
n the Supreme
Court of the United States

PETITIONERS' COMMITTEE, RICHARD HAZEN
AND HUONG L. TRAN IN HER INDIVIDUAL CAPACITY
AND AS THE DESIGNATED REPRESENTATIVE OF
THE PETITIONERS' COMMITTEE,
Petitioners,
v.

THE CITY OF HOLMES BEACH,
A MUNICIPAL CORPORATION OF THE
STATE OF FLORIDA,
Respondent.

On Petition for a Writ of Certiorari to the District
Court of Appeal of the State of Florida, Second
District, which affirmed the Final Order of the
Circuit Court of the Twelfth Judicial Circuit in and
for Manatee County, Florida

REPLY BRIEF OF PETITIONERS

DAVID M. LEVIN
FLORIDA BAR #296384
Counsel of Record
ICARD, MERRILL, CULLIS, TIMM,
FUREN & GINSBURG
2033 MAIN STREET, SUITE 600

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
REPLY BRIEF	1

TABLE OF AUTHORITIES

Cases	Page
<i>Adams v. Roberston</i> ,	2
117 S.Ct. 1028 (1997)	
<i>Howell v. Mississippi</i> ,	2
125 S.Ct. 856, 860 (2005)	
<i>Illinois v. Gates</i> ,	2
103 S.Ct. 2317 (1983)	
<i>Kaukauna Water Power Co. v. Green Bay & Mississippi Canal Co.</i> ,	2
12 S.Ct. 173, 269 (1891)	
<i>Philadelphia Newspapers, Inc. v. Jerome</i> ,	5
98 S.Ct. 546, 548 (1978)	
<i>Silber v. United States</i> ,	4
82 S.Ct. 1287, 1288 (1962)	
<i>Vachon v. New Hampshire</i>	3
94 S.Ct. 664, 665 (1974)	
<i>Webb v. Webb</i>	2
101 S.Ct. 1889 (1981)	
<i>Wood v. Georgia</i>	3
101 S.Ct. 1097, 1100 (1981)	
 Constitutional Provisions	
U.S. Const. amend. V.	1
U.S. Const. amend XIV.	1
 Statutes	
28 U.S.C. § 1257.	2

REPLY BRIEF OF PETITIONERS

It is hard enough for a citizen to literally fight city hall, particularly with all of the presumptions in favor of governmental correctness. But adding to said task, as argued by the Respondent, that the citizen must be clairvoyant so as to anticipate the trial court judge would neglect his/her obligations, and literally “rubber stamp” city hall’s proposed order, is an injustice. It is equally unjust to require a citizen to anticipate that Florida’s appellate court would affirm without an opinion the trial court’s order, notwithstanding well-established and unequivocal precedent invalidating such judicial behavior.

There are certain iconic words and names, the mere mention of which clearly identify the subject. For example, mention the names “Cher” and “Elvis”, and there is little doubt the reference is to world famous singers. Even simply initials, such as “O.J.”, convey clear identification. The same is true with respect to certain fundamental legal principles. Mention the phrase “due process”, and fundamental rights guaranteed by the *Fifth* and *Fourteenth Amendments of the U.S. Constitution* should immediately come to mind to attorneys and jurists alike.

To deny a citizen's access to the United States Supreme Court because pleadings before lower state Courts failed to mention the *Fourteenth Amendment* in connection with its claim of a denial of "due process", as argued by the Respondent, would also be unjust.

Respondent cites this Court's decisions in *Webb v. Webb*, 101 S.Ct. 1889 (1981), *Illinois v. Gates*, 103 S.Ct. 2317 (1983), and *Adams v. Roberston*, 117 S.Ct. 1028 (1997), suggesting that these cases demonstrate Petitioners' opportunity for review by this Court under *28 U.S.C. § 1257* is a nearly unwavering jurisdictional barrier in the absence of a clear articulation of the violation of a federal right before the lower state courts. In the more recent decision, *Howell v. Mississippi*, 125 S.Ct. 856, 860 (2005), however, this Court recognized that it remains "an unsettled question" whether the failure of a Petitioner to present its federal claim in the state court is "jurisdictional" or merely "prudential".

In fact, this Court has a long history of reviewing decisions of state courts when the facts and circumstances of the case can be determined by this Court as constituting a clear violation of the *Due Process Clause of the Fourteenth Amendment of the U.S. Constitution*, even in the absence of any express reference to this federal claim. See, *Kaukauna Water Power Co. v. Green Bay & Mississippi Canal Co.*, 12 S.Ct. 173, 269 (1891)

wherein this Court held,

Notwithstanding the inhibition of the Constitution is not distinctly put in issue by the pleadings, nor directly passed upon in the opinion of the [State Supreme] court, it is evident that the court could not have reached a conclusion adverse to the defendant company without holding, either that none of its property has been taken, or that it was not entitled to compensation therefor, which is the equivalent to saying that it had not been deprived of its property without due process of law. This court has had frequent occasion to hold that it is not always necessary that the Federal question should appear affirmatively on the record, or in the opinion, if an adjudication of such question were necessarily involved in the disposition of the case by the state court.

