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ORIGINAL

IN THE

Supreme Court of the United States

MICHELLE SMITH,

Petitioner,

v.

PETER B. KRUPP, Judge, Norfolk Superior Court,
THOMAS CONNORS, Judge, Norfolk Superior Court,
PETER J. RUBIN, Justice, MA Appeals Court,
JOSEPH M. DITKOFF, Justice, MA Appeals Court,
ERIC NEYMAN, Justice, MA Appeals Court,
KIMBERLY SUZANNE BUDD, Chief Justice,
ANN M. PINHEIRO, Counsel, NICHOLAS FRENCH,
Personal Representative for the Estate of
Martin French, MASSASOIT COMMUNITY COLLEGE,
& KAREN BIGLEY,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Rooker Feldman Doctrine was intended to shield Defendants; in a Title 42 section 1983 claim, in immunity for their actions of fraudulently initiating and harmfully conducting State Court proceedings with a Want of Jurisdiction and Usurpation of Power?
2. Whether the Rooker Feldman Doctrine applies to cases where the Petitioner alleged that a "Fraud of the Court" was perpetrated on the court, by Respondents French, Pinheiro, and Bigley?
3. Whether the Rooker Feldman Doctrine applies to this independent claim in Federal Court where the Petitioner seeks redress, not for a State Court **Judgment** that has been paid, but rather for the injuries inflicted by the MA State Court Proceedings that constituted Want of Jurisdiction and a Subversion of Congress / State?

PARTIES TO THE PROCEEDING

Petitioner Michelle Smith was the Plaintiff / Appellant in the proceedings below.

Respondents, PETER B. KRUPP, Judge, Norfolk Superior Court, THOMAS CONNORS, Judge, Norfolk Superior Court, PETER J. RUBIN, Justice, MA Appeals Court, JOSEPH M. DITKOFF, Justice, MA Appeals Court, ERIC NEYMAN, Justice, MA Appeals Court, KIMBERLY SUZANNE BUDD, Chief Justice, ANN M. PINHEIRO, Counsel, NICHOLAS FRENCH, Personal Representative for the Estate of Martin French, MASSASOIT COMMUNITY COLLEGE, & KAREN BIGLEY were Defendants / Appellees below.

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PETITION FOR WRIT OF CERTIORARI

At issue in this case, which was dismissed based on the Rooker Feldman Doctrine, is nothing less than the erosion of the Rule of Law in the United States. Doctrines such as the Rooker Feldman Doctrine, are being erroneously applied as a guise, in order to wrongly shield perpetrators of injurious actions with immunity. Article III, sec. 2 of the United States Constitution mandates that this instant case should not have been excluded from Federal Court Jurisdiction based on the Rooker Feldman Doctrine.

Petitioner Michelle J. Smith is respectfully asking the Honorable Supreme Court of the United States to grant this Petition for Writ of Certiorari. The underlying case is a crucial Certiorari candidate that calls upon the Supreme Court to restore the sanctity of the Rule of Law in this case.

OPINIONS BELOW

Judgment of the United States Court of Appeals for the First Circuit – Case # 23-1004 dismissing Petitioner's case due to the Rooker-Feldman Doctrine, entered on August 21, 2023, and is reproduced at App. A.

United States District Court-District of Massachusetts Order of Dismissal – Case # 1:22-cv-10576-NMG is reproduced at App. B.

United States District Court-District of MA Memorandum and Order dismissing Petitioner's case due to the Rooker Feldman Doctrine, is reproduced at App. C.

JURISDICTION

Judgment of the United States Court of Appeals for the First Circuit – Case # 23-1004, entered on **August 21, 2023**, App. A.

This Court has jurisdiction pursuant to 28 U.S.C sec. 1254(1); 28 U.S.C sec.1257; 28 U.S.C sec.1331; The Judiciary Act of 1789, sec. II, 1 stat. 78; 1948 Judicial Code and Judiciary Act, 62 stat. 930; 28 U.S.C. sec. 1332.

CONSTITUTIONAL PROVISIONS INVOLVED

28 U.S.C sec. 1254(1); 28 U.S.C sec.1257; 28 U.S.C sec.1331; The Judiciary Act of 1789, sec. II, 1 stat. 78; 1948 Judicial Code and Judiciary Act, 62 stat. 930; 28 U.S.C. sec. 1332.

The First, Fifth, Fourteenth Amendments to the United States Constitution.

The Amateur Sports Act of 1978 / The Ted Stevens Act.

The Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act.

Empowering Olympic, Paralympic, and Amateur Athlete Act of 2020.

The Administrative Procedure Act of 1946.

Article III of the United States Constitution.

Supremacy Clause of the United States Constitution.

STATEMENT OF THE CASE

A. Proceedings Below

The United States Court of Appeals for the First Circuit's affirmation of the MA District Court Judge's dismissal of Petitioner's Federal Case due to the Rooker-Feldman doctrine is wrong for the following reasons:

1) Petitioner is not attempting to utilize the Federal Courts for appellate review of a final state court judgement, as Petitioner paid the State Court judgment under duress, while receiving a court order of dismissal and satisfaction of judgment, signed, and received from Respondent Pinheiro on June 7, 2022.

2) Petitioner sought proper appellate review of the State Court judgment from the United States Supreme Court via a Writ of Certiorari, entitled "Smith v. French" 142 S.Ct. 432 (2021), cert. denied.

3) Petitioner alleged "fraud on the court" in her complaint which triggers the fraud on the Court exemption to the Rooker Feldman doctrine.

4) The independent action that Petitioner brought in Federal Court is to receive redress for injuries suffered and justice for being unlawfully and unconstitutionally subjected to the overall State Court Proceedings that were Want of Jurisdiction due to the State Court Judges' subversion of Congress' will, as prescribed in the Amateur Sports Act of 1978, The Safe Sport Act, and the Administrative Procedures Act of 1946, *Malachowski v. City of Keene*, 787 F. 2d 704, 710 (1st Cir. 1986).

Under Article III of the United States Constitution, Congress was invested with vast jurisdiction to bestow or not to bestow on the Courts. In the underlying MA

State Court Proceedings, jurisdiction was absent due to Congress stripping the state courts of jurisdiction, pursuant to the Amateur Sports Act of 1978, when a claim is based on a parental complaint to a National Governing Body of Sport, *Palmore v. United States*, 411 U.S. 389, 401 (1973). Furthermore, in illustrating the District Court Judge's error in relying on The Rooker-Feldman doctrine to shield Respondents from liability; Petitioner cites the case of *Kougasian v. TMSL, Inc.*, 359 F. 3d 1136 (9th Cir. 2004). The Circuit Court of Appeals held that the losing party in a state civil action could bring a subsequent action in federal court against an adverse party when the state judgment had been obtained by extrinsic fraud and the adverse party had fraudulently induced the state court proceedings. Decedent French's failure to exhaust his administrative remedies in violation of The Amateur Sports Act of 1978 and The Safe Sport Act of 2017, barred him from any state court action, yet he deliberately chose to; retaliate against Petitioner for her constitutionally protected complaint sent to Massasoit Community College and USA Softball about his misconduct, *Crawford-El v. Britton*, 523 U.S. 574, 592, 1185, S.Ct. 1584, 140L.Ed. 2d 759 (1998), and fraudulently induce the MA State Court proceedings. Decedent Martin French's and his attorneys; Respondents Ann Pinheiro, and Karen Bigley, fraudulent actions, and The MA State Court's unconstitutional exercise of jurisdiction in his case, served to violate Plaintiff's 1st, 5th, and 14th Amendment rights. *Meyer v. Nebraska*, 262 U.S. 390 (1923), *Gitlow v. New York*, 268 U.S. 652 (1925) (The Supreme Court held that the First Amendment right to free speech is applicable against the States via the Due Process Clause of the Fourteenth Amendment"). Therefore, Plaintiff-Appellant / Petitioner deserves the right to pursue her

independent Federal Claims under Title 42 section 1983, instead of being deprived of justice by the Federal Courts due to their erroneous invocation of the Rooker Feldman doctrine.

B. Other Related Cases

The underlying MA State Court Proceedings: that were fraudulently instituted and allowed to proceed throughout the MA State Trial system with a **Want of Jurisdiction** resulting from the MA State Courts subverting the will of Congress as prescribed in The Amateur Sports Act of 1978, The Safe Sport Authorization Act and The Administrative Procedure Act of 1946, form the basis for Petitioner's Independent Federal claims. The MA State Court proceedings are as follows:

1. The Supreme Judicial Court for the Commonwealth of MA order without an opinion, denying Further Appellate Review (FAR # 28148).
2. The Notice of Entry for Direct Appellate Review (without opinion) (DAR # 27185).
3. The Memorandum and Order of The Commonwealth of Massachusetts Appeals Court (case # 2019 P 133, and 2019 P 1572 consolidated) is a summary decision pursuant to M.A.C Rule 23.
4. The original complaint, opinions, and orders of the MA Superior Courts in Suffolk (case# SUCV2013-03032) and Norfolk (case# 1482CV00639) Counties; Petitioner's motions to dismiss for Improper Venue, Anti-Slapp, JNOV, and 60(b), and unpublished orders.

