

No. 23-5463

IN THE
SUPREME COURT OF THE UNITED STATES

Dexter Leemon Johnson — Petitioner

VS.

Oklahoma — Respondent

PETITION FOR RE-HEARING EN BANC
PURSUANT TO S. Ct. Rule 44 AND FRAP 35

Standard of Review

A petition for rehearing of a denial of a petition for a writ of certiorari is part of the appellate procedure authorized by the Rules of this Court. The right to

such a consideration is not to be deemed an empty formality as though such petitions will be denied as a matter of course. On an appropriate showing that a substantial matter is to be presented, appropriate opportunity should be given for doing so. *Flynn v. U.S.*, 75 S.Ct. 285, 286 (1955).

GROUND ONE. This Court Exceeded Its Discretion and Jurisdiction By Failing To Fulfill Its Duty As Ultimate Interpreter Of The Constitution

Standard of Review

A court acts in excess of its jurisdiction when it has no jurisdiction, or power, to act except in a particular manner. Although a court may exercise its inherent discretion to resolve matters in the interest of judicial economy, the goal of judicial economy

cannot justify sacrificing the rights of the parties. A court cannot reject or expand its authority, and is not free to refuse to follow the law because of some personal disinclination or otherwise.
20 AM. JUR. 2d Courts § 41.

Argument and Authority

In his writ of certiorari Petitioner challenged as unconstitutional the 1906 Oklahoma Enabling Act, the 1907 Proclamation that officially made Oklahoma a member of the Union, and challenged as attainders punitive measures passed by Congress against Five Civilized Tribes in 1897 and 1898 (Curtis Act).

The 1906 Oklahoma Enabling Act and the 1907 Proclamation are repugnant to Art. IV, § 3, cl. 1 of U.S. Constitution. Because, according

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to U.S. Attorney General Edward Bates, they allowed Oklahoma to enter the Union as a political entity "less than a State due to not being a separate independent body politic." See Act For The Admission of West Virginia Into The Union, 10 U.S. Op. Atty. Gen. 426, 426-427 (1862).

The punitive measures (e.g., subjected tribal legislation to arbitrary presidential veto, abolished Tribal Court systems, and provided for termination of tribal land ownership without tribal consent unless the tribes agreed to allotment) passed against the Civilized Tribes in 1897 and 1898 were attainders in that they resulted in: (1) punitive confiscation of tribal treaty land by the sovereign, (2) infliction of punishment by an authority other than a judicial authority, and (3) infliction of punishment without a judicial trial. See 16B AM. JUR. 2d
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Constitutional Law §§ 715, 716. Passage of bills of attainder is prohibited by Art. 1, § 9, cl. 3 of U.S. Constitution.

Accordingly, resolution of Petitioner's certiorari writ requires this Court, as the ultimate interpreter of the Constitution, to interpret Art. IV, § 3, cl. 1 and Art. 1, § 9, cl. 3 of U.S. Constitution. See *Baker v. Carr*, 369 U.S. 186, 211, 82 S.Ct. 691 (1962) (It is the responsibility of U.S. Supreme Court to be ultimate interpreter of the Constitution); *Moore v. Harper*, 600 U.S. 1, 19, 143 S.Ct. 2065 (2023) (Federal courts have responsibility to review laws that are alleged to violate the Federal Constitution). Thereafter the Court must apply its interpretation of said constitutional provisions to the facts of Petitioner's case. This duty is imposed on this Court by U.S. CONST.

Art. III, §§ 1, 2 and Art. VI, cl. 3. Whatever the Constitution prescribes, judges must do; whatever it prohibits, judges must refrain from doing. See 16 AM. JUR. 2d CONSTITUTION § 1. Also see *Randall v. Brigham*, 74 U.S. 523, 533 (1868) (The duties of a judge are public duties imposed by law. He must perform them). Hence, this Court's failure to perform the constitutional duty to interpret Art. IV, § 3, cl. 1 and Art. I, § 9, cl. 3 and then apply that interpretation to the facts of Petitioner's case, constituted an excess of jurisdiction. See 20 AM. JUR. 2d Courts § 41 (A court acts in excess of its jurisdiction when it has no jurisdiction, or power, to act except in a particular manner).

