

No. 05-0478

IN THE
SUPREME COURT
OF TEXAS

RONALD F AVERY

Petitioner,

v.

GUADALUPE-BLANCO RIVER AUTHORITY
MR. WILLIAM E. WEST JR.; MR. DAVID WELSCH,
Respondent.

**MOTION FOR REHEARING FROM THE
DENIAL OF PETITION FOR REVIEW**

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Petitioner, Ronald F. Avery, submits this motion for rehearing to adjure the Court to reverse its denial of the Petition for Review.

ISSUES PRESENTED FOR REVIEW

Issue 1: The Supreme Court should have granted the Petition for Review because they must determine which is sovereign, the State of Texas (Hosner v. DeYoung 1847) or the Citizen of Texas (Dickson v. Strickland 1924.) 2
Issue 2: The Supreme Court should have granted the Petition for Review because this court in 1924 determined in Dickson v. Strickland 265 S.W. 1012 that nothing against the rights of the Sovereign Citizen could be "presumed." 4
Issue 3: The Supreme Court should have granted the Petition for Review because no other case on file has ever challenged the state possession of "absolute sovereign immunity" "presumed" within the Texas Tort Claims Act (TTCA). 5

Issue 4: The Supreme Court should have granted the Petition for Review because they have a Constitutional Duty to protect the property rights of the Petitioner by declaring the limits of authority delegated to the State by the Sovereign Citizens in the Bill of Rights of the Constitution of Texas. 6

Issue 5: The Supreme Court should have granted the Petition for Review because a denial of this Petition is an unconstitutional combination of two or more branches of government in Texas in violation of Art 2 Sec 1 dissolving the State of Texas. 8

Issue 6: The Supreme Court should have granted the Petition for Review because this Court has jurisdiction and must review the Constitutionality of the Texas Tort Claims Act under Art 16 Sec 48. 9

Issue 7: The Supreme Court should have granted the Petition for Review because this Petition offers the one time opportunity for the Supreme Court of Texas to correct "public policy" and restore lawful government (the republican form) as mandated by the Texas Constitution Art 1 Sec 2. 11

ARGUMENT

Issue 1: The Supreme Court should have granted the Petition for Review because they must determine which is sovereign, the State of Texas (Hosner v. DeYoung 1847) or the Citizen of Texas (Dickson v. Strickland 1924.)

Argument & Authorities

The Petitioner belligerently¹ asserts that this court, created for his benefit² by the Constitution of Texas through his conditional tacit consent for the protection of his property, must

¹ Black's Law Dictionary 6th edition, p 155. "Belligerent - In international law, as an adjective, it means engaged in lawful war." Locke p. 281: "nay where an appeal to the Law, and constituted judges lies open, but the remedy is deny'd by a manifest perverting of Justice, and barefaced wresting of the Laws, * * * there it is hard to imagine any thing but a State of War." (Trial Court Clerk's file page 98) re: footnote #3.

² Art 1 Sec 2 Present Texas Constitution of 1876.

reverse the denial of his Petition for Review. This motion for rehearing being the last appeal document to be filed evincing the unwillingness of the Supreme Court to exercise their duty to protect the Petitioner and their willingness to continue a "state of war" with the Petitioner places the Petitioner into a lawful belligerent position. The Citizen of Texas cannot, and will not, live not knowing if the State is sovereign over them to kill them without judicial recourse unless waived or the Citizen is sovereign over the state "they create for their benefit" as described in the Texas Bill of Rights.

Hosner v. DeYoung 1847 WL 3503 (Tex.) says that the State of Texas cannot be sued without its permission. That case does not cite any law whatsoever to support their conclusion. The Hosner case became the authority for all other court actions against the State. In 1969 the Texas Congress passed the Texas Tort Claims Act (TTCA) that waived some of that "presumed absolute sovereign immunity" unlawfully derived solely from the Hosner case to kill the Citizen and destroy all their property without recourse to "her courts" unless waived in said Act or by Congressional Resolution first obtained by complainant.

The Hosner ruling was in violation of every fundamental premise of government in the new world including the U.S. Constitution, the

U.S. and Texas Declaration of Independence, the Constitutions of the Republic of Texas 1836, the State of Texas 1845, and the current Texas Constitution of 1876. This was exhaustively shown by the Petitioner in over 150 pages of Appellant documents with as many quotes of the greatest writers of political philosophy to walk the earth adopted by our early American and Texas forefathers.

Issue 2: The Supreme Court should have granted the Petition for Review because this court in 1924 determined in Dickson v. Strickland 265 S.W. 1012 that nothing against the rights of the Sovereign Citizen could be "presumed."

