

No. 22-67

**In The
Supreme Court of the United States**

ROBERT "BOB" KING,

Petitioner,

v.

SPECIALTY HOSPITAL OF WASHINGTON, et al.,

Respondents.

**On Petition For Writ Of Certiorari
To The District Of Columbia Court Of Appeals**

**REPLY BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

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**REPLY BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

Robert “Bob” King respectfully submits this reply brief in support of his petition for writ of certiorari to the District of Columbia Court of Appeals.

ARGUMENT

I. The Court Has Jurisdiction Under 28 U.S.C. § 1257.

Respondents argue (Op. Cert. 1-3) that this Court lacks jurisdiction under 28 U.S.C. § 1257 because only state law procedural standards were challenged, and because no state law was challenged as being repugnant to the United States Constitution.

In this Court and in the courts below, petitioner consistently presented his claim as a deprivation of fundamental procedural rights that barred him from the mandatory hearing under the anti-SLAPP law. As explained *infra*, the fundamental rights are the rights to due process under the law protected in the District of Columbia directly under the Fifth Amendment to the United States Constitution. Furthermore, as occurs frequently in constitutional challenges to state laws furnishing this Court’s jurisdiction under Section 1257, it was the *application* of the D.C. anti-SLAPP law to plaintiff’s case that caused the constitutional violation, rather than the text of the law itself. Under these circumstances, the Court has jurisdiction.

II. By Failing to Hold the Mandatory Hearing on the Special Motion to Dismiss Under the D.C. Anti-SLAPP Law, The Courts Below Deprived Petitioner of His Due Process Rights Under the Fifth Amendment.

Despite the fact that the D.C. anti-SLAPP statute's hearing requirement on a special motion to dismiss is framed in mandatory terms, despite the fact that the D.C. Court of Appeals so recognized the requirement but brushed aside noncompliance as harmless error, Pet. App. 2a, despite the finding by the trial court judge that the veracity of the hospital's report to the police is "a material fact in dispute and is for the jury to decide" (Pet. App. 39a n. 1), and despite petitioner's request for the hearing to which he was entitled, respondents insist that petitioner has invoked no claim of federal right or shown an attack on the validity of the D.C. statute as being repugnant to the United States Constitution.

Respondents' position is incorrect. Petitioner's claim of being deprived of a hearing on the special motion to dismiss implicates fundamental constitutional principles of due process under the Fifth Amendment: "No person shall [. . .] be deprived of life, liberty, or property, without due process of law. . . ." In the District of Columbia, both due process and equal protection of the laws derive directly from the Fifth Amendment. See *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

The core of due process is the right to notice and a meaningful opportunity to be heard. *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 542 (1985). It, however, “is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). In an analogous due process analysis, the D.C. Circuit has observed that, “however weighty the governmental interest may be in a given case, the amount of process required can never be reduced to zero – that is, the government is never relieved of its duty to provide *some* notice and *some* opportunity to be heard prior to final deprivation of a property interest.” *Proper v. District of Columbia*, 948 F.2d 1327, 1332 (D.C. Cir. 1991).

Petitioner’s pursuit of his hearing rights under the anti-SLAPP statute sufficiently invoked the due process protections, without specific reference to the Fifth Amendment each time the matter was raised. It also bears noting that when petitioner made specific complaint about violation of his due process rights in connection with the abbreviated time allotted to obtain counsel and respond to the special motion to dismiss, the court of appeals belittled the point as “perfunctory” and “skeletal.” See Pet. App. 13a.

Petitioner’s pursuit of his mandatory hearing rights on the special motion to dismiss were anything but perfunctory or skeletal. As explained in another D.C. Court of Appeals case where the hearing on the anti-SLAPP motion to dismiss was provided, the procedures in the law provide a “delicate balance” to preserve constitutional interests on both sides: “the

special motion to dismiss in the Anti-SLAPP Act must be interpreted as a tool calibrated to take due account of the constitutional interests of [both parties] . . . ; *it is not a sledgehammer meant to get rid of any claim against a defendant.*” *Am. Stud. Ass’n v. Bronner*, 259 A.3d 728, 747 (D.C. 2021), quoting *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1239 (D.C. 2016), as amended (Dec. 13, 2018).

It was a sledgehammer indeed wielded against petitioner in his attempt to assert his hearing rights on the special motion to dismiss. The lengths to which the courts below went to pretermitt the mandatory hearing are all the more astonishing in light of:

- the court of appeals’ conclusion that “the trial court erroneously granted the special motion without convening a statutorily required hearing” (Pet. App. 2a);

- the finding by the trial court that the truthfulness of the hospital’s report to the police is “a material fact in dispute and is for the jury to decide” (Pet. App. 39a n. 1);

- respondents were permitted to file the special motion to dismiss beyond the 45-day deadline, yet the *pro se* petitioner was denied the time he requested to prepare for the motion and to attempt to obtain counsel;

- when respondents emerged from bankruptcy in June 2018, they deluged petitioner with motions, squeezing petitioner and affording him little opportunity to prepare to oppose

the special motion to dismiss and motion for summary judgment.

This Court should grant the writ of certiorari to confirm the balance of constitutional interests in procedures under anti-SLAPP special motions to dismiss, to supervise the inconsistent application of mandatory hearing rights on special motions to dismiss in anti-SLAPP cases, and to correct the harmful errors in this case.

◆

CONCLUSION

The petition for writ of certiorari should be granted.

Dated: September 9, 2022 Respectfully submitted,

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