

No.

In The

Supreme Court of the United States

Christopher R Granton

Petitioner

Washington State Lottery Commission

Respondent

On Petition For Writ Of Certiorari To The United
States Court Of Appeals For The Ninth Circuit
Honorable Judges Leavy, W. Fletcher and Owens
presided

PETITION FOR WRIT OF CERTIORARI

Washington State Lottery

Jana Jones

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360 810-2888

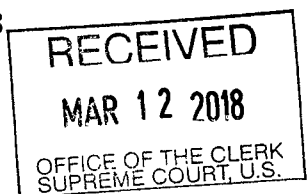
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QUESTIONS FOR REVIEW

On April 8th 2005, at 6:50pm I Christopher R Granton was playing the Mega Millions game on lottery terminal # 219917. I was playing the game by the rules, up to the point where by the rules I was to receive a ticket with numbers corresponding to those on my play slip. Instead of printing a ticket as per the rules, the Ticket Distribution Machine (TDM) performed an early break for the drawing or Draw Break. This action was a violation of the rules because a Draw Break can only occur at 7:45pm to 8:01pm as it refuses wagers during the time for the end of sales prior to the drawing. When it happened early my wager was wrongly refused. I had picked the winning combination of numbers on panel B of my play slip. I have since been fighting for my prize, claiming entitlement to the prize as a matter of fair play and honest contracting practices. The Lottery applied WAC 315-38-050(3) to my claim, and motioned for summary judgement, so they wouldn't have to honor my play. I will show this court that; not only was the action that wrongly denied me a ticket in contract, but the law that the Lottery used to get judgment in their favor is unconstitutional as applied as it impairs the obligation of contracts and violates due process's standards of fundamental fairness. Also, I will show why the District Court had Jurisdiction for review, determination and relief of the agency's disallowance decision under 5 U.S.C. § 701-706.

1. Was the action complained of, an early break for the drawing (Draw Break), in contract because mutual assent of the contract was reached?

2. Should a breach of contract or violation of the rules be enforceable, and can complete relief be granted?

3. Was the law or regulation WAC 315-38-050(3) that was used to gain judgment against my claim unconstitutional as applied, as it impairs the obligation of contracts without a compelling state interest, and violates Due Process standards of fundamental fairness?

4. Did the United States Court of Appeals for The Ninth Circuit err, when they did not address what the Supreme Court held in *Bowen v. Massachusetts*, in relation to disallowance decisions and reversal of a disallowance decisions not being “money damages”?

5. Was the District Court’s decision erroneous because it did have jurisdiction for review, reversal and complete relief of the Washington State Lottery Commission’s disallowance decision under 5 U.S.C. § 701-706?

6. Was the Washington State Court of Appeals decision erroneous because; the court did not account for fair play, or that mutual assent had formed a contractual relationship before the violation of the rules/terms on the Lottery’s part?

7. Did the Washington State Court of Appeals err by misrepresenting facts and showing bias for the Lottery, when ruling in a case that involves summary judgement, where all reasonable facts and inferences were supposed to be held in a light most favorable to the non-moving party?

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ABBREVIATIONS

TDM- Ticket Distribution Machine

WSLC- Washington State Lottery Commission

AR- Agency Record

OAH- Office of Administrative Hearings

BP- Brief of Petitioner Washington State

Court of Appeals

CP- Court Papers

App.- Appendix

IN THE SUPREME COURT OF
THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari
issue to review the judgement below.

OPINIONS BELOW

The order denying Petition for Re Hearing En Banc of the
United States Court of Appeals for the Ninth Circuit at
Appendix A-1 to the petition and is unpublished.

The Memorandum of the United States Court of Appeals for
the Ninth Circuit appears at Appendix A- 2 to the petition
and is unpublished.

The order of the United States District Court for Western
Washington at Tacoma appears at Appendix B-1 to the
petition and is unpublished.

The order denying plaintiff's application to proceed in
forma pauperis and dismissing case of the District Court
appears at Appendix B-5 to the petition and is unpublished.

The Order of the Washington State Supreme Court appears
at Appendix C-1 to the petition and is unpublished.

The opinion of the Washington State Court of Appeals
appears at Appendix D-1 to the petition and is reported at
Grant v. Washington State Lottery Commission 143 Wn.
App. 225, 177 P.3d 745 rev. denied, 164 Wn.2d 1018 (2008)

The Order of the State of Washington Thurston County Superior Court appears at Appendix E-1 to the petition and is unpublished.

The Initial Order from the Office of Administrative Hearings appears at Appendix F-1 to the petition.

JURISDICTION

The date on which the United States Court of Appeals decided my case was March 16, 2017. A timely petition for rehearing was denied by the United States Court of Appeals on November 30, 2017, and a copy of that order denying rehearing appears at Appendix A-1. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS

WAC 315-30-020(4) Ticket Distribution Machine (TDM). The computer hardware through which an on-line retailer enters the combination selected by the player and by which on-line tickets are generated and claims are validated.

