NO. 20-_____

In the Supreme Court of the United States

JOHN DOES 1 THROUGH 10,

Petitioner,

v.

DEBRA HAALAND AND ELIZABETH WARREN,

Respondents.

On Petition for a Writ of Certiorari to the United States Supreme Court for the Sixth Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is election to Congress a license to libel anyone, anywhere, anytime, even when the libel is not in response to a press inquiry, does not concern pending legislation, does not occur in the halls of Congress, and concerns private citizens, minor children, from a jurisdiction neither member of Congress represents?

LIST OF PROCEEDINGS

United States Court of Appeals for the Sixth Circuit

No. 19-6347

John Does 1–10, *Plaintiffs-Appellants, v.*
Debra Haaland; Elizabeth Warren,
Defendants-Appellees.

Date of Final Opinion Judgment: September 3, 2020

Date of Final Judgment: September 3, 2020

United States District Court for the Eastern District of Kentucky Northern Division at Covington

Civil Action No. 2:19-00117

John Does 1 through 10, *Plaintiffs, v.*
Debra Haaland, et al., *Defendants.*

Memorandum Opinion and Order: November 5, 2019

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The United States District Court for the Eastern District of Kentucky Northern Division at Covington on November 5, 2019, denied Petitioners' motion to remand this matter to state court and granted Respondents' motion to dismiss on sovereign immunity grounds. (App.24a). On September 3, 2020, the Sixth Circuit affirmed the District Court's order. (App.1a), which is published as *John Does 1-10 v. Debra Haaland et al.,* 973 F.3d 591 (6th Cir. 2020).

JURISDICTION

The judgment of the Court of Appeals was entered on September 3, 2020. (App.1a). This Court's jurisdiction rests on 28 U.S.C. § 1254(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Article I, Section 6:

The Speech and Debate clause of the US Constitution states that members of both Houses of Congress:

> . . . shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their attendance at the Session of their Respective Houses, and in going to and from the same; and for any Speech or Debate in either

House, they shall not be questioned in any other Place.

28 U.S.C. § 2671—Definitions

As used in this chapter and sections 1346(b) of this title, the term "Federal agency" includes the executive departments, the judicial and legislative branches, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States.

"Employee of the government" includes (1) officers or employees of any federal agency, members of the military or naval forces of the United States, members of the National Guard while engaged in training or duty under section 115, 316, 502, 503, 504, or 505 of title 32, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation, and (2) any officer or employee of a Federal public defender organization, except when such officer or employee performs professional services in the course of providing representation under section 3006A of title 18.

"Acting within the scope of his office or employment", in the case of a member of the military or naval forces of the United States or a member of the National Guard as defined in section 101(3) of title 32, means acting in line of duty.

STATEMENT OF THE CASE

A prominent Senator (and would-be President) and a high-profile member of Congress (now nominated Cabinet member), voluntarily chose to libel a bunch of minor children from Covington, Kentucky, through their broad followings on their social media accounts, and instigated a social media lynch mob that led to threats against these children's lives, families, and future, including death threats, threats of arson, and Hollywood movie directors showing the children shoved through large-scale shredders. After suit in state court, both Defendants removed the case to federal court, claiming it was their "duty" as member of Congress to libel these private citizen minor children, and that the Westfall Act gave members of Congress a license to libel, even when the statements were gratuitously made on social media to millions of people about private citizen minor children from a different jurisdiction and that did not even concern any matter pending before Congress.

1. Factual Background

On January 18, 2019, Petitioners, all minor school children from Covington, Kentucky, joined a larger group of classmates on a trip to Washington, D.C. to attend the March for Life. After the march, the Covington children (Petitioners) gathered near the Lincoln Memorial to await buses to return to Kentucky. While there, members of the religious group known as the Black Hebrew Israelites began taunting the Covington

children with profane insults. Some of the Covington children sought permission from chaperones to recite school cheers to drown out the taunts.

Shortly after the children began their school cheers, they were approached by Native American activist Nathan Phillips. He walked up to and into the crowd of Covington kids while beating a drum. As can be seen in video recordings of the event, nothing of note occurred while Nathan Phillips was in the crowd of Covington kids (Petitioners). Nobody was harmed, nobody was threatened, and not a single one of the Covington kids uttered so much as a rude word towards Nathan Phillips. Indeed, this incident was so mundane and peaceful that the highlight of it was a short period of time when Nathan Phillips stood in front of Nicholas Sandmann, a Covington kid who is not part of this case, while beating his drum. Nathan Phillips then left the area, with nothing meaningful occurring.

