

No. 11-7975

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In The  
*Supreme Court of United States*

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FRANCIS J. SAVARIRAYAN,

*Petitioner,*

v.

WHITE COMMUNITY HOSPITAL; COMMUNITY HEALTH SYSTEMS,  
INC.; GARY NEWSOME, President of Community Health Systems, Inc.,  
individually and in his official capacity,

*Respondents.*

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On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Sixth Circuit

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Brief in Opposition

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## QUESTIONS PRESENTED

- I. Whether the Court of Appeals correctly affirmed the District Court's dismissal of Petitioner's claims against the Respondents under the doctrine of *res judicata*.
  
- II. Whether the Court of Appeals correctly affirmed the District Court's order of summary judgment in favor of Respondents on Petitioner's claims based on the express terms of the Settlement Agreement between Petitioner and Respondents.
  
- III. Whether the Court of Appeals correctly affirmed the District Court's order of summary judgment in favor of Respondents on Respondents' counterclaim for breach of the Settlement Agreement and damages associated with the Petitioner's frivolous claims.

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## STATEMENT OF THE CASE

### Factual Background

The claims and counterclaims in this case focus on a Recruitment Agreement and subsequent Settlement Agreement entered into by the Petitioner, Francis J. Savarirayan, M.D., and the Respondents, White County Community Hospital, Community Health Systems, Inc., and Gary Newsome ("the Respondents").

The Petitioner is a Board certified urologist who entered into a Recruitment Agreement with the Hospital on or about October 31, 2002. The Agreement imposed obligations on the Petitioner to: (1) devote a minimum of 40 hours per week to the practice of his specialty, (2) promote and market his practice, (3) maintain an unrestricted license to practice medicine in Tennessee, (4) achieve and maintain membership in good standing on the active medical staff at the Hospital, (5) establish a billing and collection process, and (6) complete and satisfy all credentialing requirements for third party payors at least 90 days prior to February 15, 2003.

The Petitioner repeatedly failed to fulfill the obligations and duties required of him under the Recruitment Agreement by (1) failing to obtain an acceptable billing and collections system, (2) failing to enter into third party payor agreements, and (3) failing to properly promote and market his practice. The Petitioner was notified on numerous occasions that he was in

breach of the Recruitment Agreement. Despite being given ample opportunity to correct his actions, the Petitioner continued to breach the terms of the Recruitment Agreement.

In January 2004, after a period of discord between the parties, the Hospital and the Petitioner parted ways, with the Petitioner signing a "Settlement Agreement and Release of All Claims" ("Settlement Agreement"), in which the Plaintiff released any and all claims he then had, or might have in the future, against the Hospital and its related entities arising out of the Recruitment Agreement. Specifically, the Settlement Agreement provided that by signing the Settlement Agreement, the Petitioner:

unconditionally settles, releases, comprises, waives, discharges, indemnifies, and holds harmless the Hospital [and its related entities]...for each, every, and all actions, causes of action, liabilities, and claims...including past and future claims of any type...claims arising under any federal, state, and/or local statutes or ordinances...relating to or arising out of the Recruitment Agreement.

As part of the Hospital's consideration within this Settlement Agreement, the Hospital released its right to pursue repayment of \$260,789.44 in compensation that it had previously paid to the Petitioner.

## Opinions Below

### *State Court Proceedings*

Despite signing the Settlement Agreement that covered all claims arising from the Recruitment Agreement, the Petitioner filed suit against multiple defendants in the Circuit Court of White County, Tennessee, on January 26, 2007, asserting that the termination of the Recruitment Agreement gave rise to causes of action for (1) breach of contract, (2) violations of 42 U.S.C. §1981, (3) tortious interference with a business relationship, (4) violations of the Tennessee Consumer Protection Act, and (5) fraud. Simply, the Petitioner's lawsuit asserted claims that the Petitioner specifically released when he agreed to enter into and sign the Settlement Agreement.

The State Court granted summary judgment in favor of the Respondents after finding that: (1) the Petitioner's claims were covered by the Settlement Agreement, and (2) no genuine issue of material fact existed to allow any claim against the Respondents to survive summary judgment. The State Court also awarded monetary sanctions against the Petitioner. The State Court's Order of Judgment was entered on January 17, 2008. The Petitioner did not appeal the State Court's Order of Dismissal.

