23-1375

No. _____

In the

Supreme Court of the United States

ANTHONY I. PROVITOLA,

Petitioner, pro se,

v.

DENNIS L. COMER and FRANK A. FORD, JR.,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Anthony I. Provitola, pro se
Post Office Box 2855
DeLand, FL 32721-2855
(386) 734-5502

June 25, 2024

QUESTIONS PRESENTED

After Petitioner's State Action for declaratory judgment was corruptly terminated without any adjudication of the issues related to the declaration of fact and relief sought therein, Petitioner brought this suit against the Respondents under 42 U.S.C. § 1983 for deprivation of his constitutional rights alleged to have occurred in the State Action by his Amended Complaint. The lower courts concluded that under the Rooker Feldman doctrine the federal courts do not hve jurisdiction to grant any relief requested by Petitioner in his present Amended Complaint. This Court, dispensing with Rooker - Feldman, held in *Exxon Mobil Corp. v, Saudi Basic Industries Corp.*, 544 U.S. 280 (2005) that federal district courts do have such jurisdiction – but subject to preclusion doctrine.

The deprivation of rights are alleged in this suit to have been caused by Respondents as jointly engaged with the state court judge. The courts below on motion to dismiss rejected Petitioner's 1983 claim with the finding that the Petitioner cannot allege that the Respondents acted under color of state law. In Dennis v. Sparks, 449 U.S. 24 (1980), this Court held that private persons, jointly engaged with state officials in the challenged action, are acting 'under color' of law for purposes of § 1983 actions.

In their motion to dismiss the Respondents raised the defense of total immunity under the

Florida litigation privilege on the ground that such acts of deprivation are thus barred. However, this Court held in *Howlett v. Rose*, 496 U.S. 356 (1990) that conduct by persons acting under color of state law that is wrongful under § 1983 cannot be immunized by state law.

The question thus presented is whether the lower courts' decisions should be vacated and the case remanded for reconsideration in light of Exxon, Dennis v. Sparks , and Howlett v. Rose.

PARTIES TO THE PROCEEDINGS

Petitioner Anthony I. Provitola was pro se before the Eleventh Circuit, and was Plaintiff and appellant below.

Respondents Dennis L. Comer and Frank A. Ford,, Jr. were Defendants and appellees below.

RELATED PROCEEDINGS

This case arises from the following proceedings in the United States District Court for the Middle District of Florida and the United States Court of Appeals for the Eleventh Circuit.

□ Provitola v. Comer, et al, 22-12513 (11th Cir.). Mandate issued March 18, 2022, Judgment entered May April 5, 2024, and Order entered May 23, 2024.

□ Provitola v. Comer, et al, Case No. 6:20-cv-289 (M.D.Fl.). Orders entered Mach 4, 2021 and Apr. 15, 2019 and August16, 2022.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinions of the Eleventh Circuit are unpublished. See App-24–29 and App-8-13. The opinions of the U.S. District Court for the Middle District of Florida on the motions to dismiss of Defendants are also unpublished, but available at 2019 WL 1607534. App. 24–30.

JURISDICTION

The judgment of the Eleventh Circuit was entered on April 5, 2024. App. 1–15. This Petition is timely because it was filed before July 4, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant parts of Amendments XIV to the United States Constitution, and 42 U.S.C. § 1983 are reproduced at App-61.

STATEMENT OF THE CASE

In 2016 Petitioner and Respondent Comer were engaged in Florida declaratory litigation over the status of a roadway known as Ridgewood Avenue that the Respondent Comer obstructed with an electrically operated gate. In 1968, Petitioner purchased a parcel of land for his home place in Volusia County, Florida, which included Ridgewood Avenue along its western end. In 1993, Respondent

Comer purchased a parcel of land to the north of Petitioner's home place, which also also included a part of that roadway. In 2014, Respondent Comer obstructed Petitioner's passage on Ridgewood Avenue by installing an electrically operated gate. Respondent Ford represented Respondent Comer in the in the purchase of Comer's parcel and in the State Action. (Doc. 25, ¶ 9).

After the state court action was dismissed with prejudice (as a result of the actions in the state court denying Petitioner's right to proceed on the ground of lack of standing), the Petitioner sued Respondents in the district court alleging claims under 42 USC § 1983 and 28 USC § 1987 that were ultimately asserted in an Amended Complaint.

