

In dismissing *We The People v United States* on the ground of *stare decisis*, the DC Circuit Court held that, “the Supreme Court precedents in *Smith*¹ and *Knight*² govern this case.”

The United States Supreme Court has often recognized the "fundamental importance" of *stare decisis*, the basic legal principle that commands judicial respect for a court's earlier decisions and the rules of law they embody. See [*Harris v. United States*, 536 U.S. 545, 556-557, 122 S. Ct. 2406, 153 L. Ed. 2d 524 \(2002\)](#) (citing numerous cases).

The United States Supreme Court has pointed out that *stare decisis* "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *United States v. International Business Machines Corp.*, 517 U.S. 843, 856 (1996) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991)).

Stare decisis thereby avoids the instability and unfairness that accompany disruption of settled legal expectations. For this reason, the rule of law demands that adhering to prior case law be the norm. Departure from precedent is exceptional, and requires "special justification." This is especially true where the principle at issue has become settled through iteration and reiteration over a long period of time. See, *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984).

Smith and *Knight*, while announcing constitutional principles were **not watershed decisions**. Neither *Smith* nor *Knight* involved a constitutional decision that secured a fundamental personal liberty to millions of persons.

On the other hand, the Court’s decision in *We The People* is a **watershed decision of far reaching importance. The decision denies a fundamental Right to all persons.**

The constitutional principle, or rule of conduct, governing Government’s obligation to respond to petitions to the federal Government by private citizens, in their private capacities, for redress of grievances involving **constitutional torts – violations of certain prohibitions or restrictions placed on Government by the U.S. Constitution, itself --** has never been declared by any Court, including the *Smith* and *Knight* Courts, much less “settled through iteration and reiteration over a long period.” At risk are the essential constitutional principles of “popular sovereignty,” “limited government” and “republicanism.”

On the other hand, the constitutional principle declared by the *Smith* Court (PER CURIAM and without a plenary hearing), governs the obligation of government “to listen, to respond, or to recognize a labor association and bargain with it.” The issue was whether a government had to respond to petitions by state public employees, submitted

¹ [*Smith v. Arkansas State Highway Employees*, 441 U.S. 463](#)

² [*Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271](#)

through their union, rather than by individual employees as State law required, for redress of employment related grievances, **not constitutional torts**. There, unlike *We The People*, **constitutional torts** and the constitutional principles of “popular sovereignty” and “republicanism” were not at issue and were not at risk. The original Petitions to the State by the association of highway workers were not seeking remedies to unconstitutional conduct by the State; they were grieving issues relating to pay and working conditions. The *Smith* Court held that a government is not obligated to listen, to respond, or to recognize a labor association and bargain with it. The *Smith* Court held in its entirety as follows:

“*Held*: The Arkansas State Highway Commission’s refusal to consider employee grievances when filed by the union rather than directly by an employee of the State Highway Department does not violate the First Amendment. Even assuming that the Commission’s procedure would constitute an unfair labor practice if the Commission were subject to the same labor laws applicable to private employers and that its procedure tends to impair the effectiveness of the union in representing the economic interests of its members, nevertheless, this type of “impairment” is not one that the Constitution forbids, the Commission not having prohibited its employees from joining together in a union, from persuading others to do so, or from advocating any particular ideas.” *Smith v Arkansas State Highway Employees*, 441 U.S. 463,

The constitutional principle declared by the *Knight* Court in a 6-3 decision governs the obligation of government decision makers to listen to anyone **prior to making a decision**. There, the issues were First Amendment speech and associational rights of faculty who did not wish to join the union but who wanted to “meet and confer” individually with the college’s management, regardless of State statutory mandates. Unlike the *We The People* case, **constitutional torts** and the constitutional principles of “popular sovereignty” and “republicanism” were not at issue and were not at risk in *Knight*.

The *Knight* Court explained that, “The applicable constitutional principles are identical to those that controlled in *Smith*. **When government makes general policy**, it is under no greater constitutional obligation to listen to any specially affected class than it is to listen to the public at large.” 465 U.S. at 287. (emphasis added).

The issue in *Knight*, the converse of the issue in *Smith*, was whether the State had to respond to petitions by state public employees, submitted individually, rather than through their union as State law required, for redress of employment related grievances, **not constitutional torts**. The original Petitions to the State by the individual college professors were not seeking remedies to unconstitutional conduct by the State; they were grieving issues relating to pay and working conditions.

The *Knight* Court held in its entirety as follows:

“*Held*: The ‘meet and confer’ provisions do not violate appellees’ constitutional rights. Pp. 280-292.

(a) Appellees have no constitutional right, either as members of the public, as state employees, or as college instructors, to force officers of the State **acting in an official**

policymaking capacity to listen to appellees' views. Nothing in the First Amendment or in this Court's case law interpreting it suggests that the rights to speak, associate, and petition require government **policymakers** to listen or respond to communications of members of the public on public issues. Neither appellees' status as **public employees** nor the fact that an academic setting is involved gives them any special constitutional right **to a voice in the making of policy by their employer**. Even assuming that First Amendment speech rights take on a special meaning in an academic setting, they do not require government to allow teachers to participate in **institutional policymaking**. Pp. 280-288.