GROUND TWO. This Court In Effect Denied Petitioner's Access To The Courts By Refusing To Adjudicate Merits Of His Valid Challenge To Legal Existence Of Oklahoma

Standard of Review

It is the role of courts to provide relief to claimants, in individual or class actions, who have suffered actual harm. *Lewis v. Casey*, 518 U.S. 343, 349, 116 S. Ct. 2174 (1996). The very point of recognizing any access claim is to provide some effective vindication for a separate and distinct right to seek judicial relief for some wrong. *Christopher v. Harbury*, 536 U.S. 403, 414-415, 122 S. Ct. 2179 (2002).

Argument and Authority

In this and three other courts Petitioner presented a valid, nonfrivolous challenge to the legal existence of the State of Oklahoma. His claim is based on the fact that Oklahoma was admitted into the Union as a political ^{entity} ~~that~~ is "less than a state due to not being a separate independent body politic." Such an admission is repugnant to Art. IV, § 3, cl. 1 of U.S. Constitution. See Act For The Admission of West Virginia Into The Union, 10 U.S. Op. Atty. Gen. 426, 426-427 (1862); also see 72 AM. JUR. 2d States, Etc., § 17 (the "equal footing" requirement means Congress cannot admit an entity that is considered less than a currently existing state).

According to this Court's
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precedent and the legal rationale expressed therein, a person owing any duty to the established government has standing to challenge the legal existence of such state in a court of justice and as a result all Art. III courts have duty to examine such a claim as a justiciable issue and has duty to adjudicate the merits thereof. See, e.g., *Pacific States Telephone & Telegraph Co. v. State of Oregon*, 223 U.S. 118, 141-142, 32 S.Ct. 224 (1912):

"every citizen of such state, or person subject to taxation therein, or owing any duty to the established government, may be heard, for the purpose of assailing in a court of

justice the rightful existence of the state. As a result, it becomes the duty of the courts of the United States, where such a claim is made, to examine as a justiciable issue the contention as to the illegal existence of a state, and if such contention be thought to be well-founded, to disregard the existence in fact of the state. And as a consequence of the existence of such judicial authority, a power in the judiciary must be implied, unless it be that anarchy is to ensue, to build by judicial action upon the ruins of the previously established government a

new one...''

Pacific States..., 223 U.S. at 141-142.

Due to the fact Oklahoma imposed on Petitioner the obligation of imprisonment, he has standing to challenge the legal existence of Oklahoma. Establishment of standing by Petitioner imposes on this Court the duty to examine as a justiciable issue and adjudicate the merits of Petitioner's nonfrivolous challenge to the legal existence of Oklahoma. Pacific States, supra, 223 U.S. at 141-142.

As the entity assigned by the Constitution to be the ultimate protector, interpreter, and enforcer of the same, it is the exclusive province of this Court to be the final authority or decider on Federal Constitutional questions. See, e.g., U.S. Const. Art. III, §§ 1, 2 (The judicial

power of the United States shall be vested in one Supreme Court; The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority); also see *Martin v. Hunter's Lessee*, 14 U.S. 304, 315, 323 (1816) (The Supreme Court must have appellate jurisdiction vested in them by the Constitution, and Congress cannot denude them of it; The appellate jurisdiction of U.S. Supreme Court extends to a final judgment or decree in any suit where is drawn in question the validity of a treaty, or statute of, or an authority exercised under, the United States); *Murray v. City of Charleston*, 96 U.S. 432, 439 (1877) (Wherever rights, acknowledged and protected by the Constitution of the

United States, are denied or invaded, the Supreme Court is authorized to interfere).

As the Constitution's appointee of final adjudicator of Federal Constitutional law, this Court, in effect, denied Petitioner the 14th Amendment right of access to the courts and to rendition of final judgment on his valid, nonfrivolous challenge to the legal existence of the State of Oklahoma. See Lewis, *supra*, 518 U.S. at 349 (It is the role of courts to provide relief to claimants, in individual or class actions, who have suffered, actual harm).

More importantly, this Court's failure to adjudicate merits of Petitioner's challenge to Oklahoma's legal existence constitutes a fundamental miscarriage of justice. Because it left, un-addressed and un-corrected, a void judgment that appears on the face of the judgment roll.