Argument & Authorities

The Petitioner belligerently asserts that this court must reverse the denial of his Petition for Review. The Petitioner has shown that State possession of "absolute sovereign or governmental immunity," in the TTCA is an unlawful "presumption" in Texas.

The Petitioner and Respondents have agreed that "absolute sovereign or governmental immunity" to kill the Citizen, required in order to waive any portion thereof in the TTCA, is a "presumption." The Petitioner has shown in McMullen v. Hodge 1849 WL 4062 (Tex.) that such a "presumption" cannot be made against the lives, liberties and possessions of the "Sovereign Citizens" of Texas without a "direct, explicit affirmative declaration of such intent" in the Constitution of Texas. The 1848 McMullen case was quoted in the Dickson v. Strickland 265 S.W. 1012 1924 Supreme

Court case which went into great detail to describe how the "Sovereign Citizen" can put women in the Texas Whitehouse.

Issue 3: The Supreme Court should have granted the Petition for Review because no other case on file has ever challenged the state possession of "absolute sovereign immunity" "presumed" within the Texas Tort Claims Act (TTCA).

Argument & Authorities

The Petitioner belligerently asserts that this court must reverse the denial of his Petition for Review. No case cited by the Respondents or Court of Appeals addressed the State possession of absolute sovereign immunity "presumed" in the TTCA at the foundation of this appeal.

The Respondents proffered 34 cases in their Appellees' Reply Brief and none of those cases addressed the State possession of absolute sovereign immunity "presumed" in the TTCA of 1969. The Court of Appeals cited 8 cases in their "Memorandum Opinion." Again, none of their cases addressed the "presumption of absolute sovereign immunity" on appeal herein. Therefore, the Supreme Court of Texas cannot pretend that the State of Texas has answered or addressed any issue in this appeal. It is obvious to all that possession of "absolute sovereign immunity" by the State of Texas cannot be lawfully defended by the State and therefore, this appeal is merely ignored by writing an inapplicable Memorandum Opinion

with irrelevant citations and dismissed by "denial" from the Supreme Court.

All cases proffered to Petitioner have been those that challenge specific provisions of the TTCA or certain exceptions to the waivers of the TTCA to determine if they violate the U.S. Constitution or the Texas Constitution. But no case on file has ever challenged the possession of absolute sovereign immunity "presumed" in the TTCA which is brought by this instant appeal. Therefore, Avery v. GBRA must become the authority on the lawfulness of the State's "presumption" of "absolute sovereign or governmental immunity" to kill the Citizen and destroy all their property without recourse to the courts. But this issue on appeal for the first time cannot be left unanswered.

Issue 4: The Supreme Court should have granted the Petition for Review because they have a Constitutional Duty to protect the property rights of the Petitioner by declaring the limits of authority delegated to the State by the Sovereign Citizens in the Bill of Rights of the Constitution of Texas.

Argument & Authorities

The Petitioner belligerently asserts that this court must reverse the denial of his Petition for Review. This Court has a duty to protect the Petitioner's property rights from government invasion and harm even if he does not know the extent of those rights or fails to present them adequately.

The Supreme Court of Texas has a duty to enforce the "Bill of Rights" (Article 1) of the Texas Constitution against the Texas Legislature when it usurps judicial constitutional authority for the purpose of harming the Citizens of Texas without recourse to judicial relief. The Texas Legislature cannot be permitted to close any courts (Art 1 Sec 13) by limiting their jurisdiction in cases brought against the State for injury done to Citizens in their lands, goods, persons, or reputations (Art 1 Sec 13), or taking, damaging, or destroying property for public use (Art 1 Sec 17), or deprivation of life, liberty, or property (Art 1 Sec 19).

The Bill of Rights provisions of the Texas Constitution referenced above are to be inviolate and excepted from the powers of government forever under Art 1 Sec 29:

To guard against transgressions of the high powers herein delegated, we declare that **everything in this "Bill of Rights"** is excepted out of the general powers of government, and shall forever remain inviolate, **and all laws contrary thereto**, or to the *following provisions* (only Sec 30 of Art 1 to date), **shall be void**. (bolding, italics and parenthesis added)

This means that the Texas government acting through its officers, employees and agents cannot injure a Citizen in their land, goods, person, or reputation, etc. without a trial upon the merits and a just repair made. Art 1 Sec 29 further means that any and every law or Act, like unto the TTCA, which closes district courts, guaranteed to be open by Art 1 Sec 13, by the denial of

jurisdiction for suits against the State for violations of the Bill of Rights shall be void. Art 1 Sec 29 is written wholly and solely against State infringement upon the Bill of Rights.

