

FILED
SUPREME COURT
STATE OF WASHINGTON
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CLERK

CASE NO. 95240-0

**IN THE COURT OF WASHINGTON STATE
SUPREME COURT**

CYRUS Y. KIM,
Petitioner,

vs.

(BEST BUY
and)
City of FEDERAL WAY
Respondent.

**PETITION FOR REVIEW APPEALS COURT
DECISION**

From Appeals Court (Division I) order denying motion
for reconsideration entered on October 26, 2017.
(appeals court case number: 75960-4-1)

OPENING BRIEF FOR PETITIONER

Petitioner Cyrus Y. Kim Pro Se
818 SW 347 PL
Federal Way, WA 98023
253 733-9479

November 22, 2017

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I. IDENTITY OF PETITIONER

Petitioner Cyrus Y. Kim, Pro Se, files petition for review appeals court decision.

II. CITATION TO COURT OF APPEALS DECISION

First, three judges of appeals court affirmed on the basis of that "Our courts have clearly recognized that sovereign immunity can apply to cities and other state subdivisions."

However, all constitutional text books say sovereign immunity cannot apply to the cities.

Second, three judges of appeals court affirmed on the basis of that "failure to comply with it (RCW 4.96.010) is grounds for dismissal."

However, in the RCW 4.96.010, there is no such grounds for dismissal or that "failure to comply with it (RCW 4.96.010) is grounds for dismissal" is not specified in the RCW 4.96.010. So, three judges affirmed by revising RCW 4.96.010 beyond judges' authority to interpret RCW 4.96.010.

Third, three judges of appeals court affirmed, citing *Renner v. City of Marysville*, 168 Wn.2d 540, 545, 230 P.3d 569 (2010) — "the purpose of this claim is to allow government entities time to investigate, evaluate, and settle claims before they are sued."

However, why "the purpose of this claim" must allow government entities to investigate, evaluate, and settle claims only before they are sued because the government entities, anytime after they are sued, can investigate, evaluate, and settle claims. For the purpose, if the court dismisses the case failed to comply with it, it will violate First Amendment. So, "the purpose of this claim" was wrong in the lack of basic knowledge about subject matter jurisdiction for the sovereign immunity by 11th Amendment. The real answer is that all courts do not have authority (power) to hear the case of lack of subject matter jurisdiction by 11th Amendment. Because the lack of subject matter jurisdiction of the case is decided on the filing date, the court dismisses the case of lack of subject matter jurisdiction, which is the real reason to dismiss the case but not that "failure to comply with it is grounds for dismissal" nor that "the purpose of this claim is to allow government entities time to investigate, evaluate, and settle claims before they are sued."

Therefore, three judges affirmed in the abysmal of ignorance about the subject matter jurisdiction for the sovereign immunity by 11th Amendment.

Fourth, three judges of appeals court affirmed, citing the case of *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*, as "in that

case, the court held that an agency created by an interstate compact to manage an interstate resource could not rely on sovereign immunity afforded to the states themselves," which was held that the sovereign immunity could not apply to the non-sovereign immunity entity. So, three judges of appeals court, seeing the case held that sovereign immunity cannot apply to the non-sovereign immunity entity (City of Federal Way), affirmed applying sovereign immunity to the non-sovereign immunity entity (City of Federal Way). How stupid it was!

Fifth, three judges affirmed on the wrong issues fabricated and distorted. So, they made affirmed ruling for the different case, and thus, made a void affirmed ruling for this case.

The police officer already knew Kim did not commit trespassing to the Best Buy store, opened to the public, and the officer's notice of trespassing was for Kim's legal act on the basis of the RCW 9a.52.090, and thus, the notice of trespassing was for Kim's having not committed trespassing. So, the police officer's notice of trespassing was unlawful, overpowered ignored or violated RCW 9a.52.090, which inflicted emotional distress to Kim and the order of that "not to enter Best Buy for one year" suspended Kim's fundamental right of liberty guaranteed by 14th Amendment for one year for having not committed trespassing, and thus, the suspension inflicted another emotional distress to Kim for one

year. Thus, Kim claimed damages for emotional distress inflicted by the police officer's unlawful notice of trespassing ignored or violated RCW 9a.52.090 and by the suspension of Kim's fundamental right of liberty for year for Kim's having not committed trespassing.

