

No. **24-5622**

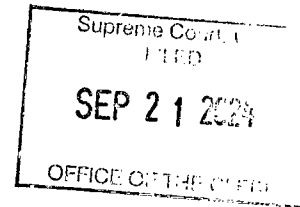
ORIGINAL

**IN THE  
SUPREME COURT OF THE UNITED STATES**

**ELAINE MICKMAN,**  
*Petitioner*

**vs.**

**SUPERIOR COURT OF  
PENNSYLVANIA in their  
Official Capacity,**  
*Respondent*



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**ON PETITION FOR WRIT OF CERTIORARI from the  
3rd Circuit Court of Appeals April 26, 2024 Order**

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**Elaine Mickman, pro se  
1619 Gerson Dr.  
Narberth, PA 19072**

i.

**QUESTIONS PRESENTED**

1. Whether the U.S. District Court erred in denying injunctive relief seeking restoration of usurped constitutional rights, despite clear evidence of irreparable harm and a likelihood of success on the merits.
2. Whether there is a conflict among the circuits regarding the judiciary's authority to grant injunctive relief to prevent ongoing violations of Constitutional Rights.
3. Whether the judiciary usurping inalienable Constitutional Rights exceeds its constitutional mandate, necessitating new case law to limit such judicial overreach and ensure the protection of fundamental rights as intended by the framers of the Constitution?

**ii.**

**PARTIES TO THE PROCEEDING**

Petitioner is an adult residing in Pennsylvania who had unresolved family court litigation before the state Court in Montgomery County, PA.

Respondent is the 3rd Circuit Appeals Court - on behalf of the Pennsylvania Superior Court of Appeals President Judge who had oversight.

**STATEMENT OF RELATED CASES**

The Third Circuit Court of Appeals Case No. 23-2777

US District Court of Eastern District of Pennsylvania 23-2047

**JURISDICTION**

The Third Circuit Court of Appeals issued its opinion on March 29, 2024.

Petitioner's timely en banc panel rehearing petition was denied April 26, 2024.

The Supreme Court of the United States has jurisdiction of this matter under 28 U.S.C. § 1254 Court of appeals; Certiorari; certified questions.

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1.

**OPINIONS**

Third Circuit Court of Appeals No. 23-2777

The petition for rehearing filed by appellant Elaine Mickman in the above-captioned matter has been submitted to the judges who participated in the decision of this Court. No judge who concurred in the decision asked for rehearing. It is now hereby ORDERED that the petition is DENIED.

BT THE COURT

s/Paul B. Matey

Circuit Judge

Dated: April 26, 2023

PDB/cc: Elaine Mickman

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Third Circuit Court of Appeals No. 23-2777

ORDERED and ADJUDICATED by this Court that the judgment of District Court entered August 29, 2023, be and the same is hereby affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/Patricia S. Dodszuweit

Clerk

Dated: March 29, 2024

## INTRODUCTION

A precedent needs to be established so that courts shall not facilitate the act of dehumanization by usurping Constitutional Rights which are inalienable and not merely awards to be granted or rescinded by the judiciary or court.

Petitioner is an ordinary person with an extraordinary case resulting in her being legally abused and maltreated by state judiciary without subject matter jurisdiction who arbitrarily and capriciously abused authority not vested by the Constitution by usurping Petitioner's inalienable Constitutional Rights to due process.

The US District Court dismissed Petitioner's Injunctive Relief suit against the state judiciary seeking restoration of usurped Constitutional Rights, but no monetary relief requested. The 3rd Circuit Court adopted US District Court's *Opinion*, but overlooked or disregarded the Congressional September 1996 11th Amendment **exception** to the *Improvement Act* which abrogates judicial immunity for Injunctive Relief or Declaratory Relief suits which is crucial for ensuring state judiciary don't act beyond their constitutional authority to prevent ongoing or future violations and can NOT supersede federal legislated law to protect a state official or judge from a suit for Injunctive or Declaratory Relief regarding a 42 US § 1983 Civil Rights claim. The judiciary is also not immune from suits involving Non-Judicial Acts and orders entered with jurisdiction.

