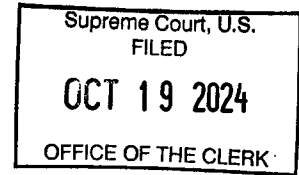


25-97



No. _____

IN THE SUPREME
COURT OF THE UNITED STATES

Susan M. Smith

Petitioner,

v.

Comm'r, SSA, Allan D. Berger, Christina J. Valerio,

Special Asst. U.S. Attorney's

Respondent.

On Petition for Writ of Certiorari

For The Tenth Circuit Court of Appeals

Case No. 24-6118

(D.C. No. 5:22-CV-00282-SLP)

(W.D. Okla)

PETITION FOR WRIT OF CERTIORARI

Susan M. Smith- Pro se

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i.

QUESTIONS PRESENTED

Whether the United States Court of Appeals for the Tenth Circuit erred in affirming the district courts June 11, 2024, frivolous and/or vexatious docket notice?

Whether there is a “good faith defense” to 42 U.S.C. 1983 that shields the defendant from damages liability for depriving the petitioner of her constitutional right if the defendant(s) acted under the color of law?

Whether the petitioner’s First and Fourteenth Amendment to the United States Constitution was violated?

Can a judge have immunity for their non judicial a Activities who knowingly violate civil rights?

ii.

PARTIES TO PROCEEDINGS

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

No. 24-6118

Smith v. Comm'r, SSA, et al

Tenth Circuit Court of Appeals

Terminated September 20, 2024

Denied Rehearing September 30, 2024

Mandate November 12, 2024

No. 22-282-SLP

Smith V. Comm'r, of SSA et. Al

United States District Court for the W.D. Okla.

Filed April 4, 2022

Closed: June 16, 2022

Appealed July 14, 2022

iii.

CONT: PARTIES TO PROCEEDINGS

No. 22-6115

Susan Smith v. Comm'r of SSA et, al.

Tenth Circuit Court of Appeals

Filed April 14, 2022

Closed June 6, 2023

No. 24-6118

Smith v, Comm'r of SSA, et. al,

Tenth Circuit Court of Appeals

Filed September 20, 2024

Denied Rehearing September 30, 2024

iv.

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Appendix B- Tenth Circuit's Order & Judgment. 39(b)-48(b)

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Appendix D – Tenth Circuit denied rehearing. 64(d)
– 65(d)

TABLE of AUTHORITES:

Bacchus Indus., Inc. v. Arvin Indus, 939 F. 2d 887,
891 (10th Cir. 1991) (citing Celotex Corp. v. Catrett
477 U.S. 317, 325 (1986)).....(11)

Celotex Corp. v. Catrett 477, U.S. 317, 325 (1986)
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Cooper v. Aaron 358, U.S. 1, 78 S Ct. 1404
(1958).....(17,18)

Conley v. Gibson 335, U.S. 1, 78 S Ct. 99 2L Ed. 2d
80 (1957).....(11)

Gomez v. Toledo, 446 U.S. 635 (1980).....(17)

Hafer v. Melo 502 U.S. 21.....(18)

Lauro Lines S. R. L. v. Chasser, 490, U.S. 495, 499
(1989).....(14)

Owen v. City of Independence 100 S Ct. 2502...(18)

CONTINUE TABLE OF AUTHORITIES

Peterson v. Jensen, 371 F.3d 1199, 1202-03 (10th Cir. 2009) (citing Sutton v. Utah State Sch. For the Death and Blin, 173 F.3d 1226 1236 (19th Cir.1999).....	(6)
S. Ct. Prac. R. 4.03 (A),....	(12,17)
Sutton v. Utah State Sch. For the Death and Blind, 173 F.3d 1226, 1236 (19 th Cir. 1999).....	(6)
Truman v. Orem City, 1 F. 4 th 1227, 1235 (10 th Cir. 2021).....	(17)
Turner v. Heckler 754 F.2d 326, 328 (10th Cir. 1995).....	(16)
U.S. v. Throckmorton 98 U.S. 61.....	(17)

1.

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

The petitioner prays that a Writ of Certiorari is issued to review the Tenth Circuit Court of Appeals order and judgment in Case No. 24-6118 on September 20, 2024 and Case No. 22-6115 on June 6, 2023. The petition pertains to a controlling question of law; alleging a violation of the petitioners First and Fourteenth Amendment Right to the United States Constitution.

