No. 12-698

In The

Supreme Court of the United States

MELISSA CRAWLEY,

Petitioner,

v.

STATE OF MINNESOTA,

Respondent.

On Petition For A Writ Of Certiorari
To The Minnesota Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Is a statute that criminalizes defamation in the form of knowingly false reports of police misconduct a constitutional restriction of speech?

The Minnesota Supreme Court upheld a statute that criminalizes knowingly false reports of police misconduct.

LIST OF PARTIES

Petitioner is Melissa Crawley, an adult citizen and resident of Minnesota.

Respondent is the State of Minnesota.

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STATEMENT OF THE CASE

The Respondent submits the following as corrections to Petitioner's misstatements in her Statement of the Case:

A. Petitioner's Conduct

Petitioner's statement as to Petitioner's conduct is almost entirely misstated. Three major points should be addressed here.

First, Petitioner was not taken to the hospital the night of the incident, nor was she "recuperating" at the hospital when she signed the release. (Pet'r's Br. 2.) Petitioner reported the incident to law enforcement more than twelve hours after it took place. (Transcript p. 206, line 18 – 207, line 7.) The following morning, more than twenty-four hours after the incident, Petitioner decided to seek medical attention, where she was examined and discharged. Prior to her discharge, Petitioner was provided with a release of medical records form, which is standard procedure where an assault is alleged to have taken place. (Transcript p. 166, line 13 – 167, line 3.) The nurse reviewed the form with Petitioner, gave Petitioner time to consider the form, and watched Petitioner sign the release before Petitioner drove herself home. (Transcript p. 169, line 4 – 170, line 24.)

Second, Petitioner's false report was not made after her acquittal (Pet'r's Br. 2), it was made during the pendency of the assault case. Petitioner's medical

records were disclosed to her defense attorney as part of discovery in the assault case. Upon learning that those records were being used against her, Petitioner went to the law enforcement center and accused an officer of forging her signature. Petitioner's First Appearance on the assault was the same day she falsely accused an officer of forging her signature, April 17, 2008. (Register of Actions, Case No. 85-CR-08-840.) Petitioner's trial on the assault did not commence until May 28, 2008.

Third, Petitioner was not charged with a crime in response to her complaint. (Pet'r's Br. 2.) Petitioner's complaint was investigated by the Winona Police Department. During the course of that investigation the investigating officer learned that a nurse had watched Petitioner sign the medical release form after reviewing the document with Petitioner. (Statement of Probable Cause p. 3-4.) Only after investigation revealed that Petitioner had knowingly made a false report of police misconduct was Petitioner charged with the crime. (Id.)

B. Trial Court Proceedings

Petitioner leaves out a great deal of what took place in the Trial Court review of this issue. From her Petition, it appears as though the Trial Court denied her motion because the Court had not heard of viewpoint discrimination. (Pet'r's Br. 4.) This is procedurally incorrect and factually misleading. The parties were scheduled to begin trial on September 15, 2008.

(Pet'r's App. 116a.) At that hearing the defense filed a motion to dismiss, based on *Chaker v. Crogan*, 428 F.3d 1215 (9th Cir. 2005). (Id.) While it is true that the Court indicated that they had not heard of viewpoint discrimination, the Court then gave the parties an opportunity to be heard on the matter. (Transcript p. 30, line 1-22.) The defense summarized *Chaker* on the record (Pet'r's App. 117a-119a) and the State submitted written argument. The Court took the matter under advisement on October 2, 2008, researched the issue, and drafted an Order denying the motion and providing the legal reasoning behind the decision. (Pet'r's App. 109a-114a.) That Order was dated October 25, 2008. Id. The motion was not summarily denied, as Petitioner would have this Court believe.

C. Minnesota Court of Appeals

Petitioner also fails to give this Court a full picture of what took place at the Minnesota Court of Appeals. Unlike her explanation of the Supreme Court decision, Petitioner neglected to mention that the Court of Appeals' decision also had a dissenting opinion. (Pet'r's Br. 4.) In that dissenting opinion, Judge Harten concluded, as did the Minnesota Supreme Court upon review of the Court of Appeals' decision, that the statute at issue proscribed defamation, rather than general lies, and fell within the exceptions outlined in R.A.V. (Pet'r's App. 102a-108a.)

SUMMARY OF ARGUMENT

This Petition should be denied because the Minnesota Supreme Court's decision in *State v. Crawley* is not in conflict with this Court's First Amendment jurisprudence, the Ninth Circuit, or other courts of last resort.

REASONS WHY THE PETITION SHOULD BE DENIED

I. The Minnesota Supreme Court's decision is consistent with this Court's First Amendment jurisprudence.

A. The Minnesota Supreme Court's decision is consistent with this Court's decision in *United States v. Alvarez*.

The decision below is consistent with this Court's decision in *United States v. Alvarez*, 132 S.Ct. 2537 (2012). In *Alvarez*, this Court struck down the Stolen Valor Act because it did *not* criminalize defamation or any other category of speech for which content-based regulation is permitted. Id. Throughout Justice Kennedy's opinion and Justice Breyer's concurring opinion, it is repeatedly pointed out that there is a difference between general lies and the historically proscribable content-based regulations, which include defamation. Id. In *State v. Crawley*, the Minnesota Supreme Court determined that Minn. Stat. § 609.505, subd. 2, proscribed defamation, not general lies. 819 N.W.2d 94, 107 (Minn. 2012) Therefore, it is

consistent with *Alvarez* in that the Minnesota statute meets the threshold that the Stolen Valor Act could not.