However, first, three judges affirmed on the wrong issues, fabricating and distorting federal civil rights claim under 42 U.S.C. §1983 and constitutional right violation claim, which Kim never claimed in entire complaint.

Second, three judges at the disqualified judges' level defined the police officer's unlawful overpowered notice of trespassing as "merely informed Kim that he was forbidden to enter the property and that he may be subject to prosecution for trespass if he did... and it merely advises the recipient that the owner of property will consider his presence to be trespass in the future," and then, affirmed on that the officer's conduct did not violate any identified constitutional right, which Kim never claimed in the entire complaint. So, three judges affirmed on wrong issues, which departed too far from Kim's claims, and so, they made a void affirmed ruling.

However, Washington's notice of claim statutes do not apply to federal civil rights claims under 42 U.S.C. §1883. Wright v. Terrell, 162 Wn.2d 192, 196, 170 P.3d 570 (2007). Kim's complaint made a 42 U.S.C. §1983 claim on two grounds. First, he argued that RCW 9a.52.090(4), which creates an affirmative

defense to trespassing for service of legal papers, also creates a positive right for Kim to enter Best Buy's property, the officer violated. Second, Kim claims that his constitutional rights were violated when police provided him with the notice of trespass informing him that he was not enter Best Buy's property for one year.

As to his statutory claim, the complaint does not allege that the officers actually interfered with service of process. The notice merely informed Kim that he was forbidden to enter the property and that he may be subject to prosecution for trespass if he did. ... As to Kim's constitutional claim, the complaint does not identify the source of the claimed right to enter the property of another with impunity. The law clearly recognizes that a property owner may exclude others. The notice of trespass is not a restraining order. it merely advises the recipient that the owner of property will consider his presence to be trespass in the future. It is calculated to allow him to avoid citation for criminal trespass. No arrest or prosecution for criminal trespass has been initiated. The officer's conduct did not violate any identified constitutional right.

III. ISSUES PRESENTED FOR REVIEW

(a) RCW 4.96.010 never specified that "failure to comply with it is grounds for dismissal." But three judges of appeals court affirmed on that "failure to comply with it is grounds for dismissal." In other words, three judges affirmed by revising RCW 4.96.010 beyond the judges' authority.

Where is that "failure to comply with it is grounds for dismissal" in the RCW 4.96.010?

(b) All constitutional text books say that sovereign immunity cannot apply to the city, not a sub-division of state as politically independent subdivision. But three judges of appeals court affirmed on

that "our courts have clearly recognized that sovereign immunity can apply to cities," making all constitutional text books wrong.

(c) In the complaint, Kim claimed the damages for the emotional distress inflicted by the police officer's unlawful notice of trespassing violated RCW 9a.52.090 and by the suspension for one year of Kim's fundamental right of liberty guaranteed by the 14th amendment for Kim's having not committed trespassing.

However, first, three judges affirmed on fabricated and distorted wrong issues for federal civil right claims under a 42 U.S.C. §1883 and §1983 and constitutional right violation claim, which Kim never claimed in entire complaint. So, appeals court three judges' affirmed ruling was for the wrong case or wrong issues, which departed too far from Kim's claims. Thus, the affirmed ruling was a void affirmed ruling.

Second, three judges, defining the police officer's unlawful notice of trespassing for Kim's having not committed trespassing violated RCW 9a.52.090 at the disqualified judges' level, fabricated and distorted Kim's claims to constitutional right violation, which never claimed in entire complaint as follows:

...merely informed Kim that he was forbidden to enter the property and that he may be subject to prosecution for trespass if he did and merely advises the recipient that the owner of property will consider his presence to be trespass in the future. It is calculated to allow him to avoid citation for criminal trespass. No

arrest or prosecution for criminal trespass has been initiated. The officer's conduct did not violate any identified constitutional right.

Thus, appeals court three judges' affirmed on that the officer's conduct did not violate any identified constitutional right. So, the affirmed ruling was for the wrong case or wrong issues, the different case, which departed too far from Kim's claims. So, the affirmed ruling was a void affirmed ruling.

IV. STATEMENT OF THE CASE

On March 24, 2015, Kim entered Best Buy, opened to the public, for the personal service of court documents, notice of appeal (15-2-05636-1 SEA), court order, and so on. (CP, complaint, EX 1). Kim informed one employee of Best Buy that Kim brought court documents. He went to the other side of the store. Kim was waiting for someone would receive the court documents inside the store. As soon as five or six employees led by Eddie Anderson of Best Buy saw Kim, shouting, "trespassing," forcefully expelled Kim with their excessive body forces outside the store and made a false report of trespassing to the police department against Kim's legal act based on the RCW 9a.52.090.

