No. 24-7130

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

KEN SMITH-PETITIONER

vs.

HOCHUL et al,-RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

KEN SMITH

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Question(s) Presented

1: Whether the Second Circuit's decisions conflict with every other decision the Second Circuit has previously addressed concerning the ripeness to a pre-challenge of a statute.

2: Whether this Petitioner has standing to pre-challenge this statute's Constitutionality.

3: Whether this Court should grant a review to clarify if this statute in fact causes injury to this Petitioner and all other similarly situated offenders.

List of Parties and Related Cases

☑ All parties appear in the caption of the case on the cover page.

Smith v. Hochul, et al, 9:23-cv-1436 U.S. District Court for the Northern District of New York.
Judgment entered February 7th 2024.

☑ All parties appear in the caption of the case on the cover page.

Smith v. Hochul, et al, 24-575 United States Court of Appeals for the Second Circuit.
Judgment entered October 31st 2024.

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See: "Appendix D"

☑ Opinion has not yet been published.

Ken Smith v. Hochul, 2024 WL 4635232.
United States Court of Appeals, Second Circuit.
See: "Appendix A"

Jurisdiction

1. The United States Court of Appeals for the Second Circuit denied this complaint pursuant to **42 U.S.C. § 1983** on October 31st 2024.

2. This petitioner submitted to this court a Notice of Appeal on December 27, 2024.

3. This court acknowledged receipt of the Notice of Appeal on February 10, 2025 and issued a 60-day Notice for this petitioner to submit the petition for writ of certiorari.

4. On or about February 17, 2025, Corrections Officers engaged in a "wildcat" strike that forced the closure of correctional facilities including this Facility, Franklin Correctional Facility. The Facility closed the Law Library, preventing incarcerated individuals from accessing copy machines, reference books, legal envelopes, and computers.

5. On March 19th, 2025, after having no success gaining access to the Law Library, and not knowing when access would resume, this petitioner submitted to this court a request for an "Extension of Time" to submit the petition for writ of certiorari via carbon copies pursuant to Rule 30 of Rules of the Supreme Court of the United States. All parties concerning this complaint were served with a copy of said request pursuant to Rule 29 of Rules of the Supreme Court of the United States.

6. This petitioner gained access to the Franklin Correctional Facility Law Library on April 5, 2025.

Constitutional And Statutory Provisions Involved

This petitioner asserts that **New York Penal Law §220.00(14)** violates constitutional and Supreme Court case law (See: Appendix B: "Special Conditions of Release to Parole")

> ..."Injury in fact" is their first of three "irreducible" requirements for Article III standing/ Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).The injury-in-fact requirement often stymies a private plaintiff's attempt to vindicate the infringement of public rights. The Court has said time and time again that, when a plaintiff seeks to vindicate a public right, the plaintiff must allege that he has suffered a "concrete" injury particular to himself."
>
> ***Spokeo, Inc. v. Robins, 136 S.Ct. 1540 at 1552.*** (See: Appendix B)

Statement of the Case

"Injury in Fact"

This Petitioner asserts that this statue Penal Law §220.00(14) is unconstitutional and affects this petitioner in a "Personal" and in an "Individual" way.

> "School grounds" means (a) in or on or within any building, structure, Athletic playing field, playground or land contained within the real Property boundary line of a public or private elementary, parochial, Intermediate, junior high, vocational, or high school, or (b) any area Accessible to the public located within one thousand feet of the real Property boundary line comprising any such school or any parked Automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such school. For the Purposes of this section "area accessible to the public" shall mean sidewalks, streets, parking lots, parks, playground, stores and restaurants."

In that being convicted of any sex offense in New York State automatically "particularizes" this Petitioner for this Penal Law Statute and possibly subjects him to Criminal Prosecution, an "Injury in Fact" occurs here due to an invasion of the legally protected interest in the right not to be discriminated against because of Class Legislation. See: ***Duren v. Missouri, 99 S. Ct. 664***. Also See: ***Yick Wo v. Hopkins, 6 S.Ct. 1064***, in which this Court has ruled against discrimination of people belonging to a distinctive group. Also See: ***Taylor v. Louisiana, 95 S. Ct. 692***; because of the above Statute (Penal Law §220.00(14)) this Petitioner is subjected to a disparate impact theory. Also See: ***Raytheon Company v. Hernandez, 124 S.Ct. 513 at 519***, in which this court ruled that the geographical density of housing and public or private parks in New York City created an actual and real injury to this Petitioner's "Private Rights" to live as a Citizen of New

York City and enjoy any Public and/or Private Parks, as the Honorable Clarence Thomas of the United States Supreme Court has stated in his concurring opinion. In ***Spokeo, Inc., v. Robins, 136 S. Ct. 1540 at 1551***:

> "[I]n a suit for the violation of a private right, courts historically presumed that the plaintiff suffered a de facto injury merely from having his personal, legal rights invaded."

