

No. 22-412

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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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TABLE OF CONTENTS

Page

TABLE OF

TABLE OF CITED AUTHORITIES

	Page
CASES:	
Abbott v. Perez 6 & W .....	
Chen v. City of Houston, ) G WK & LU .....	
Cotton v. Fordice, ) G WK & L.U.....	7.
Harness v. Watson, ) WK WK . & L.U.....	3, 7, 11
Hayden v. Paterson, ) G G & LU .....	
Hunter v. Underwood, 8 6 .....	
Medical Center Pharmacy v. Mukasey, ) G WK & LU .....	12 .....
3HQVLRQ %HQHÀW *XDU, &RUS Y /79 &RUS 8 6 .....	12
Perez v. United States ) G WK & L.U.....	12
5DPRV Y /R,XLVLDQD 6 & W .....	

Cited Authorities

	Page
6 WDU \$WKOHWLF D / / & Y 9DUVLW\ %UDQGV ,QF 6 & W .....	12
Underwood v. Hunter, ) G WK & LU aff'd 8 6 .....	11
 CONSTITUTIONAL PRO VISIONS, STATUTES AND OTHER AUTHORITIES:	
8 6 & RQVW ..DPHQG... ..	2.
8 6 & RQVW D.P.H.Q.G..9,,, ..	1.
8 6 & RQVW DPH.Q.G...;,,9..†. ..	1.
0LVV & RQVW.....	passim
0LVV & RQVW.....	passim
8 6 & † E .....	3.....
'HFODUDWLRQ RI 'RURWK\ 2 3UDWW 3K ' 'NW Harness v. Hosemann 1R FY '3- ).% WKHQ FRQVROLGDWHG ZLWK Hopkins v. Hosemann, 1R FY '3- ).% 6 ' 0LVV .....	
5 HSRUW RI 'RURWK\ 2 3UDWW 3K ' '3UDV 5HS μ 'NW Harness v. Hosemann, 1R FY '3- ).% WKHQ FRQVROLGDWHG Hopkins v. Hosemann, 1R FY '3- ).% 6...0LVV	



HQDFWHG ZLWK UDFLDOO\ GLVFULPLQDWRU\ LQ  
 EHHQ DPHQGHG DQG FRQWLQXHV WR GLVSURSRU  
 %ODFN 0LVVLV Hopkins 3ODLQWLIIV DOVR FODLP  
 WKDW 6HFWLRQ VHSUDUDWHO\ YLRODWHV WKH (TX  
 &ODXVH EHFDXVH LW SHUPLWV OHJLVODWRUV WR  
 YRWLQJ ULJKWV WR VRPH 0LVVLVVLSSL UHVLGHQWV D  
 )LQDOOHopkins 3ODLQWLIIV FODLP WKDW 6HFWLRQ  
 YLRODWHV WKH )LQDOOHopkins 3ODLQWLIIV FODLP WKDW 6HFWLRQ  
 FODLPV DUH VLJQLÀFDQW DQG PHULWRULRXV 2  
 D SDQHO RI WKH )LIWK &LUFXLW KHDUG RUDO DU  
 WKH SDUWLHV. H[SHGHopkins 3ODLQWLIIV FODLP WKDW 6HFWLRQ  
 KDV QRW \HW<sup>3</sup>EHHQ LVVXHG

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2. 7Hopkins 3ODLQWLIIV EURXJKW VXLW RQ EHKDOI RI D  
 VLPLODUO\ VLWXDWHG 0LVVLVVLSSLDQV ZKR KDYH FRPSOHWHG  
 IRU GLVHQIUDQFKLVVQJ RIIHQVHV Hopkins GLVWULFW FRXUW J  
 3ODLQWLIIV. PRWLRQ IRU FODVVS Hopkins 3ODLQWLIIV FODLP WKDW 6HFWLRQ  
 'NW Harness v. Hosemann 1R FY '3- ).% WKHQ  
 FRQVROLG Hopkins v. Hosemann 1R FY '3-  
 ).% 6 ' 0LVV )HE DW