The First Amendment to the United States Constitution provides in relevant part:

Protection for freedom of speech, the press, assembly, and the right to petition the Government for a redress of grievances.

The Fifth Amendment to the United States Constitution provides in relevant part:

No person shall be deprived of life, liberty, or property, without due process of law..

The Fourteenth Amendment to the United States Constitution, section 1, provides in relevant part:

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.

Respondent French and his attorneys conspired to perpetrate fraud on the state court. The conspiracy denied Petitioner's impartial justice; and it transgressed her constitutional rights to procedural due process. Therefore, fraud on the court existed in the MA State Court Proceedings, and the Rooker-Feldman exemption for "fraud on the court", should apply to Petitioner's Independent Federal claims.

C. Petitioner requests for the Supreme Court to review this as a Petition for an Extraordinary Writ pursuant to 28 U.S.C. sec.1652. This Federal Statutory law mandates: The laws of several states, **except where The Constitution or Acts of Congress otherwise require or provide**, shall be regarded as

rules of decision in civil actions. Since, The MA State Court system exercised jurisdiction by subverting the will of Congress, the Judicial Respondents violated Petitioner's Constitutional rights of due process causing immeasurable harm. Because Congress has the Constitutional authority under Article III of The United States Constitution to enact a piece of legislation such as: "The Amateur Sports Act of 1978, "The Protecting Young Victims from Sexual Abuse / The Safe Sport Authorization Act", "The Empowering Olympic, Paralympic, and Amateur Athlete Act of 2020", and the Administrative Procedure Act of 1946, it automatically has the authority to pre-empt all state law actions; like the MA State Court Proceedings, that conflict with this legislation, *Patchak v. Zinke*, 583 U.S. (2018), *Bank Markazi v. Peterson*, 578 U.S. (2016). Respondent French's failure to exhaust his administrative remedies, should have served to bar his State Court Proceedings, (APP 18-20), *Pliuskaitis v. USA Swimming, Inc.*, 243 F. Supp. 3d 1217 (D. Utah 2017) ("dismissing the plaintiff's state-law claims for, *inter alia*, breach of contract and the duty of good faith and fair dealing, as the claims went "to the heart of his eligibility to coach and [were] thus preempted by the [Amateur] Sports Act."), *aff'd sub nom. Pliuskaitis v. USA Swimming*, 720 F. App'x 481 (10th Cir. 2018); *Graham v. U.S. Anti-Doping Agency*, No. 5:10-CV-194-F, 2011 WL 1261321, at *5 (E.D.N.C. Mar. 31, 2011) ("concluding the plaintiff's claims, styled as claims for constitutional violations and Courts examining the legislative history of the Act have determined that Congress explicitly rejected the creation of a private cause of action, 'See *Michels v. U.S. Olympic Comm.*, 741 F.2d 155, 159'"); *Devereaux v. Amateur Softball Ass'n of America*, 768 F. Supp. 618 (S.D. Ohio 1991).

REASONS FOR GRANTING THE WRIT

I. This Court should grant certiorari to establish that a federal court cannot deny jurisdiction for claims brought by an aggrieved person against litigation opponents who conspired to fraudulently institute, and conduct with a want of jurisdiction, the MA State Court Proceedings that were injurious to Petitioner and to the privileges and freedoms of our Constitutional Republic of the United States. The aggrieved person is entitled to Jurisdiction of the Court, an impartial judge, and opportunity to seek discovery in matters of state judiciary wrongdoing where the person's procedural due process rights under the 1st, 5th and 14th amendments are at stake. The First Circuit disallowed federal remedy by incorrectly holding that Rooker-Feldman bars federal jurisdiction.

State court and federal courts have refused to allow the Petitioner due process discovery on the issue of the State Court proceedings being Want of Jurisdiction, that stripped Petitioner of her procedural due process rights and property. Petitioner is entitled to her day in court to discover the facts of how; the MA State trial judges and system subverted the will of Congress resulting in a "Want of Jurisdiction", happened and was utilized to take her freedoms, privileges and property. The misuse of Rooker-Feldman as a device to ignore and trample fundamental federal procedural due process rights is an abuse of judicial authority that will impair public confidence in the courts.