WAC 315-32-020(2) Method of play for on-line games; the player will use play slips to make number selections. The TDM will read the play slip(s) and issue ticket(s) with corresponding numbers.

WAC 315-30-040(2) The director shall announce for each on-line game, the time for the end of sales prior to the

drawings. TDMs will not process orders for on-line tickets after the time established by the director.¹

WAC 315-38-050(3) Under no circumstances will a claim be paid for either the jackpot prize or the second prize without an official Mega Millions ticket matching all gameplay, serial number, and other validation data residing in the selling party Lottery on-line gaming system computer, and such ticket shall be the only valid proof of the wager placed and the only valid receipt for claiming a prize.

WAC 315-06-070 The purchaser of a lottery ticket agrees to comply with the rules promulgated by the Washington State Lottery.

WAC 315-12-110 states: Denial of Request. Each denial of a request for public record shall be accompanied by a written statement to the requestor clearly specifying the reasons for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld. Such a statement shall be sufficiently clear and complete to permit the director or his or her designee to review the denial in accordance with WAC 315-12-120.

RCW 42.56.550 Requires an agency to show cause as to why it refused a public disclosure request.

RCW 42.56.520 Agencies must respond promptly to request for public records. Within five days of receiving a request, the agency must respond by either (1) providing the record, (2) acknowledging that the agency received the request and provide an estimate of the time it will require to respond to the request, or (3) deny the public record request.

¹ The time established for the Mega Millions game is 7:45 pm to 8:01 pm when a new game begins.

The Fourteenth Amendment to the United States Constitution provides, in part: No State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person the equal protection of the laws.

The Fourteenth Amendment Privileges and Immunities Clause offers "No State shall enforce any law which shall abridge the privileges and immunities of citizens of the United States."

Article 1 Section 10 Clause 1 of The United States Constitution provides in relevant part: No State shall enter into any law impairing the obligation of contracts.

The Freedom of Information Act, 5 U.S.C. § 552 in relevant part requires an agency to provide public records upon request.

Section 23 of the Washington State Constitution reads; No law impairing the obligation of contracts shall ever be passed.

U.S. Code § 701 -706 in relevant parts would allow for review, reversal and complete relief of the agency's disallowance decision.

STATEMENT OF CASE

The Lottery is contractual by nature, it is designed to induce many contracts. Some games like the Mega Millions, and Lotto have different methods of play. This allows the player a choice between selecting their own numbers, or having the Ticket Distribution Machine (TDM) select the numbers randomly. There are two methods of play for the Mega Millions game, and acceptance or mutual assent of the contract is different for each.

Mutual assent of a contract happens with offer and acceptance. The offer is easy to see with the method of play that I was using. A play slip for the Mega Millions game has some rules or terms on it, and is used expressly for contracting. A play slip is an offer or act of the Lottery's offering, operating to create in the acceptor a power, and having so operated it is exhausted; thereafter the voluntary act of the acceptor alone will operate to create the new relations called a contract. An offer is an act on the part of a person whereby he gives the other the legal power of creating a contract. Acceptance is the exercise of the power conferred by the one offering, by performance of some other act or acts. Both offer and acceptance must be acts expressing assent. When I completed and handed my play slip to the cashier, she inserted it into the TDM. When this happened I was exercising the operative power conferred on me by the Washington State Lottery Commission (WSLC) to a binding contract.

The acceptance part for the method of play that I was using, where a player picks their own numbers; once a play slip is handed to the cashier and it is inserted into the TDM during the time for open gameplay then mutual assent is reached. This is so because it is the acceptor's performance obligation action to commence the contract. The very next step in the contract required the lottery to print a ticket with number selections corresponding to those I selected on my play slip. I had gotten to that point when a violation of the rules on the part of the Lottery, caused me not to have a ticket to provide for validation. The acceptance part for the method of play where the player lets the TDM pick the numbers randomly happens with an exchange of money for that ticket. Because there are no rules, performance obligations, or play slips associated with this method of play it is completely different.

After mutual assent had been established any other actions dealing with that contract including any breach of the rules or terms of the contract, are in contract and are so enforceable. This is the performance part, or final step of the contract process. This is where the parties perform their mutual obligations under the agreement. Few terms are necessary for an enforceable contract. Terms must merely provide a basis for determining the existence of a breach, and for giving an appropriate remedy. The purchaser of a lottery ticket (not game specific, all ticket games) agrees to comply with the rules promulgated by the Washington state lottery commission under 315-06-070, thus the rules are included terms of the contract. Instead of printing a ticket as required under WAC 315-32-020(2), the TDM performed an early Draw Break at 6:50pm. Because there is a rule regarding the specific time of 7:45pm for this action to occur according to WAC 315-30-040(2), and because this action refuses wagers, when it happened early

it caused a breach of contract. "When an act complained of is a breach of specific terms of the contract, without any reference to the legal duties imposed by law upon the relationship created thereby, the action is in contract..."² On-line games such as the Lotto and Mega Millions the TDM always prints the ticket before the player pays. This is for both methods of play. The violation caused a breach of specific terms of the contract before consideration was to be given, but after mutual assent had formed a contractual relationship. Therefore the lottery is responsible for the violation, the breach and its contractual obligations.