**STATEMENT OF THE CASE**

This case involves the denial of Injunctive Relief by the U.S. District Court which resulted in ongoing violations of the Petitioner's Constitutional Rights. Petitioner sought injunctive relief to prevent irreparable harm by restoring her constitutional rights to refile for child support and enforce a divorce order. U.S. District Court denied relief citing a lack of jurisdiction which the 3rd Circuit adopted.

**Background:**

The issue began by an unassigned Pennsylvania state court judge who lacked subject matter jurisdiction entering an October 2020 order that granted injunctive relief without a state-required hearing within 5 days to a child support obligor seeking to defeat a child support hearing and support obligation. The October 2020 Order canceled a child support hearing, dismissed the case, and barred Petitioner from ever filing in family court for "always modifiable" child support or enforcing a Divorce Order. Petitioner timely filed a PA Superior Court appeal which was quashed without review or legal justification and jurisdiction was relinquished, yet PA Superior Court entered a May 2021 order usurping Petitioner's Constitutional Rights as a court-access-barrier, ostensibly open to all, depriving Petitioner's right to appeal and file for child support while "starving-out" an autistic, unemancipated minor, Special Needs/Ed child was at issue as well as Petitioner's property rights.



4.

Petitioner established Article III standing to sue PA Superior Court in Official Capacity- President Judge for injunctive relief in the U.S. District Court based on her federal Constitutional Rights being violated and arbitrarily usurped resulting in concrete injury traceable to the PA Superior Court for matters redressable for a favorable decision. U.S. District Court had Subject Matter Jurisdiction, but dismissed the suit without having the US Marshals serve the suit to the Defendant. The 3rd Circuit Court denied appeal by adopting the U.S. District Court's Opinion which overlooked law and fact, and dismissed the suit by mischaracterizing it because the **11th Amendment *Improvement Act* exception** allows for Injunctive or Declaratory Relief against the judiciary in their official capacity.

### **REASONS FOR GRANTING CERTIORARI**

#### **1. THERE IS CONFLICT AMONG COURTS**

Conflict among the circuits needs to be resolved regarding the judiciary's authority to grant injunctive relief to prevent ongoing violations of constitutional rights.

***Pulliam v. Allen, 466 U.S. 522 (1984)*** involved judicial immunity from a civil suit that sought injunctive and declaratory relief under 42 U.S. § 1983. The Supreme Court held that judicial immunity does not bar actions for injunctive relief against a judicial officer acting in judicial capacity which conflicts with the 3rd Circuit Court's decision in Petitioner's case.

5.

*“Injunctive relief is essential to the effective enforcement of guaranteed rights because of the breadth of the protection necessary and the drawbacks of other methods of enforcement.”* In ***Walker v. City of Kansas City, Mo.* 697 F. Supp. 1088 (1988)**, the court emphasized the need for injunctive relief when there is irreparable harm and no adequate legal remedy as Petitioner is confronted with. The Supreme Court reviewed whether federal courts have the authority to issue injunctive relief against state judges to prevent ongoing constitutional violations and emphasized the need for a clear showing of an ongoing violation and federal necessity intervention as in ***O’Shea v. Littleton*, 414 U.S. 488 (1974)**. Petitioner’s rights remain violated necessitating Injunctive or Declaratory Relief so that Petitioner can file for child support and enforce a divorce order for property rights. ***“Ex-parte Young, 209 U.S. 123 (1908)*** allows exceptions for injunctions against judges acting in their judicial capacity which: *“permits suits for prospective and injunctive relief against a state official..to enforce rights. The 11th Amendment provides **no shield** for a state official confronted by a claim that he had deprived another of a federal right under the color of law. Suit may be brought under 42 U.S.C. § 1983 which creates a federal cause of action for violation of rights secured by the federal laws and the Constitution.”*

6.

