

PROVIDED TO
SOUTH BAY CORRECTIONAL FACILITY
ON 6/19/18 FOR MAILING

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

SEAN PATRICK REILLY,

Petitioner,

VS.

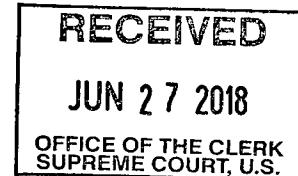
JENNIFER CHRISTINE DAVIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, FLORIDA

PETITION FOR WRIT OF CERTIORARI

Sean Patrick Reilly DC#N21886
SOUTH BAY CORRECTIONAL FACILITY
600 U.S. HWY 27 SOUTH
SOUTH BAY, FLORIDA 33493



QUESTIONS PRESENTED

QUESTION ONE

Whether a Florida Court deprived Mr. Reilly of due process of law in violation of the Fourteenth Amendment of the United States Constitution by creating an exception to the time limitations for seeking injunctions under §§ 784.046, 784.0485, Florida Statutes?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from federal courts:

The opinion of the United States Court of Appeals appears at Appendix __ to the petition and is

[] reported at _____; or

[] has been designated for publication but is not yet reported; or

[] is unpublished.

[X] For cases from state court:

The opinion of the of the highest state court to review the merits appears at Appendix A to the petition and is

[] reported at _____; or

[] has been designated for publication but is not yet reported; or

[X] is unpublished.

JURISDICTION

[] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____. A copy of that decision appears at Appendix _____.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeal on the following date: _____ and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

[X] For cases from state court:

[X] The date on which the highest state court decided my case decided my case was February 6, 2018. A copy of that decision appears at Appendix A

[] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was thereafter denied on the following date March 23, 2018 and a copy of the order denying rehearing appears at Appendix C

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INCLUDED

The Fourteenth Amendment provides that “[n]o person shall be . . . deprived of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV.

Florida Statute §784.0485. Stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.

(1) There is created a cause of action for an injunction for protection against stalking. For the purposes of injunctions for protection against stalking under this section, the offense of stalking shall include the offense of cyberstalking.

(a) A person who is the victim of stalking or the parent or legal guardian of a minor child who is living at home who seeks an injunction for protection against stalking on behalf of the minor child has standing in the circuit court to file a sworn petition for an injunction for protection against stalking.

(b) The cause of action for an injunction for protection may be sought regardless of whether any other cause of action is currently pending between the parties. However, the pendency of any such cause of action shall be alleged in the petition.

(c) The cause of action for an injunction may be sought by any affected person.

(d) The cause of action for an injunction does not require either party to be represented by an attorney.

(e) The court may not issue mutual orders of protection; however, the court is not precluded from issuing separate injunctions for protection against stalking if each party has complied with this section. Compliance with this section may not be waived.

(f) Notwithstanding chapter 47, a petition for an injunction for protection against stalking may be filed in the circuit where the petitioner currently or temporarily resides, where the respondent resides, or where the stalking occurred. There is no minimum requirement of residency to petition for an injunction for protection.

Florida Statute §784.046 (1) (b). Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.

(1) As used in this section, the term:

(b) Repeat violence means two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner’s immediate family member.

INTRODUCTION

This is an appeal from a final order granting the former girlfriend's petition for an injunction for protection against stalking. (R-34-38) This case addresses the Florida legislature's omission of a time limitations period in §784.0485, Fla. Stat.

Vague laws invite arbitrary power. From the words of Justice Gorsuch in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), "Today's vague laws may not be as invidious, but they can invite the exercise of arbitrary power all the same—by leaving the people in the dark about what the law demands and allowing prosecutors and courts to make it up." When a statute is not clear the court must review the legislative history to properly interpreting it. When there is a no clear time limit in a statute the Court must look at the legislative history to determine the legislature's intent. A litigant cannot allow a potential claim to linger for years.

In the decision below, the First District Court of Appeal in Florida refused to address the issue regarding the lack of time limit for seeking an injunction. However, the Second, Third, and Fourth District Courts of Appeal in Florida ruled that when the legislature leaves out a time-limitation for filing a Petition for an Injunction, then the courts must review the legislative history for seeking injunctions.