At the time I was walking and taking the bus because my driver's license was suspended. I had given myself enough time to get to the store and back, get changed then go to work. The store was 1.1 miles from my home, and work was 1.9 miles from my home. When I got home I was going to ask my sister's boyfriend to give me a ride to work, but he was gone. I got ready for work and hurried there I clocked in at 7:54 pm. (AR 24-27) There was nowhere along the way that I could have played those numbers again.

After an incomplete investigation done by the WSLC, (AR 54, 189) the matter was set to be heard by the Office of Administrative Hearings (OAH). Both the case report and supplemental case report are inconsistent with the facts. (AR 31,181-185) After speaking to investigator Jennifer McDaniels, I asked to speak with the Director. On May 18th 2005. I spoke with Deputy Director Julie Martin. I had explained exactly what had happened, and that I had picked the winning numbers. On May 27th 2005 I spoke with Ms. Martin again, where she explained that the early

² *Compton v. Evans*, 200 Wash 125, 132, 93 P.2d 341 (1939) (quoting *McClure v. Johnson*, 50 Ariz. 76, 69 P.2d 573 587 (1937).

draw break was more than likely caused by an internal time clock error due to daylight savings time. I asked her to investigate that possibility further, and to look for my transaction to show I had picked the numbers. I never heard from her again, instead I received a letter from the Lottery saying that they were discontinuing the investigation. I appealed to the Office of Administrative Hearings, and claimed entitlement to the prize as a matter of fair play. The Lottery had hired the Attorney General's office, who motioned for summary judgement. I didn't know what to do, I wrote several letters to both ALJ Jane Habegger and ALJ Robert Kraybill who took over for Habegger. I tried to get Judge Kraybill to issue a Subpoena Deuces Tecum for information that was relevant to my case. He agreed, but later changed his mind. (AR-148, 152, 153) On Sept. 22 2005 I received a request for public records form from the Lottery, I completed it, had it notarized and mailed it back to them on the same day. (AR 178-181) The lottery never honored my request nor did they give reason why it could not be honored.³ On Sept. 27th three day before the final submissions for consideration date, I received 459 pages of mostly irrelevant information. There were no date stamps, and no number selections to go with the transaction listings. There was permanent marker over a great deal of the section where my transaction could have been recorded. The lottery was trying to get things done quickly. Although Judge kraybill was liberal with the facts presented he did not; set a proper amount of time for discovery, honor his word to issue a subpoena to the Lottery's vendor G-Tech, and did not hold the lottery accountable for the violation of the rules, which was the cause of me not having a ticket. None of this made a

³ By not doing so put the lottery in violation of standard set in; WAC 315-12-110, RCW 42.56.550, RCW 42.56.520, The Freedom of information act 5 U.S.C § 552

difference, not even the fact that there was a witness who corroborated the fact that the draw break did happen early. Instead of ruling in fairness Judge Kraybill granted the lottery Summary Judgement on the grounds that there is a law WAC 315 38 050(3) that says that without presenting a ticket you can't claim the prize. I believe that Judge Kraybill showed bias for the lottery because he allowed the law to be used unfairly. In fairness I cannot be expected to provide a ticket to the Lottery that was wrongly refused to me, solely as a result of a violation of the rules on their part. Summary Judgement is only appropriate if reasonable minds, considering the facts and reasonable inferences therefrom could only come to one conclusion from the evidence. There were genuine issues of material fact in dispute, and the lottery was not entitled to Summary Judgement⁴.

The regulation used to get summary judgement for the lottery WAC 315 38 050(3) is inappropriate. This law is flawed or deficient as it treats both methods of play the same when they are completely different. The lottery's use of the law as applied to the method of play I was using, negates a breach of contract, and offers immunity to the lottery for the violation of the rules and its contractual obligations. What that does is it adds injury to my claim, where in fairness there shouldn't be any.⁵ The 14th

⁴ *Key Tronic Corporation v. Aetna* 124 Wn.2d 618, 881 p.2d (1994) "Summary Judgment is only appropriate if reasonable minds..." *Delisle v. FMC Corp.*, 57Wn App 79, 84, 786 p.2d 839 (1990) "The petitioners burden in responding to a Summary Judgement motion is to create an issue of fact, not carry the burden of persuasion." *Celotex v. Cattret* 477 U.S. 317, 323 (1986) "An issue is Genuine when it effects the outcome of the case."

