

No. 22-412

IN THE
Supreme Court of the United States

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

BRIEF FOR AMICI CURIAE DENNIS HOPKINS,
HERMAN PARKER, JR., WALTER WAYNE KUHN,
JR., BRYON DEMOND COLEMAN, JON O'NEAL,
AND EARNEST WILLHITE, EACH INDIVIDUALLY
AND ON BEHALF OF A CLASS OF ALL OTHERS
SIMILARLY SITUATED

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0LVV & RQVW.....	passim
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7 K Hopkins 3 ODLQWLIIV KDYH D VWURQJ SHUV
 LQWHUHVW LQ WKH GLVPDQWOLQJ RI 0LVVLVV
 GLVHQUIUDQFKLVHPPHQW VFKHPH ZKLFK LV URRV
 GLVFULPLQDWLRQ DQG FRQWLQXH WR WKLV GD\ WR GLVSURS
 LPSDFW %ODFN 0LVVLVVLSLDQV 7KH FRQVWL
 0LVVLVVLSL·V FULPLQDO GLVHQUIUDQFKLVHPPHQW
 FDUHIXO FRQVLGHUDWLRQ E\ WKLV &RXUW ,I WKH
 JUDQW FHUWLRUDUL Harceş XODLQVLDYRU RI WKH
 WKH &RXUW·V GHFLVLRQ ZRXOG UHVWURH WKH ULJKW
 02@ cp K E W P F 3 3 0 p K O V D p v 0 V D @ S V W I R V W L S E Y D F E G P a ° @ q pt ° H

WKH 0LVVLVVLSSL &RQVWLWXWLRQ LQGLYLGXDOW
LQ 0LVVLVVLSSL VWDWH FRXUWV RI QXPHURXV
ULJKW WR YRWH IRU WKH UHVV RI WKHLU OLYHV

DPHQGPHQWV WKDW UHWDLQHG DOO EXW RQH

QHYHU FXUHG WKDW LPHSLURSHU LWQVHHQW HUH
SDVVDJH RChetWL City of Houston) G
WK & LU QRU D 'UHHQDFW>PHQW@
VLJQLÀFDQMayEd D. Calderon) G
G & LU LV VXIÀFLHQW WR SXUJH D GLVFUI
RI LWV RULJLQDO WDLQW 5DWKHU WKH WDLQW
WKH UHYLVHG YHUVLRQ RI WKH ODZ GRHV QRW
DUJXDEO\ FDUU>\@ IRUZDUG WKH HIIHFWV RI DQ\
LQWHQW RQ WKH SDUW RI AMKth.>SULRU@ >O@HJ
Perez

7

FRQYHQWLRQ RI DGRSWHG D QHZ QDUU
XQDQLPRXV MXU\@ UXOH DQG LWV VWDWHG SXUS

GHOHJDWHV WR 0LVVLVVLSSL.V &RQVWLWXWLF
 `UHF RJQLJHG WKDW QR VLQJOH >IDFLDOO\
 UHVWULFWLRQ VWDQGLQJ DORQH ZRXOG DFFRP
 ZKLWH SROLWLFH ~~GHFODWRU~~ WKHUHIRUH `VSHFLÀH
 VHYHUDO UHTXLUHPHQWV WR TXDOLI\ IRU WKH H
 LQFOXGLQJ D OLWHUDF\ WHVW DQG D FULPLQDO GLVH
 SURYLVLQR WKHVH UHTXLUHPHQWV ZHUH GHVLJQ
 DQG LQWHUORFN WR FUHDWH DQ HHHFWLYH ED
 \$PHULFDQ SROLWLFDO SDUWLFLSDWLRQ ZLWKLQ

