

LI case heads to Supreme Court

Ex-chief says school violated his free speech

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Shimon Waronker, the ousted superintendent of the Hempstead school district, is taking his case to the U.S. Supreme Court, restating an argument that he was dismissed two years ago in violation of his First Amendment right to free speech, after publicly criticizing district employees.

The January filing calls for the review of a case that already has been examined in federal district and appellate courts — both of which sided with the school district in decisions issued in January and October of 2019. There's no guarantee the Supreme Court will take up the case.

Through a spokeswoman, the Hempstead district officials said Waronker is fighting an unwinnable battle for the four-year, \$265,000-a-year post he accepted in June 2017.

"The district has been successful in defeating Dr. Waronker's claims at the Federal District Court level, and at the 2nd Circuit Court of Appeals, and is extremely confident that it will prevail at SCOTUS," read a statement. "The district regrets that Dr. Waronker and his counsel, Mr. [Frederick] Brewington, have elected to pursue high-cost litigation to pursue frivolous claims, while complaining about the legal fees that the district has spent to defend itself, when they are the ones who have been pursuing claims with no merit, racking up more and more costs in terms of legal fees, money [that] would have been better used in the classroom for the benefit of the students."

In addition, the five-member school board voted unanimously in June to declare Waronker's position vacant on grounds that he never took the required oath of office. Waronker's appeal of that decision, which effectively fired him, was rejected in November on procedural grounds by then-



Shimon Waronker, left, and lawyer Frederick Brewington in January.

interim state Education Commissioner Beth Berlin "for lack of verification."

Brewington, of Hempstead, said the Supreme Court is the next step. "It's being presented to the Supreme Court for its evaluation on a very important question not only for our client, but a question within United States jurisprudence," he said.

The 23-page filing cites the two cases involving Waronker but asks the nine Supreme Court justices to reconcile the outcomes through their own decision in another case: *Lane v. Franks*. In that case, from 2014, the filing said plaintiff Edward Lane, a public employee, successfully argued he was wrongfully terminated when he testified truthfully, after being required to serve as a witness during a criminal trial.

"Crucial to the court's decision was that Lane had no choice: He could not ignore the subpoena and he could not go to court and commit perjury," Waronker's petition said. "To punish him under these circumstances was deemed to violate the First Amendment."

In October, the 2nd Circuit Court of Appeals in Manhattan rejected Waronker's assertion that his freedom of speech was violated when he was suspended without a hearing after publicly accusing Hempstead's board of corruption through an

open letter he issued Jan. 5, 2018. The board placed him on administrative leave with pay four days later.

That court upheld a decision by Central Islip-based U.S. District Court Judge Denis Hurley that Waronker was speaking in his capacity as chief administrator of the 7,600-student district, and that, as an employee, his First Amendment rights had not been stifled.

The Supreme Court ruled in *Garcetti v. Ceballos*, in 2006, that "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline."

Waronker argues in his petition to the Supreme Court that his case is more like *Lane* than *Garcetti* — that he was obligated by law as the superintendent to expose corruption, that he did it publicly through an open letter, and that he was speaking "to combat corruption."

Hempstead officials have said Waronker is responsible for corruption himself, bringing dozens of charges against him, including misconduct, bid-rigging, sham hiring, conflict of interest and neglect of duty.

Waronker, through his attorney, has denied all the accusations.

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