SUPREME COURT OF THE STATE OF RIDGEWAY

STATE OF RIDGEWAY *v.* LX1NAS

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF RIDGEWAY

No. 22-03. Decided April 15, 2022

The petition for a writ of certiorari is denied.

JUSTICE POWELL, with whom JUSTICE JACKSON joins, concurring in the denial of certiorari.

I concur in the denial of certiorari. I write to address an issue that has seemed to have been made obvious throughout this litigation.

This is the second time this case has come up before us, and this is the second time that we have denied certiorari on the issues presented by the State. Each time, the State has renewed the same question before the lower court through different motions, and, when an adverse ruling has been rendered, filed a petition for a writ of certiorari in this Court. Cf. *Lx1nas* v. *State,* 1 R. Supp. 1 (2022), cert. denied, 1 Rid. 501 (2022) (denying motion to dismiss); 1 R. Supp. 1 (2022) (granting the State's motion for summary judgment, but ruling in respondent's favor, leading to the present petition). Following the Superior Court's grant of summary judgment, the State filed the present petition before us. In both cases, the State included the following question in its petitions for writs of certiorari: "Whether the State of Ridgeway may be the named defendant in a suit seeking to enjoin, and declare as unconstitutional, an act of the State Senate."

We think the State is running on thin ice in attempting to present questions of law before us that we have previously denied review on. Although the denial of certiorari "imports no expression of opinion upon the merits of the case," *United States* v. *Carver,* 260 U. S. 482, 490 (1923), we think it suffice to say that efforts to convince us to hear an

issue renewing a question in successive petitions for writs of certiorari is futile in nature, and highly discouraged by this Court.*

This State does not have a statute requiring that all appeals before us come from final judgments of the Superior Court, like federal law. See 28 U. S. C. §1291. And even if we did, the State, in their first opinion, correctly noted that sovereign immunity was an issue that could be presented in an interlocutory appeal. See Pet. for Cert., in *State* v. *Lx1nas,* M. T. 2022, No. 1, p. 6-7. But the renewed issues indicate that in the future, other parties may use the same solution of moving to dismiss, then petitioning the court, and renewing their claims in a motion for summary judgment if we deny certiorari for issues that would not fall under the collateral order doctrine. Such actions would be designed and used to "harass opponents and to clog the courts through a succession of costly and time-consuming appeals," *Flanagan* v. *United States,* 465 U. S. 259, 264 (1984), skirting the fact that delay is "undesirable in civil disputes." *Richardson-Merrell, Inc.* v. *Koller*, 472 U. S. 424, 433-434 (1985). The time has come, therefore, where a solution through our two coordinate branches is needed to ensure that litigation is not repeatedly disrupted by "piecemeal appellate litigation" that a litigant knows is baseless, frivolous in nature, or has been intentionally filed to delay and disrupt proceedings in a lower court. *Id.,* at 430.

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* Of course, there are instances where we should reconsider a case we have decided or a petition for a writ of certiorari following subsequent developments in law that could demand a different result. In those instances, a party could file for rehearing under this Court's Rule 34 (pun not intended). The present case before us, however, would most likely not be sufficient for rehearing.

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JUSTICE JACKSON, with whom THE CHIEF JUSTICE joins, and with whom JUSTICE POWELL joins in part, concurring in the denial of certiorari.*

Petitioners have attempted this argument four times in two different courts of record and the court, on each occasion including this, have rejected it. When a matter is denied, it is denied. Attempting, for all intents and purposes, to get a rehearing on a question by filing two of the same petitions for writ of certiorari is bad practice and as evident through our decisions - a rejected one. While some of their arguments have merit, I do not believe they push it over the threshold of substance required for review.

One thing that is absolutely scary is the increased deference to case law than doing statutory analysis. The Court, historically, is the weakest of the branches of government and not intended to be some sort of gatekeepers of the Constitution as some have poised. Instead, through matters of interpretation - we "say what the law is." *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803). Other than crude debates of liability, no party nor the judge in his opinion, attempted to interpret and "say what the law is." as pertaining to 1 R. Stat. § 216 and 7 R. Stat. § 302. Attempting to analyze the cause of action (1 R. Stat. § 216) will give the reasons as to why this court denied certiorari.