*District Court Proceedings*

On August 24, 2007, while the state litigation was still pending, the Petitioner filed an action with the District Court for the Middle District of Tennessee (“the District Court”) *pro se*, asserting the same causes of action featured in the State Court action, plus additional claims of violations of the Racketeer Influenced Corrupt Organizations (RICO) Act and the Clayton Act. In response, the Respondents asserted counterclaims for the recovery of (1) \$260,789.44 on the theory that the Petitioner had breached the Settlement Agreement, and (2) damages associated with the Petitioner’s re-assertion of these frivolous claims.

The Respondents filed a Motion for Summary Judgment on October 18, 2007, insisting that they were entitled to summary judgment on the Petitioner’s claims because the express terms of the Settlement Agreement precluded the Petitioner from asserting claims against the Respondents related to or arising from the Recruitment Agreement. The Respondents also filed two Motions to Dismiss, both of which sought dismissal of the Petitioner’s claims pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure via *res judicata*.

The United States Magistrate Judge reviewed the dispositive motions and issued a Report and Recommendation on September 12, 2008. The Report and Recommendation recommended the District Court grant the Respondents’ dispositive motions and dismiss the Petitioner’s claims against

the Respondents. The District Court subsequently granted the Respondents' dispositive motions and dismissed the Petitioner's Claims with prejudice on February 10, 2009. The District Court determined that the Petitioner's federal action was a "virtual carbon copy" of the state court action and found that (1) the Petitioner's claims were barred by *res judicata*, (2) the Petitioner failed procedurally and substantively to create a genuine issue of material fact in response to the Respondents' Motion for Summary Judgment, and (3) the Settlement Agreement precluded the Petitioner from pursuing claims against the Respondents.

After the Petitioner's claims were dismissed, the only remaining claims involving the Respondents were the Respondents' counterclaims for breach of the Settlement Agreement and damages associated with the Petitioner's frivolous claims. Pursuant to the District Court's April 15, 2009 Order, the Petitioner was required to respond to the Respondents' counterclaims within 20 days of the entry of the Order. The Petitioner failed to file either an Answer or any other type of potentially responsive pleading in response to the Respondents' counterclaims.

The Respondents filed a Motion for Summary Judgment on July 8, 2009, which argued that they were entitled to summary judgment on their counterclaims because (1) the Petitioner breached the Settlement Agreement by filing suit against the Respondents, (2) the Petitioner did not dispute that he breached the Settlement Agreement, and (3) the District Court had



already found that there was no genuine issue of material fact as to whether the Petitioner breached the Settlement Agreement. The Petitioner did not respond to the Respondents' Motion for Summary Judgment on the counterclaims.

The District Court granted summary judgment in favor of the Respondents on February 11, 2010 and awarded the Respondents \$260,789.44 (plus pre-judgment interest) after concluding that the Court's prior grant of summary judgment on the Petitioner's claims was effectively dispositive of the Respondents' counterclaims. The District Court further concluded that the Respondents should be awarded their legal fees, costs, and expenses (totaling \$38,618.42) under 42 U.S.C. §1988 and Tenn. Code Ann. §47-18-109(e)(2) given that the Petitioner's original claims were frivolous, without foundation, and without legal or factual merit.

#### *Federal Appellate Court Proceedings*

The Petitioner appealed the District Court decision to the Sixth Circuit Court of Appeals ("The Sixth Circuit"). The Sixth Circuit characterized the Petitioner's appellate brief as "not contain[ing] any direct challenge to the district court's rationale for its dismissal." Therefore, the Sixth Circuit construed the Petitioner's appeal as basically "reasserting his claims." Reviewing *de novo*, the Sixth Circuit affirmed the District Court's grant of summary judgment.

The court found that Petitioner's claims were presented and decided on the merits in the state-court proceeding and therefore were precluded in federal court because they would be precluded in Tennessee state court. While the court recognized that the Petitioner's Clayton Act claim was not precluded, this claim failed as a matter of law because the Petitioner did not allege an anticompetitive injury cognizable under the Clayton Act.

The Sixth Circuit also approved the District Court's alternative grounds for summary judgment, holding that the Settlement Agreement between the parties contained a valid release of Petitioner's claims. The court also affirmed dismissal of Petitioner's legal malpractice claim against his former attorney because Petitioner could not establish an injury as a matter of law and the District Court's summary judgment on the Respondents' counterclaims for breach of contract and frivolous claims.

