

22-779
No. _____

ORIGINAL

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In The
Supreme Court of the United States

JEFFREY WILLS LUSK,
Individually and as Executor of the
Estate of Dorothy Jean Ross Lusk, Deceased,

Petitioner,

v.

ALSATA SALIMATU LAMIN, R.N., et al.,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Should a conspiracy motivated by invidiously discriminatory intent other than racial bias be actionable under 42 U.S.C. § 1985(3), the possibility of which was left open in *Griffin v. Breckenridge*, 403 U.S. 88 (1971), given 42 U.S.C. § 1985(3) makes no reference to race?

Should the invidious discriminatory intent of the conspirators be considered more vigorously, and the class-based aspect of the conspirators' animus be deemphasized, when analyzing 42 U.S.C. § 1985(3) claims?

Should a specific intent requirement replace the class-based animus requirement of 42 U.S.C. § 1985(3)?

Should *all* federal courts be compelled to extend 42 U.S.C. § 1985(3) protections to disabled individuals, thereby, resolving the inconsistency, confusion, and incongruity lingering in the class-based aspect of the conspirators' animus giving full effect to the Congressional purpose of 42 U.S.C. § 1985(3) in line with 42 U.S.C. § 12101—ADA Amendments Act of 2008 (ADAAA)?

Does the U.S. Const. amend. XIV, § 5 authorize Congress to reach purely private conduct?

Since *Griffin v. Breckenridge*, 403 U.S. 88 (1971) should the constitutional basis of Congressional power to enact 42 U.S.C. § 1985(3) and to use it to reach private conspiracies be based on the U.S. Const. amend. XIV, § 5?

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QUESTIONS PRESENTED – Continued

Should *all* federal courts hobble 42 U.S.C. § 1985(3) with the U.S. Const. amend. XIV, § 5's state action requirement, given this Court refused to do so in *Griffin v. Breckenridge*, 403 U.S. 88 (1971) and 42 U.S.C. § 1985(3) expressly addresses persons not states?

PARTIES TO THE PROCEEDING

Petitioner Jeffrey Wills Lusk was the plaintiff in the District Court proceedings and appellant in the Sixth Circuit Court of Appeals proceedings. Respondents Alsata Salimatu Lamin, R.N.; Christa J. King, N.H.A.; SHCP Franklin, Inc. dba Crown Pointe Care Center; Foundations Health Solutions, L.L.C.; Aboudou Mwegenimta Djaodo, S.T.N.A. aka Jean-Baptiste Mwegenimta Djaodo; and Isata Ortole Kargbo, S.T.N.A. were the defendants in the District Court proceedings and appellees in the Sixth Circuit Court of Appeals proceedings.

RELATED CASES

- *Jeffrey Wills Lusk v. Alsata Salimatu Lamin et al.*, No. 2:20-cv-6064, United States District Court for the Southern District of Ohio, Eastern Division. OPINION AND ORDER entered March 29, 2022.
- *Jeffrey Wills Lusk v. Alsata Salimatu Lamin, R.N. et al.*, No. 22-3360, United States Court of Appeals for the Sixth Circuit. ORDER entered December 12, 2022.

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PETITION FOR A WRIT OF CERTIORARI

Jeffrey Wills Lusk petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The United States Court of Appeals for the Sixth Circuit's decision is reported at *Lusk v. Lamin*, 2022 U.S. App. LEXIS 34243 and reproduced at App. 1-5. The United States District Court for the Southern District of Ohio, Eastern Division's decision is reported at *Lusk v. Alsata Salimatu Lamin*, 2022 U.S. Dist. LEXIS 56341 and reproduced at App. 6-25.

JURISDICTION

The United States Court of Appeals for the Sixth Circuit entered judgment on December 12, 2022. App. 1-5. The United States District Court for the Southern District of Ohio, Eastern Division entered judgment on March 29, 2022. App. 6-25.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

**42 U.S.C. § 1985(3) – Conspiracy to Interfere with
Civil Rights Provides in Pertinent Part:**

(3) Depriving Persons of Rights or Privileges

“If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws;” . . .

. . . “or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws;” . . .

. . . “in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.”

**42 U.S.C. § 12101 – ADA Amendments Act of
2008 (ADAAA) – Provides in Pertinent Part:**

(a) Findings

The Congress finds that –

- (3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;
- (4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(b) Purpose

It is the purpose of this chapter –

- (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
- (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;
- (3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and
- (4) to invoke the sweep of congressional authority, including the power to enforce the Fourteenth Amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

The Fourteenth Amendment, Section 1 and 5 of the United States Constitution, Provides in Pertinent Part:

Section 1:

“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 the power to enforce, by appropriate legislation, the provisions of this article.”

