

In the
Supreme Court of the United States

RETAIL READY CAREER CENTER, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

**BRIEF OF AMICUS CURIAE VETERANS OF THE
ARMED FORCES OF THE UNITED STATES OF AMERICA
IN SUPPORT OF NEITHER PARTY**

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INTEREST OF THE *AMICUS CURIAE*¹

Caleb A. Davis is a retired Captain of United States Marines, consumer of Title 38 (G.I. Bill and Vocational Rehabilitation and Education programs), and *pro bono* counsel to veterans. He is a graduate of the Fordham University School of Law and the Lyndon B. Johnson Graduate School of Public Affairs at the University of Texas at Austin. He is also the founder of the Fordham University School of Law veterans' advocacy group, a group providing *pro bono* legal services to veterans in New York City.



SUMMARY OF ARGUMENTS

The lower Court's new precedent is harsh to veterans and injurious to all recipients of federal funds. The lower Court ruled that the United States is immune from counterclaims for constitutional torts—*civil forfeiture without due process*. This Court should grant *Certiorari* and reverse for two reasons.

First, the new precedent jeopardizes innovation in the Title 38 marketplace. The lower Court's ruling blessed the Government's reasonless destruction of an innovative, veteran friendly vocational rehabilitation program. Traditional vocational training programs are failing veterans in catastrophic ways. The lower

¹ No counsel for a party contributed to this brief in substance or monetarily. Counsel of record for each party has consented to the filing of this brief in writing.

Court’s decision discourages innovation in the Title 38 marketplace.

Second, the lower Court’s new precedent equips partisan government agents with kingly powers to punish their rivals. Veterans’ groups, or any other recipient of federal funds, should refrain from political speech or controversial advocacy because their rivals in Government are now unrestrained by due process.

For these reasons, and others, the Court should grant *Certiorari*.



ARGUMENTS

The transition is quietly killing us. Veterans transitioning to civilian life are killing themselves at a rate of 28 veterans per day.² That number is growing.³ Congress enacted Title 38 benefits to encourage enlistment by easing the post service transition. The lower Court’s decision, however, stymies innovation among producers in the Title 38 marketplace, limits veterans’ post-service choices, and provides partisan

² See Veteran Suicide Prevention Annual Report, Department of Veterans’ Affairs, 10 (September 2017), https://www.mentalhealth.va.gov/docs/data-sheets/2019/2019_National_Veteran_Suicide_Prevention_Annual_Report_508.pdf (showing sex and age adjusted suicide rates).

³ See *id* (showing age and sex adjusted rates climbing from ~19/day in 2005 to ~28/day in 2017); Particia Kime, *Military Suicides Reach Highest Rate Since Record-Keeping Began After 9/11*, Military.com, <https://www.military.com/daily-news/2019/08/01/pentagon-reports-record-number-suicides.html>.

Government agents with destructive powers unrestrained by the Constitution.

Petitioner Retail Ready Career Center, Incorporated, had its assets seized on a sealed application under 18 U.S.C. § 981(b)(1)-(2). *See generally United States v. \$4,480,466.16 . . . et al*, case no. 3:2017-cv-02989 (pet. filed N.D. Tex Oct. 30, 2017). Veterans who had spent their Title 38 compensation on the school, were stranded without reason. Two and one half years, two successful 12(b)(6) motions, five government petitions, four federal judges, two extensions for Government criminal discovery, two civil stays, and zero indictments later the Government’s reasons for the seizure are no less a mystery. *Id.*

Retail Ready was an innovative school with a curriculum engineered to smoothly transition students into the Heating, Ventilation, and Air Conditioning profession. It was an intensive boot camp style vocational rehabilitation program largely dependent on Title 38 funding. It produced licensed, capable HVAC professionals in a mere six weeks and placed 81.49 percent of its graduates, according to Petitioner. Pet. for Writ of Cert. at 9.

Retail Ready’s intensive resident course was friendly to veterans for numerous reasons. First, it mimicked the intensive professional trade schools that are commonplace in military. It was a civilian trade school with military flavor and an alternative to leaving the military culture cold turkey. Second, its quick turnaround enabled veterans with mature financial and familial obligations to learn a vocation in a high-paying trade. Third, the school provided social services to veterans, classes intended to help students manage their finances and transition into

professional civil life. These are just a few reasons the school was so veteran-friendly.

By fall of 2017, Retail Ready had been roaring for more than two years. It churned out new classes of HVAC professionals with breathtaking pace, around 2500 in total. Being largely dependent upon Title 38 funding, it had necessarily passed numerous federal regulatory audits along the way. The seizure of its assets came without warning or reason.

