

JUL 31 2023

OFFICE OF THE CLERK

No. 23- 105

IN THE
Supreme Court of the United States

JOE THORPE,

Petitioner,

v.

TOWNSHIP OF SALISBURY, PA,
DEBRA J. BRINTON, MICHAEL J. POCHRON,
SANDY NICOLO, AND DANIEL SELL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JOE THORPE
333 East Emmaus Avenue
Allentown, Pennsylvania 18103
(610) 433-4826
joethor@ix.netcom.com

Pro se Petitioner

322462

CP
COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

I. QUESTION PRESENTED

Did the Eastern District of Pennsylvania and the Third Circuit Court of Appeals violate the rule announced in Harris v. Harvey, 605 F.2d 330 (7th Cir. 1979) that there is no such thing as automatic absolute immunity and the courts must review the exceptions to immunity under the Eleventh Amendment before allowing judges and prosecutors such protection in cases involving the Fourteenth Amendment?

II. PARTIES TO THE PROCEEDING

Petitioner is Joe Thorpe.

Respondents are Township of Salisbury, PA, Debra J. Brinton, Michael J. Pochron, Sandy Nicolo, and Daniel Sell.

III. RELATED PROCEEDINGS

Joe Thorpe vs. Township of Salisbury, et al., 5:21-cv-2102, Eastern District of Pennsylvania. Still Open.

Joe Thorpe vs. Township of Salisbury, et al., 5:21-cv-04261, Eastern District of Pennsylvania. Judgment entered March 22, 2022.

Joe Thorpe vs. Township of Salisbury, et al., No. 22-2448, Third Circuit Court of Appeals. Judgment entered April 5, 2023.

IV. TABLE OF CONTENTS

	<i>Page</i>
I. QUESTION PRESENTED.....	i
II. PARTIES TO THE PROCEEDING	ii
III. RELATED PROCEEDINGS	iii
IV. TABLE OF CONTENTS.....	iv
V. TABLE OF APPENDICES	v
VI. TABLE OF CITED AUTHORITIES	vi
VII. OPINIONS BELOW.....	1
VIII. PETITION FOR WRIT OF CERTIORARI.....	1
IX. JURISDICTION	1
X. CONSTITUTIONAL PROVISIONS INVOLVED	2
XI. STATEMENT OF THE CASE	3
XII. REASONS FOR GRANTING THE WRIT	4
XIII. FACTS AND LAW SUPPORTING THE ABOVE REASONS	5
XIV. CONCLUSION	12

V. TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED APRIL 5, 2023.....	1a
APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, FILED MARCH 28, 2022.....	6a
APPENDIX C — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED MAY 1, 2023	22a

VI. TABLE OF CITED AUTHORITIES

	<i>Page</i>
CASES	
<u>Alden v. Maine</u> , 527 U.S. 706 (1999).....	7
<u>Amadasu v. The Christ Hosp.</u> , 514 F.3d 504 (6th Cir. 2008).....	5
<u>Bivens v. Six Unknown Narcotics Agents</u> , 403 U.S. 388 (1971).....	8
<u>Employers Ins. of Wausau v.</u> <u>Petroleum Specialties, Inc.</u> , 69 F.3d 98 (6th Cir.1995)	6
<u>Fitzpatrick v. Bitzer</u> , 427 U.S. 445 (1976).....	6
<u>Harris v. Harvey</u> , 605 F.2d 330 (7th Cir. 1979).....	4, 5, 8, 9
STATUTES	
18 U.S.C. 241	3
18 U.S.C. 1505	3
18 U.S.C. 1512	3
18 U.S.C. 1513.....	3

Cited Authorities

	<i>Page</i>
28 U.S.C. 1257	1
42 U.S.C. 1983	3, 8
Fed.R.Civ.P. Rule 12(b)(6)	5
Fed.R.Civ.P. Rule 56	5
Pennsylvania Code of Judicial Conduct: Effective July 1, 2014, Canon 2	11
The Rules of Professional Conduct Published April 2023 Adopted by Order of the Supreme Court of Pennsylvania dated October 16, 1987, effective April 1, 1988	11 4
Title VIII of the Civil Rights Act of 1968, as amended in 1988, is known as the Fair Housing Act	3

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment I	2
United States Constitution, Amendment IV	2
United States Constitution, Amendment V	2
United States Constitution, Amendment XI	3
United States Constitution, Amendment XIV.....	3

