

IN THE SUPREME COURT OF THE UNITED STATES

No. 16-1495

CITY OF HAYS, KANSAS, PETITIONER

v.

MATTHEW JACK DWIGHT VOGT

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MOTION OF THE UNITED STATES
FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as amicus curiae and that the United States be allowed ten minutes of argument time. The United States has filed a brief as amicus curiae supporting petitioner. Petitioner has agreed to cede ten minutes of argument time to the United States and therefore consents to this motion.

1. This case involves whether the Fifth Amendment's Self-Incrimination Clause is violated when a compelled statement is used to assess probable cause at a preliminary hearing, but is not used to adjudicate guilt or punishment at a criminal trial. Respondent, who worked as a police officer for petitioner City of Hays, alleges that he was required as a condition of his employment to provide statements about a knife that he obtained through his work as a Hays police officer. Respondent was eventually charged with two felony counts related to his possession of the knife, and his statements were used in a preliminary hearing to assess probable cause. The magistrate judge found that probable cause did not exist to bind respondent over for trial, and the criminal charges against him were dismissed. He then filed this suit against petitioner under 42 U.S.C. 1983, alleging that petitioner was responsible for a violation of the Self-Incrimination Clause based on the use of his statements at the probable cause hearing. The court of appeals held that respondent had adequately pleaded a Fifth Amendment violation.

The United States has filed a brief as amicus curiae supporting petitioner. The brief argues that the use of a compelled statement for the limited purpose of determining whether probable cause exists to bind a defendant over for trial does not violate the Self-Incrimination Clause because it does

not render the defendant "a witness against himself" in a criminal case. U.S. Const. Amend. V.

2. The United States has a substantial interest in the question presented in this case. The Court's resolution of that question will apply to similar claims in federal prosecutions. See Fed. R. Crim. P. 5.1 (providing in certain circumstances for a preliminary hearing to assess probable cause). The United States has participated in oral argument as amicus curiae in cases involving the proper interpretation of the Fifth Amendment's Self-Incrimination Clause. See, e.g., Kansas v. Cheever, No. 12-609; Salinas v. Texas, No. 12-246; Hiibel v. Sixth Judicial Dist. Court of Nev., No. 03-5554; Missouri v. Seibert, No. 02-1371; Chavez v. Martinez, No. 01-1444. The government therefore believes that participation in oral argument by the United States would materially assist the Court in its consideration of this case.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

DECEMBER 2017