Soon, though, while the minor children (Petitioners) slept on their school bus returning home, Respondents Senator Elizabeth Warren, Representative Deb Haaland, and other Defendants named in the underlying action, instigated a social media lynch mob against the children (Petitioners) by using their millions of social media followers to lie about and libel them, triggering threats of violence against the children by the time they arrived home.

Petitioners' defamation claims against Respondent Warren arise from Warren's statements on her Twitter account that: "Omaha elder and Vietnam War veteran Nathan Phillips endured hateful taunts with dignity and strength, then urged us all to do better. Listen to his words," followed by a link to a SPLINTER

NEWS post covering the incident, which identified the Petitioners individually by image. Each of the statements complained of herein was known by the friends, family and associates of each or the Petitioners, to be about them individually. Indeed, they were individually identified as the subject of the statements complained of herein, causing death threats, hate mail, threatening phone calls, threatening emails, and other personal attacks on them each individually. The Petitioners were known to be the subject of the statements complained of herein as they were identified by photo image throughout the world, and each of the statements was interpreted by their friends, family and associates as about them personally. Petitioners' defamation claims against Respondent Haaland arise from her statements on her Twitter account that: "This Veteran put his life on the line for our country. The Covington children's blatant display of hate, disrespect, and intolerance is a signal of how common decency has decayed under this administration. Heartbreaking." (App.31a). Haaland made the following tweet of and concerning the Petitioners: "A Native American veteran was seen being harassed and mocked by a group of MAGA hat-wearing teens." (App.31a.). In that tweet, Haaland included a link to a HUFFINGTON POST article titled, *Native American Veteran Speaks Out After MAGA Hat-Wearing Teens Harass Him*. *Id*.

Respondents Warren, a leading Democratic candidate for the Presidency and a sitting United States Senator, and Haaland, a United States Representative from New Mexico at the time (and newly appointed U.S. Secretary of Interior), used their big social media followings to falsely tell their followers and the media that the Petitioners had engaged in morally abhorrent

and hateful conduct, omitting the true facts: that the Petitioners never ever interrupted an indigenous march, never stopped and blocked a Native American elder and Vietnam War-era veteran (Phillips served stateside as a refrigeration technician) from continuous participation in that event, never surrounded him in a threatening manner, never taunted him as a Native American elder, and never chanted "build the wall" at him to mock an elderly Native American in the middle of an indigenous march. Despite multiple and myriad requests to merely correct the statements without any suit or financial remedy requested, both Defendants refused any retraction, refused any correction, and refused any remedy, and their libelous statements still exist on their social media to this very day.

2. Procedural History

Petitioners filed their lawsuit on August 1, 2019. On August 14, 2019, Petitioners filed an Amended Complaint, alleging causes of action for defamation and several state law claims against Respondents Warren, Haaland, and other Defendants in that action.

On August 28, 2019, Respondent Warren filed a Notice of Removal to the United States District Court for the Eastern District of Kentucky, Covington Division, claiming that the conduct alleged against her in the Amended Complaint qualified for removal under 28 U.S.C. § 1442(a).

On September 4, 2019, Respondent Warren filed a Motion to Dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure. Alternatively, Warren's motion moved this Court to dismiss Petitioners' claims pursuant to Rule

12(b)(6) of the Federal Rules of Civil Procedure, arguing that Petitioners have failed to state a claim for any of the causes of action that they allege. Alternatively, Warren moved this Court pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure to dismiss Petitioners' claims against her for lack of subject matter jurisdiction.

On September 26, 2019, Petitioners responded with a motion to remand back to Kenton County Circuit Court. The District Court, on November 5, 2019, denied Petitioners' motion to remand and entered a Memorandum Opinion and Order finding that removal was proper. (App.24a). Additionally, the District Court granted Respondents Warren and Haaland's Motions to Dismiss upon finding that the Respondents acted within the scope of their employment in issuing their respective tweets, and because Petitioners failed to identify any waiver of sovereign immunity for their claims against the Respondents. The District Court then declined to exercise supplemental jurisdiction over the remaining claims against the ten other Defendants and remanded the matter to state court. Petitioners appealed the District Court's Order granting Defendants' Motions to Dismiss and denying Petitioners' Motion to Remand.