OPINIONS BELOW

APPENDIX A., The Tenth Circuit Court affirmed the district courts frivolous and/or various docket notices denying appellant's pending motions and opposition to the appellee's withdrawal of their

2.

CONTINUED OPINIONS BELOW

opening brief on September 20, 2024. **APPENDIX B.**, Tenth Circuit Court of Appeals Order and Judgment. **APPENDIX C.**, The United States Western District for the W.D. Oklahoma Order of Dismissal with Prejudice. **APPENDIX D.**, The Tenth Circuit Court of Appeals denied Rehearing.

JURISDICTION

The date the Tenth Circuit Court of Appeals entered its decision was September 20, 2024. The date the Tenth Circuit Court of Appeals closed the civil case was June 6, 2023. The date the District Court for the Western District of Oklahoma dismissed civil appeal with prejudice was June 16, 2022. The date the Tenth Circuit Court of Appeals denied Rehearing

3.

CONTINUED JURISDICTION

was September 30, 2024. The petitioner previously attempted to file this petition within 60 days. It was postmarked October 19, 2024, and received again on March 30, 2025. However, the petition was rejected on April 7, 2025, and June 11, 2025, due to the petitioner's errors, with instructions that the errors, be corrected in the petition and appendix so that it may be docketed. It is therefore timely under 28 U.S.C. 2010 (c) and the Supreme Court Rule 13. This jurisdiction is invoked under 28 U.S.C. 1254(1).

4.

CONSTITUTIONAL PROVISIONS

The First Amendment provides that congress makes no law respecting an establishment of religion or prohibiting its free exercise. It provides freedom of speech, the press or the right to petition the Government for redress of grievances.

The Fourteenth Amendment to the United States Constitution provides; 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 life, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of laws.

However, all the defendants deprived plaintiff of her First Amendment Right to that Federal Appeal 18 U.S.C. 241, is a law that makes it illegal for two or

5.

CONTINUED CONSTITUTIONAL PROVISIONS

more people to conspire to injure, threaten, or intimate someone in the United States. This includes preventing or hindering someone from exercising their rights or privileges as protected by the Constitution or laws of the United States.

U.S.C. 242, also known as deprivation of rights Under Color of law statute, makes it illegal to willfully deprive someone of their rights under the protection of the Constitution or laws of the United States. This includes acts committed by people acting under the color of law, statute, ordinance, or custom

6.

STATUE

42 U.S.C. 1983

28 U.S.C. 241

28 U.S.C. 1254(1)

42 U.S.C. 405(g)

423 (d)(1)(A)

18 U.S.C. 242

STATEMENT OF CASE

This case arises from the Tenth Circuit Court of Appeals affirming the district court's "Frivolous And/or Vexatious" docket notice on June 11, 2024 striking the petitioner's pending motions. The Tenth Circuit terminated the petitioner's civil appeal. This petition also arises from compelling case where a controlling question of law is unresolved and needs to be resolved by this court. When a complaint is

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susceptible to multiple interpretations, we construe it liberally to allege a constitutional violation. *See. Peterson v. Jensen*, 371 F.3d 1199, 1202-03 (10th Cir. 2009) (citing *Sutton v. Utah State Sch. For the Deaf and Blind*, 173 F.3d 1226, 1236 (10th Cir. 1999)). Asking the courts to grant SSDI benefits reverse and/or remand the commissioner's decision is not relitigating any issue. The magistrate judge erred in not converting the defendants outside pleadings to one for summary judgment as a matter of law. The court shall grant summary judgment if the movant shows that there is no genuine dispute to any material fact and the movant is entitled to judgment as a matter of law. The court's judgment- Rule 12(b)(6) or Rule 12(c) motion, the court "must" treat the motion as a summary judgment motion under

8.