II. Supreme Court Rule 10(a) and (c) call for answers to the questions presented. Rule 10 states: (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; . . . or has so far departed from the accepted and usual course

of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power; (b) – [omitted] – (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. The decision was on a federal law question that should be settled. It conflicts with other courts of appeal, and with this Court's relevant decisions. Allowing *Rooker Feldman* to block federal court claims for state court proceedings that were "Want of Jurisdiction", a "Usurpation of Power" and "fraudulently induced", is a denial of due process that will promote judge misconduct, and irretrievably blemish public perception of the judiciary, inflicting loss of public confidence in the courts.

III. FIRST CIRCUIT CONTRADICTS OTHER CIRCUITS

This case has a similar defendant group as a Third Circuit case where defendants were the opposing litigants, their lawyers, state court judicial officers, and members of an "alternative dispute resolution" ("ADR") company. *Great Western Mining & Minerals v. Fox Rothschild*, 615 F.3d 159, 161 (3rd Cir. 2010), cert. denied, 563 U.S. 904 (2011) The court described the conspiracy: Great Western alleges that its state-court losses were the result of a corrupt conspiracy between the named defendants and certain members of the Pennsylvania state judiciary to exchange favorable rulings for future employment as arbitrators with ADR Options, Inc., an alternative dispute resolution entity. In *Great Western*, the ADR company conspirator was a large ADR vendor. (615 F. 3d 161). The Third Circuit followed the Seventh Circuit in

Nesses v. Shepard, 68 F.3d 1003, 1004 (7th Cir. 1995) where the plaintiff sued “alleg[ing] a massive, tentacular conspiracy among the lawyers and judges to engineer Nesses’ defeat.” The Third Circuit held that a conspiracy between litigants, state judiciary and ADR company was not subject to Rooker Feldman, as it was within the “fraud on the court” exception because procedural due process had been denied. The court stated: As a threshold matter, we address Defendants’ contention that the Rooker-Feldman doctrine precludes the exercise of subject matter jurisdiction over this action. We disagree, as Great Western is not “complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Rather, Great Western asserts an independent constitutional claim that the alleged conspiracy violated its right to be heard in an impartial forum. (Emphasis added, 615 F. 3d 161; see also, 164-172). The First Circuit erred by failing to afford the instant case the same consideration as “Great Western”, despite the fact patterns being similar. The Seventh Circuit raised this Court’s pronouncement that violation of procedural due process is an independent injury. *Great Western, supra*, 615 F.3d at 171. In *Corey v. Piphus*, 435 U.S. 247, 266 (1978) this Court held that the right to procedural due process is “absolute” because “it does not depend upon the merits of a claimant’s substantive assertions, and because of the importance to organized society that procedural due process be observed (citations omitted).” ‘State court judicial wrongful conduct can cause breach of procedural due process; it is an independent injury’. The First Circuit decision in the instant case conflicts

with the Third and Seventh Circuits, that have followed Great Western. Therefore, the Supreme Court is needed to harmonize these conflicting decisions in the Federal Circuit Courts. Great Western has been applied by many other Circuit Courts to find Rooker Feldman not applicable, with one court stating: “while Great Western’s claim for damages may require review of state-court judgments and even a conclusion that they were erroneous, those 25 judgments would not have to be rejected or overruled for Great Western to prevail”. (56 F. Supp. 3d at 1140). The second and fifth circuits follow Nesses and Great Western. See, *Vossbrinck v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 427, 428 fn. 2 (2nd Cir. 2014); *Truong v. Bank of Am., N.A.*, 717 F.3d 377, 384-385 (5th Cir. 2013). In the Eleventh Circuit, *Dandar v. Church of Scientology Flag Serv. Org., Inc.*, 924 F. Supp. 2d 1331, 1337 (M.D. Fla. 2013), adopted the “Third Circuit’s explanation in Great Western,” that vindication for violation of an independent right is not Rooker Feldman barred, and invoking Nesses, that it is not about a state court judgment, but that the “people involved in the decision violated some independent right,” *Nesses, supra*, 68 F.3d at 1005. The Florida District Court made a point to quote Great Western to warn that “if Rooker–Feldman barred jurisdiction, there would be no federal remedy for a violation of federal rights whenever the violator so far succeeded in corrupting the state judicial process as to obtain a favorable judgment.” Great Western, 615 F.3d at 172 (emphasis added); Dandar, 924 F.Supp. 2d at 1337. The First Circuit decision in the instant case conflicts with at least Second, Third, Fifth, Seventh, and Eleventh Circuits, that have followed Great Western. Therefore, the Supreme Court is needed to

harmonize The First Circuit's conflicting decisions with other Federal Circuit Courts.

