No. 19-690

In The
Supreme Court of the United States

TINA NEVILLE,

Petitioner,

v.

JANET DHILLON, CHAIR, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *et al*.

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ADDENDUM TO PETITION FOR REHEARING

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TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Page(s)

CASES

ADDENDUM TO
PETITION FOR WRIT OF CERTIORARI

Despite the Government's contention that the status of DST's is well settled across all jurisdiction, a cursory examination of the caselaw shows that interpretations surrounding the nature of the DST are in flux. The 8th Circuit, in a 2011 ruling, found that DST's were indeed martial in character and granted them exception from the SSA's Windfall Elimination Provision (WEP). *Petersen v. Astrue*, 633 F.3d 633 (8th Cir. 2011). While this holding would bolster the Government's argument that DST's are "irreducibly military in nature," the reasoning in *Peterson* was expressly rejected by the 6th Circuit, which in *Babcock v. Comm'r of Soc. Sec.* found DST's to be only "essentially military," and thus not eligible for the WEP exception. *Babcock v. Comm'r of Soc. Sec.*, 2020 U.S. App. LEXIS 14935, *17 (6th Cir. Mich. May 11, 2020) (Quoting *Martin v. SSA*, 903 F.3d 1154, 1166 (11th Cir. 2018)). The *Babcock* Court even goes on to emphasize the civilian nature of DST's. *Bobcock*, 2020 U.S. App. LEXIS at *17 ("These differences distinguish Babcock's service as a dual-status technician from that of other National Guard members and indicate that his dual-status technician employment is not wholly 'service as a member of a uniformed service…'"). It seems the military nature of DST's is easily reduced or bolstered as the Government sees fit to best avoid granting them the civilian benefits to which they are entitled.

Respectfully Submitted,

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