3. ,Q -XQH WKH GLVWULFW FRXUW JUDQWHG V  
 'PEX S U' ðP @ €ÀH C a€Q€Q€DÀ H. REP' R W a - RQ Hopkins 3ODLQWLIIV FODLP WKDW 6HFWLRQ  
 2UGHU 'Nawess v. Hosemann 1R FY '3- ).%  
 ` tF 6 ' 0LVV -XQH ' 'p€QU R0 W  
 X•p U6p° 0Q2•# FWR

7 K Hopkins 3 ODLQWLIIV KDYH D VWURQJ SHUV  
 LQWHUHVW LQ WKH GLVPDQWOLQJ RI 0LVVLVV  
 GLVHQIUHQFQFKLVHPPHQW VFKHPH ZKLFK LV URRV  
 GLVFULPLQDWLRQ DQG FRQWLQXH WR WKLV GD\ WR GLVSURS  
 LPSDFW %ODFN 0LVVLVVLSLDQV 7KH FRQVWL  
 0LVVLVVLSL·V FULPLQDO GLVHQIUHQFQFKLVHPPHQW  
 FDUHIXO FRQVLGHUDWRQ E\ WKLV &RXUW ,I WKH  
 JUDQW FHUWLRUDUL DQG XODLQVLDYRU RI WKH  
 WKH &RXUW·V GHFLVLRQ ZRXOG UHVWUH 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 LWQKHHQW 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 GHFDWV WR WKHUHURH 'VSHFLÀH  
 VHYHUDO UHTXLUHPHQWV WR TXDOLI\ IRU WKH H  
 LQFOXGLQJ D OLWHUDF\ WHVW DQG D FULPLQDO GLVH  
 SURYLVLRLQ WKHVH UHTXLUHPHQWV ZHUH GHVLJQ  
 DQG LQWHUORFN WR FUHDWH DQ HHHFWLYH ED  
 \$PHULFDQ SROLWLFDO SDUWLFLSDWLRQ ZLWKLQ

7KH GHOHJDWHV PHWLFXORXVO\ 'VWUXFWXUHG  
 GLVHQIUHQFKLVPHQW SURYLVLRLQ HQDFWHG D  
 WKH &RQVWLWXWLRQ WR QDUURZ WKH \$IUL  
 IUHQFKLVH EDVH PLWHG WKH UHDFK RI WKH SURY  
 'WR D FDUHIXOO\ VHOHFWHG OLWV RI FULPHV WKD  
 PRUH \$IULFDQV \$PHULFDQV WKDQ ZKLWHV 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 UHVWRULQJ<sup>4</sup> ~~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 ÀUVW WКУНН  
WKH &RQVWLWXWLRQ ZDV HQDFWHG DQG GHV  
WKH 0LVVLVVLSSL /HJLVODWXUH UHVWRUHG YRW  
OHDVW LQGLYLGXDQW ~~GDWQ~~ JIRWQJ WRLPH  
HYLGHQFH WKDW HYHQ D VLQJOH \$IULFDQ \$PHUL  
UHJDLQHG WKH ULJKW WR YRWH EHWZHHQ DQ

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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 ZLWKRXW WKL  
 8 6 Hunter GRHV QRW SHUPLW D VWDWH  
 PHHW LWV EXUGHQ VLPSSOHSEFVW KRZLQJ WKDW D  
 OHJLVODWXUH PLJKW KDYH HQDFWHG WKH FKDC  
 UDFH QHXWUDO UHDERQNTXSLDWKHBRXUWV  
 WR FRQVLGHU ZKHWKHU WKH OHJLVODWXUH W  
 FKDOOHQJHG ODZ ZRXOG KDYH GRQH VR 'LQ WKH D  
 UDFLDOO\ GLVFULPLQDWRUseeParo 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  
 FRQVLGHULHG 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 GLVHQBUDQFKLVHPHQ  
 DEVHQB 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  
 ZLWKRXW 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 V<sup>3</sup>QH DUO\ D KXQGUHG \HI  
 6HFWLRQ .V RULJLQDO HQDFWPHQW<sup>3</sup>LQ DV  
 6HFUHWDU\ RI 6WDWH.V 'ÀQDO EXUGHQ XQGHU Hur

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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. BLOWHQRVQ %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  
 LQWHQGPHG μ \$V D PDWWHU RI ERWK ODZ  
 PRWLYDWLRQV 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



IIHFVLYHO\HMLVFKLVD&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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