ORIGINAL

No. 22-956

In The

Supreme Court of the United States

PAUL JOHNSON

Petitioner,

v.

BASTROP CENTRAL APPRAISAL DISTRICT

Respondent.

On Petition For Writ of Review
To The Texas Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Should the State of Texas create a separate standard of proof in statutory Writ of Mandamus cases that denies the poor and *pro se* requesters access to public information?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CITATIONS OF OPINIONS

Supreme Court of Texas' January 10, 2023, denial of Petition for Review (App. 107) is unreported.

Texas Eighth District Court of Appeals order of October 14, 2022, denying En Banc Reconsideration (App. 63) has not yet been given a Southwest Reporter Citation, is titled *Johnson v. Bastrop Central Appraisal District,* case number No. 08-20-00234-CV, and seems to be unreported.

Texas Eighth District Court of Appeals order of October 13, 2022, denying rehearing (App. 62) has not been given a Southwest Reporter Citation, but is titled *Johnson v. Bastrop Central Appraisal District,* and is reported under the case number No. 08-20-00234-CV.

Texas Eighth District Court of Appeals opinion and judgment of September 29, 2022, affirming trial court's denial of Writ of Mandamus (App. 1-14) has not yet been given a Southwest Reporter Citation, but is titled *Johnson v. Bastrop Central Appraisal District,* and is reported under the case number No. 08-20-00234-CV.

Texas Third District Court of Appeals transfer of the case to the Eighth District Court of Appeals of November 19, 2020, (App. 108-110) is unreported.

Bastrop 21st Judicial District Court's Findings of Fact and Conclusions of Law of August 28, 2020 (App. 35-37), is unreported.

Texas Attorney General's order of August 24, 2020, concerning the open records request (App. 111-115) is reported on the Texas Attorney General's website as OR2020-21154.

Bastrop 21st Judicial District Court's August 17, 2020, denial of Johnson's Writ of Mandamus (App. 34) is unreported.

Bastrop Central Appraisal District's refusal to produce documents in response to Johnson's open records request of June 19, 2020 (App. 96-97), is unreported.

STATEMENT OF JURISDICTION

The Rules of the United States Supreme Court, Rule 10, grants this Court jurisdiction over a case where a state court has decided an important federal question in a way that conflicts with relevant decisions of this Court.

The Eighth Court of Appeals issued their opinion on September 29, 2022 (App. 1-14). They denied a Motion for Rehearing on October 13, 2022 (App. 62) and denied a Motion for En Banc Reconsideration on October 14, 2022 (App. 63).

The Texas Supreme Court denied a Petition for Review on January 6, 2023 (App. 107).

CONSTITUTIONAL PROVISIONS INVOLVED

The Privileges or Immunities Clause, of the Fourteenth Amendment to the U.S. Constitution (App. 104) provides, in relevant part, "No State shall make or enforce any law which shall abridge the privileges of citizens of the United States."

The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution (App. 104) provides, in relevant part, "nor shall any State deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This case concerns an open records request (App. 94-95) Johnson had made pursuant to the Texas Public

Information Act (TPIA) (App. 98-103). Johnson requested attorney fee bill information from the Bastrop Central Appraisal District (BCAD) (App. 94-95). Under the TPIA, attorney fee bill information is a classification of information that is public information and is not subject to exceptions (App. 98). BCAD refused to release the information and said they were requesting an Attorney General's opinion to see if they could withhold the information (App. 96-97).

The TPIA authorizes requestors to file for a writ of mandamus if the governmental entity fails to produce the records (App. 102). Johnson filed an Application for Writ of Mandamus under the authority of the TPIA to get the information (App. 116-118).

The District Court denied Johnson's application (App. 34), and Johnson appealed to the Texas Court of Appeals (TCOA) based on the controlling case law decisions (*Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408 (1992), Court of Appeals of Texas, Austin; *Thomas v. Cornyn*, 71 S.W.3d 473 (2002), Court of Appeals of Texas, Austin; and *Kallinen v. City of Houston*, 462 S.W.3d 25 (2015), Supreme Court of Texas) that distinguished the requirements for statutory writs of mandamus for public information, from common-law writs of mandamus (App. 64-97).

The TCOA opinion (App. 1-14) considered the case as if it were a common-law writ of mandamus rather than a statutory writ of mandamus. Their opinion required Johnson to meet the requirements of common-law writs of mandamus and included granting governmental entities immunity from statutory writs of mandamus.

> "Appellant must show the trial court clearly abused its discretion." (App. 5).