Similarly, in *Wood v. Georgia*, 101 S.Ct. 1097, 1100 (1981) this Court held that where “a possible due process violation is apparent on the particular facts of a case, we are empowered to consider the due process issue”. See also, *Vachon v. New Hampshire*, 94 S.Ct. 664, 665 (1974).

This Court has exercised its discretion to

review the decisions of state courts, even in the absence of the express specification of a federal claim in said courts, when this Court finds that the errors committed below “seriously affect the fairness, integrity or public reputation of judicial proceedings”. *Silber v. United States*, 82 S.Ct. 1287, 1288 (1962).

There can be no clearer example of a violation by a trial court of a litigant’s rights under the *Due Process Clause of the Fourteenth Amendment of the U.S. Constitution* than to adopt, absolutely verbatim, without a single modification or edit, the proposed Final Order of the adverse party. To allow this error to stand uncorrected will seriously affect the fairness, integrity or public reputation of judicial proceedings.

The facts and circumstances of this case as presented in the lower tribunals, together with citations in Petitioners’ Briefs to federal cases involving the *Due Process Clause of the Fourteenth Amendment of the U.S. Constitution*, are sufficient to warrant this Court’s consideration and granting of Petitioners’ Writ.

Should this Court decline to exercise its discretion to reverse the lower courts’ determinations on the basis of “plain error”, and should this Court find that the record, as it now stands, does not disclose whether the appellate court affirmed the trial court’s Final Order on the basis of

Petitioners' federal claims, or on state grounds, it is respectfully requested that this Court vacate the judgment of the District Court of Appeal of the State of Florida, Second District, and to remand the cause to that court for such further proceedings as it may deem appropriate to clarify the record. Such was the action taken by this Court in *Philadelphia Newspapers, Inc. v. Jerome*, 98 S.Ct. 546, 548 (1978) where, like here, the state court rendered its decision without a written opinion.

Respectfully Submitted,

DAVID M. LEVIN
FLORIDA BAR #296384
Counsel of Record for Petitioners
ICARD, MERRILL, CULLIS, TIMM, FUREN &
GINSBURG, P.A.
2033 MAIN STREET, SUITE 600
SARASOTA, FL 34237
(941) 366-8100
DLEVIN@ICARDMERRILL.COM

DOCKET NO. 17-603

CERTIFICATE OF COMPLIANCE

PETITIONERS' COMMITTEE, RICHARD HAZEN
AND HUONG L. TRAN IN HER INDIVIDUAL CAPACITY
AND AS THE DESIGNATED REPRESENTATIVE OF
THE PETITIONERS' COMMITTEE, *Petitioners*,
v.

THE CITY OF HOLMES BEACH,
A MUNICIPAL CORPORATION OF THE
STATE OF FLORIDA, *Respondent*.

As required by Supreme Court Rule 33.1(h), I certify
that the Petition for a Writ of Certiorari contains
898 words, excluding the parts of the Reply Brief
that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing
is true and correct.

Executed on November 29, 2017

DAVID M. LEVIN
FLORIDA BAR #296384
Counsel of Record for Petitioners
ICARD, MERRILL, CULLIS, TIMM,
FUREN & GINSBURG, P.A.

2033 MAIN STREET, SUITE 600
SARASOTA, FL 34237
(941) 366-8100
DLEVIN@ICARDMERRILL.COM

CERTIFICATE OF SERVICE

I hereby certify that three correct copies of the foregoing have been furnished by U.S. Mail to: James Dye, Esq., Dye, Deitrich, Petruff & St. Paul, P.L., 1111 Third Avenue West, Suite 300, Bradenton, FL 34205, (941)748-4411 and Richard A. Harrison, Richard A. Harrison, P.A., 400 N. Ashley Drive, Suite 2600, Tampa, FL 33602, (813) 712-8757, Attorneys for Respondent, this ____ day of November, 2017.

DAVID M. LEVIN
FLORIDA BAR #296384
Counsel of Record for Petitioners
ICARD, MERRILL, CULLIS, TIMM,
FUREN & GINSBURG, P.A.
2033 MAIN STREET, SUITE 600
SARASOTA, FL 34237
(941) 366-8100
DLEVIN@ICARDMERRILL.COM