No. _____

In The
Supreme Court of the United States

TONI SHARRETTS COLLINS,

Petitioner,

v.

WILLIAM ZOLNIER,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Texas, Ninth District

PETITION FOR WRIT OF CERTIORARI

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May 4, 2020

QUESTION PRESENTED

Whether a party has absolute judicial privilege when a defamatory communication is made that has no logical relation to the proceeding.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner here, and appellant below, is Toni Sharretts Collins, an individual residing in Montgomery County, Texas.

Respondent here, and appellee below, is William Zolnier, an individual residing in Montgomery County, Texas.

RELATED CASES

Toni Sharretts Collins v. William Zolnier, No. 16-02-01225-CV, 410th District Court of Montgomery County, Texas. Judgment entered Oct. 13, 2017.

Toni Sharretts Collins v. William Zolnier, No. 09-17-00418-CV, Ninth Court of Appeals, Texas. Judgment entered May 30, 2019.

Toni Sharretts Collins v. William Zolnier, No. 19-0795, Supreme Court of Texas. Judgment entered Dec. 6, 2019.

Toni Sharretts Collins v. William Zolnier, No. Pending, Supreme Court of the United States. Judgment pending; Petition due May 4, 2020.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

STATUTES AND RULES

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for writ of certiorari to review the judgment of the Supreme Court of Texas.

OPINIONS BELOW

The Supreme Court of Texas refused appellants' application for petition of review. (App. E, *infra*, 16a). The opinion of the Ninth Court of Appeals of Texas affirming the trial court's decision is unpublished. (App. A, *infra*, 1a-9a). The decision below of the 410th District Court for Montgomery County, Texas is unpublished. (App. D, *infra*, 14a-15a).

JURISDICTION

On May 30, 2019, the court of appeals for the Ninth Judicial District of Texas in Beaumont, Texas affirmed the trial court's summary judgment. On July 8, 2019, the court of appeals denied a timely petition for rehearing. On Dec. 6, 2019, the Texas Supreme Court denied petition for review. On Dec. 13, 2019, the Texas Supreme Court denied a timely petition for rehearing. On Feb. 28, 2020, Justice Alito extended time for filing this petition for certiorari to and including May, 3, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS AND RULES INVOLVED

1. U.S. Const. amend. I provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

2. RESTATEMENT (SECOND) OF TORTS § 587 – Parties to Judicial Proceedings – A party to a private litigation or a private prosecutor or defendant in a criminal prosecution is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of or during the course and as a part of, a judicial proceeding in which he participates*, if the matter has some relation to the proceeding.*

STATEMENT

The plaintiff in this lawsuit seeks relief in civil damages. The claim rests on communications by defendant to a bankruptcy trustee defaming a judgment creditor's attorney. The issue before this Court is the scope of the immunity possessed by defendant for an out-of-court defamatory statement with no logical relation to a judicial proceeding.

For over ten (10) years, Defendant, William Zolnier (Zolnier) leased a building from Collins' client (Landlord)

to house his mattress and furniture store in Montgomery County for $3500.00 per month. In 2012, Landlord sued Zolnier for delinquent rent payments. In Feb. 2014, Zolnier fraudulently transferred all Landlord's secured inventory from Landlord's building, converting Landlord's security interest. On Aug 7, 2014, a jury awarded a monetary judgment of over $220,000.00 to Landlord. After the judgment, on Oct. 28, 2014, Zolnier filed for Chapter 7 bankruptcy to avoid paying the Landlord's judgment, and a bankruptcy trustee was appointed by the court to evaluate his debt as well as to determine whether to recommend to the Federal Bankruptcy Court a discharge of Zolnier's debt, subject to the various creditor's objections. Landlord was named as a creditor in the bankruptcy proceeding. Collins represented Landlord in the bankruptcy proceeding to file an objection to the bankruptcy based on fraud. Landlord was the only creditor who objected to the discharge of debt, because Zolnier entered agreements to pay his other secured creditors. In the letter to the bankruptcy trustee, Zolnier asserted that Collins is a cocaine addict, cocaine dealer and an inept attorney. Collins argued that whether or not Collins was a cocaine addict, drug dealer and/or an inept attorney, while completely false, had no relevancy to a bankruptcy trustee's ability to evaluate Zolnier's debt to determine whether to recommend to the Federal Bankruptcy Court a discharge.