**INTRODUCTION AND
STATEMENT OF THE CASE**

The issues presented in this case involve a genuine and current entrenched conflict between the United States Court of Appeals for the Second, Third, Sixth, Seventh and Tenth Circuits that is significant and substantially important because it will determine the standards applicable to the identification of classes protected by 42 U.S.C. § 1985(3) for cases reviewed by all United States federal courts, and in particular, cases involving disabled individuals. Because in enacting the ADAAA, Congress found that: “unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals

who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination.” Ruling on the issues presented in this case would resolve the inconsistency, confusion, and incongruity lingering in the class-based aspect of the conspirators’ animus giving full effect to the Congressional purpose of 42 U.S.C. § 1985(3) in line with the ADAAA.

The Court of Appeals for the Sixth Circuit in *Lusk v. Lamin*, 2022 U.S. App. LEXIS 34243, the Court of Appeals for the Seventh Circuit in *D’Amato v. Wisconsin Gas Co.*, 760 F.2d 1474 (7th Cir. 1985) and the Court of Appeals for the Tenth Circuit in *Wilhelm v. Continental Title Co.*, 720 F.2d 1173 (10th Cir. 1983) have held that handicapped individuals do not fall within the purview of 42 U.S.C. § 1985(3).

The Court of Appeals for the Second Circuit in *People by Abrams v. 11 Cornwell Co.*, 695 F.2d 34 (2d Cir. 1982), vacated in part on other grounds, 718 F.2d 22 (2d Cir. 1983) and the Court of Appeals for the Third Circuit in *Lake v. Arnold*, 112 F.3d 682 (3d Cir. 1997) have held that disabled individuals, as a class, are entitled to the protection afforded by 42 U.S.C. § 1985(3).

It is noteworthy that in *Tyus v. Ohio Dept. of Youth Services*, 606 F. Supp. 239 (S.D. Ohio 1985) the Court found that the handicapped are a class protected by 42 U.S.C. § 1985(3), consistent with the fact that 42 U.S.C. § 1985(3) makes no references to race, but rather prohibits conspiracies to deprive any person of the equal protection of the laws.

Another issue presented in this case involves a genuine and current entrenched conflict between the United States Court of Appeals for the Third and Seventh Circuits whether the U.S. Const. amend. XIV, § 5 allows Congress to reach purely private conduct, a question left unanswered by this Court in *Griffin v. Breckenridge*, 403 U.S. 88 (1971). Ruling on this issue would resolve the inconsistency, confusion, and incongruity lingering regarding whether state action is required to plead a 42 U.S.C. § 1985(3) claim. Such a requirement almost renders 42 U.S.C. § 1985(3) moot.

The Court of Appeals for the Third Circuit in *Richardson v. Miller*, 446 F.2d 1247 (3d Cir. 1971) held that the U.S. Const. amend. XIV, § 5 authorizes Congress to reach purely private conduct.

The Court of Appeals for the Seventh Circuit in *Murphy v. Mount Carmel High School*, 543 F.2d 1189 (7th Cir. 1976) found that the U.S. Const. amend. XIV, § 5 does not authorize Congress to reach purely private conduct.

Another issue presented in this case involves whether all Ohio citizens are entitled to Ohio's, 9-1-1 emergency, medical, ambulance, and rescue services and if those services are provided by state actors. This question was answered "yes" in *Svette v. Caplinger*, 2007-Ohio-664. The Court held:

"Ross County's operation of the 9-1-1 service is a function that is performed for the common good of all citizens of the state, and may be considered a provision of emergency medical, ambulance, and rescue services.

See R.C. 2744.01(C)(1)(b) and (C)(2)(a). As such, it performs “governmental functions” for the purpose of R.C. Chapter 2744.”

Petitioner, acting on behalf of himself and as Executor of the estate of his deceased mother, Dorothy Jean Ross Lusk, filed a complaint under 42 U.S.C. § 1985(3) against Respondents. The complaint alleged that the defendants deprived Dorothy of her Fourteenth Amendment right to be provided Ohio’s, 9-1-1 emergency medical, ambulance, and rescue services guaranteed to all Ohio citizens pursuant to *Svette v. Caplinger*, 2007-Ohio-664. Dorothy was a long-term care resident at Respondent’s extended care facility. She was non-ambulatory and non-verbal and suffered from dementia. On the morning of April 5, 2016, co-conspirators Djaodo and Kargbo allegedly caused Dorothy to fall and break her left arm, but while then acting as first responders of Ohio’s, 9-1-1 system, they intentionally did not call 9-1-1 to request an ambulance to transport Dorothy to the nearest hospital for emergency medical care. Instead, they conspired with Lamin and other Crown employees to conceal the accident (Coroner’s Verdict) that injured Dorothy and ultimately, led to her death, motivated by Dorothy’s disabled status. Dorothy was diagnosed with a broken arm (trauma injury) shortly before 6:00 p.m., and she was taken to the hospital by private ambulance. She was treated and returned to Crown’s facility later that night.

Dorothy’s health rapidly declined, and she died on April 11, 2016, at the age of 96. Crown employees

initially refused to report Dorothy's death to the Coroner (state actor) but eventually did so at Petitioner's insistence, because they did not state initially that she had a broken arm. When Petitioner attempted to investigate how Dorothy broke her arm, King told him that he could not make inquiries to Crown's staff, that an internal investigation concluded that the cause of Dorothy's broken arm was unknown, and that no incident occurred to cause the injury. King allegedly conspired with the other defendants to conceal the accident, including co-conspirator the Ohio Department of Health (state actor), motivated by Dorothy's disabled status.

