and his father, Defendant Charles Johnson ("**Senior**"), for the immediate return of her stolen property, to no avail. In fact, Defendants dared Elise to sue them. As Mississippi citizens, these Defendants claimed they were "well-connected" in Hancock County and any suit against them would be fruitless because they "knew all the judges." Defendants even claimed to be related to local judges, including, without limit, Judge Desmond Hoda ("**Hoda**"), who Defendants (erroneously) believed would try any case against them.

A cursory inspection of social media revealed that Hoda and other local judges, including Judge Trent Favre ("**Favre**"), with whom Hoda was pictured, were, at the very least, friends of the Defendants. Both of these judges appeared in Senior's "friends list" on Facebook. In fact, Favre is not only friends with Senior on his personal Facebook page, but his "friends list" identifies Senior's father, Charles Johnson, Sr. (Junior's grandfather), Senior's wife, Sherrell Johnson (Junior's step-mother), and other Johnson family members as "friends" on both Favre's and/or his wife's personal social media pages.

Apparently, the Defendants' assertions that any lawsuit filed against them in corrupt Mississippi courts would be unsuccessful were not mere hyperbole.

Because Hancock County Court was the only court of competent jurisdiction and venue, Elise had no choice but to proceed there. In December 2019, Elise traveled to Mississippi to file suit and, contemporaneously, move to proceed *in forma pauperis*.

Refusing to file Elise's pleadings, the clerk contacted Favre – to whom Petitioner's lawsuit was, unfortunately, assigned. Upon discovering the Defendants' identities, and without disclosing any prior relationship with them, Favre attempted to dissuade and discourage Elise from filing her lawsuit. After conducting an examination and determining that Elise was eligible to proceed *in forma pauperis*, Favre warned Elise that prosecuting this matter "long-distance" would be disadvantageous, if not "impossible."

However, this was a simple suit for wrongful conversion in which discovery and other matters could be conducted via U.S. Mail. Appearances in Mississippi could (and *should*) have been limited to Elise's initial visit and a trial on the merits. Further, while Elise would have preferred to bring this action *anywhere* else, Hancock County Court was the only court of competent jurisdiction and venue.

When Elise refused to voluntarily abandon her claims, Favre reluctantly authorized the clerk to file her pleadings. Well aware that Favre intended to make her prosecution of this matter unduly burdensome, Elise prepared herself for the possibility that he would repeatedly and frivolously summon her to Mississippi.

Sure enough, within two weeks, Favre had summoned Elise to appear again, in Mississippi, for another hearing on her *IFP* motion. Of course, Favre hoped Elise would be unable to attend, thus freeing him to dismiss her case before his friends and Mississippi citizens were served.

Elise traveled all the way back to Bay St. Louis, Mississippi from Tampa, Florida (where she'd been living to be closer to her physical therapists) for what amounted to a **10 (ten) minute** hearing. Elise was not sworn in and Favre's examination tracked **exactly** the same issues he'd discussed with Elise earlier that month. Again, without disclosing any prior relations with the Defendants, Favre repeated his snide warning that it would be "difficult, if not impossible" for Elise to "continually" travel back and forth to Hancock County to pursue her claims.

Obviously, the sole alternative to pursuing this action in the only court of competent jurisdiction and proper venue was for Elise to abandon her claims against these Mississippi citizens – which was clearly Favre's objective. When Elise refused to voluntarily abandon her suit, with *great* reluctance, Favre allowed her to proceed. Nearly three months after Elise filed suit, the Defendants were finally served with process.

Defendants, Senior and Universal Storage, Inc., failed to file timely answers. Elise filed an *ex parte* motion for default as a matter of law. However, Favre set the matter for hearing, requiring Elise to travel, yet again, to Mississippi for another court appearance.

Enroute to her (now) *third* appearance in Hancock County (three - all before these Mississippi citizens had even answered the complaint), to Favre's delight, Elise experienced car trouble. She immediately contacted the court to advise that she was stranded and asked that the hearing be placed at the end of the docket to give her time to remedy this emergency.

Unsurprisingly, Favre refused. By the time Elise arrived (within the hour), Favre had dismissed her motion for default and granted his friends an extension of time. Even if Elise had not experienced car trouble, no doubt the result would have been the same.