Collins argued the true motivation for Zolnier's defamatory letter to the bankruptcy trustee had no relevancy to Collins but was to persuade the bankruptcy

trustee to ignore Collins' evidence that the Zolniers fraudulently did not disclose assets on their "no asset" bankruptcy application. Collins learned in the previous trial litigation that Zolnier and his wife, Michel Zolnier, while not paying their rent to Landlord, had acquired many assets including a large equity in a half-million home, jet-skis, many bank accounts flush with cash up to $50,000.00 each not disclosed to the bankruptcy trustee as well as over half-million dollars in lien-free store inventory they had recently converted and secreted to other locations to defraud Landlord, and now, the bankruptcy estate. The Zolniers did not want Collins to communicate to the Bankruptcy trustee what assets the Zolniers had not disclosed to the bankruptcy trustee, so Zolnier employed an anticipatory attack on the credibility of Collins to the bankruptcy trustee unbeknownst to Collins until the bankruptcy trustee asked Collins if she was a cocaine addict.

Collins evidenced to the trial court that Zolnier's defamatory letter to the bankruptcy trustee was impertinent to any judicial proceeding. It was *only* to cast a bad light on Collins, who had no interest in the bankruptcy proceeding except to file an objection to the discharge of the Landlord's judgment, no interest in the Landlord's trial court judgment, nor was a party to Zolnier's judicial proceedings. Collins argued that it was obvious that Zolnier only defamed Collins to *defame* her; and that, perhaps, Zolnier hoped that after receipt of Zolnier's defamation that the bankruptcy trustee's low regard for Collins would prevent the

bankruptcy trustee from sustaining her objection to discharge of the Landlord's judgment. Collins argued that perhaps Zolnier hoped that by defaming Collins that the bankruptcy trustee would not investigate assets Zolnier possessed, but fraudulently did not disclose. It was clear, however, that Zolnier interjected to the bankruptcy trustee in an anticipatory attack on the credibility of Collins in conjunction with Collins' filed objection of the discharge of Landlord's judgment in Zolnier's Chapter 7 bankruptcy. Collins argued that the Zolnier's assertions to the bankruptcy trustee that Collins was a cocaine addict and cocaine dealer, even if true, were wholly impertinent to whether the bankruptcy trustee's duties of determining if Zolnier owned assets that he did not disclose on his Chapter 7 Bankruptcy application. Of note, several bankruptcy adversary suits against Zolnier are still open in the United States Bankruptcy Court in the Southern District of Texas, where Zolnier admitted during trial testimony that he did in fact commit bankruptcy fraud by not disclosing assets.

After Zolnier's defamatory letter was published in the course of the bankruptcy proceedings, Collins sued Zolnier in Montgomery County for defamation, arguing that Zolnier's defamatory statements "were made intending to injure [Collins's] good reputations (sic), record and professional career and expose [Collins] to impeach [Collins's] honesty, integrity, virtue and reputation."

Zolnier moved for summary judgment on Collins' claims arguing that Collins' claims were barred by

the common law absolute privilege and immunity afforded to counsel and parties, for pertinent statements made in the course of judicial proceedings. The trial court granted Zolnier's motion for summary judgment. Collins appealed to the Ninth Court of Appeals, who affirmed on the same basis. The Texas Supreme Court denied a petition for review.

REASONS FOR GRANTING THE PETITION

"A good name is rather to be chosen than great riches, and loving favour rather than silver and gold." Proverbs 22:1, KJV

"A reputation once broken may possibly be repaired, but the world will always keep their eyes on the spot where the crack was." George Washington

"It takes 20 years to build a reputation and five minutes to ruin it." Warren Buffett

"Being defamed, we intreat: we are made as the filth of the world, and are the offscouring of all things unto this day." 1 Corinthians 4:13, KJV

Defamation is defined as a false publication that injures a person's reputation, exposes him to public hatred, contempt, ridicule, shame or disgrace, or affects him adversely in his trade or business. *Garrison v. State of La.*, 379 U.S. 64, 73 (1964); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 370 (1974); *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 765 (1985); *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 12-13 (1990).

In the instant case, by denying petition for review, the State of Texas held that a party can claim absolute judicial privilege of a statement even when the defamatory communication has no logical relation to a judicial proceeding and not in the regular course of the judicial proceeding. No Fifth Circuit cases exist on this issue. However, the First, Second and Third Circuits held that a defamatory statement that is impertinent to a judicial proceeding is *not privileged*. *See infra* Section A.

