No. 19-5999

In the Supreme Court of the United States

NATASHA DELIMA

Petitioner

v.

YOUTUBE, INC.; FACEBOOK, INC.; TWITTER, INC.; GOOGLE, LLC; BLOGSPOT.COM; PATREON, INC.; GOFUNDME, INC.

Respondents

On Petition for a Writ of Certiorari
to the United States Court of Appeals
For the First Circuit

OPPOSITION BY PATREON, INC. TO PETITION FOR A WRIT OF CERTIORARI

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October 18, 2019

I. Question Presented.

Should the Court grant certiorari to review the decision of the United States Circuit Court of Appeals for the First Circuit that affirmed the dismissal of Petitioner's civil action?

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II. Table of Authorities

Constitutional Provisions

United States Supreme Court Cases

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III. Parties before the Court.

The Respondents are the Defendants in the court below: Google LLC; Twitter, Inc.; YouTube, LLC; Facebook, Inc.; Patreon, Inc.; GoFundMe, Inc.; and Blogspot.com. Petitioner is the Plaintiff in the court below, Natasha DeLima.

IV. Corporate Disclosure Statement

Respondent Patreon, Inc. states that it has no parent. No publicly held company own 10% or more of its stock.

V. Statement of the Case

Petitioner's lawsuit comes before this Court after it was dismissed by the United States District Court for the District of New Hampshire. The dismissal was affirmed by the United States Circuit Court of Appeals for the First Circuit.

The operative pleading was an Amended Complaint, filed in the District Court on August 17, 2018. In her Amended Complaint, Petitioner claimed that her rights were violated in connection with use of Defendants' websites and internet-based computer services. Petitioner's claims were based on asserted violations of her rights under the United States Constitution, certain Federal Statutes, and the violation of an Executive Order entered by President Donald Trump.

Petitioner's Amended Complaint was dismissed. The District Court gave Petitioner wide procedural latitude and considerable personal attention, leaving

her no valid reason to complain about how her Complaint and her numerous filings were handled.

VI. Reasons to Deny the Writ.

Petitioner has not asserted any question of law that warrants a grant of certiorari. Petitioner's lawsuit is founded on an insubstantial premise: That she owns the material she posts (and attempts to post) on Respondent's interactive computer services internet site and has an actionable right to use Respondents' services without interference or oversight by Respondents. Petitioner claims this actionable right arises from and is secured by the First and Fourteenth Amendments to the United States Constitution. She claims that these Amendments give her the right to use and derive income from Respondent's provision of interactive computer services. She summarizes her misunderstanding with the term "virtual property." From this perceived violation of her Constitutional rights flow her demands for damages and injunctive relief.

Petitioner has no cognizable claims based on a violation of First Amendment or Fourteenth Amendment rights because she has alleged no state action. The First Amendment[1] prohibits Congress and the States from making any law abridging freedom of speech, but does not apply to private actors. "The Free Speech Clause of the First Amendment constrains governmental actors and

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[1] "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."

U.S. Const. amend. I

protects private actors." *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1926, 204 L. Ed. 2d 405 (2019). Simply put, the First Amendment addresses governmental infringement on the right of free speech. The Fourteenth Amendment, [2] which prohibits the states from denying federal constitutional rights, likewise applies to acts of the states, not to acts of private persons or entities. *Rendell-Baker v. Kohn*, 457 U.S. 830, 837–38, 102 S. Ct. 2764, 2769, 73 L. Ed. 2d 418 (1982), *citing Civil Rights Cases,* 109 U.S. 3, 11, 3 S.Ct. 18, 21, 27 L.Ed. 835 (1883); *Shelley v. Kraemer*, 334 U.S. 1, 13, 68 S.Ct. 836, 842, 92 L.Ed. 1161 (1948).

The state action requirement preserves the "essential dichotomy" set forth in the Fourteenth Amendment between a deprivation of rights by a government and private conduct, "however discriminatory or wrongful," against which the Fourteenth Amendment, at least in the context presented here, offers no shield. *Jackson v. Metro. Edison Co.,* 419 U.S. 345, 349, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974) (*quoting Shelley v. Kraemer*, 334 U.S. 1, 13, 68 S.Ct. 836, 92 L.Ed. 1161 (1948)).

Social media sites may have become, in a limited fashion, a sort of public forum for sharing ideas and commentary, but the public forum doctrine should not be extended mechanically to contexts that are different from the public

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[2] In relevant part, "... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

U.S. Const. amend. XIV, section 1.

streets and government-owned parks where the doctrine first arose. *Arkansas Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 672–73, 118 S. Ct. 1633, 1639, 140 L. Ed. 2d 875 (1998) (public television broadcasting not the equivalent of a public park for purposes of First Amendment.) Recognition that an internet site is a "public forum" means no more that this: The United States government and the States are, alone, subject to constraints on actions to restrict content on and users from the internet. *Packingham v. North Carolina*, 137 S. Ct. 1730, 1738, 198 L. Ed. 2d 273 (2017).

While Petitioner claims to be the victim of violations of various statutes of the United States and an Executive Order from the President of the United States, she has articulated no cognizable cause of action against Respondents and has apparently abandoned her reliance on statutes and Executive Orders in her application for certiorari.

A writ of certiorari is a matter of judicial discretion. Supreme Court Rule 10 gives reasons commonly advanced for review on a writ:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
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> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.
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> U.S. Sup. Ct. R. 10

Petitioner has failed to advance an argument invoking any of the foregoing reasons for review of the dismissal of her lawsuit. The Circuit Courts of Appeal are not said to be split on any important question material to her lawsuit. The Circuit Courts are not said to be in conflict with a state court of last resort. In fact, no state court of last resort has decided any legal issue in connection with Petitioner's lawsuit. Petitioner has identified no unsettled questions of federal law.

VII. Conclusion

Given Petitioner's inability to identify any reason to issue a writ of certiorari, beyond her disappointment regarding the disposition of her lawsuit, her application for a writ of certiorari should be denied.

Respectfully submitted:

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