> "Appellant must demonstrate there is no adequate remedy by appeal." (App. 5).
>
> "The burden is on the Appellant to show he is entitled to mandamus relief." (App. 5).
>
> "Even a *pro se* applicant for a writ of mandamus must show himself entitled to the extraordinary relief he seeks." (App. 5).
>
> "At the time Appellant filed his application for writ of mandamus, the Attorney General's determination was still pending, thus Appellant had an adequate remedy at law." (App. 9).
>
> "Appellee is a political subdivision of the State of Texas, as such, it is entitled to governmental immunity." (App. 11).
>
> "Governmental immunity from suit deprives the trial court of subject matter jurisdiction over claims against a governmental entity unless the complaining party establishes the State's consent to suit." (App. 11).
>
> "Even if Appellant was entitled to a writ of mandamus, BCAD's governmental immunity has not been waived." (App. 12).

The TCOA opinion did not address the difference in the requirements for statutory writs and common-law writs, and they didn't cite to a single case that involved writs for public information, nor any other statutory writs of mandamus.

Johnson asked the TCOA for a rehearing (App. 40-49) and pointed out that their opinion contradicted the precedential case law distinguishing the standards for statutory writs from the standards for common-law writs.

"The *Kallinen* case contained many of the very same issues as Johnson's case, but the Court of Appeals didn't follow the precedent set by the Texas Supreme Court but rather overturned the precedent set in the *Kallinen* case." (App. 40).

"The *Kallinen* case ruled that a requestor does not have to seek or wait for an AG's ruling." (App. 41).

"Nevertheless, this Court of Appeals made the very same ruling that the Court of Appeals did in the *Kallinen* case." (App. 42).

"This Court of Appeals position is similarly flawed, and is similarly contrary to the precedent set by the Texas Supreme Court in the *Kallinen* case." (App. 42).

"This Court of Appeals likewise made the AG's ruling unreviewable." (App. 43).

"This Court of Appeals ruled that the Writ of Mandamus should not be granted unless and until the AG ruled on BCAD's request." (App. 43).

"The Court of Appeals Opinion in the Johnson case also ruled that Johnson did not have the right to mandamus relief because the AG had not yet ruled on the case." (App. 43).

"BCAD **refused** to supply the information by the required deadline, because the word "refuse" in the law does not include an exception for waiting for an AG's opinion." (App. 45).

"The Texas Supreme Court ruled that requestors **do not have a remedy**.

> Requestors have no right to request an AG's ruling, and no right to an administrative appeal." (App. 45).
>
> "Likewise, Johnson had no remedy to request an AG's ruling, so Johnson cannot be required to wait for an AG's ruling that he had no right to request." (App. 45).

Johnson also filed a request for en banc reconsideration (App. 50-61) raising some of the same issues and pointing out that the TCOA ruling overturned the precedent that had already been established.

> "The three issues pointed out in this Court's Opinion of September 29, 2022, all overturned the precedent set in this [*Gilbreath* case] Third Court of Appeals case." (App. 55).
>
> "This Court's Opinion of September 29, 2022, on the three issues listed above, also overturned this precedent [*Cornyn* case] from the Austin Court of Appeals." (App. 56).
>
> "So, this Court's Opinion of September 29, 2022, on the three issues above, also overturned this precedential Texas Supreme Court case [*Kallinen* case] that ruled on the very same issues." (App. 59).
>
> "The Court of Appeals Opinion of September 29, 2022, takes positions diametrically opposed to the precedent from the Texas Supreme Court *Kallinen* case, in effect, overturning the Texas Supreme Court precedent. The Court of Appeals Opinion of September 29, 2022, handed down from the Eighth Court of Appeals in El Paso, also overturned the precedent set by the Third

> Court of Appeals in Austin as expressed in the *Gilbreath* and *Cornyn* cases." (App. 60).

The TCOA denied a rehearing (App. 62) and denied en banc reconsideration (App. 63), and Johnson filed a Petition for Review with the Texas Supreme Court (App. 15-61), based on the TCOA opinion conflicting with precedent, and creating a second standard for statutory writs of mandamus, which would unconstitutionally deny requestors of the equal protection of the TPIA.