The 3rd Circuit denied Petitioner's appeal for the dismissed US District Court suit which did NOT seek monetary relief, but sought relief consistent with Congress's 1996 *Improvement Act* exception of the 11th Amendment stating:

*"This section does not provide absolute immunity for judicial officers. Immunity is not granted for any conduct of a judge's jurisdiction. Moreover, litigants may still seek declaratory relief, and may obtain injunctive relief if a declaratory... decree is...unavailable."*

## **2. SIGNIFICANT FEDERAL QUESTIONS PRESENTED**

Fundamental questions are raised about the separation of powers, the judiciary's role in interpreting versus creating law, and questions about the judiciary's role in procedurally safeguarding the Due Process Clause and protecting constitutional rights through injunctive relief versus infringing upon constitutional rights.

*Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), highlighted the limits of judicial power. In *State Ex Rel. Livingston v Ayer*, 161 P.2d 429, 23 Wash.

2d 578 (1945), the "importance of respecting the separation of powers" was emphasized and a dissenting opinion "warning against judicial overreach and the potential for the judiciary to usurp the functions of the legislative and executive branches". The court emphasized the judiciary's duty to preserve constitutional safeguards in *Williams v. United States*, 264 F.3d 1089 (2001), and the Supreme

7.

Court held that Congress has the authority to define and limit the jurisdiction of the federal courts in *Sheldon v Sill*, 49 U.S. 441 (1850). The US Supreme Court's intervention is necessary to settle conflict and clarify guidance. There is remarkable discrepancy regarding the lower courts handling judicial power that affects constitutional rights such as in *Lochner v. New York* which demonstrated judicial activism where the Court struck down state regulations on labor conditions arguing there was an infringement on economic liberties. In *Obergefell v. Hodges*, the 14th Amendment was invoked based on Due Process and Equal Protection for legalizing same-sex marriage nationwide, however some critics viewed this as creating new rights or redefining existing rights. There is inconsistency in how lower courts address judicial overreach claims and due process violations, leading to a lack of uniformity in protecting inalienable rights. Resolving these questions is of broad public importance warranting the U.S. Supreme Court's review. **Section 5 of the Constitution** granted Congress power to enforce constraints on all branches of state governments. **Constitution Section I, Article 8** prohibits the legislation, adjudication or regulation of our Unalienable Rights, and forbids states from violating fundamental rights of their citizens. "*The 14th Amendment prevents the states from violating privileges and immunities of their citizens; depriving anyone of life, liberty, or property without due process; and denying equal protection.*"

8.

The PA Superior Court's May 21, 2021 Order entered without appeal review and after relinquishing jurisdiction violated Appellant's 14th Amendment Right to file for enforcement for property rights in a Divorce Order by the order's terms creating a barrier to court-access that impedes Petitioner from due process and equal protection for any state legal recourse, thereby permanently depriving Petitioner of property which is equivalent to property theft.

*"When a spouse intends permanently to deprive the other spouse of the property, a crime has been committed"* ***LaParle v. State*, 957 P.2d 330 (Alaska Ct. App. 1998).** ***Goldberg v. Kelly*, 397 U.S. 254 (1970)** held that an evidentiary hearing is required for due process before the termination of welfare benefits which extends to loss or protecting property to ensure due process is consistent.

Petitioner's Due Process Rights were usurped without ***Full Faith and Credit*** of the Court enforcing distribution of the divorce order to Petitioner while eliminating her equal protection of the law for property rights as well as to pursue child support which was prematurely terminated for her youngest child when an unemancipated autistic minor (and later-discovered concealed income) and foreclosed Petitioner's ability to refile for "always modifiable" alimony for *Change of Circumstance* when SS determined Petitioner permanently medically disabled, consistent with the law.

The US District Court dismissed Petitioner's Injunctive Relief suit without safeguarding her constitutional rights, conflicting with *Williams v. US*, and the 3rd Circuit overlooked 11th Amendment abrogated judicial immunity for suits seeking Injunctive or Declaratory Relief which conflicts with *Ex parte Young*. The Courts violated separation of power by ignoring Congress's *Improvement Act*.