On September 3, 2020, the Sixth Circuit affirmed the District Court's order and held that the United States was properly substituted as Defendant in this case and the District Court correctly dismissed Respondents Warren and Haaland from the suit. (App.1a).

REASONS FOR GRANTING THE PETITION

The decision below conflicts with the decisions of fellow federal Circuit courts, conflicts with the decisions of this court, and conflicts with state supreme courts on the scope of legislative immunity any legislator can Constitutionally enjoy. As important, this case concerns a critically important federal question of pure law: is election to Congress a license to libel, slander, and defame anyone, anywhere, any time with absolute immunity, unlimited to legislative duties or press inquiry? Can Congress immunize itself for crimes next?

I. THE CASE BELOW CONFLICTS WITH THIS COURT'S HOLDINGS THAT THE WESTFALL ACT DOES NOT EXPAND IMMUNITY BEYOND WHAT EXISTED PRIOR TO THE WESTFALL DECISION, WHICH LIMITED IMMUNITY FOR MEMBERS OF CONGRESS TO THAT AUTHORIZED BY THE SPEECH AND DEBATE CLAUSE OF THE CONSTITUTION.

This Court already limited the scope of the Westfall Act: to "return Federal employees to the status they held prior to the Westfall decision." *See Gutierrez de Martinez v. Lamagno*, 515 U.S. 417 (1995). Notably, the express intention to "return Federal employees to the status they held prior to the Westfall decision" would mean the express intention of Congress was to restore the scope of immunity to the immunity afforded under the Speech and Debate Clause, since that is what would "return Federal employees to the status they held prior to the Westfall decision." What was that immunity "status they held prior to the Westfall

decision?" It was limited to legislative tasks. *See Proxmire*, *Gravel, et al. Hutchinson v. Proxmire*, 443 U.S. 111 (1979), *Gravel v. United States*, 408 U.S. 606 (1972). Of note, this is in conformity to the scope of legislative immunity sister state courts also repeatedly recognize. *See e.g.*, *Cooper v. Glaser*, 228 P.3d 443, 445 (Mont. 2010); *Gugliotta v. Wilson*, 168 A.D.3d 817 (N.Y. App. Div. 2019); *Janiszewski v. Belmont Career Center*, 86 N.E.3d 613 (Ohio Ct. App. 2017); *Miller v. Wyatt*, 457 S.W.3d 405 (Tenn. Ct. App. 2014); *Anderson v. Hebert*, 830 N.W.2d 704, 708 (Wis. Ct. App. 2013); *Isle of Wight County v. Nogiec*, 704 S.E.2d 83 (Va. 2011); *Clark v. Jenkins*, 248 S.W.3d 418 (Tex. Ct. App. 2008); *Hillman v. Yarbrough*, 936 So.2d 1056 (Ala. 2006); *Meyer v. McKeown*, 641 N.E.2d 1212 (Ill. App. 1994).

In 1988, the Supreme Court added a qualification to judicially crafted official immunity for the actions of federal officials: the requirement the immunized act be within the discretionary authority of the official. *Westfall v. Erwin*, 484 U.S. 292 (1988). Congress reacted by passing a law named after the decision, the Westfall Act, that removed that qualification, and engrafted the court's pre-Westfall judicially crafted common law immunity into legislatively granted statutory immunity. As subsequent courts and scholars alike concurred, the law merely put the pre-Westfall immunity case law back into effect, and made it legislation. The decision below conflicted with this legislative history, and this Court's adjudication of it.

The Speech and Debate clause of the U.S. Constitution states that members of both Houses of Congress:

> . . . shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their attendance at the Session

> of their Respective Houses, and in going to and from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

U.S. Const. Article I, Section 6 Clause 1.

The jurisprudence of the Speech and Debate Clause constitutionally constrict the contours of immunity Congress can afford itself. As the Court reiterated in *Gravel*: "This Court has not hesitated to sustain the rights of private individuals when it found Congress was acting outside its legislative role." *Gravel v. United States*, 408 U.S. 606 (1972).

This conforms to this Court's recognition that Congress cannot engraft onto itself additional immunities beyond that afforded by the Constitution. Immunity should not preclude prosecutions "which, though . . . founded on a criminal statute of general application, [do] not draw in question the legislative acts of the defendant Member of Congress or his motives for performing them." *United States v. Johnson*, 383 U.S. 169, 185 (1966). In *United States v. Brewster*, 408 U.S. 501 (1972), the Court drew a distinction between a prosecution that caused an inquiry into the motivation for performance of legislative acts and a prosecution for taking or agreeing to take money for a promise to act in a certain way. The former is proscribed, the latter is not.