> "Considering a statutory WOM as if it were a common-law WOM is contrary to current and binding case law, including case law from the Texas Supreme Court. If the COA ruling stands, Texas will have two completely different standards for statutory WOM's." (App. 24).
>
> "So, this case creates a new and different standard to be used in statutory WOM cases, but only against the poor. This double standard for a particular class of persons denies poor people the due process of law that is guaranteed them by the United States Constitution as well as the Texas Constitution." (App. 24).
>
> "This double standard will also deny all open records access to the poor. The rich people can still afford to get the rich people standard, while the poor people will be denied access to **any** open records because the poor people's standard gives governmental immunity to all governmental agencies from releasing **any** open records, because the PIA only applies to governmental agencies." (App. 24).

> "The only characteristic that distinguishes Johnson's case from the controlling cases, is that the other requestors were represented by high-priced law firms, and Johnson was too poor to even get a lawyer to represent him at all, and had to file the case *pro se*." (App. 29).
>
> "This COA ruling would create an open records standard for poor requestors that gives governmental immunity to all governmental agencies. Since the PIA only applies to governmental agencies, in effect, this COA ruling will deny **all** access to **any** public records to the poor." (App. 30).

The Texas Supreme Court denied Johnson's Petition for Review (App. 107). This Writ of Certiorari was then filed.

REASONS FOR GRANTING THE PETITION

The TCOA opinion created a different standard for considering statutory writs of mandamus, such as writs of mandamus authorized by the TPIA. Before 2003, some Texas appellate court rulings were classified as "Do not publish." In those cases, the opinions had no precedent to be applied in other cases. Now, all opinions and even memorandum opinions in civil cases, have precedential value (App. 105-106). So, now, if the TCOA ruling stands, the new *Johnson* standard created by that ruling will be controlling case law in Texas. That controlling case law will be **enforced** just as if the law were written by the legislature. The Fourteenth Amendment to the U.S. Constitution (App. 104) banning the **enforcement** of the unconstitutional standard, gives the Supreme Court

authority to consider Texas' **enforcement** of the *Johnson* standard.

The standards that were already in existence also still have precedential value, so, the standard to be used in any case will be up to the whim of the governmental agency. The only fact issue that distinguishes the *Johnson* case from the previous cases is that instead of the requestors being rich and represented by high-priced counsel, in the *Johnson* case the requestor was poor and *pro se*.

If the TCOA ruling becomes finalized, Texas will have a second standard for considering statutory writs for different classes of people. Governmental entities will have the option of which standard they want to use. Under the previous standard, the governmental entities have an obligation to release public records to the public (App. 98-103). The new *Johnson* standard gives the entities immunity from being ordered to release information (App. 5, 10-12). So, at the whim of the entities, or even the young employee who is taking open records requests, the governmental entities can refuse to release **any** information, or refuse information to **any requestor** they want. If they are challenged, and the requestor is poor, the entity, or court, can show the precedential *Johnson* case law that gives them immunity from being sued for not releasing information to the poor (App. 5, 10-12). Rich people will still get the information because they can distinguish their case from the *Johnson* standard because they are not poor and are not proceeding *pro se*.

In *McGee v. McFadden* this Court recognized that reviewing bodies may too often turn their decisions into a rubber stamp when a *pro se* litigant is involved. This Court was considering litigation that originated determining a Certificate of Appealability.

> "A court of appeals might inappropriately decide the merits of an appeal, and in doing so overstep the bounds of its jurisdiction. A district court might fail to recognize that reasonable minds could differ. Or, worse, the large volume of COA requests, the small chance that any particular petition will lead to further review, and the press of competing priorities may turn the circumscribed COA standard of review into a rubber stamp, especially for *pro se* litigants. We have periodically had to remind lower courts not to unduly restrict this pathway to appellate review." *McGee v. McFadden*, 139 S.Ct. 2608 (2019), Supreme Court of United States. (internal citations omitted).

In Johnson's case, the TCOA opinion did exactly that. Johnson had appealed the district court ruling on a statutory writ of mandamus (App. 64-97), but TCOA never even considered Johnson's petition and argument that his case was a statutory writ of mandamus and not a common-law writ of mandamus (App. 1-14).

In the *McGee* case this Court also recognized its obligation to correct lower courts' incorrect rubber stamping when *pro se* litigants are involved. Now the new *Johnson* standard for statutory writs of mandamus has been established as precedential case law by the TCOA. The new *Johnson* standard has been "blessed" by the Texas Supreme Court by denying review. The only remedy left for poor and *pro se* requestors of public information, to be allowed access to **any** public information in Texas, is to appeal to this Court to correct the lower courts' rulings as it did in the *McGee* case.

CONCLUSION

Certiorari should be granted to prevent the State of Texas, and then any following states, to unconstitutionally deny poor people access to public records from governmental entities.

Respectfully submitted,

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