
No. 19-339

IN THE
Supreme Court of the United States

EUGENE SONNIER, II,

Petitioner,

v.

CATHOLIC FOUNDATION OF THE DIOCESE OF
LAYFETTE, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEAL THIRD CIRCUIT FOR
THE STATE OF LOUISIANA, WRIT DENIED
SUPREME COURT OF LOUISIANA

PETITION FOR REHEARING

G. Karl Bernard,
Counsel of Record
G. Karl Bernard & Associates
1615 Poydras Street, Suite 101
New Orleans, Louisiana, 70112
(504) 412-9953
karl.bernard@karlbernardlaw.com

PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.2, Eugene Sonnier, II respectfully petitions the Court for reconsideration and rehearing of its November 18, 2019 per curium decision denying Petitioner's Application for Writ of Certiorari. Petitioner requests that this Court grant this Petition for Rehearing and reconsider the case by permitting further briefing on the merits and oral argument. Pursuant to Supreme Court Rule 44.2, this Petition for Rehearing has been filed within twenty-five (25) days of this Court's decision in this case.

REASONS FOR GRANTING THE PETITION FOR REHEARING

This case concerns the United States' commitment to honoring the final wishes of military service members regarding the disposition of their remains upon their death while on active duty, and whether state legislatures may circumvent or ignore the congressional authority expressed in the enactment of 10 U.S.C. § 1482 and undermine the right of a service member's designated Person Authorized to Direct Disposition regarding both internment and dis-internment of the deceased service member's remains.

Upon Petitioner's initial Application for Writ of Certiorari, inadequate emphasis was given to the need for consistency in the states' enforcement of the rights conveyed by 10 U.S.C. § 1482 for the benefit of service members and their families. Given the disparate enforcement schemes in existence across the country, it is clear that without this Court's intervention, the purpose, goals and enforcement of 10 U.S.C. § 1482 will continue to be subject to the whims of the various state legislatures and, thus, unequally enforced.

At the same time, since this Honorable Court's initial denial of certiorari, Petitioner has been informed that multiple additional interested parties who seek full and consistent enforcement of 10 U.S.C. § 1482 wish to be heard in this matter. Among those who have expressed a desire to submit amicus briefs in support of Petitioner's Writ Application are

the current and former directors of the Louisiana Department of Veterans Affairs, who have long-recognized the need for clarity and consistency in the respect that states grant to the wishes of fallen service members regarding their remains. Thus, Petitioner maintains that rehearing is appropriate and necessary.

As it stands, the Louisiana legislature has effectively blocked the application of federal law bestowing a direct benefit to a fallen soldier resided in Louisiana at the time of his death. This is an issue of national import, however. To be sure, every active duty member of the United States Armed Forces has the option of directing how his remains will be handled through the designation of a Person Authorized to Direct Disposition. Whether such designation and final wishes will be respected should not depend upon where the service member's designee resides at the time of his death. However, if Petitioner resided in a neighboring state, the outcome of this could have been quite different.

For example, Alabama is one of the states that has affirmatively addressed the enforcement 10 U.S.C. § 1482 to ensure the supremacy of the federal law. On April 29, 2010, Alabama's governor signed a bill amending §34-13-11 of the Code of Alabama, relating to funerals and the priority of persons authorized to serve as a decedent's agent for purposes of managing his remains. The amendment confirms that priority is to be given a person designated on a Department of Defense Record of Emergency Data form completed by persons serving on active duty in any branch of the United States armed forces, the United States reserve forces, or the National Guard.

Several other states, as well as the District of Columbia, do not enforce or address 10 U.S.C. § 1482 at all in their own laws. The remaining states have varying degrees of enforcement—many of which result in the limitation or infringement upon the right of a service member to designate an agent to manage the disposition of his remains. Therefore, as it stands today, there is absolutely no guarantee that a service member's Person

Authorized to Direct Disposition will have any authority at all to dictate what is one of the most sensitive and personal decisions a loved one can make: how and where to bury the deceased.

Needless to say, the states should not have the authority to interpret Congressional intent and enforce federal law only to the extent they see fit, as Louisiana has done in the case of Mr. Sonnier. Moreover, there is substantial risk that the Court's prior denial of certiorari will serve as precedent, implicitly authorizing state legislatures to impose limitations on the rights conveyed by 10 U.S.C. § 1482. This case affords the Court the opportunity to correct the Louisiana state court's misinterpretation and misapplication of 10 U.S.C. § 1482 in suits involving the dis-interment of deceased members of the United States Armed Forces and, in so doing, re-affirm the sanctity and supremacy of federal law over all conflicting state law. The implications, however, will be much broader than merely granting one grieving father the assurance that he has honored his fallen son in a proper and appropriate manner. This Court's interpretation of the law will also resolve longstanding conflicts not addressed by prior cases.

As indicated in Petitioner's Writ Application, the federal courts have insisted upon the supremacy of federal law in other, similar instances involving the administration of benefits to servicemen and women. For example, military retirement funds and the beneficiaries named pursuant to 10 U.S.C. 3911 and 3929 have been held to preempt state laws that frustrate the purpose of such provisions. As this Court held in *McCarty v. McCarty*¹, regarding California's legislative scheme regarding the division of military retirement funds, application of California's "community property principles to military

¹ *McCarty v. McCarty*, 453 U.S. 210 (1981).

retired pay threatens grave harm to 'clear and substantial' federal interests."² As this Court reasoned in *McCarty*, California's prescribed community property division of retired pay, by reducing the amounts that Congress has determined are necessary for retired service members, has the potential to frustrate the congressional objective of providing for the retired service member.³

This Court has affirmed on several additional occasions that federal law protecting military beneficiaries and the benefits and rights afforded to them shall not be weakened by state laws. “[D]enials of traditional rights to any group should not be approved without examination, especially when the group comprises members of the military, who are engaged in an endeavor of national service, frequently fraught with both danger and sacrifice.”⁴ “[L]egislation is to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need. . . . And no practice . . . can cut down the service adjustment benefits which Congress has secured the veteran under the Act.”⁵

The Supremacy Clause affords the Court and Eugene Sonnier, II relief in this dispute because La. R.S. 8:659 clearly frustrates and undermines the rights bestowed upon Petitioner as the Person Authorized for Direct Disposition by 10 U.S.C. § 1482, thus undermining Congress' clear intent, purposes and objectives in this area of law.

CONCLUSION

Petitioner, Eugene Sonnier, II, respectfully requests that this Court grant his Petition for Rehearing and order full briefing and argument on the merits of this case.

² *McCarty*, 453 U.S. at 212

³ *Id.*

⁴ *Barker v. Kansas*, 503 U.S. 594, 598 (1992).

⁵ *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946); *Trailmobile Co. v. Whirls*, 331 U.S. 1328 (1947); *Alabama Power Company v. Davis*, 431 U.S. 581 (1977).

Respectfully Submitted,

/s/ G. Karl Bernard

G. Karl Bernard

Counsel of Record

G. Karl Bernard & Associates, LLC

1615 Poydras Street, Suite 101

New Orleans, Louisiana 70112

(504) 412-9953

karl.bernard@karlbernardlaw.com

Counsel for Eugene Sonnier, II