⁵ *Hurtado v. California* 110 U.S. 516, 528, 532, 536 (1884) Justice Mathews, speaking for the court declared that "Arbitrary power, enforcing its edicts to the injury of the person and property of its subjects, is not law, weather manifested as the decree of a personal

Amendment “operates to extend the same protections against arbitrary State legislation, effecting life liberty and property, as it is offered by the 5th amendment, and that ordinarily if an act of congress is valid under the 5th Amendment it would be hard to say that a state law in like terms was void under the 14th.”⁶

The use of WAC 315-38-050(3) was inappropriate because “All contract and property rights are held subject to its fair exercise.”⁷ The Lottery’s use of this law against my claim to avoid having to take responsibility for the violation of the rules, and its failed contractual obligations is not “fair exercise” of a contract. Fair exercise of a contract would not include an immunity from circumstance. The Washington State Lottery Commission did not have the right to undermine a contract between us if said contract was not in violation of health or public welfare.⁸ WAC 315 38 050(3) as applied goes against due process standards. In 1934, The United States Supreme Court held that due process is violated “If a rule offends some principal of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.” There isn’t anything more rooted in the traditions and conscious of our people than the principal of honoring contracts.

monarch or of an impersonal multitude. And the limitations imposed by our congressional law upon the action of the government, both state and national, are essential to the public and private rights, notwithstanding the representative character of our political institutions. The enforcement of these limitations by judicial process is the device of self-governing communities to protect the rights of individuals and minorities, as well as the power of numbers, as against violence of public agents transcending the limits of lawful authority, even when acting and wielding the force of the government.

⁶ *Carrol v. Greenwich Ins. Co.* 199 U.S. 401, 410 (1905) *French v. Barber Asphalt Paving Co.* 181 U.S. 324, 328 (1901)

⁷ *Atlantic Coast Line R.R. v. Goldsboro* 232 U.S. 548, 558 (1914)

⁸ *Lochner v. Newyork* (1905)

I appealed the initial order (AR-73). That appeal was rejected by the Lottery as they affirmed and adopted ALJ Kraybill's order (AR-108-109). I then appealed that decision (AR-119-120). That appeal was also rejected by the Lottery (AR-122, 123). I then filed a petition for review in the Superior Court (AR- 76-81). After a while looking, I did find an attorney. I hired Nelson Frayley from Fabion, Johnson, and Rieder. It turned out that Nelson was good friends with Michael Tribble working for the Attorney General's Office representing the Lotttey. I thought Mr. Frayley would represent me in the Superior Court, but he quit representing me right before the trial. On November 15, 2006 a notice of reassignment was filed, reassigning the case from Judge Paula Casey, to Judge Anne Hirsch to be effective January 1, 2007 (CP-46). On December 15, 2006, I walked up to Judge Paula Casey's room and sat on a bench. After sitting awhile Assistant Attorney General Michael Tribble arrived. We walked downstairs into Judge Anne Hirsch's empty court room. Before court was in session, a man who did not introduce himself entered from the door that the Judge enters from, and said that this would be Judge Hirsch's first administrative hearing. During the hearing I did my best, but the oral arguments in my mind prior to the hearing did not come out the same during the hearing. Judge Hirsch did not give consideration to mutual assent or fair play, as she adopted the Initial Order.

I timely filed an appeal to the Washington State Court of Appeals. I thought that this court would be fair, considering more than one judge was hearing my case. That thought was proven wrong. I believe that this court showed bias for the WSLC in several different ways in their February 08, 2008 Published Opinion. First, on page 6 under their case analysis portion they misrepresented the facts of the case, it states; "Specifically, Granton argues

that the lottery commission should treat him as a de facto ticket holder because he entered into the contract with the lottery commission after he filled out his play slip and attempted to hand his money over to the cashier.” This was not my argument, I stated that I had met a condition for acceptance for the contract when I handed my play slip to the cashier, who then inserted it into the TDM during the time for open gameplay, and that a violation of the rules on the lottery’s part prevented a ticket from being issued to me.(BP error of assignment #6) If you are going to “specifically” analyze something, but not get the specifics correct then make a decision based off those faulty analytics, then your judgement becomes suspect to bias. (App. D-8)

Secondly they said on page 7 that; “But whether the ticket distribution machine was operating properly or whether the “draw break” did in fact occur early are not issues of material fact, because successfully purchasing a ticket is a requirement for collecting or claiming a Mega Millions ticket. See former WAC 315-30-050(3) (1989).” This is fundamentally wrong because, though WAC 315-38-050(3) does say presenting a ticket is a requirement, it does not say that successfully purchasing a ticket is a requirement. Given the facts that a violation of the rules wrongly denied me a ticket, and that the rules of the game are the terms of the contract, the Washington State Court of Appeals should have recognized that the Lottery’s use of that regulation against my claim was inappropriate. A violation of the rules caused a breach of contract, the early draw break caused me not to have a ticket to provide for validation. There is a specific time for when a draw break can occur in the rules. These were genuine issues of material fact. This was not some unidentifiable error, this was a specific violation of the rules or terms of the game

and contract, with real consequences. Also on page seven the court makes reference to *Thou v. Data Control Corp*⁹, saying that “Unlike Thou, granton never entered into a contract with the lottery commission. Because he never paid the purchase price of the lottery ticket because the sale was frustrated.” (App. D-9) This shows how much this court did not understand acceptance. First, the condition(s) for acceptance is to pay something, or do something, or both. In the case of Thou he both did something and paid something, because he received his tickets. If Thou had handed his play slips to the cashier and they were inserted into the TDM during the time for open gameplay and his tickets had been refused by a specific violation of the rules, then that violaton would have been in contract as well. Because he would have already completed his obligation action to commence the contract thereby forming mutual assent. Also I paid the price for the ticket to the cashier, who then gave it back to me, only because the violation of the rules on the Lottery’s part. This was first brought up during the hearing with the Office of Administrative hearings on October 4, 2005.

