

No. 18-121

IN THE
Supreme Court of the United States

JAMES ROTHERY; ANDREA HOFFMAN,
Petitioners,

v.

LOU BLANAS; JOHN MCGINNIS; TIM SHEEHAN;
SACRAMENTO COUNTY SHERIFF'S DEPARTMENT;
COUNTY OF SACRAMENTO; XAVIER BECERRA,
Attorney General of the State of California,
Respondents.

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

**REPLY IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI**

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**REPLY TO RESPONDENTS'
ADDITIONAL
STATEMENT OF THE CASE**

The Oppositions filed by Respondents contain a mishmash of facts and legal analysis primarily derived from *Mehl v. Blanas*, District Court No. 2:08-cv-2064 (E.D. Cal.), 532 Fed. App'x 752 (9th Cir. 2013), 2008 WL 324019 (E.D. Cal. 2008). *Mehl* is the foundation of their oppositions.

Mehl is also an example of a dangerous new trend in California; weaponizing 42 U.S.C. § 1988 and 28 U.S.C. § 1927 as a means of chilling Second Amendment challenges. In an Order Denying Defendants' Motion for Attorneys' Fees and for Sanctions, the District Court's reasoning explains why *Mehl* has no relevance to this case:

Here, Plaintiffs and their attorneys did not act in an unreasonable, frivolous, meritless or vexatious manner. The Mehl case was dismissed for a lack of standing. In Mehl, the Court did not find that the underlying claim regarding the issuance of CCWs lacked merit, but rather dismissed the case for lack of standing based on factors that were personal to the individual plaintiffs in the that case. See Mehl, p. 10. In the present case, unlike Mehl, both Plaintiffs submitted completed applications. Additionally, unlike Mehl, neither Plaintiff has any issues pertaining to their mental fitness

or procedures for applying which may affect their eligibility for a CCW permit. As such, County Defendants' assertion that based on the dismissal of the Mehl case that Plaintiffs and their attorneys should have recognized the objectively baseless nature of the claims, is without merit.

Following the Mehl case, Plaintiffs and their attorneys acted reasonably in filing another case challenging County Defendants alleged practice of denying CCW permits to applicants who do not contribute to the Sheriff's election campaign. Plaintiffs followed Judge Morrison England's orders in Mehl and took steps to ensure that the standing issues which came forth in that case would not be applicable to the Plaintiffs in this action.

Accordingly, this Court finds that County Defendants are not entitled to attorneys' fees pursuant to 42 U.S.C. § 1988 or 28 U.S.C. § 1927. Given the lack of standing in Mehl, the Court declined to address the additional substantive grounds identified in the complaint.

Mehl v. Blanas, District Court No. 2:08-cv-2064 (E.D. Cal.) docket entry 63 filed 11/20/2009; it can also be found at ER1 in the Ninth Circuit's appellate record.

Respondents avoid arguing any facts mentioned in the operative pleading in this case. For example, a major campaign contributor of respondent Lou Blanas, Edwin Gerber, was issued a concealed carry permit without a written application or DOJ background clearance check which Petitioners were subjected to at the same time. (FAC ¶ 21 ER68)

In addition to campaign contributions, Mr. Gerber bought Sheriff Blanas a house in Reno and would fly him to Reno and Las Vegas in his private aircraft. (FAC ¶ 129-134, ER69, ER79) All this was happening while Petitioners were also applying for their permits.

Then, there is the interesting case of “James Colafrancesco who was arrested for brandishing a handgun. As stated in the police report, James Colafrancesco said he received his Honorary Deputy Commission and CCW because of his connections to the ‘sheriff.’” (FAC ¶ 338, ER96)

As to the purported “over 200 non-contributors” who received licenses in the *Mehl* case (State Opposition page 3, footnote 3; County Opposition page 7), Respondents failed to mention that all 200 were friends of the Respondent Sheriffs’ and/or associated with businesses or other individuals who made campaign contributions. In this case, the First Amended Complaint specifically states that Lou Blanas and John McGinnis issued concealed carry permits to “friends” and not just campaign contributors. (FAC ¶s 14, 28, and 53)

For example, respondent Blanas stated in a declaration that “Pano Stathos” never made a campaign contribution to him. (For reference, see Blanas Declaration at docket entry 130-11, filed 10/15/2007, page 5 of 10, *Mehl v. Blanas*, Case No. 2:03-cv-2682 (E.D. Cal.)). However, his brother worked with respondent Blanas’ wife for Blanas’ largest campaign contributor, “AKT” and developer Angelo Tsakopoulos. (FAC ¶ 67-71, 554-557, ER71, ER96). Other examples are Michael Hisaw who worked for donor Lucky Derby Casino (FAC ¶ 156-163, ER81-2) and attorney Bart Hightower, whose law firm represents the Sheriff’s Department (FAC ¶ 137, ER79).

In sum, the only facts before this court are contained in the First Amended Complaint signed under Rule 11. Respondents do not dispute the facts as stated in the operative pleading in this case; nor can they. Instead, Respondents attempt to obfuscate the facts by directing this Court’s attention to *Mehl* - an unrelated case.

ADDITIONAL REASONS FOR GRANTING THE PETITION

The individual Sheriff gets unbridled discretion. As applied now, per the oppositions, the policy is purportedly constitutional. Then that means as previously applied to Petitioners, it was not. The arbitrary nature of the framework is unconstitutional and certainly no guarantee of a fundamental right being revoked sometime in the future. Fundamental rights do not change during each election cycle.

Moreover, there is no due process for revocation of a citizen's permit; whereas retired peace officers are entitled to the full panoply of due process because "their" permits are treated as a right being revoked.

Moreover, the current Sheriff's policy is a constitutional fraud. It was not implemented to protect a fundamental right of self defense; rather, it was deployed because there is political capital to be exploited using a discretionary concealed carry license policy. Petitioner Rothery's permit is only valid until the next election. If he decides to move to Los Angeles or San Francisco, he would have to surrender his license.

Here, the fact that petitioner Rothery was denied a permit three times by two elected officials, and then on his fourth application is granted a permit with a different elected official, proves the constitutional injury caused by such an arbitrary licensing scheme. In addition, the issuance of the permit does not release the County of its liability under 42 U.S.C. § 1983. Petitioner Rothery's claim for "monetary" damages is just as viable today, as it was at the time this action was filed. Hence, the fact that he obtained his permit after many years of applying does nothing to vitiate his claim for monetary damages under *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978).

Respondents parrot the lower courts decisions that the standard of review in an Equal Protection challenge involving the Second Amendment is "rational basis". The State further argues this case is 10 years

old as if that is some sort of disqualification. However, over that 10 year span, a myriad of decisions have come out of the Ninth Circuit; all of which ignored *District of Columbia v. Heller*, 554 U.S. 570 (2008). (e.g. *Peruta v. County of San Diego*, 824 F.3d 919 (9th Cir. 2016)(en banc), cert. denied, 137 S. Ct. 1995 (June 26, 2017)).

Respondents argue that there is a “rational basis” for allowing retired peace officers to carry weapons in public because they face a heightened "threat of danger from enemies [they] might have made during [their] service." The problem with this logic is that it assumes that all retired peace officers are more likely to be a victim of crime than an elderly person living in a crime ridden neighborhood, or a member of the armed forces being targeted by terrorists.

CONCLUSION

A summary disposition of the case would be more efficient and is more than justified considering the non-compliance of the decisions below and the emptiness of the Briefs in Opposition. For the reasons above, this Court should grant the petition for a writ of certiorari.

Date: October 9, 2018

Respectfully submitted,
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