SUPREME COURT OF THE UNITED STATES

SUSAN W. VAUGHAN
(plaintiff)

No. 20-7799

V

SHANNON FOLTZ, et al.

(respondents)

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SUPPLEMENTAL BRIEF

I certify that the word count of this brief is under 3000.

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PETITIONER SUPPLEMENTAL BRIEF

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Basis for Filing:

1. New legislation and commentary regarding need for reform of Qualified Immunity
2. Newly discovered criminal record of foster/adoptive parent revealing DSS's disregard of or failure to do a background check on this placement, proving DSS placement to be far riskier than returning or placement of EJV with Plaintiff/Petitioner/biological grandmother would be.
3. New legislation addressing discrimination against parents labeled as "mentally ill."
4. New Federal Case against fraudulent practice by DSS agents in Cherokee County, NC.

ARGUMENTS

1. Some states have passed new legislation either reforming or banning Qualified Immunity for either police or all government agents. This legislation has bipartisan support indicating that the general public supports this legislation and believes either the current application of Qualified Immunity or the law itself is unfair and unconstitutional.

On the heels of the Colorado Legislation passed in the fall of last year; Massachusetts' Chapter 253, which apparently focused on police misconduct; and weaker reforms in Connecticut's HB 2004, now comes more recent, broader and stronger legislation enacted by New Mexico lawmakers, ending Qualified Immunity for *all* government Agents.

The New Mexico law [App. 1] enacted earlier this month (April, 8 2021), HB 4, better known as the "New Mexico Civil Rights Act," according to Cato, is a law that it is a:

> *...landmark piece of legislation [that] permits citizens to sue any public official who violates their constitutional rights, and it specifically provides that qualified immunity is not a defense.*

Regarding Qualified Immunity, specifically, Section 4 of New Mexico's "Civil Rights Act," states:

> *SECTION 4. PROHIBITING THE USE OF THE DEFENSE OF QUALIFIED IMMUNITY--In any claim for damages or relief under the New Mexico Civil Rights Act, no public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body shall enjoy the defense of qualified immunity for causing the deprivation of any rights, privileges or immunities secured by the bill of rights of the constitution of New Mexico.*

On March 25 of this year, New York City passed a less popular version meant to reform Qualified Immunity protections, nevertheless still reflecting the existence of public support for addressing this issue. As of April 23, 2021, CNN reports that at least 25 states "have taken up the issue and considered some form of qualified immunity reform," adding that Connecticut and Massachusetts have also passed some form of legislation "restricting the [use of this] defense...."

Unfortunately, and despite that this legislation has bipartisan support and is aligned with evidentially supported views held by the majority of the entire population, the changes do

not apply to federal courts. Only Congress or this Supreme Court can provide U.S. citizens with what seems to be only right and just: the assurance that some states' promises to protect their citizens' Constitutional Civil Rights has relevance and application to all states and all federal court rulings. And, although Congress seems to be repeatedly debating the issue of limiting qualified immunity, its focus is on police misconduct, ignoring CPS agents' widespread and serious abuses of power and due process violations committed against nearly defenseless parents and grandparents, in many cases unnecessarily depriving them and their children of their most precious rights. No legislative or judicial body seems the least concerned about the abuses of judges who collude with corrupt CPS agents, facilitating their misconduct and due process violations and yet enjoying absolute immunity no matter the effects of their unjust collusion and due process violations.

Adding to the facts stated above is an opinion based on a survey done by the Cato Institute, cited in part below, providing further evidence that the majority of Americans are in favor of eliminating qualified immunity altogether. Although this and other commentary on Qualified Immunity focuses primarily on holding police officers accountable, I believe this is because reports of Social Worker abuse have not been nearly as widely publicized as police misconduct, particularly after the death of Mr. Floyd, often due to the secrecy of CPS acts.

> *The Cato Institute Summer 2020 National Survey of 2,000 Americans conducted with YouGov finds that nearly two-thirds (63%) of Americans [participating in the survey] support eliminating qualified immunity so that police officers can be sued for misconduct even if there is no previous legal case with similar facts that ruled officers may not engage in that conduct. Thirty-seven percent (37%) oppose ending qualified immunity* [App. 2]

This commentary adds the following:

> *Even in situations where police officers did not know they were breaking the law, Americans say officers should be held accountable. Nearly 8 in 10 Americans (79%) say that if a police officer violates a person's rights but was "unaware at the time that their actions were illegal" they should be held accountable for that misconduct. Most also believe lawsuits should be on the table. A similar share (77%) say police should not be able to avoid lawsuits for misconduct using ignorance of the law as a defense.*

The Cato Institute also states the following about Qualified Immunity that many law scholars and Civil Rights advocates agree with:

