

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2018

No. _____

GARRISON S. JOHNSON,

Petitioner,

v.

JEFFERY A. BEARD; KELLY HARRINGTON,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Garrison S. Johnson (D59672)
44750 60th Street West
Lancaaster, CA 93539

QUESTION PRESENTED

Whether Petitioner Demonstrated in the federal courts Article III of the United States Constitution standing requirements of an actual controversy persist through all stages of litigation when Petitioner claims that the CDCR'S policy of racial discrimination against him and all African American prisoners by excluding them from participation election voting process of Caucasain and Mexican American prisoners for appointment to Building Representatives Inmate Advisory Council (IAC) members violated his rights under the Equal Protection Clause of the Fourteenth Amendment.

Whether the the lower courts opinion of Article III requirements conflicts with United States Supreme Court's interpretation of article III standing requirements.

Whether the lower courts overlooked material points of facts in its decision finding that Petitioner's action lack Article III standing.

PARTIES

The petitioner is Garrison S. Johnson, a prisoner at California State Prison-Los Angeles County (CSP-LAC) 44750 60th Street West Lancaster, California. The Respondents are Jeffrey A. Beard, former California Department of Corrections And Rehabilitation (CDCR) Secretary, and Kelly Harrisngton, former Warden of the Kern Valley State Prison (KVSP).

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DECISIONS BELOW:

The decision of the United States Court of Appeals for the Ninth Circuit is unreported. A copy is attached as Appendix A to this Petition. The order of the United States District Court for the Eastern District of California. A copy is attached as Appendix B to this petition.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on March 3, 2017. An order denying a petition for rehearing was entered on December 4, 2017, and a copy of that order is attached as Appendix C. Jurisdiction is conferred by 28 U.S.C. §28 1254(1); and Article III of the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

This case involves Amendment XIV to the United States Constitution; and Article III of the Constitution which provides:

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. 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 law; nor deny to any person within its jurisdiction the equal protection of the law.

Section 5, The Congress shall have the power to enforce, by appropriate legislation, the provision of this article.

The Amendment is enforced by Title 42, Section 1983, United States Code:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or Territory of the District of Columbia, subjects or cause to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial capacity, injunctive relief shall not be granted unless a declaratory decree violated or declaratory relief was unavailable. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

The requirements of Article III Standing are Familiar:

"First, the plaintiff must have suffered an 'injury in fact'-an invasion of a legally protected interest which is (a) concrete and particularized, and(b) 'actual or imminent, not "conjectural or hypothetical.'" Second, there must be a casual connection between the injury and the conduct complained of-the injury has to be 'fairly... trace[able] to the challenged action of the defendant, and not...the result [of] the independent action of some third party not before the court.'" Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'"

STATEMENT OF THE CASE

The petitioner's complaint alleged that he is an African American and while confined at the Kern Valley State Prison (KVSP) he was housed in Building-C5 on the C-Yard Facility. Plaintiff was approached and asked to participate in the Inmate Advisory Council (IAC) election voting process by an African American, Inmate IAC member.

Petitioner informed the IAC African American member that he wanted to participate in the election voting process of the Caucasian and Mexican Inmates who were seeking election to be abuilding Inmate Advisory Council member representative in the C5 housin unit. The Inmate Advisory Council member told Petitioner that the Inmate Advisory Council rules prohibits him from voting for any race or ethnicity outside of his race. Petitioner's complaint alleged that the law under California Code of Regulations Titled 15, §3230(a) States: "each warden shall establish an Inmate Advisory Council which is representatives of that facilities inmate ethnic groups. At the discretion of the warden, subcommittees of the council may also be established to represent subcommittees or specialized segments of the inmate population. Petitioner's complaint further alleged that the CDCR Department Operational Manual (DOM) §§53120 and 5312.4 States: "Inmate Advisory Council Representative will be provided for all ethnic groups of the general population. This may be accomplished through the selection of Inmate Advisory Council representatives by the inmates of each ethnic group within their respective housing units."

Petitioner's complaint also alleged that the Defendants promulgated or implemented a law and policy under California Code of Regulations 15, §3230(a) and DOM §§53120.4 Concerning voting election of of inmates for building representatives that is racially discriminatory and so deficient that the law and policy themselves is a repudiation of the constitutional violation and the law and policy is unconstitutional. That Defendants law and policy intentionally discriminated against Petitioner because it excludes him from voting for Caucasian and/or inmates of different races or ethnicities in the election of Inmate Advisory Council Building Representatives due to his race causin Petitioner to suffer emotional distress, humiliation, fear and depression. That the law and policy of racial discrimination creats and foster hostility and tension among the prisoners by ensuring that they remain divided on a physical and psychological basis. These divisions inevitably creates the stereotyping that leads to prejudiced attitudes and beliefs, and violence.

The district court at the screening stage pursuant to 28 U.S.C. §§1915A(a), 1915(b)(1), (2) and 1915(e)(2)(B)(ii) dismissed the complaint for failure to state a claim, claiming Petitioner failed to establish any of the three standing requirements imposed by Article III of the Constitution. That Petitioner does not demonstrate any injury-in fact from being unable to vote for another ethnic group's representative. He also fails to demonstrate causation. He admits he was denied the opportunity to vote by another inmate, not by Defendants. Last, he cannot show a likelihood that his injury will be redressed by a decision in his favor. Petitioner has no present interest in the manner in which inmates at Kern Valley State Prison elect their IAC representatives since Petitioner is no longer there. Any injunction against Kern Valley Officials would not redress any injury to Petitioner. Therefore, Petitioner lacks standing to sue. The Court of Appeals affirmed the district court's dismissal of Petitioner's action for lack of Article III Standing, and did not reach other issues raised by the parties regarding the equal protection claim.