When two police officers of Federal Way Police Department came, Kim was already outside the store. Thus, the police officers couldn't see whether or not Kim committed trespassing to the Best Buy. Kim handed

over the court documents to one police officer and he started to read them and another police officer said it's not trespassing toward the employees who were waiting outside the store to see what's happening (CP complaint page 2, line 8 - 10). After having heard the police officer's words, Best Buy employees entered the Best Buy store, and the police officer, after having shouted to Kim, "stop there, don't move," talked to someone for a while through his handheld phone and then issued NOTICE OF TRESPASS (CP, complaint, EX 2) without asking anything to Kim, suspending Kim not to enter the Best Buy for one year. Thus, the notice of trespassing suspended Kim's fundamental right of liberty guaranteed by 14th Amendment from March 24 2015 for one year for Kim's having not committed trespassing on the basis of the Best Buy's false report of trespassing. The suspension of Kim's fundamental right of liberty for one year provoked anger for one year every time thinking of Best Buy, every time to see the sign of Best Buy and interrupted Kim's normal life for one year, interrupted Kim's writing book, *in 21st century, bloody political revolution*, for one year, and delayed book publishing for one year. Thus, almost one year later, February 17, 2016, Kim filed this case, claiming damages for \$2million and punitive damages of \$1 million for the emotional distress inflicted by the police officer's unlawful notice of trespassing, violated RCW 9a.52.090, and inflicted by the suspension of

Kim's fundamental right of liberty for one year for Kim's having not committed trespassing.

V. ARGUMENT

A. Affirmed in the abysmal ignorance about first amendment, sovereign immunity, subject matter jurisdiction, and sovereign immunity entities

RCW 4.96.010 Tortious conduct of local governmental entities—Liability for damages.

(1) All local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to perform their official duties, to the same extent as if they were a private person or corporation. Filing a claim for damages within the time allowed by law shall be a **condition** precedent to the commencement of any action claiming damages. The laws specifying the content for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory.

First, the congress as well as the state legislature could not make any law prohibiting people's right to petition the Government for a redress of grievances by Amendment I.

Amendment I—Congress shall not make no law respecting... or prohibiting ... or the right of the people... to petition the Government for a redress of grievances.

However, Eleventh Amendment bars to sue US Government including US government subdivision and States including State subdivision. So, all courts have no subject matter jurisdiction for the case

against US government including US government subdivision and State including State subdivision by 11th Amendment.

For US government by 28 U.S.C. §2675 (a) and for State by RCW 4.96.010, only when the claimant presented the claims to the appropriate department of US government and of State precedent to the commencement of any action, the suit is allowed. Which is widely believed as consent for suit. Without the consent, US court or State court has no subject matter jurisdiction for the case against US government or the States, and thus, such action against US government and the States must be dismissed under the lack of subject matter jurisdiction by 11th Amendment. Thus, the condition in the RCW 4.96.010, in other words, the "consent" for the suit was considered as waived sovereign immunity. Accordingly, the condition or consent applies only to sovereign immunity entities, US government and subdivision of it and State and subdivision of it but does not applies to non-sovereign immunity entities such as cities. All constitutional text books say sovereign immunity cannot apply to the city but trial court judge applied sovereign immunity to the non-sovereign immunity entity, City of Federal Way, and three judges of appeals court on the basis of that "Our courts have clearly recognized that sovereign immunity can apply to cities and other state subdivisions" (CP, division I,

unpublished opinion page 3, line 16) applied sovereign immunity to non-sovereign immunity entity, City of Federal Way..

First, 28 U.S.C. §2675 clearly specifies as "an action shall not be instituted... unless the claimant shall have first presented the claim to the appropriate Federal agency... "

28 U.S.C. §2675 (a): An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.

However, in the RCW 4.96.010, there is the word of "condition" but there is no word to dismiss the case when claimant failed to comply with the presentation of the claim to the appropriate department; nevertheless, three judges of Appeals Court for the affirmed ruling fabricated the words of "failure to comply with it is grounds for dismissal" as if such grounds had been specified in the RCW 4.96.010. Where are the words of "failure to comply with it is grounds for dismissal" in the RCW

4.96.010?