> Taking a bribe is, obviously, no part of the legislative process or function; it is not a legislative act. It is not, by any conceivable interpretation, an act performed as a part of or even incidental to the role of a legislator. . . . Nor is inquiry into a legislative

> act or the motivation for a legislative act necessary to a prosecution under this statute or this indictment. When a bribe is taken, it does not matter whether the promise for which the bribe was given was for the performance of a legislative act as here or, as in *Johnson*, for use of a Congressman's influence with the Executive Branch.

Brewster at 526.

In other words, it is the fact of having taken a bribe, not the act the bribe is intended to influence, which is the subject of the prosecution, and the Speech and Debate Clause interposes no obstacle to this type of prosecution. The same analysis is applicable here where the statements of libel themselves, not any purported legislative actions related thereto, is the subject of the underlying suit.

Expanding immunity without express statutory direction to do so contradicts this court's precedents concerning immunity, and the statutory interpretation related thereto. The Supreme Court made clear that a "statute must be read in harmony with general principles of tort immunities and defenses rather than in derogation of them" and discouraged redefining the scope of immunity based on some claim a statute "somehow eliminated" the scope of immunity law "by covert inclusion in the general language" of a statute. *Rehberg v. Paulk*, 566 U.S. 356, 361-362 (2012) (internal citations and quotations omitted). After all, courts must assume Congress is familiar with existing case law on immunity, and intended to include them and continue them, absent express language to the contrary. *Rehberg v. Paulk*, 566 U.S. 356, 362 (2012).

The decision of the lower court violates the precedents of this Honorable Court set forth above. Said plainly, this court has already decided that: "[l]egislatures may not of course acquire power by unwarranted extension of privilege" *Tenney v. Brandhove*, 341 U.S. 367 (1951), but here as Thomas Jefferson so noted, the "tyranny of the legislatures" is threatening to raise its formidable head, and must be stopped.

II. THE CASE BELOW CONFLICTS WITH FELLOW FEDERAL CIRCUITS LIMITING IMMUNITY TO LEGISLATIVE TASKS, SUCH AS ANSWERING PRESS QUESTIONS ABOUT THEIR OFFICE OR THEMSELVES PERSONALLY.

Fellow federal Circuit courts never went as far as the Circuit below in applying immunity so broadly. First, most federal Circuit courts have not approved of applying the Westfall Act to be broader and beyond the scope of immunity provided in the Constitution's Speech and Debate Clause; the court below did. Second, the few federal circuits to address this issue constricted the immunity to only statements that were made in response to press inquiries concerning their job as members of Congress or personal questions about themselves as members of Congress, not to statements gratuitously made on social media to millions of followers to whip up a social media lynch mob. Third, this Court previously held that the Westfall Act only restored the level of immunity existing prior to the Westfall decision, and Congress members' immunity for libel was limited to the same limits as the Speech and Debate Clause prior to the act.

Of note, most Circuits have not approved of the lower court's decision. The few Circuits to address the issue limited immunity to circumstances not present here. A scattering of cases across a few Circuits extended immunity only to a few acts outside of Congress: 1) answering questions from the media, and 2) concerning pending matters before Congress or personal issues about the Congressmen themselves. In the other Circuit cases relied upon by the court below, the conduct was in response to a reporter's inquiry about matters within their authorized duties or about them individually. Responding to questions about their job has been the only category of claims found immune from tortious libels outside of legislative duties or the legislative chamber.

In the primary case cited to expand immunity beyond the scope of the Speech and Debate clause, the courts emphasized the statements at issue were in response to press inquiries, and notably not "made gratuitously" to serve personal political interests. *Operation Rescue Nat. v. U.S.*, 975 F.Supp. 92, 108 (D. Mass 1997). Courts implicitly rejected that acts meant to enhance popularity, increase fundraising, or improve candidacy are not the official duties of a member of Congress. *Id.*

In *Council on American Islamic Relations v. Ballenger*, 366 F.Supp.2d 28, 32 (D.D.C. 2005) the Congressman was deemed to be acting, at least in part, for the purpose of preserving his effectiveness, the court found he was thus acting within the scope of his employment at the time of the incident in question.