There were other inconsistencies with the facts that would question bias. The court claims on page 2 (App. D-4) that the Lottery “expended significant resources” into reviewing and researching, yet the record does not reflect that, because there were no date stamps or number selections on the transaction listing. They also claim to have done an evaluation on the TDM and found no Draw break messages on April 8, 2005, on or around 6:50 pm. The court makes no mention of the witness (cashier) who gave a statement to the fact that it did happen (AR 21-23), nor did it make mention of the fact that the message “DRAWBREAK” “WAGER REFUSED BY CENTRAL” that

⁹ *Thou v. Data Control Corp.* 57 Wash. App 802, 806, 790, p.2d 1239

was shown to me by the cashier is proprietary. Only a person who this happened to and was shown the message would know it exists. On page 3 (App. D-5) it states that "ALJ habegger offered to help Granton draft subpoenas". This is not true, ALJ Kraybill agreed to issue a subpoena duces tecum to the lottery's vender G-Tech but didn't follow thru. On page 9 (App. D-11) it states "Lastly Granton argues that it was improper for ALJ kraybill to hear his case because ALJ Kraybill allegedly had no experience reviewing an agency final order." This is completely false, I argued that it was inappropriate that Judge Anne Hirsch heard my case. This was because when Assistant Attorney General Tribble and I was in her empty court room, a man who did not identify himself came in thru the door the judge enters from and announced that "this will be the first administrative hearing case for Judge Hirsch." I thought this inappropriate because the effective reassignment date was January 1 2007, and that a case of this magnitude would require a judge with the proper experience. If you look at the original order you can see that Judge Paula Casey's name has a line through it and Judge Anne Hirsch's name is penned in. Also I thought it odd that there was Judge or bench changes by both the OAH and the Thurston County Superior Court without reason. Lastly, on page 9 it states "Moreover, any deficiencies in the Lottery commissions process occurred after Granton failed to purchase requisite ticket and we need not reach those issues." This is also incorrect and bias, and shows that this court either intentionally misrepresented the facts, or didn't understand the premise of my claim. Considering that my ticket was denied by a violation of the rules, there certainly was a deficiency on the Lottery's part. This court dismissed my case as frivolous, but could not get the facts strait. What reason, if not for bias, would this court have for misrepresenting the facts? If the Supreme Court were to

read my Appellant Brief to this court, then they would see that everything I've said about this court's Published Opinion is true.

I filed a timely appeal to petition the Washington State Supreme Court, but without giving reason they denied hearing my case. I considered going to the Federal Courts, but our country was in a bad recession. In a letter to then Washington Governor Christine Gregoire, I explained that it would have done more harm had I won during a time when the government was stretching its budget for the basics.

On June 1, 2016 after the recession, I filed a complaint in the District Court Western District of Washington at Tacoma. The Honorable Judge Robert J. Bryan presided. In this court I ran into some serious stumbling blocks. I did not know about jurisdiction, so I did not address it in my original complaint. Also I had not properly articulated the contractual relationship, to show how WAC 315-38-050(3) was unconstitutional as applied. I tried to remedy this by amending my complaint, but without a specific reason as to why this court felt it didn't have jurisdiction, this was unfruitful. These mistakes would not be repeated in the U.S. Court of Appeals.

In my complaint to the District Court I did explain; that I'm only trying to recover award monies that were wrongly refused to me by the Lottery Commission, and that the relief sought was a reversal of the Washington State Lottery Commission's decision to deny my prize claim. Judge Bryan recognized the injustice but felt there was no jurisdiction to hear the case. He didn't explain exactly how there was a lack of jurisdiction until his final ruling, leaving me to have to address that matter in the Federal Court of Appeals. Furthermore Judge Bryan felt that it could be

problematic that the statute of limitations on contracts for Washington State had passed.

After frantically trying to find jurisdiction I ran into a case wherein the ruling by the Supreme Court of the United States held that disallowance decisions and reversal of disallowance decisions were not damages. The court explained that “damages” are given to the plaintiff for suffered loss, whereas specific remedies are not substitute remedies at all, but give the plaintiff the very thing he was entitled.” The case was *Bowen v. Massachusetts* 487 U.S.879 (1988). Because I’m seeking declaratory and injunctive relief with a “monetary award” instead of “money damages”, review in the District Court should have been allowed.¹⁰ Though the Supreme Court simply “reversed” the board’s decision in *Bowen v. Massachusetts*, the District Court had the power to grant complete relief under 5 U.S.C. § 706.¹¹

On Nov 21, 2016 my appeal was filed with The United States Court of Appeals for The Ninth Circuit. I appealed because The District Court had jurisdiction for review and reversal of the lottery commissions disallowance decision, and because I knew that the contractual relationship could be better explained. Also I learned that new issues could be brought up, so I asked for review of the Washington State Court of Appeals Published Opinion. I did this so that I could show the court that I had it right, before any statute of limitations had expired. I showed the Federal Court of Appeals how the ruling by the Washington State Court of Appeals was erroneous, and bias as was explained earlier in this petition.