BASIS FOR FEDERAL JURISDICTION

This case raise a question of interpretation of Article III of the United States Constitution. The district court had jurisdiction under the general federal question jurisdiction conferred by 28 U.S.C §1331.

REASON FOR GRANTING THE WRIT

A. Conflict with Decisions of Other Courts

The holding of the courts below that Petitioner failed to establish any of the standing requirements imposed by Article III of the Constitution is directly contrary to the holding of seven federal circuits. *Tarnsey v. O'Keefe*, 225 F.3d 929, 934 (8th Cir. 2000); *Americans United for Separation of Church and State v. Prison Fellowship Ministries, Inc.*, 509 F.3d 406, 419 (8th Cir. 2007); *Duffy v. Riveland*, 98 F.3d 447, 453 (9th Cir. 1996); *Kerr v. Farrey*, 95 F.3d 472 (7th Cir. 1996); *Armstrong v. Dais*, 275 F. 3d 849, 861 (9th Cir. 2001); *Goff v. Nix*, 803 F.2d 358, 361 n.6 (8th Cir. 1986); *Lehn v. Holmes*, 364 F.3d 862, 871 (7th Cir. 2004).

B. IMPORTANCE OF THE QUESTION PRESENTED

This case presents a fundamental question of the interpretation of this court's decision in *Already, LLC v. Nike, Inc.*, 568 U.S. _____, _____; *Arizona For Official English v. Arizona*, 520 U.S. 43, 64; and *Lujan v. Defenders of Wildlife*, 504 U.S. 55, 560-61 (1992); and Article III of the Constitution. The lower courts decision dismissing Petitioner's action conflicts with the above United States Supreme Court's precedent.

The question presented is of great public importance because it affects the Article III Standing Requirements a petitioner must satisfy when filing suit in a federal court. Also, the standing requirements are of great importance to prisoners, because it affects their ability to challenge prison rules, regulations and policies that may be unconstitutional.

The issue's importance is enhanced by the fact that the lower courts in this case have seriously misinterpreted Article III of the Constitution, and *Already, LLC v. Nike, Inc.*,

568 U.S. _____, _____; Arizona For Official English v. Arizona, 520 U.S. 43, 64; Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). This court held in Lujan and Arizona for Official English that Article III of the Constitution confines the judicial power of federal courts to deciding actual "Cases" or "Controversies," §2. One essential aspect of this requirement is that any person invoking the power of the federal courts must demonstrate standing to do so. In other words, the litigant must seek a remedy for a personal and tangible harm. Although most standing consider whether a plaintiff has an "actual controversy" persist throughout all stages of litigation. Standing "must be met by person seeking appellate review, just as it must be met by persons appearing in court of first instance." Also, Also, Article III elements require a showing of concrete and particularized injury.

The lower courts reasoning the Petitioner fails to establish any of the three requirements of Article III Standings is incorrect. In Petitioner's district court complaint he alleged he was an African American inmate who was excluded from participating in the voting election process of caucasian and Mexican Inmates for building Housing Unit Inmate Advisory Council members due to his race is black. Petitioner's complaint alleged that the prison policies under CCR tit. 15, §3230(a) and DOM §§ 53120 and 53120.4 are unconstitutional because they exclude him from voting for Caucasian and mexican Inmates for building housing Inmate Advisory Council Members due to his race. Petitioner's complaint alleged that as a result of these racial discriminatory policies hostility, and tension is created among prisoners by ensuring that they remain divided on physical and psychological basis causing him to suffer from fear and emotional distress. A copy of Petitioner complaint is attached as Appendix D to this petition. Petitioner filed an appeal with the Ninth Circuit Court of Appeals which reiterated the claims alleged in the district court. A copy of Petitioner's Ninth Circuit Informal Brief is attached as Appendix E to this petition.

Petitioner contends that his complaint challenges respondents Inmates Advisory Council policies as being unconstitutional which confers standing under Article III. Therefore,

in this case Petitioner's injury is the constitutional violation of the 14th amendment rights to be free from racial discrimination. *Duffy v. Riveland*, 98 F.3d 447, 453 (9th Cir. 1996), and the Respondents policies discriminates against Petitioner which subjects him to emotional distress. Therefore, Petitioner demonstrated in the lower courts a particularized concrete interest sufficient to create a case of controversy under Article III which affects him in a personalized and individual way. Thus, Petitioner asserted his own legal rights and interest which gives this court authority to find Petitioner has standing in this case. *Powers v. Ohio*, 499 U.S. 400, 410 (1991).

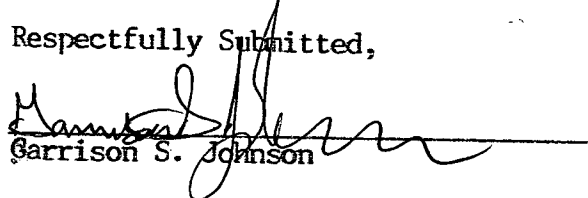
Thus the court below seriously misinterpreted Article of the constitution standing requirements. The court should correct that misinterpretation and make it clear that Petitioner demonstrated Article III Standing.

CONCLUSION

For the foregoing reasons, certiorari should be granted in this case.

Dated: 2/15/18

Respectfully Submitted,


Garrison S. Johnson

Pro Se, Petitioner