VII. OPINIONS BELOW

Joe Thorpe v. Township of Salisbury, PA, et al., 5:21-cv-04261, Eastern District of Pennsylvania. Opinion entered March 28, 2023. Unreported. Appx 6a – 21a

Joe Thorpe v. Township of Salisbury, PA, et al., 22-2448 (Third Circuit Court of Appeals. Opinion entered April 5, 2023. Unreported. Appx 1a – 5a

Joe Thorpe v. Township of Salisbury, PA, et al., 22-2448, Third Circuit Court of Appeals. Rehearing Denial entered May 1, 2023. Unreported. Appx 22a - 23a

VIII. PETITION FOR WRIT OF CERTIORARI

Joe Thorpe, pro se, respectfully petitions this court for a writ of certiorari to review the orders and judgments of the Eastern District of Pennsylvania and Third Circuit Court of Appeals.

IX. JURISDICTION

Joe Thorpe's petition for rehearing by the Third Circuit Court of Appeals was denied on May 1, 2023. Joe Thorpe invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the Third Circuit Court of Appeals' judgment.

X. CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment V:

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 put twice 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.

United States Constitution, Amendment XI:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

United States Constitution, Amendment XIV:

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.

XI. STATEMENT OF THE CASE

On May 4, 2021, Plaintiff filed a 42 U.S.C. § 1983 complaint for conspiracy to obstruct justice against each of the Defendants in this action. Since that time the Defendants have filed and prosecuted numerous housing code violation actions against the Plaintiff in an effort to criminally intimidate, harass, and retaliate against Plaintiff in violation of 18 U.S.C. 241, 18 U.S.C. 1512, 18 U.S.C. 1505, 18 U.S.C. 1513, and the Fair Housing Act.

Defendant Michael J Pochron held numerous hearings knowing that he was a defendant in related actions and that he was conspiring to assist the other Defendants in executing and covering up corrupt criminal activities. John Ashley was the Solicitor for Defendant Township of Salisbury, PA and prosecuted those hearing even though he was a defendant in a related action. This is a violation of the Rules of Professional Conduct. Defendant Debra J. Brinton is a Township of Salisbury, PA commissioner who oversees the activities of the Defendant Township of Salisbury, PA and its employees particularly Defendants Sandy Nicolo and Daniel Sell who filed and participated in the actions.

On one occasion a Constable delivered municipal summons to Plaintiff's home that were normally sent by mail. On another occasion Defendant Michael J Pochron issued a bench warrant for Plaintiff's arrest for failure to respond to a summons Plaintiff never received in violation of the Fourth Amendment.

The sole purpose of these actions was to tamper with the Civil Rights proceedings currently before the United States District Court at Joe Thorpe vs. Township of Salisbury, PA (No. 5:21-cv-2102) by intimidating Plaintiff who is a witness and a victim in that action.

XII. REASONS FOR GRANTING THE WRIT

The decision by the Court of Appeals is plainly incorrect, as it both contradicts the bright-line holding of Harris v. Harvey, 605 F.2d 330 (7th Cir. 1979) and the express purpose of the rule.

The present case is a textbook example of the court's disregard for facts that prompted the Harris v. Harvey, 605 F.2d 330 (7th Cir. 1979) ruling.

The Court of Appeals' erroneous decision circumvents the premise that no one is above the law including judges for civil rights violations.

This case presents this Court with an opportunity to clarify the Harris v. Harvey, 605 F.2d 330 (7th Cir. 1979) standard requiring the District Court to permit Plaintiffs to obtain and present full evidence of judicial misconduct and criminal actions before dismissing such cases.

XIII. FACTS AND LAW SUPPORTING THE ABOVE REASONS

Motions for dismissal are generally governed by Fed.R.Civ.P. 12(b)(6). Under the traditional rule, when "considering a Fed.R.Civ.P. 12(b)(6) motion to dismiss, 'the district court must construe the complaint in a light most favorable to the plaintiff, accept all of the factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of his claims that would entitle him to relief.'" Amadasu v. The Christ Hosp., 514 F.3d 504, 506 (6th Cir. 2008).

In addition, the Federal Rules of Civil Procedure contemplate that a district court may sua sponte grant summary judgment by converting a motion to dismiss filed pursuant to Fed.R.Civ.P. Rule 12(b)(6) into a motion for summary judgment, provided that "all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Fed.R.Civ.P. 56; see

Employers Ins. of Wausau v. Petroleum Specialties, Inc.,
69 F.3d 98,104-05 (6th Cir.1995).