¹⁰ Pp. 487 U.S. 89-901

¹¹ Pp. 487 U.S. 909-912

I showed the U.S. Court of Appeals how WAC 315-38-050(3) as applied impairs the obligation of contracts, and violates due process standards as follows; In determining whether or not a state law has impaired a contract, there are four things to consider; 1) Was there a contract? 2) Did the State law impair the contract? 3) Was the impairment substantial? 4) Does the impairment serve as a legitimate public purpose and is reasonable and necessary?

When I handed my completed play slip to the cashier, I had conferred my intent to create legal relations. When she inserted it into the TDM, I was reasonably able to believe that I was empowered to “close the contract”. The cashier could not accept the money I had paid for the ticket only because the violation.

In determining whether or not a contract exists in any given case one must ask; what were the facts, what were the acts of the parties and the circumstances that surround them? When these have been ascertained the next step is analytical. Immaterial facts must be eliminated, and the rest must be classified as either evidential or operative. The operative facts are those that cause the existence of those legal relations called a contract. The first operative fact is that play slips are an offer and are used expressly for contracting as the method of play for picking one’s own numbers versus having the TDM pick them randomly. The next operative fact for this method of play is that the player must correctly fill out the play slip. The next operative fact is where mutual assent occurs, it is where the player hands their play slip to the cashier who then inserts it into the TDM during the time for open gameplay.

A promise is an expression of intention that the promisor will conduct his/her self in a specific way in the future, with an invitation to the one promised to rely

thereon. The final part of a contract deals with these promises. It's called performance and enforcement, this is where the parties perform their mutual obligations under the agreement. If one person fails to perform their duties under the contract, the other may file a civil lawsuit to enforce it. The lottery's promise was to print a ticket with number selection corresponding to those on my play slip as per WAC 315-32-020(2).

Does the state law impair the obligation of contracts? The State law in question is WAC 315-38-050(3), it reads "Under no circumstances will a claim be paid for either the jackpot prize or the second prize without an official Mega Millions ticket matching all game play." "In determining the validity of the regulation in question, the courts inquiry is limited to ascertaining whether or not the regulation has a rational basis."¹² "The challenger of a regulation must establish that the regulation is so lacking in reason for its promulgation that it's essentially arbitrary."¹³ WAC 315-38-050(3) is not fair, and cannot be fair unless you fix the deficiency in the regulation. That deficiency is that it treats both methods of play the same, when they are very different. In regards to the method of play where you let the TDM pick the numbers for you, it's a strait forward cash for ticket wherein mutual assent is formed with that exchange. For that method of play this law seems fine, however it offers no conscious to those who choose to use the method of selecting one's own numbers. This is because there is no protection afforded within this law to the contractual performance obligations associated with this method of play. Under WAC 315-38-050(3) any performance obligation that is not upheld on the part of the lottery, is given immunity from litigation. Thereby making it so lacking in

¹² *Ostrer v. Schenck* 41 N.Y.2.d 782 (1977)

¹³ *Marburg v Cole* 286 NY 202, 204 (1941)

reason as applied that it is arbitrary, as the law clearly impairs contractual performance obligations. Because this law doesn't give consideration to basic contract principals, it is fundamentally flawed. In order to maintain a fair game for everyone who plays, a player must have some kind of contract protection. I played the game by the rules, up to the point where by the rules a ticket should have been printed for my number selections.

Was the impairment substantial? Yes, very much so, as it completely impairs contractual obligations for the Lottery by way of immunity from circumstance. The impairment is substantial because it violates 14th Amendment rights, as it effects life, liberty and property. It also substantially impairs due process, because it does not facilitate the means for ruling fairly. That alone makes it a matter of national importance, considering how many people play the multi-state Mega Millions game.

Does the impairment serve as a legitimate public purpose, and is it reasonable and necessary? The only legitimate public purpose for impairing a contract is if it concerns an immediate issue of public health and welfare, of which there was no such issue. Now let's examine the next part, whether it's reasonable and necessary. This law effects winners of the primary and secondary prizes. This law is lacking in scope as it does not give conscious to those who play by the rules, meet the condition for acceptance of a contract, and are wronged by no fault of their own. It gives no remedy for any breach of the performance of the contract, as it offers immunity to the lottery if a breach/violation occurs. Furthermore because people rarely win such a prize, when there is a breach of specific terms/rules of the contract, there should be an avenue for redress to establish fair play. I would say that the impairment was not reasonable or necessary.