Three judges didn't know that "failure to comply with it is grounds for dismissal," the fabricated unspecified words in RCW 4.96.010, violates Amendment I if the case was against non-sovereign immunity entity. The plain error was caused by abysmal ignorance about Amendment I, sovereign immunity, and subject matter jurisdiction behind the **condition** in RCW 4.96.010.

Citing the case of *Renner v. City of Marysville*, three judges justified the grounds for dismissal.

But, it also states that a prospective plaintiff must file a claim of damages as a condition precedent to the commencement of any action claiming damages. ID. The purpose of this claim is to allow government entities time to investigate, evaluate, and settle claims before they are sued. *Renner v. City of Marysville*, 168 Wn.2d 540, 545, 230 P.3d 569 (2010).

However, three judges could not see the case of *Renner v. City of Marysville* violated the First Amendment. If they had been a smarter judges, they should have questioned why the time the government entities to investigate, evaluate, and settle must be allowed only precedent to the commencement of any action claiming damages because the time to investigate, evaluate, and settle claims is always possible after they are sued. Because the three judges did not know about the subject matter jurisdiction for the sovereign immunity entity, they cited wrong case of

Renner v. City of Marysville violated the First Amendment. Three judges' ignorance about subject matter jurisdiction was the main cause of plain error but three judges ruled as "We affirm. WE CONCUR:"

Second, smart judges could find the sovereign immunity entities from the following cases but three judges could not.

In cited case of *Pirtle v. Spokane Pub. Sch. Dist. No.81,83 Wn. App. 304, 921 P.2d 1084, (Wash. Ct. App. 1996)*, Spokane Pub. School District was the subdivision of the Washington State, and thus, Spokane Pub. School District was sovereign immunity entity. The claimant for any suit against sovereign immunity entity must be presented claims before the commencement of any action claiming damages for the consent behind the **condition**. Thus, "failure to comply with it is grounds for dismissal" must be applied to only sovereign immunity entity but not non-sovereign immunity entity, City of Federal Way. Appeals court three judges applied sovereign immunity to the non-sovereign immunity entity, City of Federal Way, which was the main cause of plain error.

Kim cited the following case in the trial court and appeals court (CP, Objection / opposition /Def and Appellant' brief) but all judges ignored.

The case of *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391, 99 S.Ct. 1171, 59 L.Ed.2d 401 (1979)* was held that

a defendant created by interstate compact agency was not immune from suit in federal court under the Eleventh Amendment, 440 U.S. at 402-03, 99 S.Ct. at 1177-78 and that the defendant agency, due to its composition, structure, and function, was a "political subdivision" of the states and not an "arm" of the states, 440 U.S. at 401-03, 99 S.Ct. at 1177-78. Thus, the case was held that the sovereign immunity cannot apply to the non-sovereign immunity entity. But three judges could not understand what the above two cited cases were meaning. Deplorably, citing the case *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*, as "in that case, the court held that an agency created by an interstate compact to manage an interstate resource could not rely on sovereign immunity afforded to the states themselves," which was indicating that the sovereign immunity could not apply to the non-sovereign immunity entity, three judges of appeals court affirmed, seeing the case held that sovereign immunity could not apply to the non-sovereign immunity entity (City of Federal Way), affirmed applying sovereign immunity to the non-sovereign immunity entity, City of Federal Way. How stupid it was!

Accordingly, the failed condition precedent to the commencement against the non-sovereign immunity entities do not make any difference but the failed condition precedent to the commencement against the sovereign immunity entities by the condition of RCW 4.96.010 makes lack

of subject matter jurisdiction and makes no court have power to hear the case but trial court judge and three judges of appeals court knew that "RCW 4.96.010 applies all local government entities." How stupid it was.

It is a critical word of the condition in RCW 4.96.010 when the suit was against the sovereign immunity entity and when the plaintiff failed the prerequisite clause, the dismissal of case will always be decided under the subject matter jurisdiction by 11th Amendment because no court has subject matter jurisdiction to hear the case—that is the real reason for dismissal under the condition but not that "failure to comply with it is grounds for dismissal" nor that "the purpose of this claim is to allow government entities time to investigate, evaluate, and settle claims before they are sued."

