

No. \_\_\_\_\_

19-5720

IN THE

SUPREME COURT OF THE UNITED STATES

Melinda Scott

(Your Name)

PETITIONER

Joshua Moon

vs.

Brian Zaiger

FILED  
AUG 01 2019  
OFFICE OF THE CLERK  
SUPREME COURT (19)  
RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals (Fourth Circuit)

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Melinda Scott

(Your Name)

PO BOX 1133-2014PMB87

(Address)

Richmond, VA 23218

(City, State, Zip Code)

540-692-2342

(Phone Number)

## **QUESTION(S) PRESENTED**

1. Has Plaintiff Scott stated sufficient facts to support an Invasion of Privacy claim against Defendants Moon and Zaiger?
2. Are Defendants Moon and Zaiger immune from liability under 47 USC 230?

## 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:

## RELATED CASES

1. *Nemet Chevrolet, Ltd. V Consumeraffairs.com, Inc.* 591 F. 3d 250
2. *Zeran v American Online, Inc* 129 F.3d 327 (1997)

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION .....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	6
REASONS FOR GRANTING THE WRIT .....	7
CONCLUSION .....	9

## INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

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 A to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

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

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 2, 2019.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals 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. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied 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. \_\_\_\_ A \_\_\_\_.

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

1. Communications Decency Act
2. 47 USC 230

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

Please see attached

### STATUTES AND RULES

Please see attached

### OTHER

Please see attached



## Table of Authorities

1. Batzel v. Smith 333 F. 3d 1018 (9<sup>th</sup> Circuit) (2003)
2. Ben Ezra, Weinstein, & Co. v America Online Inc. 206 F. 3d 980 (10<sup>th</sup> Circuit) (2000)
3. Universal Communications Systems v Lycos, Inc 478 F 3d 413 (1<sup>st</sup> Circuit) (2007)
4. Green v. AOL 318 F. 3d 465 (3<sup>rd</sup> Circuit) (2003)
5. Reno v. American Civil Liberties Union 521 US 844, 117. Ct. 2329, 138 L. Ed. 874
6. Ashcroft v. American Civil Liberties Union 535 US 564, 122 S. Ct. 1700, 152 L. Ed.2d 771

## Statutes

7. Florida Defamation laws
8. Florida Invasion of Privacy laws
9. Massachusetts Defamation laws
10. Massachusetts Invasion of Privacy laws

## Other

11. Second Restatement of Torts
12. Third Restatement of Torts

## STATEMENT OF THE CASE

Defendant Joshua Moon is the owner of a business called "Lolcow, LLC" which operates a website called "Kiwi Farms". Defendant Zaiger is the owner of a wiki website called "Encyclopedia Dramatica". Both Defendants published content on their websites about Petitioner Scott. Both Defendants published the Petitioners name, likeness and photo without her consent (Appropriation). Both Defendants published private facts about Petitioner Scott. Both Defendants published defamatory statements that were false and put Petitioner Scott in a false light.

Defendant Moon published statements about Plaintiff Scott as an owner of the website. Defendant Zaiger published the information about Plaintiff Scott as an owner of his website. Both Defendants designed their websites for other users to input in information as well. Both Defendant's sites encourage illegal activity (defamation and invasion of privacy) by other users. Defendant Moon also published information about Plaintiff Scott using his own user profile ("Null").

Defendant Moon also acted as an interactive user on his website "Kiwi Farms". He openly acknowledges he makes responses and comments on user threads using his user profile "Null". Defendant Moon openly acknowledges that he monitors threads closely. Defendant Moon distributed information about Plaintiff Scott to Defendant Zaiger as well.

Both Defendants were informed by Plaintiff Scott and were made aware of defamatory nature of the information that they posted. Both Defendants were reminded and told in email that they did not have Plaintiff Scott's permission to use her name, likeness and photo on their sites. Plaintiff Scott asked in separate emails to the Defendants to remove the content. Defendant Moon refused to remove the content. Defendant Zaiger denied owning the website "ED" despite public records showing otherwise. Consequently, Plaintiff Scott filed a Complaint for Invasion of Privacy and Defamation in the federal Western District of Virginia outlining the facts of her case using the *pro-se* litigant form. Plaintiff Scott asked for an injunction for the removal of the content as well as damages.