> *Qualified immunity is a judicial doctrine that shields public officials, like police officers, from liability when they break the law. Cato's Project on Criminal Justice chose to make the elimination of qualified immunity one of its top priorities nearly three years ago for the simple reason that civil society is impossible without a well-functioning criminal justice system.*
>
> *Either the Supreme Court or Congress could end qualified immunity, and it would be a major victory for accountability.*

I, Plaintiff, am not personally opposed to some reasonable application of Qualified Immunity as it should be and, I believe, was intended to be applied by all courts. If there are some instances where, only in emergencies, an agent makes an honest, possibly unavoidable mistake, he or she should not be held accountable if neither negligent or misconduct is involved. As Kent College law professor Sheldon Nahmod points out in the CNN article [App.3]

> *"In police cases generally, the Supreme Court has been concerned with the fact that officers have to make split-second decisions".... "The Supreme Court is saying, 'We need to be aware that they require some slack.' You need an egregious case before a defendant will be denied qualified immunity."*

However, facts presented by Plaintiff's petition prove that the scenario described above has nothing to do with the circumstances in her case, and she has provided sworn testimonial evidence submitted by Defendants, themselves, confirming that no emergency ever existed regarding this case. Therefore, I am personally and painfully aware of how Qualified and Absolute immunity have been and are being misapplied. I also believe that applying Qualified and/or Absolute immunity to any case that does not involve an emergency situation or where blatant misconduct, abuse and/or law violations are committed is the same as saying that some people are indeed above the law.

Argument 2. As mentioned briefly in Plaintiff's Petition for Certiorari, Plaintiff has recently discovered that DSS's choice of placement with and adoption of Plaintiff's grandson—Mr.

Ralph Clayton Barlow— has a 20-year record of serious motor vehicle violations, spreading across several states and, in most cases. involving driving under the influence of alcohol or other intoxicating substances, sometimes when his license was revoked.

In light of the facts presented in said Petition, i.e. evidence that DSS Defendant's deprived Plaintiff/grandmother/custodian of all association with her grandson, accusing her of being "inappropriate," that these allegations were fabricated, that plaintiff grandmother was deprived of due process and proper opportunity to contest said allegations, and that DSS cited/used said fabricated allegations in a fraudulent manner to procure a stipulation DSS then use to deprive Plaintiff of her right to adopt her own grandson, Plaintiff believes this new information regarding DSS' CHOICE of placement of EJV provides further evidence of DSS Defendants', Romm's in particular, misconduct—not only via the fraud and statute violations they committed, but in their failure to either do a background check on the person with whom Plaintiff's grandson was placed – or else, having done one, ignored it in favor of receiving federal funds for placing a child in Foster Care, Adopting him AND falsely reporting that child on a state registry as a neglected child, creating statistics used to justify their existence and procure further federal funding.

Although Plaintiff discovered some of the criminal and dangerous behavior of the adoptive father while she was filing her appeal with the Fourth Circuit, she did not yet have the final or official judgments on the several violations in Dare County, NC alone, including the most recent and disturbing case (occurring on May 22, 2020 [App. 4, 5, 6], where said adoptive father was allegedly stopped by officers after reports of him nearly driving into a group of pedestrians, then hitting a tree, pulling out and stopping nearby following initiation of police pursuit, only to take off again and run into a side rail near the local police station, flipping his vehicle and rendering him unconscious. Plaintiff has had to purchase from Dare County Courts the results of the court hearings on this most recent reckless driving event known to her. That information is provided in the attached Appendix 4.

While I do not judge those who have an obvious addiction-related illness, nevertheless, a person who repeatedly acts in a seriously reckless manner, as Mr. Barlow has a history of doing, is far more "unfit" to have my grandson in his custody than I ever was.

There is nothing even remotely similar in my history, and yet DSS filed papers in opposition to my petitions for custody and adoption of my grandson, referring to me as "unfit," basing that characterization on the results of their own fraudulent and reckless actions, while choosing a family headed by this very ill, reckless man over me and the wishes of the child's own mother.

Despite this negligence, fraud and the repeated clear violations of state and federal laws, Judge Flanagan ruled, and the Fourth Circuit Court of Appeals affirmed, that these DSS agents deserve immunity protection from even a trial, much more so any conviction or accountability for wrongdoing. There is no better example of misapplication of immunity.

CONCLUSION

In conclusion, regarding Qualified Immunity, I point to Justice Thomas' rational and relevant dissenting opinion in Baxter v Bracey, in which he explains the historical purpose of the Civil Rights Act of 1871, which addressed a need to respond to "'the reign of terror imposed by the Klan upon black citizens and their white sympathizers in the Southern States,'" also pointing out that the provisions of "Section 1, now codified, as amended, at 42 U. S. C. §1983," make "no mention of defenses or immunities."