To avoid the necessity of discovery, Senior expressed an interest in settling this matter on behalf of himself and Universal Storage, Inc., by returning Elise's stolen movables. Meanwhile, with his discovery responses long overdue, Junior propounded discovery of his own. Elise timely filed responsive pleadings with the court.

In a March 17, 2020 letter, Junior claimed that Elise's responses were deficient. On April 6, 2020 (via registered U.S. Mail), Elise provided supplemental responses and reminded Junior that his discovery responses were nearly two months past due. Junior failed to reply. Instead, on April 23, 2020, without service, Junior filed a motion to compel, attaching the March 17, 2020 letter and failing to notify the court that Elise had provided supplemental responses on April 6, 2020. Favre did not set this motion for hearing. Instead, with no notice or contradictory hearing, Favre granted Junior's motion *ex parte* the day it was filed.

Two weeks after Favre granted Junior's motion, Elise received a copy of the docket report showing that, with no notice or hearing, Favre had granted Junior an order compelling Elise to provide supplemental responses. Elise immediately contacted the court to inquire about this order and explain that supplemental responses had already been tendered on April 6, 2020 - weeks before Junior filed his motion.

During that May 2020 phone call, Elise further advised that, although she was not legally required to file discovery into the record, she would file a copy of her supplemental responses immediately if it was customary and/or if the court wanted her to do so. Favre advised that it was neither customary nor necessary for Elise to file supplemental responses into the record. (Favre would later disingenuously claim in his order dismissing this suit, "[T]here is no evidence that Plaintiff ever complied with this Order.")

Junior continued to evade discovery and, eventually, Elise was forced to file a motion to compel. Elise did not immediately set this matter for hearing because settlement negotiations with Senior were ongoing. If unsuccessful, Elise intended to file a second motion to compel against Senior and set hearings on both motions for the same day to limit unnecessary travel. (Of course, Favre did not grant Elise's motion *ex parte* as he had granted Junior's motion to compel *ex parte*. Apparently, only motions filed by Favre's friends and Mississippi citizens mustn't be set for contradictory hearing and require no notice.)

Strained settlement negotiations continued with Senior through January 2021. Thereafter, Senior ceased any effort to settle this matter and Elise, once again, propounded discovery. After receiving no response, in March 2021, Elise contacted the court to inquire about available hearing dates. She advised that she would be filing a motion to compel against Senior and wished to set it and the previously filed motion against Junior for hearing on the same date as a matter of judicial efficiency and to limit unnecessary travel.

Coincidentally (or not), the very week Elise intended to file her motion to compel and set both motions for hearing, Favre, *sua sponte*, served Elise with a vague notice to appear in his court to show cause why her case should not be dismissed. This notice cited no basis for dismissal. Not knowing on the grounds on which Favre intended to dismiss her suit, Elise immediately filed an opposition to Favre's *sua sponte* motion and provided a status update. Favre set this matter and (at Elise's request) Plaintiff's Motion to Compel for hearing on June 14, 2021.

On June 14, 2021, Elise traveled back to Mississippi - again. At the outset of the hearing, Favre, once again, asked defense counsel to confirm the identities of the Defendants as members of the Johnson family. Again, without disclosing any prior relationship with these Mississippi citizens, Favre proceeded with the hearing.

Favre feigned impartiality for about 20 minutes before holding that Elise had abandoned her action. Favre dismissed Elise's case *with prejudice* allegedly in accordance with Miss. R. Civ. P. 41(d). Favre argued that dismissal with prejudice was appropriate because nothing had been filed into the record of these proceedings for "**nearly 11 months.**"

Of course, there were no pleadings to be filed regarding settlement negotiations that took place during this period. For that matter, in a case in which service of process took nearly two (2) months and two Defendants took nearly three (3) months to answer the complaint, "nearly 11 months" hardly seems to be a long enough period to reasonably assume that Elise abandoned her suit. This is especially true when Plaintiff's Opposition to Dismissal was filed immediately upon notice that Favre moved *sua sponte* to dismiss her case.

More importantly, Miss. R. Civ. P. 41(d)(1) clearly states:

"In all civil actions wherein there has been no action of record during the preceding **twelve months**, the clerk of court shall mail notice to the attorneys of record that such case will be dismissed by the court for want of prosecution **unless within thirty days** following said mailing, action of record is taken or an application in writing is made to the court and good cause shown why it should be continued as a pending case. If action of record is not taken or good cause is not shown, the court **shall** dismiss each such case **without prejudice**. The cost of filing such order of dismissal with the clerk shall not be assessed against either party." Miss. R. Civ. P. 41(d)(1). (Emphasis added.)