IV. "FRAUD ON THE COURT" EXEMPTION TO ROOKER FELDMAN

The First Circuit panel failed to recognize that due to Petitioner's allegation of "fraud on the court" in regard to Respondents French, Pinheiro, and Bigley, the Rooker Feldman Doctrine does not apply to deprive Petitioner of Federal Jurisdiction. It should be settled federal law that claims of state judiciary wrongdoing, such as Want of Jurisdiction and Usurpation of Power are violations of due process, and when it has been alleged that some or all opposing Respondents have fraudulently induced proceedings, this constitutes a "fraud on the court" to have been committed, and that "fraud on the court" takes the case out of a Rooker-Feldman jurisdiction bar, because there has been a denial of procedural due process.

V. EXERCISE OF SUPERVISORY POWER - ESTABLISH FEDERAL REMEDY FOR STATE JUDICIARY WRONGDOING

Rule 10(a) applies because the First Circuit and state courts, on application of federal law to state judiciary malfeasance and wrongdoing, have "departed from.. the usual course" such that there can be "call for an exercise of this Court's supervisory power." In *Dennis v. Sparks*, 449 U.S. 24, 25 (1980), the Court affirmed the importance of "providing a remedy against those private persons who participate in subverting the judicial process and in so doing inflict injury on other the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the

public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society, institutions in which fraud cannot complacently be tolerated consistently with the good order of society." *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238, 246, (1944), overruled on other grounds, *Standard Oil of Cal. v. U.S.*, 429 U.S. 17, 18 (1976) 29 persons." In *Kimes, supra*, 84 F.3d at 1128, the court stated the "common law did not provide immunity to private attorneys conspiring with a judge to deprive someone of their constitutional rights." Respondents sought and obtained a court ruling that Rooker-Feldman shields them from the consequences of their actions in federal court. The First Circuits ruling serves to chill the Constitutional rights of Petitioner and should be rectified. To quote *Great Western, supra*, 615 F.3d at 172, the Florida District Court in *Dander, supra*, 924 F. Supp. at 1337 noted such danger, that "if Rooker-Feldman barred jurisdiction, there would be no federal remedy for a violation of federal rights whenever the violator so far succeeded in corrupting the state judicial process as to obtain a favorable judgment."

VI. ETHICS AND PUBLIC CONFIDENCE IN JUDICIARY AT STAKE

In the 2021 Year End Report, Chief Justice Roberts highlighted the importance of federal court adherence to the highest ethics. A federal judge should not sit on a case where the named or implicated local state court judges are personally known to the federal judge or in contact through local bar and judicial activities. The facts of the state court disregard for Jurisdiction, Usurpation of Power, and Fraud on the Court, which the federal courts upheld, will not pass muster with the public.

VII. RULE 10(c) SUPPORTS THE PETITION

Rule 10(c) applies because the First Circuit has denied and undermined the availability of federal remedy to persons damaged by state court malfeasance. If Respondent state court judicial officers and others, cannot be sued in federal court because of Rooker Feldman, there will be no federal remedy for state judiciary wrongdoing and harm, and violation of constitutional rights. The public will lose confidence in the Rule of Law and the Judicial System to provide justice.

VIII. THE QUESTIONS PRESENTED ARE VITAL TO THE PRESERVATION OF PUBLIC CONFIDENCE IN THE COURTS

In the instant case there is actual and appearance of state court system litigant fraud on the court, and judicial want of jurisdiction and usurpation of power, for which there must be due process redress and right to inquiry. Petitioner Michelle J. Smith deserves her day in court.

CONCLUSION

For the foregoing reasons, Petitioner Michelle J. Smith is respectfully asking this Honorable Court to grant this Writ of Certiorari. due to the statutory protections that Petitioner is entitled to pursuant to the Amateur Sports Act of 1978, The Safe Sport Authorization Act, The Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020, The Administrative Procedure Act of 1946, and The United States Laws and Constitution specifically the First, Fifth and Fourteenth Amendments.

Respectfully submitted,

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