On March 16, 2017 The U.S. Court of Appeals filed a memorandum on my case. The honorable Judges Leavy, W. Fletcher, and Owens, Circuit Judges presided. As much as I tried to show the judges that I wasn't seeking "damages", but was seeking the reversal of a bad agency decision and a prize that I was allegedly already entitled to, they recognized my claim as seeking damages. It took the court a while to decide, and they did not even address what was held by the Supreme Court in relation to my case showing that disallowance decisions and reversals of disallowance decisions are not "damages". Because they did not hold to a decision of a higher court, or even acknowledge it, I did not get equal protection of the law, which is a violation of Due Process. 30 years after *Bowen v. Massachusetts* courts still have a hard time determining between "damages" and "monetary relief" it was fundamentally unfair for them not to even address what was held by a higher court. It seemed like they just read the District Courts Judgement, and didn't even read my appeal. My best guess is that the U.S. Court of Appeals for the 9th circuit has too many cases and not enough judges.

I explained the following in my Motion for Rehearing En Banc; that their ruling goes against a prior ruling of the United States Supreme Court. In the case of *Bowen v. Massachusetts* restitution or reimbursement was granted. It was further ruled that "An action in the court of the United States seeking relief other than damages and stating a claim that an agency, or an officer thereof failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the grounds that it's against the United States, or that the United States is an indispensable party." This is appropriate with my case because I am seeking restitution, through a reversal of an agency's disallowance decision,

and because the ruling was made so that a person could get specific equitable relief, if they were due said relief. I am only asking for what I am entitled to as a matter of fair play and honest contracting.

Though the agency action that reverses a disallowance decision is described as “restitution”, a reversal of a disallowance decision is not properly characterized as an award of “damages”. The decision is an adjustment – in the size of a federal grant that is payable in huge quarterly installments. A reversal of a disallowance decision is reviewable under 28 U.S.C § 1331.

Also in *Bowen v. Massachusetts*, the Supreme Court held that certain claims, which it characterized as seeking specific relief in the form of monetary award rather than “damages”, could be pursued under the APA 5 U.S.C. §§ 701-706. Although 5 U.S.C. § 702 denies the District Courts review jurisdiction in action against federal agencies seeking “money damages”, the plain meaning of that language does not foreclose review of a disallowance decisions in cases like *Bowen v. Massachusetts* and *Dept. of income and maintenance v. Heckler*. First insofar as the states complaints sought declaratory and injunctive relief, they were not actions for money damages. Second and most importantly, the monetary aspects of the relief sought by the state are not money damages as the term used in 702. The ordinary meaning of the term is compensatory relief for an injury suffered. Here the states suits are in the nature of an equitable action for specific relief¹⁴ seeking

¹⁴ Occasionally a specific relief can be a “Specie Remedy,” courts frequently describe equitable actions for monetary relief under a contract in exactly those terms. See, e.g., *First National State Bank v. Common Wealth Federal Savings and Loan Association*, 610 F.2d 164,171 (3rd cir. 1979) (Specific performance of a contract to borrow money.)

reimbursement to which the state was allegedly already entitled, rather than money in compensation for losses suffered as a result of the disallowance. This also makes sense with my case because I did not suffer any losses as a result of the disallowance, but was allegedly entitled to a “monetary award” prior to a disallowance decision. Also the relief that I’m seeking is declaratory and injunctive, because I’m asking for a reversal of the WSLC’s prize denial or disallowance decision.

Section 704, which provides for District Court review of final agency actions “for which there is no “adequate remedy” in any court”- does not bar relief, since the doubtful and limited relief in the Claims Court under the Tucker Act is not an adequate substitute for the District Court. The Tucker Act of The Claims Court is deficient for several reasons, here are some that apply to my case; the Claims Court has no power to grant equitable relief, a claimant is left at the mercy of the state in question to honor the ruling. The demeanor of the Solicitor General of Washington State’s office from direct correspondence with them, regarding the issues presented, would suggest that they would not honor a ruling from the Claims Court. Disallowance controversies typically involve state government activities that the District Court would be in a better position to understand and evaluate than a single, specialized tribunal headquartered in Washington. This is not a case where money is the only issue, this case has issues of fairness, and questions the integrity of the Washington State Lottery Commission. This case has issues of constitutionality, and a law that as applied denies me Due Process

The United States Court of Appeals for the ninth circuit failed to act in a fair manner. I had initially provided in my appeal to this court, a jurisdictional basis to proceed

with my case in the District Court. This court completely ignored what was held by the Supreme Court in *Bowen v. Massachusetts*, citing that my claim was seeking “Damages”. After I had further explained how I wasn’t seeking damages in my Motion for Rehearing En Banc, The court ignored the facts again, and stated that no judge had requested a vote on whether to rehear the matter En Banc.