The record demonstrates that **no** "twelve month" period elapsed without measures to advance this case. Further, the record shows that "action of record" **was** taken "within thirty days" of mailing of notice. Even if Elise had failed to take any action (she did not), under Miss. R. Civ. P. 41(d), "the court *shall* dismiss such case **without** prejudice."

Having cited Miss. R. Civ. P. 41 (d), Favre was certainly aware of its provisions. Favre deliberately failed to abide by Mississippi's Rules of Civil Procedure thus advancing his agenda to thwart any civil action against his friends and Mississippi citizens.

But again, this was no surprise. Favre's repeated comments and actions, both before and after this suit was filed, evidenced his desire to either force Elise to abandon her claims against these Mississippi citizens voluntarily or, in his Mississippi banana republic, he would manufacture cause to dismiss her suit against them involuntarily.

Before leaving the bench, Favre smirked. Knowing Mississippi discriminates against indigent litigants and prohibits them from proceeding *in forma pauperis* on appeal, Favre invited Elise to appeal his decision if she disagreed. Further, Favre reminded Elise that he'd "warned [her] all along" that prosecuting this matter long-distance would be an uphill battle. Of course, Favre's prophetic ability is hardly impressive when his prophecies are self-fulfilling.

From the outset of this litigation, Petitioner was not merely facing three (3) adversaries represented by three (3) separate law firms. Before Elise's suit was even filed, Favre abandoned his role as an unbiased trier of fact and law, placed himself squarely in an adversarial position, effectively joining the defense team. Elise was, in reality, facing four (4) adversaries, one of whom was Favre himself.

Unfortunately, there was nothing surprising about Favre's adversarial role. After all, Defendants warned your Petitioner that an out-of-state litigant stood no chance against them in Mississippi courts. They weren't lying. What was surprising, and reprehensible, was Favre's overt abuse of power, his blatant violations of Mississippi law, and his use of your Petitioner's status as an impoverished, disabled, litigant to deny her due process and equal protection of the law all to protect his friends and Mississippi citizens.

The extent of Favre's relationship with the Defendants beyond social media is unknown. However, whether they are close personal friends, acquaintances, relatives, campaign donors, etc..., Favre's consistent and repeated failure to disclose his connections to the Defendants and/or their family members certainly creates the appearance of impropriety. This combined with Favre's unethical preoccupation with convincing Elise to relinquish her claims against these Mississippi citizens (not to mention making a disabled Plaintiff's prosecution of this case unduly burdensome) before abusing his power and wrongfully dismissing her suit, against all law and evidence and under the circumstances outlined herein, on grounds of abandonment, also causes any reasonable person to question the impartiality and integrity of all courts throughout Hancock County and the State of Mississippi.

Complaints to the Mississippi Commission on Judicial Performance were to no avail. Neither were appeals to the Hancock County Circuit Court nor the Mississippi Supreme Court. Nonetheless, Elise promptly filed notice of appeal and moved to proceed *in forma pauperis* in Hancock County Circuit Court.

Ignoring Favre's flagrant disregard for black letter law, on February 28, 2022, the Hancock County Circuit Court denied Petitioner's *IFP* motion and dismissed her appeal. Citing Miss. Code Ann. §11 -53-17, the court held that Elise is **not** entitled to proceed *in forma pauperis* in **any** proceedings against these (or any other) Mississippi citizens because she, "is not a citizen of the State of Mississippi" and "[t]here is no *in forma pauperis* status on appeal in a civil action."

Believing the ruling unconstitutionally discriminated against interstate commerce by denying a "non-citizens" their constitutional rights to due process and equal protection under the law, including, without limit, the Americans with Disabilities Act, your Petitioner promptly filed notice of appeal to the Mississippi Supreme Court and, simultaneously, moved to proceed *in forma pauperis*.

On June 2, 2022, the Mississippi Supreme Court denied Petitioner's *IFP* motion and dismissed her appeal "for failure to pay the \$200.00 filing fee and the costs of the appeal."

