No. 20-1824

IN THE
SUPREME COURT OF THE UNITED STATES

VINCENT LUCAS,
Petitioner,

v.

TRICIA MOORE, MARCIA PHELPS, LICKING COUNTY, OHIO, AND THE CITY OF NEWARK, OHIO,
Respondents.

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

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REPLY BRIEF

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TABLE OF CONTENTS

I. This case involves conflicts of law between the Sixth and Seventh Circuit Courts of Appeals

The Respondents' brief is incoherent. First, they claim that the "alleged conflict is not 'with a decision of another court of appeals.'" But later they admit that the alleged conflict is between the Sixth and Seventh Circuit Courts of Appeals. Resp. Br. 4.

The conflict is a conflict of law between the Sixth and Seventh Circuit. One of this Court's primary functions is to resolve conflicts of law between the federal Courts of Appeals. Sup.Ct.R. 10(a). (1.) The law in the Seventh Circuit is that courts must do a balancing test to weigh the disclosure's utility to the government against the harm. The law in the Sixth Circuit is that no balancing test should be used. (2.) The law in the Seventh Circuit is that the scope of the disclosure is relevant; the government may not "exceed the scope" justified by the alleged permissible use. The law in the Sixth Circuit is that scope is not relevant. It does not matter that the scope of people to whom the disclosure is made vastly exceeds what is justified to achieve the permissible use.

The Respondents' Brief at 4 states that the Petition "cites only the disagreement between the Sixth and Seventh Circuit in the application of a balancing test." (Emphasis added). That is false. One of the disagreements is whether a balancing test should be used at all. The law in the Seventh Circuit is that "[W]e need to balance the utility (present or prospective) of the [government's disclosure of] personal information ... against the potential harm." *Senne v. Village of Palatine*, 784 F.3d 444, 447 (7th Cir. 2015). However, the law in the Sixth Circuit is that no balancing test should be used. Thus, the conflict is not a "misapplication of a properly stated

rule of law." The conflict is that the law is materially different between the two Circuits.

The Sixth Circuit did not apply any balancing test at all. If the Sixth Circuit would have applied a balancing test, its Opinion would contain a comparison of the disclosure's harm to me versus the benefit to the government and an analysis of whether that benefit outweighs the harm. However, the Sixth Circuit's Opinion contains none of that, because the law in the Sixth Circuit is that a balancing test should not be used.

If ever there was a case in which the benefit versus harm weighs in favor of non-disclosure, it is this case. No legitimate government purpose is served by providing the public with my Social Security Number. The harm of disclosing my SSN to the public is obvious. The benefit to the government is non-existent because prosecutor Moore could have easily avoided the public disclosure by redacting or filing under seal, and her prosecution would not have been hindered in the slightest. Pet. at 9-11.

Another major disagreement of law is whether the scope of the disclosure is relevant. The law in the Seventh Circuit is that the government "can disclose the information only in a manner that does not exceed the scope of the authorized statutory exception." *Senne*, 695 F.3d 597, 606 (7th Cir. 2012). "There is an argument for placing identifying information such as height and weight on a ticket placed face down under a windshield wiper, but it would be at once unnecessary and an offensive invasion of privacy to place that information in a newspaper, on a billboard, or on the police department's website." *Senne*, 784 F.3d at 447-48 (emphasis added). Thus, the law in the Seventh Circuit is that the range of people to whom a

disclosure is made is highly relevant. The fact that the government may be justified in making personal information available to a limited range of people (i.e. people in the immediate vicinity of the parking ticket) does not justify making the information available to the entire world. By contrast, the law of the Sixth Circuit is that the scope of the disclosure is irrelevant. The Sixth Circuit held that because Moore was justified in disclosing highly restricted personal information to one person (the judge), she is permitted to disclose the information to the entire world. This is beyond absurd. Under this reasoning, if the IRS requests a driver's SSN from a Department of Motor Vehicles, the DMV could satisfy that request by posting the SSN on the DMV's public website.

II. This case is not an issue of "best practices"

The Respondents and District Court trivialize the issue by saying that the DPPA does not mandate "best practices." At issue is Moore's practice of disclosing Social Security Numbers to the public for no good reason. To say that this is merely an issue of best practices is like saying that it is merely a "best practice" for a surgeon not to amputate the wrong leg or a "best practice" for the police to have probable cause before conducting a strip search during a traffic stop. This case is no mere issue of "best practices." At issue is an egregious violation of basic privacy rights by the Respondents and whether the DPPA prohibits that privacy violation. The Respondents and District Court fixate on just one sentence of a footnote from *Senne*, 695 F.3d at 606 n.12, quote it out of context, and ignore everything else in the *Senne* opinions.

III. The Respondents' reasoning was rejected by this Court in *Maracich*

The Respondents argue that their disclosure is permitted under a literal reading of the DPPA's exemptions. Like other statutes, the DPPA requires court interpretation, and this Court is the ultimate authority on interpreting federal statutes. The Respondents' arguments are very similar to the arguments rejected in *Maracich v. Spears*, 570 U.S. 48 (2013). Therein, the defendants argued that under the "plain language" of the DPPA, lawyers are permitted to obtain from DMV records the names and addresses of potential plaintiffs in order to solicit them to join a lawsuit — the disclosures "fall squarely" under the DPPA exemptions, since the disclosures were "For use in connection with ... litigation." 18 U.S.C. §2721(b)(4).

This Court disagreed. This Court held that the DPPA must be interpreted and its exemptions must be read "narrowly in order to preserve the primary operation of the statute." 570 U.S. at 60. "Unless commanded by the text, however, these exceptions ought not operate to the farthest reach of their linguistic possibilities if that result would contravene the statutory design." *Id.*

The violation of privacy rights in this case is far more egregious than in *Maracich*. In *Maracich*, the disclosure was only of names and addresses to lawyers. By contrast, in this case, the disclosure is of my Social Security Number ("highly restricted personal information" under the DPPA) and other personal information to the general public, including career identity thieves.

CONCLUSION

The woeful inadequacy of the Respondents' Brief illustrates that there is a serious conflict of law between the Sixth and Seventh Circuits, the law in the Sixth Circuit is wrong, and this case is an excellent candidate for review by this Court.

Respectfully submitted,
Vincent Lucas