#### **REASONS FOR DENYING THE WRIT**

**I. THE GRAVAMEN OF THE PETITIONER'S APPEAL IS A LAUNDRY LIST OF UNSUPPORTED FACTUAL ALLEGATIONS NOT PERTAINING TO THE SIXTH CIRCUIT'S DECISION IN THIS CASE.**

The Petitioner's Writ of Certiorari does not dispute the factual or legal basis for the District Court or Court of Appeal's straightforward application of *res judicata* and interpretation of the Settlement Agreement between the parties. Instead, the Petitioner's Writ of Certiorari offers a long and fanciful list of criminal, civil, and equitable allegations against the Respondents, Respondents' Counsel, Petitioner's own former counsel and *eight* individual

judges that have rejected Petitioner's claims throughout their repeated dismissals in state and federal court.<sup>1</sup> Petitioner's eight "questions presented" range from specific allegations of judicial bribery to general policy objections to campaign finance law regarding judicial campaigns.<sup>2</sup> None of these unsupported allegations challenge the Sixth Circuit's findings of law or implicate the Court's core function of clarifying and developing the law of the United States.

## II. THE DECISION OF THE SIXTH CIRCUIT DOES NOT RAISE ANY IMPORTANT FEDERAL QUESTION.

Although the Petitioner's pleading of RICO and Clayton Act claims was sufficient to confer jurisdiction to the District Court under 42 U.S.C. 1983, there is no important federal issue in this case. Petitioner's claims nest almost exclusively in Tennessee law. The Sixth Circuit affirmed the District Court's grant of summary judgment by applying Tennessee law on claim preclusion and contract law. The Sixth Circuit's only holding with respect to federal law was uncontroversial: a Clayton Act claim is legally insufficient without showing an anticompetitive injury.<sup>3</sup>

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<sup>1</sup> Dr. Savarirayan Petition, p. 2-3, (Petitioner attempts to name eight judges as additional defendants in his writ petition "for performing Justice for Hire").

<sup>2</sup> Dr. Savarirayan Petition, pp. 7, 11.

<sup>3</sup> See *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977) ("We therefore hold that for plaintiffs to recover treble damages on account of § 7 violations, they must prove more than injury causally linked to an illegal presence in the market.").

### III. THE SIXTH CIRCUIT'S APPLICATION OF *RES JUDICATA* FOLLOWS CLEAR SUPREME COURT PRECEDENT.

There is no genuine legal controversy that the state court's dismissal of Petitioner's claims on the merits precluded Petitioner's subsequent claim in federal court. The Sixth Circuit correctly held that claims "that were presented and decided on the merits in a state-court proceeding are precluded in federal court to the same extent as in the courts in which the judgment was entered."<sup>4</sup> This Court has repeatedly made clear that a state court decision on the merits precludes consideration of the same claim in federal courts if state law precludes the claim in state courts.<sup>5</sup> The Sixth Circuit also properly found that "Tennessee courts have held that if a second lawsuit involves the same parties acting in the same capacity and touches the same subject matter as the first lawsuit, then the principles of *res judicata* apply."<sup>6</sup>

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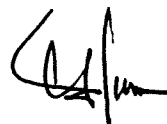
<sup>4</sup> *Savarirayan v. White County Community Hospital*, No. 10-5286 \*4 (6th Cir. Jun. 29, 2011).

<sup>5</sup> *San Remo Hotel, L.P. v. City & County of San Francisco*, 545 U.S. 323, 342 (U.S. 2005) ("We have repeatedly held, to the contrary, that issues actually decided in valid state-court judgments may well deprive plaintiffs of the "right" to have their federal claims relitigated in federal court."); *See also University of Tennessee v. Elliott*, 478 U.S. 788, 793-794 (U.S. 1986); *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 523 (U.S. 1986); *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373 (1985); *Allen v. McCurry*, 449 U.S. 90, 96 (1980); *Migra v. Warren City Sch. Dist. Bd. Of Educ.*, 465 U.S. 75, 80-85 (1984) (state claims precluded regardless of §1983 claim), *Kremer v. Chemical Construction Corp.* 456 U.S. 461, 466 (1982).

<sup>6</sup> *Savarirayan*, No. 10-5286 \*4 (6th Cir. Jun. 29, 2011) (quoting *Whitfield v. City of Knoxville*, 756 F.2d 455, 459 (6th Cir. 1985)).

## CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari should be denied.



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CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing has been furnished via U.S. Mail, postage prepaid, to the parties, as indicated below, on January 20, 2012:

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