This case demonstrates Mississippi State courts' outlandish departure from normal judicial standards, blatant disregard for the U.S. Constitution and principles fundamental to our judicial system, and discrimination against interstate commerce. The Mississippi courts' decisions are an affront to basic principles of our system of adjudication and are intended to achieve Mississippi's desired goal: protecting and immunizing Mississippi citizens by unlawfully dismissing claims brought by indigent, disabled, out-of-state residents for damages sustained as a result of the tortious and criminal misconduct of Mississippi citizens both inside and outside of Mississippi's borders. The decision is not merely erroneous, it is egregiously so – making this a matter of sufficient importance to merit review.

This Court should grant this Writ and exercise its supervisory powers to prohibit the State of Mississippi from further discriminatory action against interstate commerce by enacting and enforcing protectionist legislation that denies disabled, indigent "non-citizens" due process, equal protection of the law, and the privileges and immunities it affords to Mississippi citizens.

REASONS FOR GRANTING THE WRIT

I.

To prohibit the State of Mississippi from unconstitutionally discriminating against interstate commerce by denying "non-citizens" the right to proceed *in forma pauperis*, this Court should GRANT this Writ.

The Commerce Clause, found in Article I, Section 8, Clause 3 of the U.S. Constitution, gives Congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

Implicit in the Commerce Clause is the "Dormant Commerce Clause" that prohibits state legislation that discriminates against or excessively burdens interstate commerce. Of particular importance here, is the prevention of protectionist state policies that favor state citizens or businesses at the expense of non-citizens conducting business within that state. See *West Lynn Creamery Inc. v. Healy*, 512 U.S. 186 (1994) (Massachusetts state tax on milk products struck down, as the tax impeded interstate commercial activity by discriminating against non-Massachusetts citizens).

The Commerce Clause limits the power of states, including, without limit, the State of Mississippi, to adopt laws that discriminate against interstate commerce and foreign citizens. This "negative" aspect of the Commerce Clause prohibits legislative and judicial protectionism – including any and all measures designed to benefit state citizens and businesses at the expense of the rights and interests of out-of-state or foreign citizens. Thus, state statutes, like Miss. Code Ann. §11 -53-17, that clearly discriminate against interstate commerce are routinely struck down.

Citing Miss. Code Ann. §11 -53-17, Mississippi courts repeatedly denied Petitioner's motions to proceed *in forma pauperis* in a lawsuit against its residents and their family business because, despite being a disabled and indigent litigant otherwise entitled to pauper status, she "is not a citizen of the State of Mississippi."

Miss. Code Ann. §11 -53-17 provides,

A **citizen** may commence any civil action, or answer a rule for security for costs in any court without being required to prepay fees or give security for costs, before or after commencing suit, by taking and subscribing the following affidavit:

"I, ___, do solemnly swear that I am a **citizen** of the State of Mississippi, and because of my poverty I am not able to pay the costs or give security for the same in the civil action (describing it) which I am about to commence (or which I have begun, as the case may be) and that, to the best of my belief, I am entitled to the redress which I seek by such suit."
Miss. Code Ann. §11 -53-17. (Emphasis added.)

Miss. Code Ann. §11 -53-17 is a facially discriminatory statute that explicitly limits, restricts, and prohibits indigent non-citizens from accessing Mississippi courts. In fact, it requires indigent litigants to swear an oath that they are "citizen[s] of the State..." before being permitted to proceed *in forma pauperis* in suits against Mississippi residents and businesses, like Universal Storage, Inc., the Defendants' family-owned storage facility.

Miss. Code Ann. §11 -53-17 violates principles basic to the Commerce Clause by further handicapping impoverished and disabled out-of-state litigants and encouraging degenerate Mississippi citizens, who wish to avoid civil (and criminal) liability and penalties for the torts and crimes they commit against victims in foreign states, to escape to the jurisdiction of the State of Mississippi and the protectionist measures it affords to its citizens.

Miss. Code Ann. §11 -53-17 grants its citizens the right to proceed *in forma pauperis* while simultaneously denying that right to foreign citizens. By permitting its citizens the right to proceed *in forma pauperis* while denying that right to non-citizens, Mississippi has created a playing field more dangerous to interstate commerce than if it had denied due process and equal protection of the law to ALL indigent litigants who are unable to afford the pre-payment of costs regardless of residence or citizenship.