Those appellate courts determined that the statute § 784.0485, Florida Statutes, must be read in conjunction with § 784.046 (1) (b), Florida Statutes, which defines repeat violence as "two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of

the petition, which are directed against the Petitioner or the petitioner's immediate family member." Touhey v. Seda, 133 So. 3d 1203 (Fla. 2d DCA 2014); Wyandt v. Voccio, 148 So. 3d 543 (Fla. 2d DCA 2014); Richards v. Gonzalez, 178 So. 3d 451 (Fla. 3d DCA 2015); David v. Textor, 189 So. 3d 871 (Fla. 4th DCA 2016).

STATEMENT OF THE CASE

This tragedy arose from a "*stale ten-year old*" rancorous break-up between former boyfriend Appellant Sean P. Reilly, and his estranged girlfriend Appellee Jennifer C. Davis, in October of 2006 (T-14, 18), which resulted from the girlfriend's vitriolic criticism and her penchant for *recrimination* of Mr. Reilly. Following the disunion, Ms. Davis developed a bitter resentment for Mr. Reilly, where she perpetually persecuted him ever since. (R-1D09-5013, 1D15-3252) Years of scathing litigation against Mr. Reilly followed the disdainful break-up, causing Ms. Davis to form an alliance with Messrs. Eric Abrahamsen and Jack Campbell, prosecutors with their own personal vendetta against Mr. Reilly as suggested by personal retaliatory attacks from her counsel Eric Abrahamsen¹ (Mr. Reilly's former prosecutor, whom is now in private practice representing the same putative victim in this case), and his supervisor, Assistant State Attorney Jack Campbell,² which

¹ Mr. Abrahamsen represented the ex-girlfriend against Mr. Reilly in a government capacity and is currently representing her in a private capacity with the same goal of *oppressing and persecuting* Mr. Reilly. *See Rules Regulating the Florida Bar, Fla. Bar R. 4-1.11* (a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service...Thus, a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially.)

² Reference to DCA Case Nos. 1D09-5013, 1D10-1359, 1D11-88, 1D15-3252, and 1D15-3302,

have resulted in *questionable* convictions involving Ms. Davis. (R- 1D09-5013 & 1D15-3252) Mr. Reilly has endured years of chastisement at the hands of Ms. Davis and her allies³. *Id.*

A. The May 26, 2016 Evidentiary Hearing

Since then Ms. Davis has postulated allegations of stalking based on prejudice and paranoia. (T-26-28) Over the years she has made irresponsible rhetoric leading Mr. Reilly to endure unrelenting chastisement to suppress Mr. Reilly's speech. *Id.* The last alleged incident of contact between Mr. Reilly and Ms. Davis occurred in November 2013, when Mr. Reilly filed a complaint against Ms. Davis with the Florida Bar Association. (T-29-30) (R-3252, T-56-57, St. Exh. 44-46).

B. Testimony of State Prosecutor Jack Campbell

After the preliminaries that identified Mr. Jack Campbell as the prosecutor from the Office of the State Attorney, Second Judicial Circuit, (T-4-5) Mr. Campbell proffered that he was the prosecutor on the Aggravated Stalking trial⁴ against Mr. Reilly. (T-5) (R-3252) He testified that Mr. Reilly was found guilty in that case. *Id.* Mr. Campbell testified that he was familiar with the previous criminal history of Mr. Reilly because he was the supervisor of former prosecutor and current private

involving the same actors, all of whom have displayed a proclivity of harboring hostility against Mr. Reilly and have demonstrated resentful and vindictive attacks toward the former boyfriend with objectives to deprive him of his freedom and future security.

³ Mr. Reilly left Tallahassee, Florida in 2007 to avoid persecution when Ms. Davis used the legal system to impede Mr. Reilly's freedom to enter various bars/nightclubs in Tallahassee and his employment at Florida State University and have him arrested for going to AJ's Bar. But she continues to use the legal system to harass or oppress him.