Unlike the statements in *Williams*, which were made in the context of an interview addressing Con-

gress' appropriation of money for the restoration of the Battleship Texas, or statements made in *Operation Rescue Nat. v. U.S.*, 975 F. Supp. 92 (D. Mass. 1997) which were specifically concerning pending legislation, the statements in this case were not made within the context of any pending congressional action whatsoever. Additionally, unlike the statements in *Ballenger*, they were not made for the purpose of preserving the Senator's "effectiveness" as they were not pure opinions, but libels and lies masquerading as the result of an independent inquiry by a Senator in her legislative tasks, citing as its source an article with multiple false statements of facts she implied were also true, including false allegations of what would constitute criminal harassment in the state of Kentucky. Lies about minors are not OK because a Senator says them outside of her legislative duties.

Federal courts find comparable intentional tortious conduct outside the protections of immunity. *See e.g., Bergeron v. Henderson*, 47 F.Supp.2d 61 (D. Me. 1999); *Jamison v. Wiley*, 14 F.3d 222 (4th Cir. 1994); *Mobley v. Coby*, 1996 WL 250655 (D. Md. 1996); *Baggio v. Lombardi*, 726 F.Supp. 922 (E.D.N.Y. 1989); *Allstate Ins. Co. v. Quick*, 254 F.Supp.2d 706 (S.D. Ohio 2002); *Greene v. Rubin*, 1997 WL 535893 (E.D. Pa. 1997); *Counts v. Guevara*, 328 F.3d 212 (5th Cir. 2003); *McHugh v. University of Vermont*, 966 F.2d 67 (2d Cir. 1992); *Nadler v. Mann*, 951 F.2d 301 (11th Cir. 1992); *Melo v. Hafer*, 1992 WL 396816 (E.D. Pa. 1992).

Finally, in the other Circuit decisions, the Attorney General certified the claim arose under the defendant's official duty; that never occurred here. The Westfall Act only offers protection to a government actor when that actor was acting within the scope of his or

her employment "at the time of the incident out of which the [tort] claim arose." 28 U.S.C. § 2679(d)(1). When a federal employee is sued for wrongful or negligent conduct, the Act empowers the Attorney General to certify that the employee "was acting within the scope of his office or employment at the time of the incident out of which the claim arose." § 2679(d)(1), (2). Upon the Attorney General's certification, the employee is dismissed from the action, and the United States is substituted as defendant in place of the employee. No such certification ever occurred, or was even sought, by the defendants in this case, another critical conflict with the decision of the few Circuits to extend immunity at all.

The case below directly conflicts with the Circuit decisions on the issue, which limit a federal employee's immunity to statements about their federal office made to the press. No Circuit, until this Circuit, ever extended immunity to any libel, any place, anywhere, anytime, regardless of the statement's nexus to pending legislation or a reporter's inquiry. The gratuitous voluntarily instigated statements on social media that intended to cause and did cause a social media lynch mob against a bunch of minors from Kentucky, was not within the official legislative duties of either defendant, nor within their Constitutionally protected prerogative of immunized speech, nor even with the certification of the Attorney General. As such, the decision below conflicted with the decisions of fellow federal Circuits, just as it conflicted with the precedents of this Court.

III. THE CASE BELOW CONFLICTS WITH STATE SUPREME COURTS ON THE SCOPE OF LEGISLATIVE IMMUNITY A LEGISLATOR CAN CONSTITUTIONALLY ENJOY.

Sister state supreme courts also conflict with the decision of the Circuit below. In order for immunity to apply, it must be the case that "the legislator was engaged in a legislative function when he or she spoke." *Cooper v. Glaser*, 228 P.3d 443 445 (Mont. 2010). "Whatever imprecision there may be in the term "legislative activities," it is clear that nothing in history or in the explicit language of the Clause suggests any intention to create an absolute privilege from liability or suit for defamatory statements made outside the Chamber." *Hutchinson v. Proxmire*, 443 U.S. 111, 127 (1979). "The immunities of the Speech or Debate Clause were not written into the Constitution simply for the personal or private benefit of Members of Congress, but to protect the integrity of the legislative process by ensuring the independence of individual legislators." *Id.*