Miss. Code Ann. §11 -53-17 is clearly unconstitutional under this Court's decisions invalidating state laws designed to benefit the citizens of a state by creating barriers that neutralize or deny rights to foreign citizens conducting, and even forced to conduct, business in Mississippi. Mississippi's imposition of a differential burden on any part of the stream of commerce - including access to Mississippi courts integral to interstate commerce - is invalid because such burdens result in unfair advantage to Mississippi residents and businesses and a disadvantage to citizens of foreign states.

The burden placed on interstate commerce by the State of Mississippi is far from incidental and cannot be justified. Further, neither political process (because no one is typically lobbying on behalf of indigent litigants) nor, as this case has shown, can judicial process be relied upon to prevent the State of Mississippi's legislative abuse of non-citizens to advantage its in-state residents and businesses.

This Writ should be granted to review whether the protectionist measures adopted by the State of Mississippi that protect its residents and preserve its businesses by shielding them from liability for damages sustained by foreign citizens as a result of their torts and crimes is the hallmark of the protectionism prohibited by the Commerce Clause.

II.

To prohibit the State of Mississippi from unconstitutionally denying "non-citizens" the same privileges and immunities it regularly affords own citizens, this Court should GRANT this Writ.

The Privileges and Immunities Clause, found in Article IV, Section 2, Clause 1 of the U.S. Constitution, provides that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." This guarantee of privileges and immunities afforded to all persons born or naturalized in the United States is also found in the Bill of Rights. Amendment XIV, Section 1 to the U.S. Constitution states, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." The Privilege and Immunities Clause protects the fundamental rights of individual citizens of the United States and restrains state efforts to discriminate against out-of-state citizens.

References to fundamental rights not expressly stated in the Constitution can be found as early as 1823. In *Corfield v. Coryell*, Supreme Court Justice Bushrod Washington articulated a list of fundamental rights guaranteed by Article IV, Section 2 of the U.S. Constitution stating,

"Protection by the Government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the Government must justly prescribe for the general good of the whole. The right of a citizen of one State to pass through, or to reside in any other State, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefits of the writ of habeas corpus; **to institute and maintain actions of any kind in the courts of the State**; to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the State..." *Corfield v. Coryell*, 6 F. Cas. 546 (1823). (Emphasis added.)

The Privileges and Immunities Clause protects the fundamental rights, including the right to institute and maintain actions of any kind in the courts of any state, of individual citizens, including those who are impoverished or disabled, and prohibits states, from adopting laws that discriminate against out-of-state citizens. Thus, state laws that clearly violate the Privileges and Immunities Clause are routinely struck down.

As previously explained, citing Miss. Code Ann. §11 -53-17, Mississippi courts repeatedly denied Petitioner's motions to proceed *in forma pauperis* and denied her fundamental right to institute and maintain her action in against Mississippi citizens in state courts because, despite being a disabled and indigent litigant otherwise entitled to pauper status, she "is not a citizen of the State of Mississippi."

Miss. Code Ann. §11 -53-17 provides,

A **citizen** may commence any civil action, or answer a rule for security for costs in any court without being required to prepay fees or give security for costs, before or after commencing suit, by taking and subscribing the following affidavit:

"I, ___, do solemnly swear that I am a **citizen** of the State of Mississippi, and because of my poverty I am not able to pay the costs or give security for the same in the civil action (describing it) which I am about to commence (or which I have begun, as the case may be) and that, to the best of my belief, I am entitled to the redress which I seek by such suit."
Miss. Code Ann. §11 -53-17. (Emphasis added.)

By enacting legislation that preserves the fundamental rights of impoverished Mississippi "citizens" and affords them access to its courts while simultaneously denying that fundamental right to all other non-citizens, the State of Mississippi has clearly violated the Privileges and Immunities Clause.

This Writ should be granted to review whether measures adopted by the State of Mississippi, specifically Miss. Code Ann. §11 -53-17, that seek to preserve the fundamental rights of its citizens, while simultaneously disadvantaging and denying those same rights to "non-citizens" forced to do business in Mississippi is exactly the type of unconstitutional discrimination against out-of-state citizens that the Privileges and Immunities Clause prohibits.

III.

To prohibit the State of Mississippi from unconstitutionally discriminating against indigent, disabled "non-citizens" by denying them due process and equal protection of the law afforded to Mississippi citizens, this Court should GRANT this Writ.