GROUND THREE. The Existence Of A Void Judgment Appears On The Face Of The Judgment Roll

Standard of Review

A judgment is void where it appears that the trial court did not have subject-matter jurisdiction, jurisdiction over the parties, capacity to act as a court, or jurisdiction to render the particular judgment at issue. A judgment entered without jurisdiction is void and thus can be vacated. A judgment can be void not only for lack of jurisdiction, but also where the court acts in a manner contrary to due process. To say that a judgment is void is to

say that it may be challenged in perpetuity. Because a court's power to vacate a void judgment is inherent, there is no deadline for it to exercise that power. 46 AM. JUR. 2d Judgments §25.

Argument and Authority

In four courts Petitioner presented a valid, viable challenge to the legal existence of Oklahoma: Osage County District Court, Case No. WH-2022-03; Oklahoma Court of Criminal Appeals, Case No. HC-2023-445; U.S. Court of Appeals for the Tenth Circuit, Case No. 23-7030; U.S. Supreme Court, No. 23-5463. Neither court has adjudicated the merits, applied a valid procedural bar, nor declared to be frivolous Petitioner's challenge to the legal existence of

Oklahoma.

Neither the U.S. Attorney General, U.S. Solicitor General, or any other interested party has made an attempt to contest, contradict, or find legal error in Petitioner's challenge to the legal existence of Oklahoma. The U.S. Attorney General has a right, under 28 U.S.C.A. § 2403(a), to intervene and defend United States whenever a judicial challenge is ~~made~~ to the constitutionality of an Act of Congress. Failure by Attorney General to intervene can be interpreted in no other way than that, the Attorney General finds Petitioner's challenge to Oklahoma's legal existence so well-founded as to consider it unable to be defeated by existing precedent, established rule of law, nor constitutional provisions.

But most telling of all is the fact that Respondent has not made any attempt to contest or contradict Petitioner's challenge to his client's (State of Oklahoma) legal existence. That speaks volumes when you consider that his client stands to lose EVERYTHING,

LITERALLY, Petitioner's challenge to the legal existence of Oklahoma STANDS UNCONTESTED AND THUS NOT DEFEATED.

Due to the judgment roll(s) in four different courts showing an uncontested claim of jurisdictional defect and denial of due process, Petitioner has demonstrated that he suffered a void judgment. See 46 AM. JUR. 2d Judgments § 25 (A judgment can be void not only for lack of jurisdiction, but also where

the court acts in a manner contrary to due process); also see *Wade v. Mayo*, 334 U.S. 672, 683, 68 S. Ct. 1270 (1948) (Denial of due process renders void the judgment and commitment under which Petitioner is held).

A void judgment is a legal nullity that may be challenged in perpetuity, and requires vacation whenever it presents itself. 46 AM. JUR., supra, at § 25 (To say that a judgment is void is to say it may be challenged in perpetuity. Because a court's power to vacate a void judgment is inherent, there is no deadline for it exercise that power).

In accordance with well-established rule of law mandating vacation of void judgment, Petitioner ask(s) this Court to render final judgment ordering that he forthwith be relieved from ALL legal obligations imposed on
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him by and while under the custody of the illegal State of Oklahoma, including extradition proceedings wherein Petitioner was extradited from Oklahoma to California.

REASONS FOR GRANTING RE-HEARING

Re-hearing en banc should be granted for the reason that his challenge to the legal existence of Oklahoma stands uncontested and un-impeached.

But it should also be granted because the claims raised by Petitioner involve issues of imperative public importance beyond the particular facts and parties in his case.

In four different courts Petitioner made the claim that Oklahoma's admission into the Union is repugnant to Art. IV, § 3, cl. 1 of U.S. Constitution.

The gist of the claim is that Oklahoma is less than a state due to not being a separate independent body politic. This position is supported by the fact that Oklahoma is and always has been governed by at least six different political entities: Oklahoma and five separate tribal governments of the Five Civilized Tribes. A state so constituted, operated, and governed falls short of compliance with the "equal footing" requirement.

Admission of such a political entity is prohibited by Art. IV, § 3, cl. 1 of U.S. Constitution. See *Admission of West Virginia*, supra, 10 U.S. Op. Atty. Gen. 426, at 427 (Congress cannot admit into this Union any territory, district, or other political entity,

less than a State. And such State must exist, as a separate independent body politic, before it can be admitted under that clause of the Constitution, and there is no other clause); also see 72 AM. JUR. 2d States, Etc. §17 (the "equal footing" requirement means Congress cannot admit an entity that is considered less than a currently existing State).