Issue 5: The Supreme Court should have granted the Petition for Review because a denial of this Petition is an unconstitutional combination of two or more branches of government in Texas in violation of Art 2 Sec 1 dissolving the State of Texas.

Argument & Authorities

The Petitioner belligerently asserts that this court must reverse the denial of his Petition for Review. The TTCA constitutes the exercise of judicial power by the Legislature and a change in the fundamental form of government resulting in the dissolution of the State of Texas.

The constitution of the legislative is the first and fundamental act of society, whereby **provision is made for the continuation of their union, under the direction of persons, and bonds of laws, made by persons authorized thereunto, by the consent and appointment of the people**, without which no one man, or number of men, amongst them, can have authority of making laws that shall be binding to the rest. When any one, or more, shall take upon them to make laws, **whom the people have not appointed so to do, they make laws without authority, which the people are not therefore bound to obey; by which means they come again to be out of subjection**, and may constitute to themselves a new legislative, as they think best, being in full liberty to resist the force of those, who without authority would impose any thing upon them. **Every one is at the dispose of his own will, when those who had, by the delegation of the society, the declaring of the public will, are excluded from it, and others usurp the place, who have no such authority or delegation.**³

³ Locke, John, *Two Treatises of Government* 1689 ed. Peter Laslett (Cambridge Texts in the History of Political Thought Cambridge University Press 40 West 20th Street, New York, NY 10011-4211, USA) p. 407. www.Constitution.org/jl/2ndtr19.htm

The TTCA has instituted an unlawful and repugnant combination of the Legislature and the Judiciary wherein the Legislature can determine when the court has jurisdiction to hear and repair crimes committed by the State against the Citizen. Art 2 Sec 1 is to prevent this type of despotism in Texas:

The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and **no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others**, except in the instances herein expressly permitted. (bolding added)

Certainly the Legislature may have authority to determine the geographic jurisdiction and certain subject matter jurisdictions of the various courts but it cannot deny jurisdiction to any court for an injury done to a Citizen in their lands, goods, persons or reputations, etc. by the State of Texas protected by Article 1.

The TTCA infringes on the most fundamental principles of government and the intent of every provision of the Texas Bill of Rights as exhaustively shown by the Petitioner since filing suit.

Issue 6: The Supreme Court should have granted the Petition for Review because this Court has jurisdiction and must review the Constitutionality of the Texas Tort Claims Act under Art 16 Sec 48.

Argument & Authorities

The Petitioner belligerently asserts that this court must reverse the denial of his Petition for Review. The Judiciary of

Texas has jurisdiction and must review the constitutionality of the TTCA.

The Texas Judiciary has authority from Art 16 Sec 48 to determine if the "presumption" of "sovereign immunity" to harm the Citizen without recourse to the courts at the base of the TTCA is repugnant to the Constitution:

All laws and parts of laws now in force in the State of Texas, **which are not repugnant to the Constitution of the United States, or to this Constitution**, shall continue and remain in force as the laws of this State, until they expire by their own limitation or shall be amended or repealed by the Legislature. (bolding added)

Obviously, laws, common and statutory, that were in place at the time of the ratification of the present Texas Constitution cannot remain in force if they are repugnant to the constitution. When an Act of the Legislature "presumes" to have "sovereign immunity" to harm the Citizen without judicial recourse based upon a common law decision in Hosner v. DeYoung and that Act is used by the State to deny jurisdiction to the courts to hear claims by an injured Citizen against the State, the Supreme Court has superior constitutional jurisdiction on appeal to determine if that "presumption" at the base of the TTCA, agreed to by all parties, is "repugnant" to the Constitution of Texas.

Petitioner has shown a plethora of fundamental law and logic at the trial and appellate courts proving that nothing is more

repugnant to the Texas Constitution than State absolute sovereign immunity to kill the Citizen and steal or destroy all his property, without recourse to the courts unless waived by statute or congressional, "whole body," resolution. And since the State does not have a scintilla of sovereign immunity to harm the Citizen, they cannot waive or assert any portion thereof in the TTCA. The Texas Tort Claims Act is void and incurable under the present Constitution of Texas and the Supreme Court of Texas has an unavoidable duty to declare it so.

Issue 7: The Supreme Court should have granted the Petition for Review because this Petition offers the one time opportunity for the Supreme Court of Texas to correct "public policy" and restore lawful government (the republican form) as mandated by the Texas Constitution Art 1 Sec 2.