After its assets were seized, Retail Ready filed Constitutional counterclaims against the United States in the lower Courts. *United States v. \$4,480,466.16 in Funds Seized From Bank of Am. Account Ending in 2653*, 3:17-CV-2989-D, (N.D. Tex. Apr. 26, 2018) vacated and remanded, 936 F.3d 233 (5th Cir. 2019), withdrawn from bound volume, opinion withdrawn and superseded on denial of reh'g, 942 F.3d 655 (5th Cir. 2019) and aff'd on other grounds, 942 F.3d 655 (5th Cir. 2019). After reviewing the counterclaim against the Government, the Appellate Court split with its siblings and for the first time ruled that the United States was immune from counterclaims for Constitutional torts. 942 F.3d 664-66; but see e.g., *United States v. Washington*, 853 F.3d 946, 968 (9th Cir. 2017) (“The United States enjoys sovereign immunity only from unconsented suits. . . . when the *United States files suits*, consent to counterclaims seeking recoupment or offset will be inferred.”) (emphasis added); *United States v. James Daniel Good Real Property*, 510 U.S. 43 (1993) (awarding money damages).

The lower Court created a Circuit split based and new precedent with an inconsistent ruling. It agreed that Retail Ready could file counterclaims *in rem* based upon its interest in the seized property consistent

with the time worn practices in Admiralty, but ignored the United States' express waiver of immunity in Admiralty proceedings. 942 F.3d 661-63; *but see* 46 U.S.C. § 30903(a) (“In a civil action in admiralty brought by the United States . . . an admiralty claim in *personam* may be filed or a setoff claimed against the United States[.]”). It christened the United States with immunity for its *ex parte* seizure and disallowed the exercise of jurisdiction over Retail Ready’s counterclaims. *Id.* at 664-66.

A.

The *Amicus Curiae*’s first concern is an economic one. He is interested in proliferating a Title 38 marketplace rife with the innovation and entrepreneurship that produced Retail Ready Career Center. The implications of vibrant marketplace are obvious. He avers that Veterans will transition better with more post service choices, not less.

The Government’s shoot first; file endless continuances/stays later tactic stymies innovation. Here, the Government appears to have blessed Retail Ready on Monday, then seized its assets and shut it down on Tuesday. There is nothing more hostile to innovation than insecurity. And nothing can generate more insecurity than the arbitrary seizure of personal property by a sovereign. Our republic’s violent history strongly suggests that this variety of insecurity seeds revolt.

B.

The *Amicus Curiae*'s second concern is for the vitality of groups that receive Government funds. We live in a partisan era and regulatory state. Agencies like the Internal Revenue Service, Federal Bureau of Investigations, and the Veterans Administration are run by partisans like Lois Lerner,⁴ Peter Strzok and Lisa Page,⁵ and Miguel Coias,⁶ respectively. The lower court's decision provides these partisans with immense power to punish their rivals unrestrained by the Constitution.

Although this brief is veteran centric, the lower Court's decision subjects all recipients of federal funds to the unchecked, extraconstitutional torts of partisans or well-intentioned dim wits. *Planned Parenthood*, for example, might be a prime target. Between 2013 and 2015, it received approximately \$90,000,000.00 in federal funds.⁷ Could a FBI or DoJ investigator with a pro-life bend now seize women's health clinics throughout the south with immunity?

⁴ Kelly Phillips Erb, *IRS Targeting Scandal: Citizens United, Lois Lerner, And The \$20M Tax Saga That Won't Go Away* (June 24, 2016), <https://www.forbes.com/sites/kellyphillipserb/2016/06/24/irs-targeting-scandal-citizens-united-lois-lerner-and-the-20m-tax-saga-that-wont-go-away/#46955111bcd1>.

⁵ Marina Stewart, *Mueller Removed FBI Agent From Russia Probe Over Anti-Trump Messages* (December 2, 2017) <https://www.npr.org/2017/12/02/568018387/mueller-removed-fbi-agent-from-russia-probe-over-anti-trump-messages>.

⁶ See *Retail Ready Career Center, Inc. v. United States, Miguel Coias*, case no. 3:2019cv02204 (pet. filed Sep. 16, 2019).

⁷ *GAO-18-204R Federal Funds for Selected Organizations*, Government Accounting Office, 5 (Mar. 6, 2018).

Yes . . . Yes, they can.

Good luck to the Republic, Good Luck to us all.

Respectfully submitted,

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