In a defamation action, when the plaintiff seeks to hold a party, counsel or a witness "liable only for the defamatory effect of his testimony [or statement], and in such an action he enjoyed absolute immunity upon a threshold showing that the allegedly defamatory statements were *relevant to the judicial proceeding*." *White v. Frank*, 855 F.2d 956, 959 (2d Cir. 1988) (citing *Briscoe v. LaHue*, 460 U.S. 325, 330-32 & n. 11 (1983) (holding that 42 U.S.C.S. 1983 did not authorize convicted state defendant to assert damages claim against police officer for giving perjured testimony at defendant's criminal trial).

The Texas Supreme Court's decision further deepens an entrenched, longstanding and acknowledged circuit conflict between other circuits in the United States. The decision below is irreconcilable with three other circuits and is wrong. The question whether a party can claim absolute judicial privilege when an out-of-court defamatory communication has no logical relation to a judicial proceeding is a recurring and

important one. And this case is an ideal vehicle for deciding it. Certiorari should be granted.

A. There is a Circuit Conflict.

Three of the thirteen circuits have addressed the question whether a party can claim an absolute judicial privilege when a defamatory communication is impertinent. All three circuits have held that a party *cannot* claim an absolute judicial privilege when a defamatory communication is impertinent. However, the decision below is contrary to all other federal circuits who have opined. The conflict with State of Texas has been acknowledged by multiple circuits including those below.

1. ***Fifth Circuit.*** No circuit decision exists in the Fifth Circuit on this issue. However, in the decision below, the Texas Supreme Court holds, by its affirmation of the trial and appellate court, contrary to the three opining circuits, that a defamatory statement has an absolute judicial privilege *regardless of relevance or relation to the judicial proceeding*.

The analysis of the decision below at issue here, as well as respondent's claim under it, *ibid.*, determined that, in this case, "[c]ommunications and publications made in the due course of a judicial proceeding will not serve as the basis for a defamation action." (App. A, *infra*, 6a). Further, "that immunity is absolute even if the statement is false, uttered or published with express malice." *Id.* The court acknowledged, but rejected, Collins' argument that absolute judicial privilege cannot

be extended to Zolnier's statements because Collins had no interest in Zolnier's judicial proceedings *and* "there is simply no nexus between Zolnier's defamatory statements and Zolnier's Chapter 7 bankruptcy asset case." The decision below liberally holds that any defamatory statement that mentions a judicial case will create an absolute immunity, to-wit "it is enough that the [defamatory statement] have some reference to the subject of the inquiry." (App. A, *infra*, 7a). The decision below further held that "*any communication* by Zolnier regarding . . . his understanding of why a creditor *[although Collins is not a creditor]* may oppose the discharge *is related to and relevant to the judicial proceeding*." (App. A, *infra*, 6a). Since, Zolnier's defamatory statements about Collins were completely unrelated to Landlord's creditor's judgment and the State of Texas determined the defamatory statements had absolute judicial immunity, the State of Texas adopts a position contrary to the other circuits. This Court should grant certiorari to harmonize all the circuits to comport that a court cannot summarily grant immunity to person for defamation cloaked under the veil of a judicial proceeding when the defamatory statement is not relevant to the judicial proceeding in which a defendant made the statement.

2. ***First Circuit.*** Contrary to the decision below, the First Circuit holds that if the injured party shows a statement is irrelevant, it is not privileged. In *Lath v. Oak Brook Condo. Owners' Ass'n*, 2018 U.S. Dist. LEXIS 33233, *5-6 (1st Cir. March 1, 2018), the First Circuit found that "a statement is presumed relevant

unless the person allegedly [injured] demonstrates that it was so palpably irrelevant *to the subject matter of the controversy* that no reasonable man can doubt its irrelevancy or impropriety." The First Circuit expressly held, "[s]tatements made in the course of judicial proceedings constitute one class of communications that is privileged from liability in civil actions *if the statements are pertinent or relevant to the proceedings. See Pickering v. Frink*, 461 A.2d 117 (1983); *McGranahan v. Dahar*, 408 A.2d 121 (1979); *cf. Supry v. Bolduc*, 293 A.2d 767 (1972) (determining statements made during a public hearing were not absolutely privileged because the hearing did not have all the hallmarks of a judicial proceeding)." This Court should grant certiorari to harmonize all the circuits to comport that a court cannot summarily determine a person immune to defamation when the defamatory statements are not pertinent or not relevant to the proceedings.

