IN THE SUPREME COURT OF THE UNITED STATES

SEAN M. DONAHUE

v.

COMMONWEALTH OF PENNSYLVANIA

19-5808

PETITION FOR REHEARING

The Petitioner CORRECTS his Petition for Rehearing per instructions from the Clerk of the Supreme Court of the United States. This petition for rehearing is presented in good faith and not for delay and is limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

The Petitioner also adds a new fact that was not made available until October 31, 2019, when the attorney representing the police officers who arrested the Petitioner in the underlying criminal case filed a briefing in a civil case, in which the Petitioner is suing the arresting officers involved in the instant case and the City of Hazleton, Pennsylvania, for which they work. *(Donahue v. City of Hazleton, PA et al, Civil Action 3:14-CV-1351, US Middle District of Pennsylvania) (US Federal Courthouse in Scranton, PA.)* The Supreme Court of the United States can take judicial notice of that public court filing.

In their October 31, 2019 briefing at US Middle District of PA, 3:14-cv-1351, the arresting officers (who are defendants in the civil case) argue that the Petitioner in the instant case was arrested and prosecuted for his having sent numerous emails to government offices and government officials over many years, almost a decade. The arresting officers further argue that many of the emails, for which the Petitioner was arrested and for which he was convicted at the underlying state criminal case, were included in their discovery at the federal civil docket at 3:14-cv-1351 (US Middle District of PA).

> *"II. STATEMENT OF FACTS*
> *A. THE ALLEGATIONS OF THE COMPLAINT*
> *This action stems from the transmission of an email from Plaintiff, Sean Donahue ("Donahue") to Luzerne County District Attorney Stefanie Salavantis ("Salavantis") on August 17, 2012. [Footnote 1] Donahue's email to Salavantis speaks for Itself.*
>
> *As a result of the email to Salavantis and the other emails identified in Exhibit "A" to this SUMF, Donahue was charged with two offenses: 18 Pa.*
>
> *C.S.§2706(a)(1)- terroristic threats with intent to terrorize another and 18 Pa. C.S.*
> *§2709(a)(3) - harassment repeatedly alarm or annoy. Violation of 18 Pa. C.S.*
> *§2706(a)(1) is a misdemeanor of the first degree and violation of 18 Pa. C.S.*
> *§2709(a)(3) is a summary offense (Doc. 1 at ¶s 32-34).*
>
> *Donahue admits in his Complaint that, "prior to the charges being filed, on August 21, 2012, Donahue allegedly sent a series of emails requesting that government officials cease contacting him without a warrant" (Doc. 1 at ¶ 39; Exhibit "A" at pp. 000391-000394)."* (id)
>
> *"[Footnote 1] All documents referenced in this brief are exhibits to Defendants' Statement of Undisputed Material Facts ("SUMF") which make up the Defendants' summary judgment record in this case. See Exhibit "A" to Defendants' SUMF."* (id)

(See APPENDIX 1: Plaintiff includes the entirety of the arresting officer's exhibits to their above referenced civil court brief. The arresting officers also provided many additional emails in discovery that were not included as exhibits to their filings.)

The problem with the claims made by the arresting officers at the above referenced federal civil docket is that the state itself determined that all of the other emails, for which the police argue that they arrested and prosecuted the Petitioner in the instant case, were protected free speech.

In the underlying criminal case, the state only presented a single email that it alleged to be unprotected criminal speech. Yet, at the civil case, police argue that the Plaintiff was really convicted for all of the other emails that the state itself determined to be free speech. The Plaintiff argues that he is entitled to both reversal of conviction and expungement because he was the victim of both selective and retaliatory prosecution. (*Hartman v. Moore, 547 U.S. 250 (2006); U.S. v. Armstrong, 517 U.S. 456, 458 (1996); United States v. Gutierrez, 990 F.2d 472, 476 (9th Cir. 1993); Nieves v. Bartlett 587 U. S. __ (2019)).*

In Nieves v *Bartlett,* Bartlett was not convicted for the action upon which his charge was based but he could not show that he was really arrested for other protected actions that occurred earlier that day. In the instant case, it is the police officers themselves who argue that the Petitioner was arrested and convicted for numerous other emails that the state has already determined to be free and protected speech. In the instant case, the state actors have already proved that the

Petitioner was really arrested for emails that were not included and not referenced in the charging documents and were not adduced at trial.

What is more, because the arresting police officers now admit to the fact that the Plaintiff was really prosecuted for the many other emails that the state itself deemed to be free speech, the Plaintiff RESPECTFULLY REQUESTS that the Supreme Court of the United States rule that the single email in question, when taken within the context of all of the additional emails, can no longer be considered to be unprotected speech. What is more, the Petitioner RESPECTFULLY REQUESTS that the Court rule that because the many emails for which the Petitioner was really arrested and prosecuted were never adduced at trial, the underlying state conviction must be reversed and expunged.