A citizen of New York City convicted of a sex offence suffers such an injury from having his private rights invaded. The geographical density of housing and public parks in New York City is NOT the same as the geographical density in rural upstate New York. Statistically, the recidivism rate for sex offenders is much lower than any other type of convicted felon in New York City and even lower for convicted sex offenders over the age of 50. DOCCS' very own "COMPAS" risk and assessment report is evidence which confirms this Petitioner as statistically at low risk for future felony violence and at low risk for future arrest. Yet, New York City issues incentives in the form of multi-million dollar tax breaks to real estate developers for including public parks (many of which are located on waterways in New York City), schools, and day care centers in their developments. In essence, this further alienates rehabilitated sex offenders away from their families and support, connections that are proven to critically reduce recidivism. PL§ 220.00(14) effectively promotes "banishment" of some classes of convicted felons' personal rights while allowing other convicted felons to enjoy life, liberty, family, and the pursuit of happiness as citizens of the United States, while also effectively promoting and engaging in "state sponsored" voter suppression since 99% of all polling stations are located within "school grounds" as defined by the language in PL § 220.00(14) (***Ortiz v. Breslin, 2022 WL 515803***). Yet, all other convicted felons are NOT categorized in any way for such punishment. As the

Honorable Late Supreme Court Justice Thurgood Marshall stated in his Concurring Opinion in ***Vance v. Terrazas, 100 S. Ct. 540 at 551***:

> "[T]his punishment is offensive to cardinal principles for which the Constitution stands. It subjects the individual to a fate of ever-increasing fear and distress. He knows not what Discriminations may be established against him, what proscriptions may be directed against him and when and for what cause his existence in his native land may be terminated. He may be subject to banishment, a fate universally decried by civilized people."

Thus, if this petitioner would choose to go out shopping to a store, such as a CVS or Walgreens to fill his high blood pressure or heart medication, he must use Google Maps to find one outside of 1000 feet of a school, which is impossible in New York City, thus threatening his health. If this petitioner cannot find a place to park his car that is not within 1000 feet of "school grounds," he can be subjected to a **an administrative punishment**, such as a parole violation, or **a criminal punishment**, such as an arrest for violation of PL§ 220.00(14), if this petitioner parks a car within 1000 feet (a distance equivalent to 4 New York City blocks in all directions) of the descriptions in PL§ 220.00(14), or even uses mass transit, which is common in New York City, within 1000 feet of the descriptions in PL§ 220.00(14), he can be subjected to a punishment that could severely alter his life. Yet all other convicted felons in New York City are not subjected to any such restrictions. Even law enforcement murderers are allowed to patronize and to reside within 1000 feet of police precincts. Murderers are allowed to patronize and to reside within 1000 feet of their victims' families. Armed robbers of gas stations are allowed to patronize and to reside within 1000 feet of gas stations. These ex-felons are free to enjoy their personal rights to hasten their rehabilitative goals, and engage in supportive services within their communities in New York City, rights that are guaranteed by the Constitution of the United States. Thus, this statute has an adverse effect on the rehabilitative goals for sex offenders and could, by its

language, contribute to mass incarceration of a distinct group of ex-felons who unknowingly may violate this statute.

This Petitioner agrees that children must be protected and that the public must be protected. However, public safety should not come at the cost of one distinctive group, while ignoring another. This would effectively **ostracize** one distinctive group from their families, friends, and support networks. Sex offenders are having their personal rights invaded by PL§ 220.00(14), which is "illegal legislation" and having their rights to "go home again" denied. There are ways to achieve both objectives through logical, unbiased, and balanced legislation that this defendant can pass through State Legislation or by Executive Order. For example, the defendant could begin by considering a "comprehensive geographical" study based on legislation designed to include all New Yorkers in their re-entry into their communities and their attempts for atonement and their pursuit of happiness and the American Dream; not fear-based legislation which contributes to a disparate impact for some ex-offenders, passed without the support of legislators who do not represent New York City residents. The legislation proposing to establish the 1,000-foot "buffer zones" around schools was introduced six days before the end of the 2005 legislative session as Bill No. A.8894/S.479. This law was enacted on the last day of the session without any public hearing or opportunity for public comment. Also See: ***Berlin v. Evans, 31 Misc.3d 919 at 926***: this Legislation is **extreme** and could possibly be amended to a more rational national standard of 200 feet from schools during school hours, as many states have already done, instead of this broad legislation that affects people's personal freedoms at all times during the day or night. This legislation amounts to an overboard invalidation of prior Supreme Court case law. Also See: ***U.S. V. Stevens, 130 S. Ct. 1577***.