3. ***Second Circuit.*** Contrary to the decision below, the Second Circuit holds that if a statement is obviously impertinent it is not privileged. "The elements of a defamation claim are a false statement, published without privilege or authorization to a third party, constituting fault . . . and it must either cause special harm or constitute defamation per se." *Peters v. Baldwin Union Free School Dist.*, 320 F.3d 164, 169 (2d Cir. 2003) (internal quotation marks and citations omitted). Under New York law, a participant in a judicial proceeding who makes statements in connection with that proceeding is entitled to an absolute privilege with respect to the statements made. *See Kelly v.*

Albarino, 485 F.3d 664, 665-66 (2d Cir. 2007). However, the alleged defamatory statements must be pertinent to the matter before the court. *Id.* For a statement made in connection with a court proceeding to be the subject of a defamation action, it must be "so obviously impertinent as not to admit of discussion, and so needlessly defamatory as to warrant the inference of express malice . . . [i]n other words, the statement must be . . . motivated by no other desire than to defame." *Dachowitz v. Kranis*, 61 A.D.2d 783, 786 (App. Div. 2d Dep't 1978); *Azkour v. Haouzi*, 2012 U.S. Dist. LEXIS 66497, *17-18 (1st Cir. May 11, 2012).Specifically, in *Dachowitz*, an absolute privilege attaches to an oral or written statement made in a judicial proceeding which is *pertinent* to the proceeding and that the term "*pertinent*" has been liberally construed by the courts to attach to any statement that may possibly be or become material or pertinent. *Dachowitz*, 61 A.D.2d at 786; (Second) of Torts, Section 587 (Appendix 2).

Dachowitz is completely on-point with the instant case, and had fundamentally fair Second Circuit law been applied, the result in the decision below would have been different. Petitioner, Seyma Dachowitz, brought a defamation action to recover damages from Defendant, Kranis, an attorney, for his defamatory statements in an affidavit submitted in a judicial proceeding that Seyma had been convicted of crimes in both the Federal and State courts. The alleged libel was made by Kranis in an action pending in the Civil Court of the City of New York. In that action, Kranis sued, among others, Seyma and a realty corporation in

which she was an officer, to collect a legal fee for services he allegedly rendered on their behalf. Kranis claimed his defamatory statements were absolutely privileged, was granted summary judgment and the complaint was dismissed. However, after the appellate court's thorough perusal of the four corners of the papers submitted by the parties in this action, the appellate court opined that "there [was] not one scintilla of evidence present upon which to base the possible *pertinency* of defendant's statement." Specifically, Seyma had never been convicted in a Federal or State court of any impropriety and even if she had it was not relevant to the case in which Kranis made the defamatory statements. Thus, the appeal court reversed the trial court, holding that defamatory statement was not privileged because no logical relationship to a pending proceeding existed between the judicial proceeding and the defamatory statement, so Kranis was liable for defamation. *See* RESTATEMENT (SECOND) OF TORTS § 587 Cmt. c. illus. (2nd 1979) ("on relevancy to the judicial proceeding"). *Id.*

The court reasoned that the proof which has been adduced strongly negated defendant's contention that the statement was made for the purpose of impeaching the credibility of plaintiff Seyma Dachowitz. Specifically, the record was devoid of any grounds, either reasonable, unreasonable, mistaken, imaginary, or even feigned, upon which it could be hold that defendant's gratuitous statement was at least "possibly pertinent." *See Seltzer v. Fields*, 20 A.D.2d 60, 62 (App. Div. 1st Dep't 1963). The "alleged libelous statement [ ] was not

'so obviously impertinent as not to admit of discussion'" but was made to impeach the credibility of the adversary party, [and is], on this record, baseless." *Dachowitz*, 61 A.D.2d at 786. "Whether the statement complained of was made by the defendant in good faith and without malice in the belief that it was pertinent and material to the issues between the parties, or whether it was maliciously made to libel and injure the plaintiff wife, are *questions of fact* which should be decided upon a trial. *See Wiser v. Koval*, 50 A.D.2d 523, 524 (62 (App. Div. 1st Dep't 1975).

Whether denominated a "privilege" or "in fact a right" (1 Seelman, Law of Libel and Slander, pars 191, 233), or an absolute privilege (*Martirano v. Frost*, 255 N.E.2d 693, 695 (1975), the abiding question is whether the statement is possibly or plausibly relevant or pertinent to the judicial proceeding so as to bar the action. Like in *Dachowitz*, Zolnier's defamatory statement about Collins (who was not a party, a creditor, a witness, or with in precuniary interest in the outcome of Zolnier's proceedings) cannot possibly or plausibly be relevant or pertinent to Zolnier's Chapter 7 Bankruptcy. Thus, Zolnier's defamatory statements are not privileged in the Second Circuit, so should not be privileged in the Fifth Circuit or the State of Texas. This Court should grant certiorari.