⁴ Take Judicial Notice of 1D15-3252

counsel Eric Abrahamsen, when Mr. Abrahamsen prosecuted Mr. Reilly. (T-5-6) Mr. Campbell claims that Mr. Reilly began victimizing his girlfriend Ms. Jennifer Davis in 2007. (T-6) Mr. Campbell promulgated a “policy that all cases involving Sean Reilly will be assigned to him personally based on [Mr. Reilly’s] actions against [Eric Abrahamsen] and other parties throughout these cases.”⁵ *Id.* This policy was implemented out of retaliation for Florida Bar complaints filed by Mr. Reilly against Mr. Abrahamsen and Ms. Davis. (T-13; R-3252, T-56, 57, St. Ex. 44, 45, 46)

Mr. Campbell testified that Mr. Reilly was “convicted of a violation of injunction and criminal use of personal ID information.” (T-6-7) The certified judgment and sentence listed a sentencing requirement to have no contact with [Ms. Davis] or her family, Investigator [Marie Clark], Assistant State Attorney Eric Abrahamsen and his family, Officer D. Begault and his family. (T-7, Ex. 1, 2) Mr. Campbell presented a certified copy of the judgment and sentence for Aggravated Stalking in [Appeal No. 1D15-3252]. *Id.* Once again, “there is a special condition to have no contact with Ms. Davis and her family, Eric Abrahamsen and his family.” *Id.* (Ex. 3) He further testified that “[Mr. Reilly] was sentenced to five years in the Florida Department of Corrections as a Prison Releasee Reoffender.” (T-8)

Next, Mr. Campbell proffered that the prison sentence Mr. Reilly received was “significant because it’s the only time [he’s] seen Judge Shafter give a maximum sentence on a case.” (T-9) He stated that “the only way we were going to

⁵ See 1D09-5013, 1D10-1359, 1D11-88, 1D15-3252, 1D15-3302 (Mr. Campbell, Mr. Abrahamsen and Ms. Davis have been targeting Mr. Reilly for years to send him to prison and to keep him languishing in prison)

be able to stop [Mr. Reilly] from continuing to offend against [Ms. Davis] was to incarcerate [Mr. Reilly] for as long as humanly possible." *Id.*

The overzealous prosecutor used the entire jurisdiction⁶ in the criminal court to prosecute Mr. Reilly. (T-9-10) The prosecutor spoke with Mr. Abrahamsen and Ms. Davis's family about seeking the maximum incarceration. (T-10) He proffered that Mr. Reilly [allegedly] "stalked [Ms. Davis] even from behind prison bars through the use of roommates, through jail mail, through various manipulations of the criminal justice system."⁷ *Id.* Claims that have otherwise been debunked in the Aggravated Stalking trial. (R-3252)

Furthermore, the prosecutor revealed his intentions to obtain the injunction on Mr. Reilly to maintain jurisdiction to arrest Mr. Reilly for any legal pretext to manipulate a sentence in the future and manufacture recidivism⁸ to have him sentenced to a mandatory prison term under the Prison Releasee Reoffender Act and "habitualize [Mr. Reilly]" in a future recrimination effort to incarcerate him again. (T-10-11) Mr. Campbell affirmatively stated that "unless the [trial] court awards them an injunction, he would be unable to charge Mr. Reilly with a felony Aggravated Stalking charge." (T-11) He illustrated his concerns with "double jeopardy," explaining how he "used up all of the prior conduct" in the 1D15-3252

⁶ This is Issue One in DCA Case No. 1D15-3252, where the State lacked jurisdiction or venue that the alleged conduct occurred in Leon County.

⁷ These allegations remain on appeal in 1D15-3252 and Mr. Reilly has steadfastly maintained his innocence and continues to assert his constitutional rights.

⁸ Mr. Campbell manufactured a case on Mr. Reilly in 1D15-3252 as a form of reprisal and he infers that he will do it again.

Aggravated Stalking prosecution. (T-12) He asserted that he "will be able to *Williams Rule*"⁹ the previously alleged conduct. *Id.* Mr. Campbell further claims that he intends to seek the maximum sentence against Mr. Reilly every time he offends Ms. Davis. *Id.*

Mr. Campbell proffered his intent for seeking the injunction when he stated, "If [Mr. Reilly] gets out and contacts her again, hopefully it will be a felony, and hopefully I will make it a habitual felony offender, then I can seek ten years and we're just going to continue to progressively respond to Mr. Reilly's decisions to stalk her further."¹⁰ (T-11)

Subsequently, Mr. Campbell testified that Mr. Reilly's conduct started with dropping classes.¹¹ (T-12, 15) Mr. Campbell acknowledged that he brought the retaliatory prosecution for Aggravated Stalking against Mr. Reilly for exercising his constitutionally protected right to petition the government for redress of grievances, when he proffered that he's "gone to such extent because of the way that [Mr. Reilly] has attacked everyone... [With] Bar complaints¹² against his own (sic) counsel, [Mr. Abrahamsen], and [Ms. Davis]." (T-13) He presented demagogic portents that Mr.

