No. 20-351

IN THE

Supreme Court of the United States

NORRIS PAUL CAREY, JR.,

Petitioner,

v.

DEPUTY SECRETARY JOANNE THROWE, CAPTAIN EDWARD JOHNSON, CAPTAIN CHARLES VERNON AND SUPERINTENDENT ROBERT K. ZIEGLER,

Respondents.

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

REPLY BRIEF

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Introduction

Despite Respondents' deprecations, this case concerns important freedoms: First, the freedom of a veteran police officer, in retiring, to rely on federal assurances he may protect himself with a concealed weapon, a freedom that ought to be secure against local feuds and vendettas. Second, the freedom of a citizen to call into public question the suitability of a public officer to fill the office he holds. Petitioner Norris Paul Carey, Jr. ("Mr. Carey") has lost both freedoms, and cannot redress his loss because of bad decisions enabled by disagreements among the circuit courts and a lack of clarity in the law. It is desirable and in the public interest that this Court grant Mr. Carey's Writ of Certiorari to protect the many Americans seeking the same freedoms sought by Mr. Carey.

Argument

I. REVIEW IS WARRANTED TO RESOLVE A CONFLICT BETWEEN CIRCUITS CONCERNING WHETHER LEOSA CREATES AN ENFORCEABLE RIGHT UNDER § 1983 AS A MATTER OF LAW.

Respondents' Brief presents the Court with a school of red herrings.

First: This Petition presents no "contest [of] a state's determination that an officer did not retire 'in good standing' and therefore is not a 'qualified' officer," as urged by Respondents. The decision of which review is sought affirmed dismissal of Mr. Carey's Complaint. On review by this Court, as below, Mr. Carey's allegations must be assumed true, including his allegation he retired in good standing. (Mr. Carey's contention is hardly implausible, given the Maryland Police Training

Commission, the agency charged with determining whether Maryland law enforcement officers are in good standing, certified Mr. Carey to be in good standing.) As in *DuBerry v. District of Columbia*, 824 F.3d 1046 (D.C. Cir. 2016), Mr. Carey had qualified under a fully-fledged LEOSA program created and maintained by the State, but Respondents refused to let Mr. Carey exercise his LEOSA rights for reasons not countenanced by LEOSA (as, again, the District of Columbia did in *DuBerry*). The Fourth Circuit should have aligned itself with the District of Columbia Circuit in allowing qualified LEOSA participants to enforce their rights without local interference, but it did not, creating a sharp and unwholesome disagreement among the circuit courts.

Second: Mr. Carey had been issued the "photographic identification" card required by LEOSA, and hence has never sought "to compel a state to issue the . . . card," as claimed by Respondents. Instead, Mr. Carey seeks relief under 42 U.S.C. §1983 enforcing his right to carry a concealed firearm pursuant to LEOSA, thus raising the very issue upon which Respondents concede "there is a circuit split." While it is true Mr. Carey, in the *ad damnum* clause of complaint, asked for an order commanding the State "to issue [Petitioner] a LEOSA certification card," that request was made only because of Respondents' unwarranted interference with Mr. Carey's use of his existing LEOSA card. Thus, the right Mr. Carey seeks to vindicate is the right to carry a concealed firearm pursuant to LEOSA, and not the issuance of an "identification card," which is a purely administrative matter of no consequence in this case.

Third: Because Mr. Carey seeks enforcement of his LEOSA right to carry a concealed weapon, and not the issuance of an identification card, (which he possesses), Respondents' profession of "anti-commandeering concerns" is certainly unwarranted and perhaps disingenuous.

In sum, the criterion for enforceability of a federal statute under §1983 is whether that statute was intended to bind the states, on the one hand, to the benefit of would be plaintiffs, on the other. Here, both the plain language of LEOSA and its legislative history make it clear Congress intended to bind the states to allow qualified retired law enforcement officers the benefit of whatever protection a concealed firearm could provide. To deny LEOSA enforceability through §1983 is to dilute its imperative, commanding language down to the expression of wishes and recommendations. The fact Congress clearly meant for the states to comply with LEOSA, to abide by its terms, is not the same as requiring the states to carry out those terms: LEOSA creates, not a list of things for the states to do, but a set of rules with which they are to comply. The anti-commandeering arguments raised by the Fourth Circuit were considered and rejected by Congress in adopting LEOSA, and should not now be resurrected. The split among circuits interpreting LEOSA should be resolved in favor of affording qualified retired law enforcement officers the protection Congress intended them to have.

REVIEW IS NECESSARY TO RESOLVE A CONFLICT CONCERNING WHAT QUALIFIES AS AN "ISSUE OF PUBLIC CONCERN AS A MATTER OF LAW."

Respondents ask the Court to withhold review of a First Amendment decision it defends as based on settled precedent, which, however, Respondents cast in unprecedented terms: Respondents suggest only "systemic complaints" can give rise to public concern, and complaints about the misconduct or poor character of an official can seldom do so and never do so where the complaint is not about a stranger but about an official known personally to the citizen making the complaint. That Respondents must fashion new law to support the decision under review is a powerful argument that review by this Court is warranted. But whether new law or old law, it is certainly bad law: To suggest, as Respondents do, the First Amendment will protect only speech unalloyed by any personal knowledge of the person spoken about would withdraw the protection of the First Amendment from many important discussions of important topics and, oddly, leave rural Americans without the same First Amendment freedoms afforded their city cousins.

Perhaps, at a minimum, this case is a reverberation of this Court's observation in 2004 that "the boundaries of the public concern test are not well defined," *San Diego v. Roe*, 543 U.S. 77, 83 (2004), echoed in 2011 in *Snyder v. Phelps*, 562 U.S. 443, 452 (2011), and perhaps likely to echo yet again as public interest in the character and mores of their public officials – particularly law enforcement officials – escalates. (*cf.*, the so-called "cancel culture.").

CONCLUSION

For all of foregoing reasons, Mr. Carey respectfully requests the Supreme Court grant review of this matter.

Respectfully submitted,

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