

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Lara Bush-Pensy, Petitioner

v.

Timothy Pflieger, Respondent.

On Petition for Writ of Certiorari to the Wisconsin Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether basic First Amendment and Due Process freedom of speech is infringed where a state court restrains a person's private e-mail absent any evidence the e-mail content was unprotected speech intentionally sent.

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COURT OF APPEALS

Lara Bush-Pensy respectfully petitions for a writ of certiorari to review the judgment and opinion of the Wisconsin Court of Appeals in this case.

OPINION BELOW

The opinion of the Wisconsin Court of Appeals is not published and appears herein as Appendix A.

JURISDICTION

The decision of the Wisconsin Supreme Court denying review was entered March 17, 2020. This Court's jurisdiction is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment 1 provides, in pertinent part:

Congress shall make no law . . . abridging the freedom of speech . . .

United States Constitution, Amendment 14 provides, in relevant part:

No state . . . shall deprive any person of life, liberty, or property, without due process of law; . . .

STATEMENT OF CASE

I. Proceedings Below

On January 10, 2018, respondent Pfleiger (hereinafter “Tim”) filed a petition for a harassment restraining order against appellant Bush-Pensy (hereinafter “Lara”) under §813.125, *Wis. Stats.*, in Door Co. Circuit Court No. 18 cv 04. (5). The matter was resolved by a stipulation filed February 2, 2018 in which both parties agreed to have no further contact of any kind with each other and Lara alone agreed any future contact with Tim “*may be deemed harassment.*” (14:1, ¶3). Emphasis added. The petition was dismissed based on this stipulation. (13). The stipulation also provided either party could file a motion to reopen the case should there be further harassment. (14:1, ¶4).

On March 12, 2018, Tim filed just such a motion to reopen (15) based entirely on 3 mails. (16). The motion was heard on March 19, 2018 and granted over Lara's opposition. (40). A restraining order against Lara was filed. (17).

On May 22, 2018, Lara filed a motion for relief from judgment under §806.07, *Wis. Stats.*, supported by a brief and affidavits. (21)(22)(23)(24). The motion was heard on August 1, 2018 and denied. (31)(41). The written order denying the motion was filed August 8, 2018 (31).

II. Factual Background

Both circuit court judges found as a fact the e-mails were inadvertently sent to Tim. (40:11 [line 23] - 40:12 [line 21] injunction judge)(41:19 [line 9] - 41:20 [line 11] §806.07 judge). Neither judge nor the court of appeals considered whether the injunction satisfied the requirements of the governing case, *Bachowski v. Salamone*, 139 Wis.2d 397, 407 N.W.2d 533 (1987).

REASON FOR GRANTING THE WRIT

I. A decision by this Court will clarify whether private e-mail is protected by the First Amendment.

The free speech problem arises here because the Wisconsin statute allowing harassment restraining orders is interpreted by the state supreme court as intended "to prevent repeated assaults on the privacy interests of individuals *without unnecessarily infringing on their freedom to express themselves through speech and conduct.*" *Bachowski v. Salamone*, 139 Wis.2d 397, 409, 407 N.W.2d 533 (1987), emphasis added. Thus, the legislative purpose of the requirement of intent was to aid in protecting the basic constitutional guarantee of free speech. See discussion at 139 Wis.2d 408-410. Counsel notes "Wisconsin's harassment statute was based substantially on an New York statute." *Id.* at 408.

Now, since its first decision involving free speech and Internet communication, this Court has accorded protection of individual rights paramount importance. *Reno v. ACLU*, 521 U.S. 844, 879, 117 S.Ct. 2329 (1997) ("The Government's assertion that the knowledge requirement somehow protects the communications of adults is therefore untenable."). And see *Packingham v. North Carolina*, 582 U.S. ___, 137 S.Ct. 1730, 1736 (2017) ("[T]he Court must exercise extreme caution before suggesting that the First Amendment provides scant protection for access to vast networks in [the modern Internet.]"). Counsel invokes these concerns here.

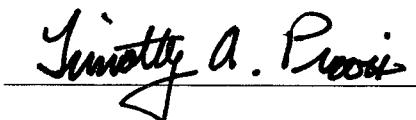
But, as it appears there are few decisions involving free speech and electronic mail between private parties, *cf. Ex Parte Burton*, 586 S.W.3d 573 (Tex. Crim. App. 2019)(1st Amendment free speech prohibited conviction of man for sending allegedly annoying e-mails to ex-wife), counsel understands the Court would not ordinarily find this issue ripe for its consideration. Counsel submits there are exceptions to every rule and respectfully submits, considering millions of private citizens are e-mailing each other every day, this case is one of the exceptions which proves the rule and so is worthy of the Court's consideration.

CONCLUSION

Counsel respectfully submits the Court should grant certiorari and hear this case for the reasoning presented here..

Dated: August 10, 2020

Respectfully submitted,



Timothy A. Provis

Attorney for Petitioner

BUSH-PENSY