⁹ *Williams v. State*, 110 So. 2d 654 (Fla 1959)

¹⁰ Reflecting a concern that a presumptively innocent person should not languish under an injunction used to fabricate and enhance future charges, in violation of the constitutional guarantee of being "Innocent until proven guilty."

¹¹ It should be noted that there is no direct evidence that Mr. Reilly is responsible for dropping classes. *See Reilly v. State of Florida, First District Court of Appeal in 1D09-5013.*

¹² The filing of a motion in Court and Florida Bar complaints on attorneys was an anomaly in the alleged pattern of stalking.

was perfume ads about...some type of romantic (sic) where you wore the same scent." *Id.*

Then, "the [Florida] Bar complaint letters against [Ms. Davis] on October 4, 2013, November 1, 2013, November 18, of 2013, which led to the [retaliatory] prosecution in 2014." (T-16) (R-1D15-3252, St. Exh. 44, 45, 46; T-56, 57).

Mr. Campbell provided the court with speculation as to any possible, and more than unlikely, future events. *Id.* He made abstract prognostications of potential future conduct. The testimony was elicited to express the necessity of an injunction as a prophylactic measure for hypothetical behavior.¹⁵

C. Testimony of Former Girlfriend Jennifer Davis

Jennifer Davis claimed that she met Mr. Reilly during her undergraduate years at Florida State University in 2006 and dated for about seven or eight months. (T-18) Ms. Davis offered testimony regarding her romantic relationship with her much maligned boyfriend Sean Reilly which approximately ended in September 2006. (R- 1D09-5013, T2-39) She spoke about a phone call between them that took place on October 22, 2006. (R- 5013, T2-40) She further stated that she received ten phone calls on October 27, 2006. (*Id.* at 54). Ms. Davis was quick to blame Reilly when she postulated acts of harassment claiming she "would wake up to find trash cans behind [her] car, tires slashed, branches behind [her] car, phone calls at all hours of night from him and some from blocked numbers, [she] received

¹⁵ Ms. Davis's coalition is seeking to punish Mr. Reilly for the prospect of an alleged act of violence or stalking that may someday manifest itself many years into the future.

love letters, random stuff on [her] door steps." (T-18) Ms. Davis alleged that she received a phone call from Mr. Reilly in [January 2007] "threatening that the Grudge 3 was going to happen in [her] living room, he was coming over with a knife." (T-19) Ms. Davis proffered that her "father reached out to Mr. Reilly on numerous occasions, actually met up with Mr. Reilly and sat down with Mr. Reilly and said, 'you know, look, this has to stop.'" (T-19) Ms. Davis testified that her father "reached out to [Mr. Reilly's] mother and uncle to try to see if they could convince him to leave [her] alone, but death threats just continue[d] to escalate and continued on." *Id.*

Next, Ms. Davis proffered that she petitioned for an injunction on January 19, 2007, and Mr. Reilly was arrested for violating that injunction for entering AJ's Sports Bar. (T-19, 20) As part of Ms. Davis's operation to harpoon the livelihood of Mr. Reilly, AJ's bar, along with several other bars and nightclubs and Florida State University, was listed on Ms. Davis's petition for an injunction as a place(s) that she frequented. (R-3252, T-33) On February 7, 2007, Ms. Davis encountered Mr. Reilly at AJ's Bar, a public place listed on the injunction. *Id.* at 34. Ms. Davis stated that Mr. Reilly did not approach her, say hello or offer to buy her a drink. *Id.* at 33. Ms. Davis alleged that Mr. Reilly stared at her and she immediately left the bar. (*Id.*, T-33, 67) Mr. Abrahamsen introduced evidence showing the Mr. Reilly was prosecuted for his appearance at AJ's Bar on that occasion and a sentence was imposed of 12 months probation for the incident at AJ's Bar on February 7, 2007, shortly after the injunction had been served. (Exh. 3) No words were exchanged between them.