Argument & Authorities

The Petitioner belligerently asserts that this court must reverse the denial of his Petition for Review. Present "public policy" based upon "protection of State tax coffers" and marketed as "governmental concern for the poor tax-burdened citizen" is created by and dependent upon violation of the most fundamental constitutional laws in Texas, i.e., tyranny.

The Petitioner has exhaustively shown on appeal that the colossal judicial superstructure of "sovereign and/or governmental immunity" in Texas is built upon no Constitutional or fundamental

foundation whatsoever and is termed a "confusing maze of common-law principles and statutes"⁴ by legal scholars. In 1963, the Arizona Supreme Court said, upon declaring it void and incurable, that "The whole doctrine of governmental immunity from liability for tort rests upon a rotten foundation."⁵

Political "public policy" demanded the perception of modern Texas as a democracy rather than a Republic as described in the Bill of Rights (Art 1). Democracy is defined as:

That form of government in which the sovereign power resides in and is exercised by the **whole body** of free citizens directly or indirectly through a system of representation, as distinguished from a monarchy, aristocracy, or oligarchy.⁶ (bolding added)

It is fallaciously perceived today that "sovereign power resides in and is exercised by the whole body of free citizens" rather than residing in and exercised by each Individual Citizen as described in the Texas Constitution. The Citizen is striped of their sovereignty under a democracy. But under the law of the present constitutional Republic of Texas, the Citizen retains their sovereign power to bring a "Bill of Rights" suit against his own State that he created for his protection.

⁴ Rhodes, Comment, *Principles of Governmental Immunity in Texas*, St. Mary's L.J. 679 682 (1996) quoted in O'Connor's Texas Causes of Action 2004 p. 621.

⁵ Stone v. Arizona Highway Commission 381 P.2d 107, 109. (one of many such quotes on appeal)

⁶ Black's Law Dictionary 6th edition, p 432.

A Republic is defined as, "That form of government in which the administration of affairs is **open to all the citizens.**"⁷

Therefore, under a republic, each citizen retains their sovereign power to protect their property through the government they create for their own benefit. The Declaration of Independence of Texas and the United States of America reflect these first principles of government from which our constitutions are derived.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right or the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.⁸

The government is elevated over the citizen in a democracy and the system is reduced to an "elective despotism" just as Thomas Jefferson said.⁹

As of 9-11 we have seen an acceleration of despotic democracy against the property rights of Citizens under the so-called "war on terror." This "public policy" is three-fold. First, the citizen must lose his liberty (Patriot Act) and property¹⁰ to secure the

⁷ Black's Law Dictionary 6th edition, p 1302.

⁸ The unanimous Declaration of the thirteen united States of America.

⁹ Petition for Review, 10.

¹⁰ Kelo v. City of New London (theft of private property for economic good of whole body)

safety of the "whole body." Second, the citizen can be knowingly or unknowingly sacrificed (9-11) for the future good (global democracy) of the "whole body." And third, Citizens protecting their property are slandered and reported to Homeland Security as "domestic terrorists"¹¹ for protection of the "whole body."

This three-fold "public policy" was inaugurated on 9-11 as admitted to by the lease holder of the World Trade Center, Larry Silverstein, on PBS television.¹² He said that building seven (47 stories tall) was conventionally "pulled" at 5:30 PM on 9-11, meaning that towers 1 and 2 were also pre-wired with explosives to commence this new age of "world wide democracy."

This is where "democracy" and "sovereign immunity," together, have taken us. This is the duty of, and one time opportunity for, the Supreme Court of Texas to restore Texas to its lawful foundation, stop legislative usurpation, restore the Republic, and resist tyranny. The Petitioner trusts that this court will perform its duty, honor their forefathers, and protect their posterity, regardless of their future careers, in the name of Christ Jesus.

¹¹ Avery v. GBRA

¹² Google "Silverstein's admission" and watch the video yourself.

PRAYER

For the reasons stated in this motion, Petitioner asks the Court to grant this motion for rehearing, grant his Petition for Review, request the record from the Fourth Court of Appeals, set this case for oral argument, and after argument, sustain the Petitioner's issues for review, reverse the judgment of the trial and appellate courts, and remand for a trial on the merits.

Further, the Petitioner prays for any other relief to which he may be entitled.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Rehearing from the Denial of Petition for Review was forwarded by certified mail, return receipt requested # 7004 2890 0004 4558 3421, on this the _____ day of _____, 2005 to the following:

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