Both the Fifth and Fourteenth Amendments to the U.S. Constitution provide that "no person shall be... deprived of life, liberty, or property without due process of law." This Due Process Clause describes the legal obligation of all states to operate within the law and provide fair procedures. The Clause embodies a commitment to legality and procedures that rests at the heart of all legitimate legal systems.

The Fourteenth Amendment also provides, "No state shall make or enforce any law which shall... deny to any person within its jurisdiction the equal protection of the laws." The Equal Protection Clause embodies the idea that a governmental body may not deny any person equal protection of its governing laws and must treat an individual in the same manner as others in similar conditions and circumstances.

The Fifth Amendment's Due Process Clause requires the U.S. government to practice equal protection. The Fourteenth Amendment's Equal Protection Clause requires states to practice equal protection.

At one time (albeit nearly a century ago), Mississippi's Supreme Court articulated its understanding of the importance of due process to advanced societies. In 1930, the *Meeks* court stated, "[u]nder the Constitution ***all persons are entitled to maintain an action in the courts*** for an injury done to him in his lands, goods, person, or reputation, and the courts shall be open and justice shall be administered without sale, denial, or delay." *Meeks v. Meeks*, 156 Miss. 638, 126 So. 189, 190 (1930). (Emphasis added.)

The *Meeks* Court further understood the necessity of affording impoverished individuals access to its courts, stating, "... that every person, however humble or poor, may resort to the courts for the vindication of his rights and the redress of his wrongs. Justice must be granted to every person, whether such person is able to pay the costs or not..." *Id.*

Decades later, the Mississippi legislature enacted Miss. Code Ann. §11 -53-17 which states,

A ***citizen*** may commence any civil action, or answer a rule for security for costs in any court without being required to prepay fees or give security for costs, before or after commencing suit, by taking and subscribing the following affidavit:

"I, ___, do solemnly swear that I am a ***citizen*** of the State of Mississippi, and because of my poverty I am not able to pay the costs or give security for the same in the civil action (describing it) which I am about to commence (or which I have begun, as the case may be) and that, to the best of my belief, I am entitled to the redress which I seek by such suit."
(Emphasis added.)

However, the Mississippi legislature specifically and intentionally denied "non-citizens" the same rights afforded to its own citizens.

By enacting legislation that affords impoverished Mississippi "citizens" access to its courts while simultaneously denying that right to all other non-citizens, the Mississippi legislature evidenced its clear intent to deny indigent, and in this case disabled, out-of-state residents and "non-citizens" due process and equal protection of its laws.

Due process, as Judge Henry Friendly outlined, typically requires the opportunity for litigants to proceed in an unbiased court; to be afforded the right to present evidence, including calling witnesses; the right to know opposing evidence; the right to cross-examine adverse witnesses; the right to an impartial decision based exclusively on the evidence presented; the requirement that the court prepare a record of the proceedings and the evidence presented; the right to receive written findings of fact or reasons for its decisions, etc...

Of course, in this case, the State of Mississippi failed to even provide an unbiased court much less all of the other procedures that due process normally requires. In fact, the Mississippi courts failed to prepare the records of the lower courts' proceedings on appeal and the Mississippi Supreme Court didn't bother providing any written findings of fact or reasons before dismissing your Petitioner's case. Apparently, she was not entitled to due process or equal protection of any of Mississippi's laws, not merely Miss. Code Ann. §11-53-17, that is specifically designed and intended to deny indigent "non-citizens" forced to operate within its jurisdiction due process and equal protection of the laws.

This Writ should be granted to review whether the measure enacted by the Mississippi legislature, specifically Miss. Code Ann. §11-53-17, unconstitutionally discriminates against out-of-state residents and/or "non-citizens," who are forced not only to conduct business in Mississippi but have no choice but to avail themselves of its laws and courts, by denying them fundamental rights to due process and equal protection of the law.

CONCLUSION

The State of Mississippi has evidenced its intent to violate principles fundamental to our judicial system and interstate commerce. Its constitutional violations are a matter of national importance, particularly to anyone forced to conduct business in Mississippi. To the extent that this case evidences a departure from the accepted and usual course of judicial proceedings and the State of Mississippi's disregard for the U.S. Constitution and the Bill of Rights, it warrants an exercise of this Court's supervisory powers. This Writ should be granted.

Respectfully Submitted,



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