My approach to law has always been a pragmatic one - I care far more about material and substance than words on

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* JUSTICE POWELL does not join paragraphs two, three, and four, as well as the last paragraph of this opinion.

a page. I will not vote in favor of any petition for certiorari which does not demonstrate itself to be material. A good argument, or even correct legal argument does not give entitlement to relief just as here it does not give entitlement to certiorari. An erroneous legal argument would have a better chance of getting certiorari if it is coupled with substance.

I would consider substance to be something other than the words on a page, if a matter only exists on paper and not in reality then it is a matter that does not hold substance. An argument does not hold merit if it does not hold substance, and I would consider merits to be the antithesis of technicality. Therefore, if your argument is only contingent on mere technicality then it is not worthy of appeal, unless you are able to demonstrate substance arising out of that technicality that exists in reality and not words on a page.

Petitioner, in their argument about parties, attempts to grasp for straws as to who the actual defendant is. In the respondent's civil complaint, they make their statement of parties very clear: "The Parks and Wildlife Officer was acting in his official capacity as an agent for the State of Ridgeway, therefore, representing the State." See Compl., at 1, ¶ 3. Petitioner attempts to overcomplicate the matter and draw technical grounds through the nomenclature of the complaint when in reality, their name was set that way because "Cases against an individual in official capacity as an agent of the government shall be construed as cases against the government." 1 R. Stat. § 220. Whether the name of the case ought to be "*Lx1nas* v. *AdamAxer33*" or "*Lx1nas* v. *State of Ridgeway*" is not of material concern to the court because it is harmless error at best. Its statement of parties still reflects the nature of the suit and the party seeking to be enjoined by the respondent-plaintiffs.

The legislature is clear about its standing on pre-enforcement claims. They are rejected. 1 R. Stat. § 218 grants the

government a wide range of immunity to claims, except for 1 R. Stat. § 216. 1 R. Stat. § 216 creates a cause of action for injury that is "concrete, [and] non-hypothetical[.]" The legislature uses two words to describe the type of injury that must be asserted for them to get standing under this claim. The first being "concrete" which is "[e]xisting in reality or in real experience[.]" American Heritage Dictionary Online (5th ed. 2022). The next requirement is non-hypothetical, meaning the harm cannot just exist on paper. No matter the likelihood of that hypothetical, it still remains just a hypothetical, explicitly not included by law. There is no constitutional right to seek pre-enforcement review over a claim, furthermore the statute does not preclude the review of the constitutionality of an action. When the Senate commands, the court must follow.

The capacity to issue an injunction is contingent, among other things, the ability to enforce it. A statewide injunction is inherently unenforceable. What remedy would the court have if its order was violated by those enjoined? Take deputy John Doe before the judge for a contempt hearing? The ridiculous means for enforcement of this injunction thereby serve as its principal flaw.

The statute does not permit statewide injunctions. It also does not word itself as a vehicle for judicial review of an enactment by the legislature. Attempting to use the statute as a vehicle for judicial review, when other mechanisms exist, gave rise to its ambiguity and the confusion as seen in this case. It exists entirely to review executive actions and its relief package is narrowly tailored to providing relief from those specific actions. This is evident in the wording of the language "policy, order, procedure, or directive" which, for all intents and purposes, is any executive action. The legislature authorizes two remedies for this cause of action "permanent restraining order against the government prohibiting them from enacting this policy, order, procedure, or directive[]" and "injunctive relief reversing any harm done."1

R. Stat. § 216. Other than the initial arrest, plaintiff-respondents did not identify any "policy, order, procedure, or directive" which exists to systematically deprive their rights. While I find that in some way shape or form the initial arrest falls under this category, the relief demanded must be narrowly tailored around the action being disputed. In the same manner the court cannot enjoin the entire government from making identical policies to one it has found unconstitutional, it cannot enjoin the entire government from making identical arrests to the one it has found unconstitutional here.