Rule 56. The magistrate judge erred not doing. The petitioner withdrew her appeal [No. 20-6008] assuming the commissioner would comply with the magistrate judge's decision and remand for further administrative processing as necessary. The petitioner then filed a Civil Rights suit alleging the Commissioner of SSA, Allan D. Berger and Christina J. Valerio in the wrongful taking of the petitioner's application for SSDI depriving the petitioner of her federal right to appeal. Nevertheless, that did not happen. The petitioner then filed a Government Disability suit again seeking the commissioner's final answer. The Tenth Circuit dismissed the petitioner's timely appeal under its firm waiver rule. Not considering that both parties failed to object to the magistrate judge report but the sanctions were only

9.

applied to the petitioner. The District Court dismissed the same case under the doctrine of res judicata. The district court erred in not dismissing the commissioner's untimely motion to dismiss [No. 20-CV-124-SM]. The Tenth Circuit Court of Appeals erred in affirming the district courts June 11, 2024's "Docket Notice" accusing the petitioner of filing frivolous and/or vexatious claims. The petitioner believes the district judge's frivolous and/or vexatious notice was submitted in "bad faith". The petitioner believes because she petitioned the Supreme Court of the United States to review Judge Palk's ORDER AND JUDGMENT wrongfully dismissing her *42 U.S. C. 1983*. The petitioner believes the action taken by the Supreme Court that the district judge retaliated because the petitioner

10.

exercised her constitutional rights to petition the Commissioner of Social Security for disability benefits and petitioning this court requesting review of District Judge Palk's June 16, 2022, dismissal of her suit.

Frivolous And/or Vexatious Claims

District judge Palk knew that when he terminated his referral to the magistrate judge for disposition that he invited unnecessary added multiple claims and delayed the procedures. The defendants have a history of frivolous and/or vexatious behavior of not being in compliance with both court's orders.

However, the United States Attorney General failed its "Entry of Appearance" On July 2, 2024. The Tenth Circuit erred in dismissing No. 24-6118. The Tenth Circuit Court's gave notice to both parties

11.

in its June 18, 2024, notice. The petitioner met her required date. The courts should find the defendant's to be the frivolous Litigants because the defendant(s) did not submit anything in "good faith". Judge Palk's meritless order has also needlessly caused judicial resources to be directed because of his wrongful termination of the petitioner's suit on June 16, 2022, in accordance with 28 U.S.C. 636(b)(1)(B) and (C), has tremendously interfered with the court's efficient administration of plaintiff's cases moving forward. The court should find the petitioner to be inviolate. The petitioner did nothing wrong to harass the defendants, she was only persistent with the courts for relief from judgment and/or Summary Judgment a complaint should not be dismissed "unless it appears beyond a doubt that the plaintiff can prove

12.

no set of facts in support of her claim which would entitle her to relief.” *Conley v. Gibson* 335, U.S. 31, 45-46, 78 S Ct. 99, 2L Ed. 2d 80 (1957). On the other hand, the statute says that an individual shall be under a disability only if her impairment is of such severity that she is not only unable to do her previous work but cannot engage in any other kind of substantial gainful work which exists in the national economy then the burden shifts to the commissioner to show that the petitioner retains the capacity to work. The commissioner failed its burden. The moving party need not to negate the non-moving claim, but instead may show that “there is an absent to support the non-moving party’s case”. *Bacchus Indus., Inc. v. Arvin Indus., Inc.* 939 F.2d 887, 891(10th Cir. 1991) (Citing *Celotex Corp. v. Catrett*

13.

477 U.S. 317, 325 (1986). When a defendant significantly neglects their case, particularly to the point of repeatedly failing to respond to the court orders or engage in the legal process, they could potentially be considered a vexatious litigant, which means they were abusing the system to delay any proceedings from moving forward. The civil Rule 37 (b) (1) (a) is a federal rule that addresses “An appeal or other action shall be considered frivolous if it is not reasonably well-grounded in fact or warrant by existing law or a good faith argument for the extensions, modification or versal of existing law”. *S. Ct. Prac. R. 4.03 (A)*. On the face of the plaintiff’s complaint, it clearly appears that the action is not frivolous nor malicious when the defendant(s) played an active role in the original case and did not have

14.

reasonable grounds or probable cause to support the assertions in the original case.

Recusal of Judge

Under the “Code of Conduct for United States Judge’s”, states; A judge should perform the duties of the office fairly, impartially and diligently. The judge should perform those duties with respect for the judges impartially might reasonably be questioned; including but not limited to instances in which the judge has a bias or prejudice concerning a party or personal knowledge of the disputed evidentiary fact concerning the proceedings. 28 U. S. Code 455- Disqualification of Justice, Judge, or Magistrate Judge of the United States shall disqualify himself in any proceedings in which his impartially might be reasonably be questioned. District Judge Palk is at

15.

fault for this unnecessary claim [24-6118] for no just reason. The district judge possibly conspired to deprive and delay petitioner's claims, denying her right to "Demand by Trial by Jury" and "Summary Judgment".