What is more, the arresting officers only provided a small number of additional emails in their discovery at the civil case docket. If this Court grants certiorari, the entirety of the remaining emails that were never adduced in the state criminal proceeding but were released by the arresting officers in the related civil case will be forwarded to this Court by the Petitioner. When the entire, decade long, context is considered as a whole, the single email in question does not rise to the level of unprotected speech. *(Thornhill v. Alabama, 310 U.S. 88, 95 (1940); Brandenburg v. Ohio, 395 U.S. 444, 447-8 (1969); Broadrick v. Oklahoma, 413 U.S. 601 (1973)* The state intentionally kept this knowledge from the state trial court and also kept it from the defense. The Plaintiff was not in possession of the additional context at the state criminal trial docket.

What is more, even if the single email in question did rise to the level of unprotected speech, the Petitioner was immune from prosecution for any "true threat" if that threat arose from a labor dispute. *(COMM V BELL Com. v. Bell, 516 A.2d 1172 (Pa. 1986), the Pennsylvania Statutory Construction Act of 1972, 1 Pa.C.S.A. §1921(b))*

> "(e) Application of section.--This section shall not apply to conduct by a party to a labor dispute as defined in the act of June 2, 1937 (P.L.1198, No.308), known as the Labor Anti- Injunction Act, or to any constitutionally protected activity." *(18 Pa. C.S. 2709 (e) at the time charges were filed;* See copy of the, now struck but relevant, harassment statute attached*)* (APPENDIX 2)

The Pennsylvania Labor Anti- Injunction Act was extended to charges of terroristic threats because the act protected those involved in labor disputes from prosecution for "true threats". (APPENDIX 2)

The Supreme Court of the United States erred by failing to take up the matters raised in the Petitioner's filing of August 31, 2019. *(Petition for Writ of Certiorari to the Superior Court of Pennsylvania)* The issues raised in the instant case are of fundamental importance. They have direct bearing on the willingness of law enforcement throughout the United States to infringe upon both the fundamental right of free speech and the fundamental right to bear arms.

In *Thornhill*, the Court said;

> *"The freedom of speech and of the press which are secured by the First Amendment against abridgment by the United States are among the fundamental personal rights and liberties which are secured to all persons by the Fourteenth Amendment against abridgment by a State." (Thornhill v. Alabama, 310 U.S. 88, 95 (1940))*

Yet, in *Brandenburg,* the Court stated;

> *" 'the mere abstract teaching... of the moral propriety or even moral necessity for a resort to force and violence is not the same as preparing a group for violent action and steeling it to such action.' " (Brandenburg v. Ohio, 395 U.S. 444, 447-8 (1969))*

In the sentence just prior to that, the Court contradicted its own findings in *Thornhill* by stating;

> *"... the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action...." (id 447-8)*

The Court was clearly wrong in *Brandenburg* when it claimed that

> *"...except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action...." (ibid)*

The reason the high court was wrong was because it failed to differentiate from its exception a clarifying instruction to guide the government, the courts and the people to recognize and identify when *"imminent....action"* involving the *"use of force"* that may be deemed *"lawless"* absent the antecedent act of tyranny and/or the infringement of fundamental rights by the government of the United States and/or the states themselves is not *"lawless"* but is instead a constitutionally protected activity.

Wikipedia states;

> "**Glorious Revolution of 1688–1689**
> *Main article: Glorious Revolution*
>
> The British have always regarded the overthrow of King James II of England in 1688 as a decisive break in history, especially as it made the Parliament of England supreme over the King and guaranteed a

bill of legal rights to everyone. Steven Pincus argues that this revolution was the first modern revolution; it was violent, popular, and divisive. He rejects older theories to the effect that it was an aristocratic coup or a Dutch invasion. Instead, Pincus argues it was a widely supported and decisive rejection of James II. The people could not tolerate James any longer. He was too close to the French throne; he was too Roman Catholic; and they distrusted his absolutist modernisation of the state. What they got instead was the vision of William of Orange, shared by most leading Englishmen, that emphasised consent of all the elites, religious toleration of all Protestant sects, free debate in Parliament and aggressive promotion of commerce. Pincus sees a dramatic transformation that reshaped religion, political economy, foreign policy and even the nature of the English state." (https://en.wikipedia.org/wiki/Stuart_period)

In *Heller*, this court stated;

> "...the right secured in 1689 as a result of the Stuarts' abuses was by the time of the founding understood to be an individual right protecting against both public and private violence." *(District Of Columbia v. Heller ,554 U. S. 570, 593-4 (2008))*

In *Heller* the court waxes nostalgic in a romanticized rooting of its ruling all the way back to the old country to an era of *"Glorious Revolution"*, where it is indisputably the case that the Court found its romance in the *"violent, popular, and divisive"* revolution that was thence the *"imminent....action"* of an armed people *"'preparing a group for violent action and* [thence following through by] *steeling it to such action.' " (Brandenburg)* In citing the era of the Stuarts, the Court also contradicted itself by emphasizing the *"individual right protecting against both public and private violence." (Heller)* When all of the aforementioned rulings are taken together, the Supreme Court of the United States is not clear as to which side of the Stuart era it is on. Do the individuals have a right to arm themselves against the Stuarts and engage in *"violent, popular, and divisive"* uprising or do other

individuals have a right to arm themselves against those who are engaging the uprising. The Supreme Court of the United States was not clear on this point.