7KH GHOHJDWHV PHWLFXORXVO\ `VWUXFWXUHG
 GLVHQIUDQFKLVPHQW SURYLVLQR HQDFWHG D
 WKH &RQVWLWXWLRQ WR QDUURZ WKH \$IUL
 IUDQFKLVH ~~EDVLP~~ PLWHG WKH UHDFK RI WKH SURY
 `WR D FDUHIXOO\ VHOHFWHG OLW RI FULPHV WKD
 PRUH \$IULFDQV \$PHULFDQV WKDQ ZKLWHVµ E\
 SULPDULO\ RQ SURSHUW\ UHODWHG RIIUWHV

7KH OHJLVODWXUH PD\ E\ D WZR WKLUGV YR
ERWK KRXVHV RI DOO PHPEHUV HOHFWHG UHV
ULJKW RI VXIIUDJH WR DQ\ SHUVRQ GLVTDOL
UHDVRQ RI FULPH EXW WKH UHDVRQV WKHUHIR
EH VSUHDG XSRQ WKH MRXUQDOV DQG WKH YRW
EH E\ \HDV DQG QD\V

0LVV &RQWW;,, †

1RWKLQJ LQ WKH &RQVWLWXWLRQ SURYLGHO
SDUDPHWHUV IRU OHJLVODWRUV. GHOLEHUD
UHTXLUHPHQW WKDW OHJLVODWRUV DFW LQ D UDF
LQ UHVWRULQJ⁴ ~~SRWKRU~~ UHJRWLRQ 'DOORZHG
WKH OHJLVODWRUV FRPSOHWH GLVFUHWLRQ WR
YRWLQJ ULJKWV ~~WRUHWLRQ~~ WRUHHQVXUHG WKDW
ZKLWHV FDXJKW XS LQ WKH FULPLQDO MXVWLFH
SRVVLEOH UHPHG\ DQG FRXOG UHGHP WKHLU μ U
'U 3UDWW UHVHDFKHG WKH UHVWRUDWLRQ R
SXUVXDQW WR ~~6HFWLRQ~~ LQ WKH Δ UVW WKUHH
WKH &RQVWLWXWLRQ ZDV HQDFWHG DQG GHV
WKH 0LVVLVVLSSL /HJLVODWXUH UHVWRUHG YRW
OHDVW LQGLYLGXDOW ~~3UDWQJRWLQJ~~ WRLPH
HYLGHQFH WKDW HYHQ D VLQJOH \$IULFDQ \$PHUL
UHJDLQHG WKH ULJKW WR YRWH EHWZHHQ DQ

14. Id. DW ^

Id.

Id. DW ^

17. 'HFODUDWLRQ RI 'RURWK\ 2 ~~Hart~~ ~~SWW~~ 3K ' 'NW
v. Hosemann 1R FY '3-).% WKHQ FRQVROLGDWHG ZL
Hopkins v. Hosemann 1R FY '3-).% 6 ' 0LVV
DW ^

18. Id. DW ^^

ODZ ZRXOG KDYH EHHQ HQDFWHG ZLWKRXXW WKL
 8 6 Hunter GRHV QRW SHUPLW D VWDWH
 PHHW LWV EXUGHQ VLPSSOHSEFUV KRZLQJ WKDW D
 OHJLVODWXUH PLJKW KDYH HQDFWHG WKH FKDC
 UDFH QHXWUDO UHDEVROXTSLWVHBRXUWV
 WR FRQVLGHU ZKHWKHU WKH OHJLVODWXUH W
 FKDOOHQJHG ODZ ZRXOG KDYH GRQH VR 'LQ WKH D
 UDFLDOO\ GLVFULPLQDWRU\ USEPARO VLYDWLRQ μ
 Underwood v. Hunter) G WK & LU
 FRQVLGHULQJ WKH PRWLYDWLRQV RI WKH
 OHJLVODWXUH WR GHWHUPLQH ZKHWKHU 'WKH VDP
 KDYH UHVXOWHG KDG WKH LPSHUPLVVLEOH SXUS
 FRQVLGHULQJ μ 8 6