### **3. COMPELLING REASONS EXIST**

A compelling reason exists in ensuring that the judiciary does not overstep its bounds which is crucial for maintaining the balance of power among the branches of government. The Judiciary usurping rights is viewed as judicial activism in an attempt to create or redefine existing rights as in *Obergefell v. Hodges*. However, in *Obergefell*, rights were recognized for same-sex marriage when marriage is effectively a contract, whereas there is no justification for the court usurping and infringing on fundamental due process rights involving pursuing child support which can not be redefined by the judiciary because existing federal laws are established by the Legislative branch of government, and usurping rights for due process to enforce a divorce order violates the 14th Amendment to protect property rights. "*The 14th Amendment forbids any arbitrary deprivation of life, liberty, or property and secures equal protection to all under like circumstances in the enjoyment of their rights.*" *Giozza v Tiernaa, 148 US 657, 662 (1893)*.

It is compelling to ensure the judiciary adheres to due process which is crucial for maintaining the rule of law and protecting individual liberties and rights.

The U.S. Supreme Court needs to settle judicial activism v. judicial restraint.

It is essential for the U.S. Supreme Court to protect inalienable rights by defining judicial powers and boundaries as those vested by the Constitution and within the scope of the law to limit judicial overreach.

*“The United States is a constitutional democracy,” and “constitutional rights would be of little value if they could be...indirectly denied.” **Smith v. Allwright**, 321 U.S. 649, 664 (1944). “The framework for determining what procedural due process requires in administrative proceedings” was established in **Matthews v. Eldridge** 424 U.S. 319 (1976). **Marbury v. Madison**, **Lochner v. New York**, and **Obergefell v. Hodges** are cases that illustrate the complexities and controversies regarding the judiciary's influence on constitutional rights and legislative powers. The Petitioner has demonstrated irreparable harm and a likelihood of success on the merits, satisfying the criteria for injunctive relief as established in **Winter v. NRDC**, 555 U.S. 7 (2008). The courts’ refusal to grant Petitioner injunctive relief despite clear standards highlights the need for this Court's review. Public interest and balance of equities strongly favor granting injunctive relief so that inalienable Constitutional Rights are restored for those usurped.*

Ongoing violation of rights not only harms the Petitioner but also undermines public confidence in the judicial system's ability to protect constitutional safeguards. Lack of due process is manifestly unjust when there is a serious flaw that leads to an outcome based on the fundamental compromised integrity of the process by overlooking factual or legal matters and offending a sense of judicial propriety. Recent and relevant is the ***Chevron*** reversal since the underlying state case includes child support which involves a federal agency interpretation where federal laws and regulations apply, yet Petitioner is deprived court-access without Relief. It is.. *“a perversion of justice to allow a person who was....crippled by officials acting under color of state law to then be crippled by courts during the infancy of his or her case.”* ***Peatross v City of Memphis, 818 F.3d 233 (6th Cir. 2016)***. Petitioner’s case illustrates repeated court “rubber stamped” approval for unconstitutional conduct which is a clear travesty of justice.

The state Court’s gross overreach and manifest abuse of authority and discretion maltreated Petitioner and her child. Irreparable harm is the outcome without Injunctive Relief and restoration of Petitioner’s Constitutional Rights.

Petitioner demonstrated conflict among Courts regarding Injunctive Relief, judicial *usurp vs. safeguarding* Constitutional Rights, judicial overreach, judicial disregard for separation of powers, and the judiciary *creating vs. redefining* law.



12.

New case law is prudent for clarifying guidance on the limits of the judiciary to protect inalienable Constitutional Rights for everyone, clarifying boundaries for separation of powers, and ensuring Injunctive Relief is granted for protecting 14th Amendment rights. The Court has a history of protecting inalienable rights including due process, freedom of speech, and equal protection.

The *All Writs Act*, 28 U.S.C. § 1651 authorizes the Supreme Court to issue “*all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law*,” which order government officials and judges to take or prohibit a certain action to confine lower courts to the proper exercise of their jurisdiction.

### **Conclusion**

Granting Certiorari to provide clarity and guidance on judicial limits will contribute to regain lost confidence in the judicial system and meaningfully reinforce the intent for existing case law, legislated law, and the constitutional framework designed to protect inalienable rights.

***For the foregoing reasons,*** Petition for Writ of Certiorari needs to be Granted.

*Respectfully Submitted,*

  
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Elaine Mickman September 21, 2024