The United States District Court for the Southern District of Ohio, Eastern Division Dismissed Petitioner's complaint ruling disability status is not a class protected by 42. U.S.C. § 1985(3) and that none of the Respondents were state actors, without looking for state involvement.

The United States Court of Appeals for the Sixth Circuit affirmed the District Court's Judgment regarding disability status and was silent regarding state action.

REASONS FOR GRANTING THE PETITION

In *Griffin v. Breckenridge*, 403 U.S. 88 (1971), this Court left unanswered whether conspiracy motivated by invidiously discriminatory intent other than racial bias is actionable under 42 U.S.C. § 1985(3) and the

constitutional basis of Congressional power to enact 42 U.S.C. § 1985(3) and to use it to reach private conspiracies is based on the U.S. Const. amend. XIV, § 5. The question of race is immensely important to the proper administration of the class-based aspect device because in enacting the ADAAA, Congress' purpose was to invoke the sweep of congressional authority, including the power to enforce the Fourteenth Amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

Further, this case is a particularly suitable vehicle for considering the questions. It showcases the reasons why 42 U.S.C. § 1985(3) claims have received the “death knell” among the circuits, resulting in the intent of Congress to provide protections to individuals from conspiracies intended to deny their rights to equal protection of the laws to be circumvented.

This Court should grant certiorari to eliminate the discrepancy between the circuits and balance of U.S. courts and clarify a uniform standard of review.

I. The Federal Courts Of Appeals Are Divided Over Whether: A Conspiracy Motivated By Invidiously Discriminatory Intent Other Than Racial Bias Is Actionable Under 42 U.S.C. § 1985(3); Disabled Individuals Are Protected Under 42 U.S.C. § 1985(3); The U.S. Const. amend. XIV, § 5 Authorizes Congress To Reach Purely Private Conduct; And 42 U.S.C. § 1985(3) Claims Require State Action.

Since this Court left unanswered in *Griffin v. Breckenridge*, 403 U.S. 88 (1971) whether invidiously discriminatory intent other than racial bias is actionable, disabled individuals constitute a protected class under 42 U.S.C. § 1985(3), and the U.S. Const. amend. XIV, § 5 authorizes Congress to reach purely private conduct the circuits have weighed in as follows:

1. The Court of Appeals for the Sixth Circuit in *Lusk v. Lamin*, 2022 U.S. App. LEXIS 34243, the Court of Appeals for the Seventh Circuit in *D'Amato v. Wisconsin Gas Co.*, 760 F.2d 1474 (7th Cir. 1985) and the Court of Appeals for the Tenth Circuit in *Wilhelm v. Continental Title Co.*, 720 F.2d 1173 (10th Cir. 1983) have held that handicapped individuals do not fall within the purview of 42 U.S.C. § 1985(3).

2. The Court of Appeals for the Second Circuit in *People by Abrams v. 11 Cornwell Co.*, 695 F.2d 34 (2d Cir. 1982), vacated in part on other grounds, 718 F.2d 22 (2d Cir. 1983) and the Court of Appeals for the Third Circuit in *Lake v. Arnold*, 112 F.3d 682 (3d Cir. 1997) have held that disabled individuals, as a class, are entitled to the protection afforded by 42 U.S.C. § 1985(3).

3. The Court of Appeals for the Third Circuit in *Richardson v. Miller*, 446 F.2d 1247 (3d Cir. 1971) held that the U.S. Const. amend. XIV, § 5 authorizes Congress to reach purely private conduct.

4. The Court of Appeals for the Seventh Circuit in *Murphy v. Mount Carmel High School*, 543 F.2d 1189 (7th Cir. 1976) found that the U.S. Const. amend. XIV, § 5 does not authorize Congress to reach purely private conduct.

5. There is no consistent agreement among the circuits whether 42 U.S.C. § 1985(3) claims require state action or state involvement regarding claims based upon equal protection of the laws.

6. This circuit split is now firmly entrenched.

Only this Court can bring uniformity to these issues.

II. The Questions Presented Are Exceptionally Important.

For the same reasons this Court in *Griffin v. Breckenridge*, 403 U.S. 88 (1971) deemed a more generous construction of 42 U.S.C. § 1985(3) and of Congress's power to reach private deprivations of civil rights worthy of this Court's attention, the questions left unanswered are worthy of this Court's review here.

**III. This Case Is A Particularly Suitable Vehicle
For Resolving The Questions Presented.**

This case presents an excellent vehicle for resolving the questions presented because the elements of non-racial bias, disabled individuals, Congress's power to reach purely private deprivations of civil rights, state action, and the questions presented allow this Court to review questions not presented in *Griffin v. Breckenridge*, 403 U.S. 88 (1971).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,
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