REASONS FOR GRANTING THE PETITION

In determining why a writ of certiorari should be granted, I would have to ask, what about my case would be most important for the Justices. Not being a judge myself or even a lawyer, and not knowing what compels such powerful people to take action, I can only hope to put myself in your position in an ethical and moral capacity. If I were a judge and was looking to be compelled to act on a case, fair play and honest contracting practices would probably be at the top of my list. Legally, I have used the application of the laws correctly and have shown; that mutual assent was established, the violation of the rules that prevented a ticket from being printed for me was in contract, the use of WAC 315-38-050(3) is inappropriate and unconstitutional as applied, that the Washington State Court of Appeals Published Opinion is erroneous, that the District Court did have jurisdiction for review, and reversal of the WSLC's decision to deny my prize claim, and had the power to grant complete relief under 5 U.S.C. §§ 701-706.

I would also have to consider the urgency and national importance of the matter. This is kind of tricky, because the matter is urgent to address because it presents

an issue of fairness in a game that millions of Americans play each day. More people play the Mega Millions game every day than immigrants enter our country, and hundreds of millions of dollars are generated for State Governments that participate in the Mega Millions game, and other lottery games with the same method of play. The tricky part is that I am the only person this has happened to, and it will more than likely never happen again. As a petitioner I fear that this will make a difference, but in reality, it shouldn't matter if the issue only effected just one person or a thousand people. The importance of preserving the integrity of fairness in the game, is crucial to maintaining a fair and equitable Lottery Agency, and keeping to the tradition of honoring contracts is what defines us as Americans.

Another thing that would be at the top of my list would be the constitutionality of the issues presented, especially when they are joined by issues concerning fair play or honest contracting practices. This case involves just that. The WSLC is not arguing the fact that I played the game or that I had picked the winning combination of numbers. They are not arguing that an early break for the drawing wrongly refused my wager. The Lottery is relying solely on the immunities that they receive by applying a law.

If due process is founded on the principals of fundamental fairness, then WAC 315-38-050(3) as applied goes against these principals. If you look at the law on its face it offers "Under no circumstances". This is a law that would be made for a monarch or dictator, not for a democratic society founded on the principals of justice and equality. This law does not offer fair resolution by those standards, or any circumstance where fairness should be affirmed. What could be more arbitrary than an immunity

from circumstance? Especially when that circumstance involves a violation of rights that requires fair resolution, and greatly effects a citizen's life, liberty, or property. "A moral obligation may become the basis for a claim against the government only when it is fixed or recognized in a statute, regulation, or (in exceptional circumstances) an award."¹⁵

The immunities of this law extend to impair contractual obligations as applied. Article 1 Section 10 Cause 1 of the United States Constitution says that no law shall be entered that impairs the obligation of contracts.¹⁶ Also my right to contract is protected. Liberty of contract, applied repeatedly in subsequent cases as a restraint on Federal and State power. Freedom of contract was also alluded to as property right as evident in the language of *coppage v. Kansas* 236 U.S. 1,14 (1915). "Included in the right of personal liberty and the right of personal property-partaking in the nature of each- is the right to make contracts for the acquisition of property." Liberty implies the absence of arbitrary restraint. The privileges and immunities clause of the 14th Amendment offers "No State shall enforce any law which shall abridge the privileges and immunities of citizens of the United States." If the right to contract is afforded to me under the 5th Amendment, then relief should be available under the privileges and immunities clause of the 14th amendment because it protects the rights "which owe their existence to the Federal Government, its national character, its constitution, or its laws."¹⁷

¹⁵ United States v. Realty Company, 163 U.S. 427 (1896)

¹⁶ *Trust Co. v. New Jersey* 431 US. 1 (1977)

¹⁷ *McDonald v. City of Chicago* 561 U.S. 742 (2010)

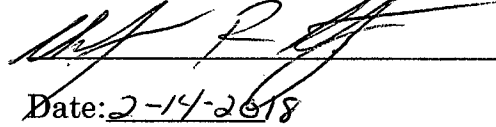
Finally, but not any less important is the fact that I've been fighting for a life changing prize for almost 13 years now. I did what few people can do, I picked the winning combination for the jackpot prize. This is not something that I will ever be able to do again. This is one thing that I would like this court to see, by putting itself in my place. This is my last chance, to save my American dream. A dream I should have been living since April 8 2005. From when we are very young we are taught to never give up, to keep fighting and your dreams can come true. I've never given up, I took some time off because our country was in a bad recession. It was the right thing to do, and as soon as the economy recovered in 2016, I filed my complaint with the District Court. I still believe in America and that those who represent her are patriots at heart. Maybe I'm crazy, but I believe that this court will see that I'm seeking reversal of a bad agency decision, that includes a "monetary award", instead of seeking "damages". Why even have rules or terms of contracts if there is no accountability? There has to be accountability, and an immunity from circumstance is exactly the opposite of that. That is why the Lottery's decision should be reversed and an "adjustment" should be made in my favor. Any damages resulting in a breach of contract, can be awarded as a specific performance or rescission to provide "complete relief."

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Christopher R Granton Pro Se.

A handwritten signature in black ink, appearing to read "CR Granton", is written over a horizontal line.

Date: 2-14-2018