

In The
Supreme Court of the United States

RONALD I. PAUL,

Petitioner,

v.

SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION; PAUL D. DE HOLCZER,
individually and as a partner of the law Firm of Moses,
Koon & Brackett, PC; MICHAEL H. QUINN,
individually and as senior lawyer of Quinn Law
Firm, LLC; J. CHARLES ORMOND, JR., individually
and as a partner of the Law Firm of Holler, Dennis,
Corbett, Ormond, Plante & Garner; OSCAR K. RUCKER,
in his individual capacity as, Director Rights of Way
South Carolina Department of Transportation;
MACIE M. GRESHAM, in her individual capacity as
Eastern Region Right of Way Program Manager South
Carolina Department of Transportation; NATALIE J.
MOORE, in her individual capacity as assistant chief
counsel South Carolina Department of Transportation,

Respondents.

**On Petition For A Writ Of Certiorari
To The South Carolina Court Of Appeals**

REPLY BRIEF FOR THE PETITIONER

RONALD I. PAUL
Pro Se Petitioner
Post Office Box 4353
Columbia, South Carolina 29240
Cell (803) 414-2305
ronaldipaul@att.net

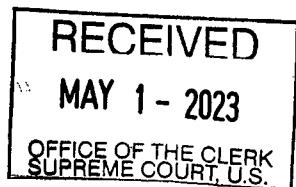


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PETITIONER'S RESPONSE TO RESPONDENTS' STATEMENT OF THE CASE

Petitioner objects to Respondents' Statement of the Case to the extent it includes factual inaccuracies, contested factual matters and arguments. (R 440 lines 7-10, 56-57, 437 lines 6-26 then go to 330-391) Incomplete and cherry-picked. (see Pet. App. 44)

PETITIONER'S RESPONSE TO RESPONDENTS' REASONS FOR DENYING THE PETITION

To challenge the Petition For A writ of certiorari, the Respondents make four arguments:

First, Respondents insist the Petitioner fails to set forth any basis for review by this Court. However, Respondents identify no barrier to the Court's resolution of the Question Presented, Respondents do not contest the Question Presented most salient to this Court's decision on certiorari. And they do not dispute the Question Presented is important.

Second, the Respondents contend that the Petitioner merely states in a conclusory manner that his claims against the Respondents were improperly dismissed. This argument is unclear, but clearly and it cannot be disputed that the Petition For A writ of certiorari addresses an ongoing violation of federal law and seeks relief properly characterized as prospective and, Respondents do not dispute that the issue was squarely presented in the state courts, and the

Appendices (See Pet. App. 1-58) clearly dispute this argument, this argument is meritless.

Third, the Respondents contend that the Petitioner fails to challenge or address each of the bases for the dismissal in state court, However, the state appeal courts rejected Respondents' position on those other issues; whether the state court would agree following remand is of no moment, importance, or relevance. (See Pet. App. 5)

Finally, the Respondents insist that count one in the complaint for Declaratory relief (see Pet. App. 28-30) is barred by the statute of limitations. That contention is doubly wrong, the state courts ignored that, "traditionally and for good reasons, statutes of limitation are not controlling measures of equitable relief. Such statutes have been drawn upon by equity solely for the light they may shed in determining that which is decisive for the chancellor's intervention, namely, whether the plaintiff has inexcusably slept on his rights so as to make a decree against the defendant unfair". *Holmberg v. Armbrecht*, 327 U.S. 392, 396, 66 S.Ct. 582, 584, 90 L.Ed. 743 (1946); See *Russell v. Todd*, supra, 309 U.S. [280] at page 289, 60 S.Ct. [527] at page 532, 84 L.Ed. 74 [(1940)]; *Prudential Lines, Inc. v. Exxon Corp.*, 704 F.2d 59, 65 (2d Cir. 1983) (see Pet. 5)

Petitioner has not slept on his rights so as to make a decree against the defendant unfair, therefore, a statute of limitations defense may not be considered. *Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946). In this case, however, there is no suggestion Petitioner

delayed seeking relief, in fact, the Record on Appeal shows, and it cannot be disputed that Paul has been pursuing his rights diligently to this present date and extraordinary circumstance stood in his way [*Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)]. (see Pet. 5-6)

In addition, in *Ex parte Young*, 209 U.S. 123 (1908), the court held “a plaintiff may seek prospective injunctive and declaratory relief to address an ongoing or continuing violation of federal law or a threat of a violation of federal law in the future.” *Ex parte Young* doctrine, which provides that an individual may sue a state official for “injunctive or declaratory relief to remedy an ongoing violation of law.” *S.C. State Ports Auth.*, 243 F.3d at 170; *Ex parte Young*, 209 U.S. 123 (1908). To determine whether the *Ex parte Young* doctrine applies to a specific case, the court must simply “conduct a ‘straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.’” *Va. Office for Protection and Advocacy v. Stewart*, 563 U.S. 247, 255 (2011) (quoting *Verizon Md. Inc. v. Public Serv. Comm’n of Md.*, 535 U.S. 635, 645 (2002)). The rationalization behind this exception is that a state officer violating federal law is “stripped of his official character” and “thereby loses the cloak of state immunity.” *W.Va. Highlands Conservancy, Inc. v. Huffman*, 651 F.Supp.2d 512, 523 (S.D. W.Va. 2009) (citing *Ex parte Young*, 209 U.S. at 157) Respondents’ statutes of limitation objection thus falters, and they provide no other reason for this Court to deny review. Each

argument lacks merit, the petition for a writ of certiorari should be granted.

CONCLUSION

The question is one of great importance. Respondents are unable to dispute any of this, there are no barriers to review of the question presented in this case. The Court should grant certiorari and provide necessary and overdue guidance to the state courts and to the many parties the question affects and will affect in the future.

Respectfully submitted,

RONALD I. PAUL
Pro Se Petitioner
Post Office Box 4353
Columbia, South Carolina 29240
(803) 414-2305
ronaldipaul@att.net

April 27, 2023