No such opportunity was given here. This was a matter of the Fourteenth Amendment against the Eleventh Amendment; therefore, the case is dismissed and nothing more needs to be said.

What did the Fourteenth Amendment do? Passed by the Senate on June 8, 1866, and ratified two years later, on July 9, 1868, the Fourteenth Amendment granted citizenship to all persons “born or naturalized in the United States,” including formerly enslaved people, and provided all citizens with “equal protection under the laws.

Most importantly, in Fitzpatrick v. Bitzer, 427 U.S. 445, 448 (1976) the Court held that Congress could enforce the “substantive guarantees of the Fourteenth Amendment” by lancing the “shield of sovereign immunity afforded the State by the Eleventh Amendment.” The opinion began with the Fourteenth Amendment’s text, noting that it “quite clearly contemplates limitations on [states’] authority and concluding that the amendment represented a momentous “shift in the federal-state balance.

The Eleventh Amendment as preserving a particular federal-state balance that is, the one originally envisioned by the Founders. But that federal-state balance was decimated in practice on the battlefields of the Civil War, and this shift was memorialized thereafter in the Civil War Amendments.

Along with its constitutional siblings, then, the Fourteenth Amendment represented a new conception of federal government. At the Founding, states were

generally seen as a bulwark protecting the people from the predations of a distant and potentially tyrannical national government. But now the states had revealed themselves as independent threats to individual liberty. The Fourteenth Amendment sought to meet this newly realized danger. The amendment restrained the states directly by limiting their ability to, among other things, “deprive any person of life, liberty, or property, without due process of law.”

The Court has relied on this balance-altering shift to explain why section 5 enables the federal government to override state sovereign immunity. Fitzpatrick was based upon [the] rationale that the Fourteenth Amendment, *adopted well after* the adoption of the Eleventh Amendment and the ratification of the Constitution, operated to alter the pre-existing balance between state and federal governments

The Court said by ratifying the Fourteenth Amendment, the states “surrendered a portion of the sovereignty that had been preserved to them by the original Constitution,” including their right to sovereign immunity. Alden v. Maine, 527 U.S. 706, 756 (1999). So when Congress chooses to abrogate state sovereign immunity through section 5, it is not breaching the walls of federalism. Instead, it is acting within its proper realm, a province annexed by the “shift in the federal-state balance” occasioned by the Fourteenth Amendment.

While Fitzpatrick dealt with direct congressional abrogation under section 5, its reasoning should apply whenever the Fourteenth Amendment acts of its own force to impose a remedial obligation on the states under the Due Process Clause. In other words, although states and

their citizens have tussled over the circumstances under which Congress can abrogate state sovereign immunity, the clash is largely beside the point whenever the Fourteenth Amendment wades directly into the fray. In those cases, the Fourteenth Amendment requires states to provide an effective remedy for their unlawful conduct even if Congress sits idly by. Accordingly, as recognized implicitly, no part of the Fourteenth Amendment should be limited by state sovereign immunity.

The first ten amendments of the Bill of Rights are self-explanatory. Violations of any of the rights described in these amendments give rise to causes of action against state judges under Title 42 U.S.C. § 1983 and Bivens v. Six Unknown Narcotics Agents, 403 U.S. 388 (1971).

Though judges have some immunity from lawsuit, judicial misconduct or bad personal behavior is not completely protected - total impunity is in fact considered contrary to the rule of law. Depending on the jurisdiction, they may be criminally charged for courtroom behavior unrelated to the decision-making process.

Harris v. Harvey, 605 F.2d 330 (7th Cir. 1979) was a landmark decision on judicial immunity, brought under the Civil Rights Act (42 U.S.C. § 1983). Sylvester Harris, an African-American police lieutenant in Racine, Wisconsin, was attacked in a variety of ways by Judge Richard G. Harvey. Harris sued Harvey because of (a) comments Harvey made to the news media, (b) threatening letters Harvey wrote to city and county officials who attempted to defend Harris, and (c) parties Harvey held for ranking state officials during which he attempted to get Harris removed from law enforcement. The jury concluded that Harvey was not eligible for judicial immunity for these

actions, as such acts which were not part of the judge's normal duties (i.e. were "outside his jurisdiction"). The jury awarded Harris \$260,000 damages. Another judge later added \$7,500 legal fees. The United States Court of Appeals for the Seventh Circuit concurred with the jury's decision. Judge Harvey petitioned the Seventh Circuit court for an en banc rehearing, which was denied. His petition to the Supreme Court was also denied. Harris v. Harvey is the first case in the United States where a sitting court judge has been sued and lost in a civil action; it is a binding precedent in the Seventh Circuit and is persuasive authority in the other circuits.