Three judges of appeals court in the abysmal ignorance about subject matter jurisdiction for sovereign immunity by 11th Amendment affirmed on the fabricated ground, "failure to comply with it is grounds for dismissal" applying sovereign immunity to the non-sovereign immunity entity. That "failure to comply with it is grounds for dismissal" should have been applied to the sovereign immunity entity. Three judges who could not distinguish the non-sovereign immunity entity, City of Federal Way, from sovereign immunity entity made a stupid plain error.

B. Affirmed on wrong issues for the fabricated distorted claims

Kim's Claims of damages for emotional distress inflicted by the police officer's unlawful notice of trespassing violated RCW 9a.52.090 and by the suspension of Kim's fundamental right of liberty for one year for Kim's having not committed trespassing were fabricated and distorted to the claims under 42 U.S.C. §1883 and §1983 and to the constitutional rights violation claim, which Kim never claimed in entire complaint and fabricated and distorted as that the officer's conduct did not violate any identified constitutional right, which Kim never claimed as follows:

(Page 4, line 8) However, Washington's notice of claim statutes do not apply to federal civil rights claims under 42 U.S.C. §1883. *Wright v. Terrell*, 162 Wn.2d 192, 196, 170 P.3d 570 (2007). Kim's complaint made a 42 U.S.C. §1983 claim on two grounds. First, he argued that RCW 9a.52.090(4), which creates an affirmative defense to trespassing for service of legal papers, also creates a positive right for Kim to enter Best Buy's property, which the officers violated. Second, Kim claims that his constitutional rights were violated when police provided him with the notice of trespass informing him that he was not enter Best Buy's property for one year.

... The notice merely informed Kim that he was forbidden to enter the property and that he may be subject to prosecution for trespass if he did. ... RCW 9A.52.090 creates affirmative defenses upon "any prosecution." ...He was neither arrested nor prosecuted. The complaint fails to allege facts that establish a present or prospective violation of statutory rights grounded in RCW 9A.52.090... The notice of trespass is not a restraining order. It merely advises the recipient that the owner of the property will consider his presence to be trespass in the future. It is calculated to allow him to avoid citation for criminal trespass. No arrest or prosecution for criminal trespass has been initiated. The officer's conduct did not violate any identified constitutional right.

First, affirmed ruling on the claims under 42 U.S.C. §1883 and §1983 and the constitutional rights violation claim departed too far from Kim's claims and completely unrelated to Kim's claims. Therefore, three judges of appeals court affirmed on wrong issues or different case. So, they made a void affirmed ruling.

Second, the police officer's notice of trespassing was for Kim's having not committed trespassing for the legal act based on RCW 9a.52.090.

RCW 9a.52 090 Criminal trespass — Defenses

(4) The actor was attempting to serve legal process which includes any document required or allowed to be served upon persons or property, by any statute, rule, ordinance, regulation, or court order, excluding delivery by the mails of the United States. This defense applies only if the actor did not enter into a private residence or other building not open to the public and the entry onto the premises was reasonable and necessary for service of the legal process.

Thus, the police officer's notice of trespassing was unlawful violated RCW 9a.52.090. But three judges of appeals court affirmed on that "the officer's conduct did not violate any identified constitutional right." Kim never claimed the police officer violated Kim's constitutional right in the entire complaint. Therefore, three judges of appeals court affirmed again on wrong issue departed too far from Kim's claims, and so, made another void affirmed ruling, saying, "We affirm. WECONCUR;"

This simple case was delayed almost two years from the date filed on 02-17-2016 by the judges' lack of basic knowledge. This case is worth publishing in my book, *in the 21st century, bloody political revolution*, which is scheduled to publish around June 2018.

VI. CONCLUSION

Trial court judge made plain errors in the abysmal ignorance about Sovereign Immunity Entity and three judges of appeals court made plain errors for the affirmed ruling in the abysmal ignorance about First Amendment, 11th Amendment, Subject Matter Jurisdiction, and Sovereign Immunity Entity, and affirmed on wrong issues which Kim never claimed, making a void affirmed ruling. Therefore, this court must reverse the appeals court affirmed ruling.

Dated on December 22, 2017



Cyrus Y. Kim, pro Se,
818 SW 347th PL, Federal Way, WA 98023
cykim@q.com

APPENDIX

A copy of appeals court order denying a motion for reconsideration

CYRUS KIM - FILING PRO SE

December 22, 2017 - 12:18 PM

Transmittal Information

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