Since that day in February of 2007 at AJ's Bar, Jennifer Davis acknowledged that she has not encountered Sean Reilly outside of court. (*Id.* at 67) Ms. Davis further testified that she hasn't had contact with Mr. Reilly in years. *Id.*

D. Testimony of Boyfriend Sean Reilly

The former boyfriend Sean Reilly testified that "the petitioner is required to prove each incident of stalking, in which he cited *Touhey v. Seda*, 133 So. 3d 1203. (T-32) Mr. Reilly went on to argue that "the law requires that there must be an incident within the previous six months of them filing an injunction...[a]nd these witnesses haven't testified to an act of violence, or stalking, within the last six months of the filing of the March 11, 2016 petition." (T-32, 33) Mr. Reilly explained that "section 784.0485 of the Florida Statutes, which pertains to injunctions against stalking, must be read in conjunction with section 784.046 (1)(b), which requires at least two incidents of stalking to obtain an injunction, one of which must be within six months of filing the petition for injunction." (T-33) He cited the following case law to support his position: *David v. [Textor]*, [189 So. 3d 871 (Fla. 4th DCA 2016)]; *[Wyandt] v. Voccio*, 148 So. 3d 543; and *Richards v. Gonzalez*, 40 Fla. L. Weekly D2340. *Id.*

Mr. Reilly testified that he has "had absolutely no contact with Ms. Davis since 2013...nothing has changed...since the last time the injunction was dismissed." (T-34)

E. Closing Arguments of Eric Abrahamsen

Mr. Abrahamsen agreed that there has not been any contact between Mr.

Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

The harm Ms. Davis complains of *must* be real and immediate. *See Los Angeles v. Lyons*, 461 U.S. 95, 111, 103 S. Ct. 1660, 75 L. Ed. 2d 675 (1983). She has provided evidence that any communication with her is old and relating to ongoing litigation.

Beyond establishing that she faces an imminent harm, Davis must show a "sufficient causal connection" between that harm and the conduct she seeks to enjoin such that the injunction would effectively curb the risk of injury. *Perfect 10, Inc. v. Google, Inc.*, 653 F.3d 976, 980-81 (9th Cir. 2011). Despite her construed focus on the threats against her life, Davis has brought a petition for an injunction. Therefore, she needs to show that the harm she alleges is causally related to the Mr. Reilly's actual conduct.

She has not made such a showing. Mr. Reilly's complaints to the Florida Bar about Ms. Davis's perceived misconduct do not amount to any belief that harm is imminent or will happen in the future.

A. The Statutory Interpretation

Section 784.0485, Fla. Stat. (2012), became effective on October 1, 2012, "creating a cause of action for an injunction for protection against stalking." Given the statute's recent enactment, the Second District Court held that cases analyzing allegations of stalking in context of section 784.046, which applies to injunctions for protection against repeat violence, sexual violence, and dating violence. *Touhey v. Seda*, 133 So. 3d 1203 (Fla. 2d DCA 2014).

competent, substantial evidence to support an injunction against stalking, the trial court was required to determine whether the Respondent proved that there were two incidents of stalking, including one incident within the **mandatory six month period**. The testimony alone could have supported the issuance of an injunction had she proffered testimony as to an act of violence or stalking within six months of the filing of the motion on April 20, 2016. There was no evidence, however, that Petitioner committed an act of violence or stalking within six months of the filing of the petition of April 20, 2016. Indeed, all of the conduct found by the trial court to have constituted acts of violence or stalking by Petitioner occurred no later than November 2013.

II. This case is the proper vehicle for deciding the issue

The Court in Mr. Reilly's case ruled that there is no time limit to seek an injunction, which conflicts with several other Florida appellate districts in Wyandt v. Voccio, 148 So. 3d 543 (Fla. 2d DCA 2014); Richards v. Gonzalez, 178 So. 3d 451 (Fla. 3d DCA 2015); *see also* David v. Textor, 189 So. 3d 871 (Fla. 4th DCA 2016). The Supreme Court can resolve this dispute.

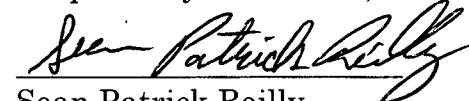
Vague laws risk allowing judges to assume legislative power. Vague laws also threaten to transfer legislative power to police and prosecutors, leaving to them the job of shaping a vague statute's contours through their enforcement of decisions. *See Grayned v. City of Rockford*, 408 U.S. 104, 108-109, 92 S. Ct. 2294 (1972). The judge in this case arbitrarily decided that there are no time limitations for an injunction.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated this 19th day of June 2018.

Respectfully Submitted,



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