The Amended Complaint alleged that Respondents violated Petitioner's's due process rights when they acted as private persons jointly engaged with and with the cooperation of and in concert with the corruption of Judge Upchurch, Judge Rowe, and both Fifth District Court of Appeal panels to illegally rule against him. More specifically, the amended complaint alleged that Provitola was injured by: (1) Judge Upchurch's illegal granting of Comer's motion for attorney's fees and illegally facilitating the Defendants' avoidance of the hearing of [Provitola's] motion for summary judgment; (2) Judge Rowe's illegal granting of Comer's motion to dismiss and motion for attorney's fees, illegal denial of Petitioner's motion to vacate, and illegally facilitating the Defendants' avoidance of [Provitola's] motion for summary judgment; (3) the Fifth District Court of Appeal's illegal affirmance of Judge Rowe's dismissal order; and (4) the Fifth District Court of Appeal's illegal affirmance of Judge Rowe's attorney's fees award. (Thus appears to emerge an insistent irrational exercise of petty authority by a self protective clique of local judges to prevent the

exposure of the incompetence in a minor real estate transaction of a favored member of the bar that got out of hand.)

Respondents moved to dismiss the Amended Complaint. The district court granted the motion and dismissed the amended complaint with prejudice on three grounds: 1) Florida's litigation privilege provided Respondents absolute immunity because their actions occurred during the regular course of litigation; 2) Petitioner had not alleged that Respondents were state actors under section 1983; and 3) that the district court lacked jurisdiction over Petitioner's claims under the Rooker-Feldman doctrine.

Petitioner appealed to the Eleventh Circuit which opined that the district court correctly dismissed the Amended Complaint for lack of subject matter jurisdiction, but erroneously with prejudice (when it should have been without prejudice). The Eleventh Circuit did not reach any other of the matters addressed by the dismissal.

Upon remand by the Eleventh Circuit, the district court entered an order in which it adhered to its former rulings on dismissal, again with prejudice! Upon further appeal to the Eleventh Circuit that court "AFFIRMED"; although the meaning of that decision was not clear to the Petitioner, The other matters that were not reached in the first appeal were again presented in the Petition for Rehearing– which was denied without comment.

REASONS FOR GRANTING THE PETITION

The Court should grant the petition, vacate the lower courts' judgments, and remand in light of Exxon, Dennis and Howlett, . Summary vacatur and remand are appropriate here because correctly applying the rule of this Supreme Court authority is likely to determine the case's outcome.

INTRODUCTION

The process of the lower courts has proceeded with the issues raised by the dismissal in the courts below of the Amended Complaint – the Second Amended Complaint having been stricken by the district court.

ROOKER-FELDMAN DOCTRINE

In the first appeal the lower court held (App. E) that "the district court dismissed Petitioner's amended complaint for lack of subject matter jurisdiction". Reconsideration of the panel decision is necessary because the reference therein to Rooker-Feldman conflicts with the decision of the United States Supreme Court in Exxon Mobil Corp. v, Saudi Basic Industries Corp., 544 U.S. 280 (2005) which dispensed with such meaningless labeling of preclusion doctrine. As discussed in Exxon: If a federal plaintiff "present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party ... , then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion. GASH Assocs. v. Village of Rosemont, 995 F. 2d 726, 728 (CA7 1993)." In the present 1983 action there is no alignment of issues with the state action to which the principles of preclusion can apply, because the issues in the state action were limited to standing to sue for a

declaration of fact as to the status of the roadway involved.

UNDER COLOR OF STATE LAW

The Appellant's Amended Complaint [App-G] includes extensive allegations of the unconstitutional actions under color of law of the State Courts' judges and, necessarily implies the joint engagement of those judges with the Appellees in effecting those actions. In Dennis v. Sparks, 449 U.S. 24 (1980) the United States Supreme Court allowed a § 1983 action against private parties who acted in concert with a state judge. To avoid the doctrine of Dennis in this case the Appellees argued that they are not "state actors" based on the authority of Harvey v. Harvey, 949 F.2d 1127 (11th Circuit 1992). However, the allegations of the Harvey complaint did not charge the judge with such knowledge as would have rendered his conduct to be corrupt. In the present case, the Respondents are charged with joint engagement with judges involved who could not avoid full knowledge of the corrupt nature of their conduct, which is the determinative factor in identifying the Respondents as having acted under color of law.

IMMUNITY FROM A § 1983 ACTION.

This Court, in Huls v. Llabona (11th Cir. 2011), Case No. 10-13610 (unpublished), an appeal from the United States District Court for the Middle District of Florida, Docket No. 6:10-cv-00538-GAP-GJK, held to the authority of Howlett v. Rose, 110 S.Ct. 2430, 2442-43 (1990) (providing that "[c]onduct by persons acting under color of state law which is wrongful under 42 U.S.C. § 1983 . . . cannot be immunized by state law."). Therefore under the doctrine of the Supreme Court in Howlett v. Rose no

litigation privilege immunity exists for cases involving the deprivation of constitutional rights within the power of the states to selectively nullify by judicial decision federal statutory law that enforces federal constitutional rights.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

Anthony I. Provitola, Petitioner pro se

ANTHONY I,PROCITOLA, P,A.
Counsel for Petitioner
Post Office Box 2855
DeLand, Florida 32721
Tel. (386) 734--5502
aprovitola@cfl.rr.com

June 28, 2024