The lower district court dismissed Petitioner Scott's claims for Invasion of Privacy and Defamation. The lower district court granted Defendants Moon and Zaiger immunity under 47 USC 230 for Invasion of Privacy. The lower district court granted Defendant Zaiger immunity under 47 USC 230 for Defamation claims. The lower district dismissed Petitioner Scott's defamation claims against Defendant Moon as "rhetorical hyperbole". Petitioner Scott appealed the case to the Fourth Circuit Court of Appeals demonstrating that Defendants Moon and Zaiger did not qualify for immunity based upon current legal standards. Upon appeal the Appeals court dismissed Scott's Invasion of Privacy claim appeal.

## REASONS FOR GRANTING THE PETITION

Reason 1 (Rule 10(c)): National importance (§1-2)

Reason 2 (Rule 10(a)): Decision of 4<sup>th</sup> Circuit Appeals Court conflicts other Appeals courts (§3)

Reason 3 (Rule 10(a)): Decision of 4<sup>th</sup> Circuit Appeals Court sanctions a departure of lower court (§4)

Reason 4 (Rule 10(a)): Deviation from usual course of judicial proceedings (§4-5)

Many Americans are being affected negatively by a website called “Kiwi Farms”. Petitioner Scott is the only target of the website thus far who has appealed to courts for justice. The owner of the website, Joshua Conner Moon, has caused countless injuries to American people in many judicial circuits. He uses his website to harass, injure and defame others. Journalists everywhere are in an outpour over the unabated harmful content on his website. Even the country of New Zealand has asked that he remove content from his site which mocks terrorist events in their country. The website Encyclopedia Dramatica also has a widespread negative reach on American people.

Despite the civil requests for him to remove harassing and defamatory statements about others, Defendant Moon persists in his reckless disregard for others. He has even contributed to the suicide of a young teenage girl. His website does not embody the protection of the First Amendment. His website embodies the presence of a domestic terrorist who verbally harasses others. He uses loopholes in Internet law to continue in a behavior that would be regulated by law in a brick and mortar setting. A decision by this Court that enforces strict standards of immunity would give justice to many Americans. This Court should settle this important question of federal law because of the number of American people in different judicial circuits that would be affected from a decision.

Kiwi Farms is an example of a pattern of conduct that is continuing all over the United States. Countless Americans are being victimized by the lack of congressional regulation of extreme internet behavior. Judicial courts however have consistently stated that immunity from liability under 47 USC 230 can only be used as a defense under certain conditions. The 1<sup>st</sup>, 3<sup>rd</sup>, 9<sup>th</sup> and 10<sup>th</sup> Court of Appeals have all enforced certain

standards of immunity under the Communications Decency Act. The Fourth Court of Appeals has also outlined immunity standards for internet service providers under 47 USC 230. The Fourth Court of Appeals has deviated from the decisions of other Appeal's courts and their own standards for applying immunity under 47 USC 230 with regard to the Petitioner's case. This Honorable Court should, under Rule 10 (a), accept the Petitioner's case. The Fourth Court of Appeals has not treated the Petitioner with a consistent legal standard.

Further, the facts presented by the Petitioner in her original Complaint are not being treated according to the usual course of judicial proceedings. The facts of her case which were stated in her Complaint should be applied when deciding this case. Instead, the district court and Appeals court have deviated from the usual course of judicial proceedings by treating the facts raised in her complaint as insufficient to state a case. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to *draw the reasonable inference* that the defendant is liable for the misconduct alleged" (emphasis added)(*Ashcroft v. Iqbal*). The Appeals court has sanctioned a departure by a lower court to disregard the aforementioned legal standard in *Ashcroft*. Petitioner Scott outlined sufficient factual content demonstrating Defendants Moon and Zaiger were/are responsible for the information they posted on their websites about Petitioner Scott.

Lastly, the 4<sup>th</sup> Circuit Court of appeals has departed from judicial proceedings by misquoting in their Opinion information in Petitioner Scott's brief. In Petitioner Scott's brief Petitioner Scott stated: "The part of the dismissal being appealed is whether or not Plaintiff Scott has stated an Invasion of Privacy claim against Defendant Moon that does not qualify for immunity under the Communication Decency Act". Instead, the Appeals court incorrectly stated that Petitioner Scott "asks us to review the district court's holding that her complaint failed to demonstrate that Defendants Moon and Zaiger were information content providers...". The court of appeals (4<sup>th</sup> Circuit) did not correctly restate the appeal brief content and they did not address the issues raised in the Petitioner's brief. In accordance with Rule 10(a) this Honorable Court should accept the Petitioner's case.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

 \_\_\_\_\_

Date: August 1, 2019