Q1. Does a man have an inalienable and fundamental right to arm himself and intentionally act out to overthrow the Stuarts and/or any other king or government, i.e., the government of the United States and/or the states themselves, or doesn't he? **The Petitioner's Suggested Answer is Yes He Does.**

Q.2. Does a man have an inalienable and fundamental right to arm himself to defend against acts of tyranny by the government of the United States and/or the states themselves or doesn't he? **The Petitioner's Suggested Answer is Yes He Does.**

Q.3. If a man has the rights inquired about in Q.1 & Q.2, then does he not also have a right to speak out about the exercise of those rights, without having to govern his voice or words with concerns over whether or not his words and voice are taken by someone else, or taken by all, to be harbingers of *"imminent....action"*? **The Petitioner's Suggested Answer is Yes. He Has a Right to Speak Freely Without Having to Govern Himself With Such Concerns.**

Q.4. If the actions themselves are not *"lawless"*, then why does it matter what he says and how could the government of the United States and/or the states themselves be allowed to retaliate with the *"abridgment" (Thornhill)* of those rights? **The Petitioner's Suggested Answer is The Government Cannot Abridge His Rights and the Conviction Must Be Reversed and Expunged.**

Q.5. Even if the actions themselves are *"lawless" (Brandenburg)*, why does it matter? **The Petitioner's Suggested Answer is that It Doesn't Matter. He Can Say Whatever He So Chooses to Say and He Can Do So With Impunity.**

Q.6. If a Georgetown University professor can speak out about "castrating" the members of the US Senate Judiciary Committee who dare vote to confirm the President's nominee to the bench, then how can any of the words in the instant case, whether taken together or apart, not be protected speech? **The Petitioner's Suggested Answer is that The Words in Question Are Protected Speech.**

Q.7. Is there some special tacit speech right for important people that the common man does not have? *(The era of the Stuarts)* **The Petitioner's Suggested Answer is Yes But Its Existence is Unconstitutional.**

In the instant case, the Appellant does not merely argue that the words for which he was prosecuted are protected speech. He also argues that the alleged *"imminent....action"*, even if carried out, would have been protected action under the US Second Amendment. As interpreted in *Heller*, those actions would have been protected actions both in defense of one's self and as a just revolt against the state actors who actively engaged in the oppressive, violent and tyrannical actions reminiscent of "the Stuarts' abuses ".

It is beyond the Petitioner, and many other common men, as to why the Supreme Court of the United States, having issued so many conflicting and contradictory rulings in its interpretation of both the First and the Second

Amendments of the US Constitution, would not take up the issues being raised in the instant case. The instant case is wrought with examples of tyrannical violent actions that occurred at the hands of the government. It is therefore the perfect case in which the Court can take up the issues raised herein.

The Petitioner RESPECTFULLY REQUESTS that the Court hear the instant case and that it rule once and for all whether or not the Second Amendment guarantees and individual and/or a group right to arm one's self and/or a group to both defend against the actions of the government (state and/or federal) and also to engage in, implement, carry out and follow through with *"violent, popular, and divisive"* revolt to unseat and replace that government. The Petitioner RESPECTFULLY REQUESTS that the Court rule, once and for all, whether or not the First Amendment guarantees an individual and/or group right to publicly call for, publicly demand and/or publicly promise and/or threaten such action.

The foregoing document is true in both fact and belief and submitted under penalty of perjury.

Respectfully Submitted,

Nov 14, 2019
Date

Sean M. Donahue
Sean M. Donahue

IN THE SUPREME COURT OF THE UNITED STATES

SEAN M. DONAHUE

v.

COMMONWEALTH OF PENNSYLVANIA

19-5808

Certification Of A Party Unrepresented By Counsel

I hereby certify that this petition for rehearing is presented in good faith and not for delay and is limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

Respectfully Submitted,

Nov 14, 2019
Date

Sean M. Donahue

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

November 6, 2019

Sean Donahue
625 Cleveland Street
Hazleton, PA 18201

RE: Donahue v. Pennsylvania
No: 19-5808

Dear Mr. Donahue:

The petition for rehearing in the above-entitled case was postmarked October 28, 2019 and received November 5, 2019 and is herewith returned for failure to comply with Rule 44 of the Rules of this Court. The petition must briefly and distinctly state its grounds and must be accompanied by a certificate stating that the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

You must also certify that the petition for rehearing is presented in good faith and not for delay.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 15 days of the date of this letter, the petition will not be filed. Rule 44.6.

Sincerely,
Scott S. Harris, Clerk
By: C. Houghteling
Clara Houghteling
(202) 479-5955

Enclosures

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 15, 2019

Mr. Sean M. Donahue
625 Cleveland Street
Hazelton, PA 18201

Re: Sean M. Donahue
v. Pennsylvania
No. 19-5808

Dear Mr. Donahue:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

Scott S. Harris

Scott S. Harris, Clerk