Courts routinely decline immunity claims where the defendant tried to shield libel behind an official proceeding or their duties when their comments do not relate by either subject or place. *Gugliotta v. Wilson*, 168 A.D.3d 817 (N.Y. App. Div. 2019) "Absolute immunity should not be extended to members of city council, where there is no pending legislation relating to the subject matter of the alleged defamation and where the publication is beyond the legislative forum; instead, statements made other than in a legislative session or related meeting should be afforded a qualified privilege." *Janiszewski v. Belmont Career Center*, 86 N.E.3d 613 (Ohio Ct. App. 2017). "Legislative privilege does not give a member of a subordinate legislative body

the right to use his or her position as a forum for private slanders against others." *Miller v. Wyatt*, 457 S.W.3d 405 (Tenn. Ct. App. 2014). A legislator "cannot claim a legislative privilege before a body that is not legislating." *Anderson v. Hebert*, 830 N.W.2d 704, 708 (Wis. Ct. App. 2013). There can be no immunity where the legislator's statement was not made in legislative capacity. *Isle of Wight County v. Nogiec*, 704 S.E.2d 83 (Va. 2011). Statements made outside of the legislative session not concerning pending legislation were not protected statements. *Clark v. Jenkins*, 248 S.W.3d 418 (Tex. Ct. App. 2008). Statements outside of legislative function are not immune from suit even though made by a legislative official. *Hillman v. Yarbrough*, 936 So.2d 1056 (Ala. 2006). No immunity for legislative comments outside of legislative functions. *Meyer v. McKeown*, 641 N.E.2d 1212 (Ill. App. 1994).

The same logic that limited immunity in the decisions of federal Circuits and this court, reverberate through the state supreme courts as well: election to legislative office is not a license to libel anyone, anywhere, anytime, unrelated and unconstrained by the legislative tasks authorized of a legislator. Election to office is not an unlimited license to libel.

IV. THIS CASE CONCERNS A CRITICAL CONSTITUTIONAL QUESTION OF PURE LAW: IS ELECTION TO CONGRESS A LICENSE TO LIBEL THE CITIZENRY WITHOUT LIMIT AND WITHOUT CONSEQUENCE?

This Writ should be granted because the issues raised herein are of great nationwide importance, raise questions of pure law, and clarity is needed from this Court.

Is election to Congress a license to libel anyone, anywhere, any time? The Constitution already carefully balances the need for risk-free speech made by members of Congress in the halls of Congress and in their Congressional duties as legislators. The statute already immunizes public statements in response to press inquiries concerning their Congressional duties. Extending and expanding Congressional immunity to anything they say, anywhere, anytime, contradicts the Constitution and exceeds the statutory immunity of their office.

The Supreme Court long ago rejected election to Congress as a license to libel. *See Hutchinson v. Proxmire*, 443 U.S. 111 (1979). A quartet of cases reinforced this principle. *See e.g., Hutchinson v. Proxmire*, 443 U.S. 111 (1979); *Doe v. McMillan*, 412 U.S. 306, 324 (1973); *United States v. Brewster*, 408 U.S. 501, 512 (1972); *Gravel v. United States*, 408 U.S. 606 (1972).

Constitutional issues arise if the Westfall Act is interpreted to contradict both the Speech and Debate Clause, as well as contradict the pre-Westfall jurisprudence it presumably reinstated. "Legislatures may not of course acquire power by unwarranted extension of privilege." *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951). "'The tyranny of the legislatures is the most formidable dread at present and will be for long years.'" *Id.*, at 375 n. 4, quoting Thomas Jefferson.

This case allows this court to clarify that the Westfall Act does not extend official duties of a member of Congress beyond legislative duties (if members of Congress are intended to be covered by the Westfall Act, at all), and Congress does not have the authority, and cannot be Constitutionally granted the authority, to immunize itself beyond legislative actions. Under

the dangerous logic of the decision below, Congress could immunize its members for anything (without even expressly telling anyone, including their constituents at the time, that they even did so).

Could Congress members immunize themselves from criminal prosecution next? Are there any limits? Right now, a member of Congress can sue a citizen for lying about that member of Congress, but a citizen cannot sue a member of Congress for lying about that citizen, even when the lie does not concern any legislative task of that member of Congress. Imagine: get elected to Congress, and now you can libel your neighbor, your ex, your business competitor, and even children. You don't have to be within Congress; you can use your millions of followers on social media to create real-time social media lynch mobs with devastating outcomes. Such a conflict in power between the citizen and their "representative" unbalances the very balance the Constitution carefully constructed. This case begs for this Court's clarity. Election to Congress cannot Constitutionally be a license to libel anyone, anywhere, anytime.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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