Therefore, this Petitioner has a personal stake in the language of PL§ 220.00(14), and a concrete, real, immediate, and **direct** injury in fact to this Petitioner, and a standard for a pre-challenge of said Statute. (See: ***Davis v. Federal Election Commission 128 S. Ct. 2759***). And this statute is ripe for a pre-challenge of its constitutionality.

Standing

As the Supreme Court has stated in ***Davis v. Federal Election Commission, 128 S. Ct. 2759 at 2769***:

> "... [A] party facing prospective injury has standing where the threatened injury is real, immediate, and direct."

Also See: ***Babbitt v. United Farm Workers National Union, ect., et al, 99 S. Ct. 2301 at 2308***:

> "But [o]ne does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending, that is enough."

This Petitioner asserts that injury is occurring **prior** to a parole board hearing. The defendant provides an incarcerated individual with "Special Conditions of Release to Parole". These are "impending" conditions that, if paroled, **must** be adhered to by the prospective parolee. The prospective parolee cannot challenge these conditions **prior** to its implementation. (See: Appendix B). Thus, there can be a pre-challenge to this statute, because this Petitioner was put on **notice** of the injury prior to being granted parole that he **must** abide to the special conditions which include PL§ 220.00(14), or he would risk not only a parole violation but also criminal prosecution if he attempted to exercise a Constitutional right to vote given by the New York State Legislation to every ex-felon upon his release and guaranteed by the Constitution of the United States. The Supreme Court went on to state in ***"Babbitt"*** Supra, at 2309;

> "When contesting the Constitutionality of a criminal statute, "it is not necessary that the plaintiff first expose himself to actual arrest or prosecution to be entitled to challenge [the] statute that he claims deters the exercise of his Constitutional rights."

Thus, by the language of this statute PL§ 220.00(14), the injury to this Petitioner facing is an immediate, concrete, particularized, and actual injury, whether this Petitioner is paroled in the

near future or not as acknowledged by the United States Courts of Appeals for the Second Circuit; Also See: ***Smith v. Hochul, 2024 WL 4635231.***[1]. This Petitioner asserts that although he has **NOT** been given a sex offender level. Every convicted sex offender is subjected to PL§ 220.00(14) at every level. Also See: ***Berlin v. Evans, 31 misc. 3d 919 at 921***: thus, it does not matter what level a sex offender is 1, 2, or 3 **prior** to going to the parole board or being paroled. The "Special Conditions of Release to Parole" **must** be signed by any sex offender prior to being released on parole. (See: Appendix D). The special conditions included in PL § 220.00(14) affect this Petitioner **before** and after release. This prospective injury occurs prior to and after this petitioner being paroled. Thus, by this petitioner's assertions that this statute has allowed his Parole Board Commissioners to misuse the criteria of Executive Law § 259-i in order to deny this petitioner and similarly situated individuals a fair and impartial hearing, irreparable harm has or will occur to that individual. (See: Appendix C). The lower court's ruling deviates from prior Second Circuit rulings and has created a well-founded fear of persecution where the individual desires to return to his or her home and families in the New York City area. (See: **Vt. Right to Life Comm. v. Sorrell, 221 F.3d 376 at 381**; See Also: **Knife Rights, Inc. v. Vance, 803 F. 3d 377 at 384**.)

[1] **This subject was also the topic of this Petitioner and a parole commissioner Mr. Michael Cooley on 2-12-2025, at this Petitioners parole hearing in which this parole Commissioner notified this Petitioner that he will be subjected to Penal Law§ 220.00(14) upon release from incarceration. This conversation occurred approximately in the first 25 minutes of this hearing and this conversation was audio and video recorded. However, the defendants deliberately omitted this conversation/testimony from the official hearing transcripts provided to this Petitioner on 3-6-2025. (See: Appendix C)**

Reasons for Granting the Petition

This petitioner asserts that because of New York State Penal Law § 220.00(14), this petitioner has been denied parole based on this statute, which has allowed the Parole Board to abuse the criteria of Executive Law § 259-i when deciding discretionary release. Whereas, this petitioner's parole hearings have become irrational, bordering on impropriety, with the Parole Board relying on uncharged crimes, personal attacks, and disregard for his completed required institutional programming. This petitioner asserts that his denials of parole are purely predicated on the fact that he and similarly situated individuals could not possibly live in New York City because of New York State Penal Law § 220.00(14) requirements. Thus, the lower court's ruling is erroneous and denies the petitioner and all similarly situated individuals their private rights to public spaces.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ken Smith

Ken Smith

Date: Monday, April 21st, 2025