In the case at hand Defendant Michael J. Pochron committed both judicial misconduct and administrative misconduct to assist in criminal activities by Defendant Debra J. Brinton.

Defendant Michael J. Pochron's violated the Code of Judicial Conduct by failing to recuse himself when requested to in 2019 then hearing and ruling on numerous trials when he was a defendant in a related matters in Federal court. In February 2023, Defendant Michael J. Pochron recused himself after an untold amount of damage done to Joe Thorpe at the direction of Defendant Debra J. Brinton.

At least twice, Michael J. Pochron was engaged in ex parte communications with Co-Defendant Debra J. Brinton who is a Township of Salisbury, PA commissioner. This conduct was beyond his covered judicial duties and was intended to help Defendant cover-up her corrupt actions to harm Joe Thorpe and enrich her by possessing Defendant of Township of Salisbury, PA's public land.

In the fall of 2019, Joe Thorpe went to the Office of Defendant Michael J Pochron to make a complaint and was told by Defendant Michael J Pochron's staff that Plaintiff was not allowed to make a complaint at Defendant Michael J, Pochron's directions. This violated Plaintiff's Fourteenth Amendment equal protection and First Amendment freedom of speech rights. The Courts are required to accept complaints and administer justice. They are not to bar the courthouse door to petitioners because of their race. This conduct was beyond his covered judicial duties and was intended to help Defendant Debra J. Brinton cover-up her corrupt actions to harm Joe Thorpe and enrich her by possessing Defendant of Township of Salisbury, PA's public land for her personal use. This is an administrative duty not a protected judicial duty.

Both Courts did not accurately analyze the allegations of misconduct by Defendant Michael J. Pochron. The Eastern District dismissed Joe Thorpe's complaint with prejudice simply because it was a civil right case that made a claim against a Pennsylvania District Magistrate. There was no allowance of time to engage in discovery. There was no dismissal without prejudice as would be expected. There was no opportunity to amend Plaintiff's Complaint.

These serious ethics violations should put a question in the minds of both courts that there maybe more mischief here than meets the eye. Only a through investigation of the alleged corruption by discovery and litigation can end this alliance between the Defendant Township of Salisbury, PA and the local District court.

According to the Pennsylvania Code of Judicial Conduct: Effective July 1, 2014, Canon 2. A judge shall perform the duties of judicial office impartially, competently, and diligently.

Among those duties:

- 2.2. Impartiality and Fairness.
- 2.3. Bias, Prejudice, and Harassment.
- 2.4. External Influences on Judicial Conduct.
- 2.6. Ensuring the Right to Be Heard.
- 2.9. Ex parte Communications.
- 2.11. Disqualification.
- 2.12. Supervisory Duties.
- 2.15. Responding to Judicial and Lawyer Misconduct.

Defendant Michael J. Pochron violated all of the above duties. Although this Code is not designed or intended as a basis for civil or criminal liability, such actions should place courts on notice that something is wrong here and they should treat obstruction of justice allegations as serious offenses.

Defendant Debra J. Brinton is a forceful politician who runs for office appealing to the same voters that Defendant Michael J. Pochron must attract. This situation creates a natural need for Defendant Michael J. Pochron to stay in

Defendant Debra J. Brinton's good graces. This contortion of democracy has caused Defendant Michael J. Pochron to risk so much to remain in office at any price.

Defendant Debra J. Brinton has rewarded her neighbors who helped her maintain her possession and control of the Defendant Township of Salisbury, PA's land which invades the property rights of Plaintiff in violation of the Fifth Amendment. This same abomination of democracy and power has caused these and other neighbors to risk much more to keep such a powerful person in office even if it physically harms them and the property of the Defendant Township of Salisbury, PA.

XIV. CONCLUSION

For the foregoing reasons, Joe Thorpe, respectfully requests that this Court issue a writ of certiorari to review the orders and judgments of the Eastern District of Pennsylvania and Third Circuit Court of Appeals.

DATED this 31st day of July 2023.

Respectfully Submitted,

JOE THORPE
333 East Emmaus Avenue
Allentown, Pennsylvania 18103
(610) 433-4826
joethor@ix.netcom.com

Pro se Petitioner