AT LEAST FIVE other states are governed simultaneously by state and tribal governments: Montana, New Mexico, North Dakota, South Dakota, Washington, and Alaska. The Colorado and Nebraska Constitutions both prohibit the State from taxing Indians, which is indicative of dual governance by State and Tribal

governments. It's important to point out the fact that all of these States were admitted AFTER the 1862 Attorney General opinion rendered in The Act For The Admission of West Virginia Into The Union, 10 U.S. ~~Op.~~ Atty. Gen. 426 (1862). States that are governed in such a manner are contrary to the legal principles and rationale elucidated in The Act For Admission of West Virginia Into The Union, and are therefor in the Union in defiance and violation of Art. IV, § 3, cl. 1 of U.S. Constitution. See Admission of West Virginia, *supra*, 10 U.S. Op. Atty. Gen. 426-427.

Permittance of formation, creation, and admission of States into the Union in violation of the Constitution is indicative of the type of assumption or exercise of
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ABSOLUTE POWER that the U.S. Constitution (and all other written constitutions) was created, designed, and intended to prevent. See 16 AM. JUR. 2d Constitutional Law § 4 (The purpose of a written constitution is to define and limit the powers of government and secure the rights of the people).

Open disregard of the law and an attitude and lust for absolute power are what caused The Civil War to happen. The racial and political climate pervading this Country these days is so intensely rancorous that, the Nation would not survive another Civil War.

As the ultimate protector, interpreter, and enforcer of the Constitution, this Court should grant re-hearing en banc to: (1)

declare invalid all states in the Union contrary to the "equal footing" and "independent body politic" requirements inferred in the text and interpretation of Art. IV, §3, cl. 1 of U.S. Constitution; (2) render a final judgment ordering that all of such states be re-built by CONSTITUTIONAL judicial, legislative, and executive action; (3) specify the process to be adhered to after an Art. III court has determined that a state has no legal existence; and most importantly (4) specify the process and conditions required for admission, so that the public won't have to live in constant fear of the government starting another civil war by performing extreme arbitrary and lawless acts such as forming,

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creating, and admitting new states into the Union in flagrant violation of and insolence to the letter and spirit of the Constitution; OR, (5) simply render final judgment vacating Petitioner's void judgment and order him relieved of ALL legal obligations imposed on him by and while under the custody of the ILLEGAL State of Oklahoma, including extradition proceedings wherein Petitioner was extradited FROM Oklahoma to California.

CONCLUSION

When I be explaining this case to other prisoners they tell me, "These people will KILL YOU before they let you take a whole State down."

I ALWAYS respond, "I GUARANTEE, they got that to do!"

Martin Luther King, Jr. said that, "A man who ain't willing to die for something ain't fit to live." My freedom is a cause i'm willing to die for all day everyday. Meaning: I'm going to keep on presenting to y'all my valid challenge to the legal existence of Oklahoma until y'all either kill me or let me free. OR go on record "proving" me wrong.

IT IS SO PRAYED.

Respectfully Submitted,

Dexter L. Johnson

DECLARATION UNDER PENALTY OF PERJURY

The undersigned states under penalty of perjury that he is the Petitioner in this action, that he has read this document and that the information contained herein is true and correct.
28 U.S.C. § 1746, 18 U.S.C. § 1621.

Executed on November 17, 2023.

Dexter L. Johnson
Signature

CERTIFICATION OF PRO SE COUNSEL

Pro se Petitioner, Dexter L. Johnson, hereby certify that the grounds presented are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. Petitioner also certifies that his Petition for Re-hearing En Banc is presented in good faith and not for delay or any other reason than to achieve JUSTICE.

Executed on November 18, 2023.

Dexter L. Johnson, Pro se Counsel
Signature

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Petition For Re-hearing En Banc was placed in the prison legal mail system to be mailed, first class postage prepaid, to

Office of The Clerk
U.S. Supreme Court
Washington, D.C. 20543-0001

on November 20, 2023. I also certify that on the same day a copy of said Petition was mailed to opposing counsel at

Gentner Drummond
Oklahoma Attorney General
313 NE 21st Street
Oklahoma City, Oklahoma 73105

Dexter L. Johnson

Signature