

ORIGINAL

22-6891

No. _____

FILED

FEB 16 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

J.K.D.

— PETITIONER

(Your Name)

vs.

State of Texas

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Criminal Appeals - Texas

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joseph Dinger

(Your Name)

Tarrant County Jail

(Address)

Fort Worth, TX 79196

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Does an Elected Judge violate Due Process, as this Court discussed in Repub Party of Mn v. White, 536 US 659 (2002), Specifically J. O'Connor concurrence & J. Ginsburg dissent?
2. Does Texas Constitution proscribing judicial elections violate Supremacy Clause?
3. Does Texas Const. proscribing judicial elections violate Appointments Clause?
4. Does Texas Const. proscribing judicial elections violate 'Separation of Powers' framework of two branches of politics & 1 independent judiciary?
5. Does Tex Const. proscribing judicial elections constitute a 'Bill of Pains & Penalties' under Cummings v. Missouri, 71 US 277 (1866) that inflicts punishment on Pretrial Detainees without judicial trial under US v. Loew, 328 US 303 (1946)?
6. Does Tex Penal Code § 37.08, § 42.07 encroach upon protected speech as being overly broad & vague, void for vagueness when looked through the elegant lens J. Gorsuch concurred in Sessions v. Dimaya, 138 S.Ct 1204, 1223 (2018)? 'Vague laws invite arbitrary [political] power!'
7. Does Tex Const proscribing all judges...including, Court of Appeals, Court of Criminal Appeals and Texas Supreme Court... are to be elected violated a criminal defendant's right of appeal where the appellate court shares the jurisdictional problem as the trial court?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Because of the exceptional circumstances and extraordinary constitutional questions presented that appear to be of first impression to any court, Petitioner cannot find any cases directly on point. However, just as this court danced around those questions of constitutional law in Repub Party of Mn, it appears Art III accepts the fiction to move the actual merit of the case along. See Chisom v. Roemer, 501 US 389 (1991), Houston Lawyers v. AG-Tex, 501 US 419 (1991), Williams-Yulee v. Florida Bar, 575 US 433 (2015).

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TABLE OF AUTHORITIES CITED

CASES

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1. Williams-Yulee v. Florida Bar, 575 US 433 (2015)
2. Coperton v. A.T. Massey Coal, 556 US 868 (2009)
3. Repub Party of MN v. White, 536 US 765 (2002)
4. Chisom v. Roemer, 501 US 380 (1991)
5. Houston Lawyers v. Tex AG, 501 US 419 (1991)

STATUTES AND RULES

1. US Const 5th Amendment - Due Process Clause
2. US Const 14th Amendment - Due Process Clause
3. US Const 1st Amendment - Free Speech Clause
4. US Const Art VI, cl 2 - Supreme Law of Land
5. US Const Art. II, cl 2 - Appointing Power
6. US Const: Separation of Powers Doctrine - Article III.
7. US Const Art I, §10, cl 1
8. Tex Penal Code § 37.08
9. Tex Penal Code § 42.07

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix 8 to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Jan 11, 2023.
A copy of that decision appears at Appendix B.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves not only the Texas Constitution being in conflict with the US Constitution, but reaches back into the country's foundation and the core principle that Art III was created specifically to have an independent judiciary as a check on political power of the other two branches.
2. This case also involves the core principle the people should not be ~~sub~~ subjected to the King George Parliamentary politics which the founding fathers felt so strongly about... the Declaration of Independence shows their angst:
"In every stage of these Oppressions We have Petitioned for redress in the most humble terms. Our repeated Petitions have been answered only by repeated injury. A [Judge], whose character is thus marked by every act which may define a [politician], is unfit to be the [adjudicator] of a free people."
3. Texas's 3rd branch of politics finds it amusing to misconstrue, mischaracterize a hybrid state law petition under Tex. Cod of Criminal Procedure as a Mandamus action, to then summarily deny any relief without any written order. This insult is added to the injury, Texas politics inflicts upon the presumption of innocence.

STATEMENT OF THE CASE

1. This case involves a direct challenge to the constitutionality of Texas practice of electing it's judges and the conscious or unconscious bias this practice ~~inv~~ invokes into the criminal setting; whereby there is no presumption of innocence when almost 100% of Texas judges in the criminal context are former prosecutors.
2. This case involves a direct challenge to the constitutionality of Texas practice of appealing bias trial court orders to appellate court with the same political bias as the offending trial court and criminal defendant's do not enjoy rudimentary trial rights demanded by US Constitutional minimums.
3. This case involves a direct challenge to the constitutionality of Texas' obvious appearance of partiality by works in concert of these political actors repeated injury to the accused for humble pleas for the constitutional minimums found in this Court's opinions.
4. This case involves a direct challenge to the constitutionality of Texas' political agenda of having two supreme courts... One "Texas Supreme Court" for Civil matters and a second 'Court of Criminal Appeals' for criminal matters whereby both civil and criminal cases share the Court of Appeals and many times the same trial court dockets.

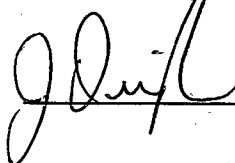
REASONS FOR GRANTING THE PETITION

1. This case provides this court a superior vehicle to enforce this court's jurisdiction, recalibration of Separation of Powers doctrine and provide this court to clearly define what comity and federalism mean, and application thereof... outside of the §2254 Habeas context.
2. This case provides this court the opportunity to relieve voluminous burden on the lower court's dockets overflowing with aggrieved Texas inmates' pleas for Constitutional minimums via §1983, §2241, §2254... which empirical historical data will show has not been accomplished by the entanglements of PLRA over-reach and chill on 1st Amendment.
3. This case provides the Court an opportunity to define in clear language what is Constitutional... as the States have requested. See *Daves v. Dallas Co*, 22 F.4th 522 (5th Cir 2022) dissenting opinion FN 19. "Tellingly on this point, the highest judicial officers of our State Courts - with the Chief Justice of Texas as their president - have filed an amicus brief in this case asking us to resolve the merits." This case gives this Court opportunity to define Comity & Federalism as it did with 'Access to Courts' in *Christopher v. Harbury*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "J. D. Smith", is written over a horizontal line.

Date: Feb 9th