4. ***Third Circuit***. Contrary to the decision below, the Third Circuit holds that if a statement is obviously impertinent it is not privileged. In *Bradley v. Hartford Accident & Indemnity*, 30 Cal. App. 3d 818 (1973), defamatory documents were filed in the court's public

files for the sole purpose of having the defamation within the protective shield of the absolute privilege and then to spread it with impunity. A plaintiff law firm in *Bradley* brought a defamation action against a defendant law firm for communications made regarding the plaintiff's actions in a past case. The defendant accused the plaintiff of manufacturing evidence, suborning perjury and generally acting in an unprofessional and illegal manner during the adjudication of the past suit. The court held that the defamatory statements uttered outside of court were *not privileged* because the statements were made to persons without any interest in present or future suits against the defamed law firm. *See Bradley v. Hartford Accident & Indemnity*, 30 Cal. App. 3d 818 (1973).

In *Bradley*, it is easily discernible what result would ensue should the court condone such an apparent ruse by providing absolute immunity to the resourceful slanderer. The privileged defamation would gain full-fledged legitimization. All that the slanderer would have to do to avoid the consequences of his evil act would be to file the defamatory matter with the court first, then republish it as an absolutely privileged matter to the news media or to the public at large, thereby converting the litigation in the court into litigation in the press or in the street.

The above consideration all the more compels the conclusion that in determining whether or not the defamatory publication should be accorded an absolute privilege, *special emphasis must be laid on the requirement that it be made in furtherance of the litigation*

and to promote the interest of justice. Only if this requirement has been satisfied, is it appropriate for the courts to define liberally the scope of the term "judicial proceeding" and the persons who should be regarded as litigants or other participants. *Bradley v. Hartford Accident & Indemnity*, 30 Cal. App. 3d 818, 826 (1973).

Likewise, in the case below, Zolnier filed defamatory statements in the court files and with court personnel about Collins for the sole purpose of injuring Collins' reputation and in order to republish with impunity. Zolniers' statements that Collins was a cocaine addict and dealer could in no way have made any difference to whether the bankruptcy trustee would investigate Zolnier's assets because the bankruptcy trustee had to investigate them as a part of his duties regardless. Since Collins was not a party, not a witness, not a creditor, had done nothing more than file a one page "form" objection to the discharge of Landlord's judgment in Zolnier's Chapter 7 bankruptcy, Zolnier's defamatory statement had no nexus or been able to further litigation or promote justice. However, Zolnier's evil act did spread lies about Collins when Zolnier's letter to the bankruptcy trustee became a part of the public record and gained full-fledged legitimization as evidenced by legal professions asking if Zolnier's defamation were true – despite the fact Collins has never used cocaine or even been exposed to it in person. Thus, Zolnier's defamatory statements would not be privileged in the First, Second or Third Circuits, so should not be deemed defamatory statements in the Fifth

Circuit or the State of Texas. This Court should grant certiorari.

B. The Decision Below is Wrong

Judicial privilege is *an absolute* privilege yielding complete immunity from defamation allegations, and therefore the classification of communications that may be protected by litigation privilege is necessarily *narrow.* Litigation privilege generally only extends to defamatory communications involving litigants or other participants in a trial authorized by law. 53 C.J.S. *Libel & Slander* § 72 at 132 (1987). The defamatory communications must be made during or prior to a judicial proceeding *and have some connection or logical relation to that proceeding. Id.*

A judicial absolute privilege may exist because there is a realm of communication essential to the exploration of legal claims that would be hindered were there not the protection afforded by the privilege. The essential realm of protected communication is not, however, without bounds. Rather, the protected realm has traditionally been regarded as composed only of those communications which are issued *in the regular course of judicial proceedings* and which are *pertinent and material to the redress or relief sought. Id.*

In Pennsylvania, protection for such communications in a judicial proceeding are firmly established but such protection only attaches to those made in the regular course of the judicial proceedings and which are pertinent and material to the redress or relief sought.

Barto v. Felix, 378 A.2d 927 (1977), appeal dismissed, 487 409 A.2d 857 (1980) (although statements in briefs are privileged, counsel's reiteration of the contents of his brief at a press conference held not privileged because the remarks were not made at a judicial proceeding). The Pennsylvania Supreme Court did "not regard the alleged defamatory letter in [that case] as having been issued in the *regular course of judicial proceedings* as a communication pertinent and material to the redress sought. Although the letter made reference to matters which occurred in an ongoing trial, the letter was not directly relevant to the court proceedings. Accordingly, the Court did not believe the letter was within the sphere of activities which judicial immunity was designed to protect.