8QGHU Hunter WKH RQO\ OHJDOO\ UHOHYDQW LQWHQW
 RI WKH OHJLVODWXUH WKDW HQDFWHG WKH SU
 %XW WKH HQ EDQF PDMRULW\ GLG QRW FRQÀQH
 FRQVLGHULQJ ZKHWKHU WKH GHOHJDWHV ZRXOG
 6HFWLRQ .V FULPLQDO GLVHQIUDQFKLVHPHQ
 DEVHQW GLVFULPLQDWRU\ LQWHQW ,QVWHDG W
 LQFRUUHFWO\ ORRNHG WR WKH 0LVVLVVLSSL /HJL
 WR DPHQG 6HFWLRQ GXULQJ D FRPSUHKHQVLY
 WKH VWDWH.V HOHFWLRQ ODZV LQ WKH V DQC
 '6HFWLRQ ZRXOG KDYH EHHQ SDVVHG LQ LWV
 ZLWKRXXW UDFLDOO\ PRWLYDWLRQ μ :KLOH
 WKH)LIWK &LUFXLW GLG QRW FRQVLGHU 6HFWLR
 Q WKH GLVWULFW FRXUW HUURQHRXVO\ FRQVI
 FRQFHUQLQJ WKH 0LVVLVVLSSL /HJLVODWXUH.V ID
 6HFWLRQ LQ WKH V³QH DUO\ D KXQGUHG \HI
 6HFWLRQ .V RULJLQDO HQDFWPHQW³LQ DV
 6HFUHWDU\ RI 6WDWH.V 'ÀQDO EXUGHQ XQGHU Hur

See 2 UGHU 'Hess v. Hosemann 1R FY
 '3-).% @ '0)

% X W Subsequent OHJLVODWXUH.V IDLOXUH WR
 ODZ KDV QR UHOHYDQFH WR WKH TXHVWLRQ RI
 OHJLVODWXUH ZRXOG KDYH HQDFWHG WKDW OD
 GLVFULPLQDWH, e.g. BICOMLORVQ %HQHAW *XDU
 &RUS Y /79 &RUS 'D SURSRVDO
 WKDW GRHV QRW EHFRPH ODZ μ LV D SDUWLFXO
 EDVLV IRU LQIHUULQJ WKH LQWHQW RI DQ HDU
 Medical Center Pharmacy v. Mukasey) G
 WK &LU '>\$@EVHQW D YDOLG DPHQGPH
 WKH VWDWXWRU\ VWUXFWXUH WKH RSLQLRQ RI WK
 LQIRUPV XV OLWWOH LQ GHFLGLQJ ZKDW WKH
 LQWHQG μ \$V D PDWWHU RI ERWK ODZ
 PRWLDWLRQV RI WKH V 0LVVLVVLSSL /HJLVOD
 WR DPHQG 6HFWLRQV DQG FDQQRW EH LPS
 GHOHJDWHV WR WKH &RQVWLWXWLRQDO &R
 HQDFWHG WKHVH SURYLVLRQV RU WR WKH 0LV
 YRWHG LQ IDYRU RI WKH DPHQGPHQWV WR 6HFW
 DQG

ORUHRYHU WKH 0LVVLVVLSSL /HJLVODWXUH

IIHFVWLYHO\HUMERLVFKUVD&RXUW VKRXOG JUDQW
UHYLHZ WR GHWHUPLQH ZKHWKHU VWDWXWHV RU
ZLWK GLVFULPLQDWRU\ LQWHQW PD\ EH FOHD
GLVFULPLQDWRU\ WDLQW PHUHO\ WKURXJK OHJLV

CONCLUSION

)RU WKH IRUHJRLQJ UHDVRQV DQG WKRVH SUHVHQV
3HWLWLRQHUHTXHVW WKDW WKLV &RXUW VKRXOG
WKH SHWLWLRQ IRU FHUWLRUDUL

5HVSHFWIXOO\ VXEPLWWHG

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