(b) Appellees' speech and associational rights have not been infringed by PELRA's restriction of participation in "meet and confer" sessions to the faculty's exclusive representative. The State has not restrained appellees' freedom to speak on any education-related issue or to associate or not to associate with whom they please, including the exclusive representative. Nor has the State attempted to suppress ideas. Similarly, appellees' associational freedom has not been impaired, since they are free to form whatever advocacy groups they like. Pp. 288-290.

(c) Appellees' exclusion from "meet and confer" sessions does not deny them equal protection of the laws in violation of the Fourteenth Amendment. The State has a legitimate interest in ensuring that its public employers hear one, and only one, voice presenting the majority view of its professional employees **on employment-related policy questions**, and permitting selection of "meet and confer" representatives to be made by the exclusive representative is a rational means of serving that interest. Pp. 291-292."

In dismissing *We The People*, the DC Court misapplied the constitutional principles declared in the *Smith* and *Knight* cases.

A reversal for Plaintiffs in *We The People* would not make *Smith* or *Knight* a legal anomaly or otherwise undermine their basic legal principles. A reversal would not overrule *Smith* or *Knight*, nor would it undermine any reliance that Congress or the state legislatures have placed on *Smith* and *Knight* in drafting laws governing employment related grievance procedures.

A reversal on rehearing, holding that the failure by the United States to respond to private Plaintiffs' Petitions for Redress of **constitutional torts** violated the First Amendment would not overrule or undermine the rule of law established in *Smith* and *Knight*.

In *We The People*, the facts and circumstances are radically different from *Smith* and *Knight*, undermining the critical factual assumptions in *Smith* and *Knight*. In *Smith* and *Knight*, the issue was the statutory right of public employees, in union or otherwise, to have the government listen to their employment related grievances **prior to making a public policy decision**.

In *We The People*, the issue is the constitutional Right of each and every citizen to have the Government respond to their grievance regarding **after-the-fact, on-going constitutional torts**.

In *We The People*, the grievances are after-the-fact and on-going violations of the war making, money, tax and privacy provisions of the Constitution. In *We The People*, Plaintiffs are not attempting to influence the Government prior to the Government's making of a public policy decision.

In *We The People*, Plaintiffs have a legitimate interest in the protection, preservation and enhancement of republican government – in form and in substance. This is to say, Plaintiffs have a legitimate interest in Government accountability **that does not depend on the results of the ballot box and majority rule.**

In *We The People*, Plaintiffs' case rests on facts and legal arguments not presented or raised in *Smith and Knight*.

In *We The People*, Plaintiffs have placed heavy reliance on the factual historical context and purpose of the First Amendment's Petition Clause, something the parties did not do in *Smith and Knight*. See Judge Rodgers concurring opinion in *We The People*.

Detours from the straight path of *stare decisis* have occurred for articulable reasons when a Court has felt obliged "to bring its opinions into agreement with experience and with facts newly ascertained," *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 412 (1932) (Brandeis, J., dissenting).

In *We The People*, the failure of the government to respond to Plaintiffs' Petitions for Redress of constitutional torts is not protected by *stare decisis*, and should be declared to be violative of Plaintiffs' First Amendment Rights.³

We The People is not a case that fits the *stare decisis* norm. There is a strong justification warranting a departure from *Smith and Knight*.

In *We The People*, Plaintiffs will ask the Court to distinguish their case from *Smith and Knight*. There is a significant basis for that distinction. Both the facts and circumstances and the legal arguments are substantially different from those that were at issue in *Smith and Knight*.

In *We The People*, the Court **is not dealing with an issue of statutory interpretation**, where the claim to adhere to case law is generally powerful once a decision has settled statutory meaning, as was the case in *Smith and Knight*, see *Patterson v. McLean Credit Union*, 491 U.S. 164, 172-173 (1989) ("Considerations of *stare decisis* have special force in the area of statutory interpretation, for here, unlike in the context of constitutional interpretation, the legislative power is implicated, and Congress remains free to alter what we have done").

In *We The People*, the doctrine of *stare decisis* does not provide a sufficient justification for concluding that Government does not have to respond to proper Petitions for Redress of **constitutional torts**.

³ The Court may want to consider developing a standard for such cases faithful to the Amendment.

The courts give stronger *stare decisis* effect to its holdings in statutory cases than in constitutional cases. See *Clark v. Martinez*, 543 U.S. 371, quoting *Hilton v. South Carolina Public Railways Comm'n*, 502 U.S. 197, 205 (1991).

While the Executive and Legislative branches, in the public sphere, may well have been acting outside the boundaries drawn around their power by the terms of the Constitution, with a misplaced reliance on *Smith* and *Knight's* narrow rulings that “government does not have to listen or respond or recognize those that Petition for Redress,” **citizens, in the private realm, on the other hand have not been relying on *Smith* and *Knight***. Citizens such as the Plaintiffs in *We The People* have not, for more than one century, perceived the need to claim or exercise their First Amendment Rights to Petition for Redress of constitutional torts. Departing from *Smith* and *Knight* would **not** dislodge settled **rights** and expectations as far as the People are concerned. It may, however, dislodge settled **obligations** and expectations as far as the United States is concerned.

If the DC Circuit Court were to depart from *Smith* and *Knight*, no other major Court decisions would have to be reconsidered.

Whatever effect the DC Circuit Court's decision may have in strengthening the application of *stare decisis*, it is likely to be less important than what the Court has done in eroding the Constitution.