Similarly, like in the instant case, a letter from a bankrupt to a bankruptcy trustee that defames the creditor's attorney is NOT in the regular course of judicial proceedings. Further, such a communication that falsely asserts a creditor's attorney is a cocaine use and dealer, which is wholly untrue, has absolutely no nexus to the bankruptcy trustee's duties of find assets of a bankrupt.

The privilege is not a license for extra-judicial defamation, and there is unnecessary potential for abuse if letters of the sort written in this case are published with impunity. Whether a challenged communication is published prior to, or during, a judicial proceeding, it must bear a certain relationship to the proceeding so as to qualify it as privileged. Evaluated by this standard, the instant letter does not qualify as privileged

with respect to proceedings which might be brought against plaintiff. *Id.* Thus, the decision below based on "regular proceedings" standard described herein is wrong. This court should grant certiorari.

Whether the common law absolute privilege and absolute immunity is afforded to statements made in the course of judicial proceedings that are impertinent to the proceeding is a question of first impression with no clear analytical framework for analysis in the Supreme Court of the United States and the Fifth Circuit. The analytical framework available to answer the question provides guidance as to the First, Second and Third Circuits. First Amendment concerns and the canon of avoidance, may curb a plain meaning analysis when the interests at stake involve out of court defamatory statements injuring a disinterested person that are not *made in furtherance of the litigation and to promote the interest of justice; but solely to create smoke and mirrors of the Plaintiff's fraud on the bankruptcy court*. Thus, this Court should grant certiorari because the court below, the decision below is wrong.

C. The Question is Important and This is a Good Vehicle

In Texas, a defendant can defame a disinterested party under the pretense of a "judicial proceeding" to obtain immunity from liability of that defamation, regardless of whether the defamatory statement had a relation to the furtherance of the litigation or promoted the interest of justice. Obviously, this doctrine of

absolute judicial immunity only condones and encourages additional bad acts by the resourceful slanderer. While the motivation for the defendant's defamation is likely to be a subterfuge to distract the court from defendant's underlying bad acts by placing shade on another person, it may also be a retaliatory action by the defendant to cause shame or injury on a person he is trying to silence or hurt. Irrespective of the defendant's motive, a privileged defamation would gain full-fledged legitimization once in the public record and at the folly of the defendant or any media outlet to repeat. Such defamation would hurt the victim's reputation, expose him to public hatred, contempt, ridicule, shame, disgrace, or affect him adversely in his trade or business. Texas law currently provides no recourse while three of the circuit courts do.

The above consideration all the more compels this Court to determine whether or not an out-of-court defamatory publication about an impertinent issue should be accorded an absolute privilege or if a *requirement be made that a privilege exist only if the statement is in furtherance of the litigation and to promote the interest of justice*. This court has the power over the state judgment to correct it to the extent that it amalgamates and homogenizes the law in all the circuits to comport with this Court's mandate as well as to correctly adjudge federal rights that Collins raised with sufficient precision and timeliness to have enabled the state court to have considered it.

This is a case of first impression for the Supreme Court of the United States because this court has

never ruled on this issue and the circuits are split. Some American decisions required a showing that the witness' allegedly defamatory statements were relevant to the judicial proceeding, but once this threshold showing had been made, the witness had an absolute privilege. *Briscoe v. Lahue*, 460 U.S. 325, 331 (1983). Other courts appear to have taken a position closer to the English rule, which did not require any showing of pertinency or materiality. *See*, *e.g.*, *Chambliss v. Blau*, 28 So. 602, 603 (1899); *cf. Calkins v. Sumner*, 13 Wis. 193, 197-198 (1860) (in absence of objection and ruling by court, lack of pertinency of responses to questions does not remove immunity, because witnesses are not in a position to know what statements are pertinent to the case). *Id.*

A review of the decision below would resolve the conflict between the circuits. It would also answer an important recurring question affecting civil liberties of person's victimized by defamation without recourse when the statement is wholly unrelated to furthering a judicial proceeding or in the interest of justice. Finally, it would be an ideal vehicle for this Court to set precedent of fairness to citizens that comports with the First Amendment while protecting reputations from bad actors.

CONCLUSION

Petitioner, Toni L. Sharretts Collins, prays that the Supreme Court grant a writ of certiorari to review the judgment of the court below.

Respectfully submitted,

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