Citizens in this country are once again having a "reign of terror" imposed upon them in the form of excessive police misconduct and also excessive and unnecessary child removals by CPS agents who fail to comply with due process and other laws and regulations. Although Plaintiff is not considered black, she has nevertheless been disproportionately targeted in a way that many black citizens have been by police AND CPS agents due to her low income and the fact that her daughter suffers a disability. It is well-documented and often reported by NCCPR's Richard Wexler that black and low-income families are disproportionately victims of CPS violations and child removals, where no problem other than low income exists and can be remediated with proper support, compliance with governing laws and understanding. While police use of excessive force is causing unnecessary deaths, CPS child removals and parental rights terminations are considered the equivalent of civil death penalties for the deprived parents and other family members. Justice Thomas concludes in his dissent stating:

> *I continue to have strong doubts about our §1983 qualified immunity doctrine. Given the importance of this question, I would grant the petition for certiorari.*

Plaintiff reiterates, that even if recent applications of Qualified Immunity are justified, it is erroneous to apply this protection to defendants in Plaintiff's case because many of the violations committed did not involve discretion and because everybody knows it's a violation of the law and civil rights for a government agent in a prosecutorial role to fabricate evidence and omit exculpatory evidence, falsely accusing someone and falsely charging them with allegations that deprive them of constitutional rights. In other words, we all know it's wrong to lie – to bear false witness against someone in court proceedings, especially regarding something so vital and weighted as child custody. In Massachusetts, the victim of falsified allegations by a government agent didn't have to go past the Federal District Court to receive justice. I should not have had to go to the lengths and expense I have gone to or to bother the Fourth Circuit Court of Appeals, much less the U.S Supreme Court with such obvious violations! As reported by npr's WBUR [App. 8].

> *In Worcester, a pair of police officers asked for qualified immunity after they were accused of lying on a police report about why they arrested a man on drug charges. He was held for two and a half months before charges were dropped. The federal district judge ruled the officers should have known a warrantless arrest was illegal, and that falsifying or misrepresenting facts in order to arrest someone would violate someone's rights. Worcester eventually paid the man $18,000 in a settlement.*

Regarding Argument 2, specifically, Plaintiff notes that although she provided the Court of Appeals (4th Circuit) some of the information she had recently found on Mr. Barlow's criminal background, that court offered no response, whatsoever, to this serious concern, and Plaintiff could not confirm the judgments at the time because Barlow had sought and was allowed a continuance. Plaintiff just received the confirmed conviction of his most recent and dangerous driving while impaired, in which he was charged with several violations, including inhaling a toxic substance, driving while impaired, hit and run, property damage, resisting a public officer and assaulting a government officer [APP. 4, pp. 12-24].

Finally, regarding the Dare and Currituck DSS's discrimination against Plaintiff's family because of the child's mother's disability, NCCPR's Richard Wexler just reported on Washington State's response [https://www.seattletimes.com/seattle-news/washington-legislature-acts-to-reduce-number-of-children-removed-from-parents/]:

The Washington State Legislature has passed – nearly unanimously – legislation to narrow definitions of neglect and the scope of intervention by the family police. As the Seattle Times reports

The bill changes what the state has to prove in the first stages of a case, before a full fact-finding hearing before a judge, from a "serious threat of substantial harm" to "imminent physical harm."
While a difference of only a few words, "the current statute says, look as far into the future as you want and consider any possible harm to the child," Tara Urs, special counsel for civil policy and practice at the King County Department of Public Defense, explained in a recent interview. The words "imminent" and "physical," she said, "would narrow the focus to this immediate situation."
The bill also prevents the state from removing children because of certain conditions in the home - including poverty, inadequate housing, ***a parent's mental illness*** *and substance use - unless there is a specific connection to such a danger* [emphasis added].

NCCPR also makes note of the scandal in Cherokee County NC over DSS violations and the related case now being heard by a Federal District Court in Western, NC.

> ***Carolina Public Press reports*** *that "hidden foster care" – using coerced "voluntary" placements to bypass even the minimal due process requirements of the family policing system to take children from their homes, is about to go on trial in North Carolina* [App. 8]

Plaintiff offers this Supplemental Brief, with attached evidence, to further support her argument that the defendants in her case do not deserve either qualified or absolute immunity protections from accountability for their crimes, ADA discrimination and other misconduct – that their actions were intentionally negligent, fraudulent, discriminatory and abusive of the law and Plaintiff's Civil rights in a way that has caused severe trauma and other harm and deprivation to Plaintiff and her family, not to mention putting her grandson in a position of risk of death or severe disability due to the adoptive father's reckless driving.

Plaintiff reiterates her request for justice – in addition to monetary compensation, the return of her grandson to his rightful biological family if this Court has the power to grant this, or if not, at least the granting to Plaintiff of a right to visit her grandson and assure that he is safe and happy.

Respectfully submitted, this the 6th day of May, 2021.

Susan W. Vaughan

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