The court has an additional action that it can take to ensure justice thereon - judicial review. While petitioners are correct that the courts cannot erase law in the statute books, it does however have the ability to make declarative constitutional findings and comport them into precedent. A declaration that a given action, empowered by law, was unconstitutional due to the law being contrary to the constitution in the first place is not outside the scope of equitable remedy afforded to the courts. A declaration is much different than a specific performance injunction, and judicial review of a statute is hardly any different than the circumstances I provided. Just because the Supreme Court severs an unconstitutional law does not mean that they simultaneously enjoin the entire government preventing them from enacting it. Instead, it is just a declaration that the given law is unconstitutional, and any action emanating from it will be inherently unconstitutional as well and will be seen in such light by the courts who will subsequently reverse it. It is within the scope of the Superior Court to make a declarative finding that an action contingent on a statute was unconstitutional, and therefore sever from the law that it finds to be repugnant to the Constitution. *Marbury* v. *Madison*, *supra*.

While I sustain and generally agree with the spirit of the arguments petitioners make about pre-enforcement review,

I do not believe that this case is pre-enforcement review, and I quite frankly have no absolute understanding as to what substance they derive their argument from. The usage of past-tense verbs in respondent-plaintiffs pleadings and their statement of facts "stopped[,]" "asked[,]" or "arrested" creates a discontinuity from the arguments petitioners are making about a pre-enforcement challenge and then the actions being disputed are past-tense. What I imagine is that petitioners are attempting to state that seeking an injunction against all officers of the State is itself a pre-enforcement action, as part of a multi collateral argument against the statewide injunction demanded by respondent-plaintiffs. This however, makes very little sense as to the merits of the case. The respondent-plaintiffs, at no point did they allege facts or make a claim in their cause of action which would cause the implication that they were seeking pre-enforcement review on future acts in the legislation, only review of the parts of the legislation they are in collateral with. The argument that this was a pre-enforcement challenge would be valid only if the respondent-plaintiffs made a claim which is contingent on a future set of acts rather than ones that have already transpired. But, because respondent-plaintiffs made their claim entirely on facts that have already transpired, it is a post-facto review.

I was close to granting review entirely because of one of the reliefs ordered by the Superior Court. According to the Superior Court, "[t]he State of Ridgeway as a whole; and by proxy its actors, agents and otherwise enforcement officers shall be prohibited from enforcing this act through an injunction." 1. R. Supp. 1 (2022). It is erroneous, using the aforementioned legal theory I previously ascertained. The question then turns to whether this error ought to warrant review. Ordering briefs is a pesky process, and takes a lot of time for a case to proceed through the briefing process and oral argument. Parties ought to only be burdened to such lengthy and scrupulous procedure when the court is in

a position to make a correction of substance. It is bad policy for the court to enjoin parties to the appellate process when a prima facie review of the merits would not dictate a change of substance beyond an amendment of record or, a recurring analogy in this opinion, changing words on a paper. If we were to overturn the injunction, law enforcement officers still wouldn't be able to arrest others for a violation which was declared unconstitutional. Furthermore, I highly doubt that the Superior Court would be calling deputy John Doe in for a contempt hearing because he violated its orders. Furthermore, albeit a haphazard approach without due regard to the power of its prescription, the Superior Court at face value seems to have used "injunction" as a means to give clear instructions to law enforcement officers and ease ambiguity about whether the law ought to be enforced or not. Because of its usage as a tool to ease ambiguity than actually compel a person with court order to take a specific or overt action, a correction to this would not result in any change in substance. In fact, if the court were to grant review of just this issue alone, it would raise the confusion if we were to strike down an injunction while preserving other parts of the judgment. The fact that it would not produce a change in substance, and would only serve to make the matter more complex for the enforces and the general public, then the matter ought not to be taken up.

Law is built on a foundation of statute and reason. Two things have been neglected in these proceedings. If both parties attempted to really understand the statute and its spirit, a lot of the confusion would be resolved. Statute should be principally relied on in a legal argument as foundation with precedent to fill in its ambiguities. If you cannot find your answers directly in statute, or you need guidance as to how to interpret it to your facts, only then should you defer to case law.