RIGHT TO TRIAL BY JURY

To be unreviewable on appeal from a final judgment, the order must deprive the appellant of a right "that is essentially destroyed of its vindication must be postponed until trial is completed". *Lauro Lines S.R.L. v. Chasser*, 490 U.S. 495, 499 (1989). Rule 38; Right to a Jury Trial; Demand as declared by the Seventeenth Amendment to the United States Constitution or as provided by a Federal Statute-shall be preserved to the parties inviolate. The refusal to consider it would result in a miscarriage of injustice.

16.

The defendants waived the opportunity to raise an issue at the district court level where the petitioner's interest in substantial justice is at stake.

REASON FOR GRANTING THE WRIT

First, the petitioner believes her First and Fourteenth Constitutional Right has been violated after being denied her appeal of the commissioner's final decision. Second, the case presents a controlling question of law, that has not been but should be settled by this court. Thirdly, this petition contains compelling cases and lastly, the petitioner met the requirements under Rule 56(a). The Petitioner's claim should never have been dismissed because proper procedures we're not followed, the courts were biased towards the petitioner. The defendant conceded to an error. Had the Supreme Court not

17.

intervened injustice would have been the final decision. The court would be in error in dismissing the petitioner's suit and would deprive the petitioner of her constitutional rights. The defendants failed their burden of proof. *See Turner v. Heckler* 754 F.2d 326, 28 (10th Cir. 1995). The district judge retaliated against the plaintiff for exercising her constitutional right to petition the Supreme Court. A 1983 Title 42 provides that a person acting under the color of state law who subjects, or causes to be subjected, any citizens of the United States to deprivation of any rights, privileges, or immunities secured by that conduct was lawful but also, on whether he has a subjective belief. *Gomez v. Toledo*, 446 U.S.635 (1980). On the other hand, it states, A plaintiff can overcome it by showing (i) the defendant's action

18.

violated a constitutional or statutory right, and (ii) that right was established at the time of the defendant's complaint of-conduct. *Truman v. Orem City* F. 4th1227, 1235 (10th Cir. 2021). Any judge or officer that does not comply with the oath to the Constitution of the United States wars against that constitution and engages in acts in violation of the Supreme law of the land. The judge is engaged in acts of treason. See. *Cooper v. Aaron* 358, U.S. 1, 78 S Ct. 1404 (1958). Therefore, Judge Palk did not comply with 28 U.S.C. 453- Oaths of justices and judges. *The U.S. v. Throckmorton* 98 U.S. 61 whereas, officials and even judges have no immunities. See *Owen v. City of Independence*, 100 S. Ct. 2502; and *Hafer v. Melo* 502 U.S. 21; officials and judges are deemed to know the law and sworn to

19.

uphold the law, officials and judges cannot claim to act in good faith in willful deprivation of law, they certainly, cannot plead ignorance of the law, the courts have. Ruled there is no such thing as ignorance of the law. *Cooper v. Aaron* 358 U.S. 1, 78 Ct. 1401 (1958). “No state legislator executive or judicial officer can war against the constitution without violating his undertaking to support it”. The commissioner of, SSA delayed and deprived the petitioner claim by submitting an untimely appeal to dismiss, and a frivolous and/or vexatious claim of Notice of Withdrawal of Appearance. Allan D. Berger deprived and delayed the petitioners claim by pleading outside matter as a denial of benefits and not remanding for further administrative processing

20.

and conceding the ALJ erred. Christina J. Valerio delayed and deprived the petitioner of the right to SSDI by agreeing with Allan D. Berger that the petitioner does not have evidence for remand. Regardless that the ALJ and Vocational Expert agreed that the petitioner could not perform her prior work, the Magistrate Judge found three (3) claims the ALJ did not consider and for the most serious element to her application is that the petitioner is a 100% disabled Veteran again, the commissioner failed its burden to prove the petitioner pertains the capacity to perform a different job and that that job exists in the national economy. The petitioner won her SSDI case and her civil rights. The defendants did not respond to ANYTHING. The court's judgment is wrong.