B. The Minnesota Supreme Court's decision is consistent with this Court's decision in *R.A.V. v. City of St. Paul, Minnesota.*

The Minnesota Supreme Court's decision is also consistent with this Court's decision in *R.A.V. v. City of St. Paul, Minnesota*, 505 U.S. 377 (1992). In particular, the *Crawley* decision relies on analysis of the exceptions outlined in *R.A.V.*, finding the statute constitutional because it fell within two separate exceptions. *Crawley*, 819 N.W.2d at 112-14. Petitioner appears to be claiming that because Petitioner disagrees with the Minnesota Supreme Court's application of *R.A.V.*, there is a conflict between the two decisions. (Pet'r's Br. 12-16.) The fact that the court in *Crawley* found that two of the exceptions apply to the statute does not mean the decisions are in conflict. Quite the contrary – it means that this Court's First Amendment jurisprudence is being applied.

II. The Minnesota Supreme Court's decision is not in conflict with the Ninth Circuit.

A. The Minnesota Supreme Court's decision is not in conflict with the Ninth Circuit's decision in *Chaker v. Crogan*.

The *Crawley* decision is not in conflict with the Ninth Circuit's decision in *Chaker v. Crogan*, 428 F.3d 1215 (2005), *cert. den.,* 126 S.Ct. 2023 (2006). As the Minnesota Supreme Court correctly observed, the First Amendment analysis in *Chaker* is clearly lacking – particularly in regard to the *R.A.V.* exceptions. *Crawley*, 819 N.W.2d at 114. Furthermore, the *Crawley* and *Chaker* courts started from different points. The *Chaker* court defined the California statute, Cal. Penal Code § 148.6, as prohibiting "knowingly false speech" (428 F.3d at 1225) while the *Crawley* court defined the Minnesota statute, Minn. Stat. § 609.505, subd. 2, as prohibiting "defamation" (819 N.W.2d at 107). As this Court is aware, having recently made the distinction in *Alvarez*, knowingly false speech is analyzed differently from defamation under First Amendment law. 132 S.Ct. at 2544 ("Absent from those few categories where the law allows content-based regulation of speech is any general exception to the First Amendment for false statements"). The Ninth Circuit Court and the Minnesota Supreme Court engaged in different analysis from different premises about different statutes. Put another way, each court had a separate starting point, a separate ending point, and took separate paths between the two points. There is no conflict.

B. The Minnesota Supreme Court's decision is not in conflict with any decision of a court of last resort in any other jurisdiction.

Petitioner claims that the Minnesota Supreme Court decision is in conflict with other jurisdictions, and cites to several cases in support of that claim. (Pet'r's Br. 16-21.) Although it is true that some courts have decided similar issues differently, it is important to note that the only courts apart from the *Chaker* Court to find similar statutes unconstitutional were federal district courts (*Hamilton v. City of San Bernardino*, 107 F. Supp. 2d 1239 (C.D. Cal. 2000); *Eakins v. Nevada*, 219 F. Supp. 2d 1113 (D. Nev. 2002)), and a municipal court (*State v. English*, 776 N.W.2d 1179 (Elyria Muni. Ct. 2002)) that, like *Chaker*, also failed to engage in analysis of the *R.A.V.* exceptions. None of those is a court of last resort. The only other court of last resort that has addressed this issue – the California Supreme Court in *People v. Stanistreet*, 58 P.3d 465 (Cal. 2002), *cert. den.*, 123 S.Ct. 1944 (2003) – found the California statute constitutional after detailed *R.A.V.* analysis. Id. at 471-72. So, the only courts of last resort to have undertaken a thorough *R.A.V.* analysis of the issue have agreed that there is no constitutional infirmity.

One particularly glaring omission on Petitioner's part is in her discussion of the so-called "conflict" between *Stanistreet* and *Crawley*. (Pet'r's Br. 18.) Petitioner contends that because both the California Supreme Court and the Minnesota Supreme Court

did not find that the first *R.A.V.* exception applied, they are in conflict. (Id.) What Petitioner fails to mention is that both courts are in unison on the application of the other two exceptions – finding that both exceptions apply to the statutes at issue and, therefore, upholding both statutes as constitutional. *Crawley*, 819 N.W.2d at 112-14; *Stanistreet*, 58 P.3d at 472. The difference is that the California Supreme Court in *Stanistreet* did not apply a narrowing construction to the California statute (Cal. Penal Code § 148.6) – therefore it was not analyzed strictly on the basis of defamation law. *Stanistreet*, 58 P.3d at 471-72. The Minnesota Supreme Court found that the first *R.A.V.* exception did not apply because the legitimate state interest underlying defamation is "the compensation of individuals for the harm inflicted upon them by defamatory falsehood." *Crawley*, 819 N.W.2d at 111, *quoting Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 341 (1974). Because Minnesota was analyzing on defamation basis and California was not, it should be no surprise that they reached different conclusions on the first *R.A.V.* exception. On the other two *R.A.V.* exceptions, Minnesota and California are consistent. Because there is no conflict, this Court should also be consistent and deny certiorari, as it did in *Stanistreet*.

C. The narrow First Amendment issue that has been decided in this case would not be applicable to other First Amendment cases.

Finally, Petitioner contends that this Court should grant her Petition because lower courts are addressing other First Amendment issues relating to false speech. (Pet'r's Br. 21-23.) However, Petitioner fails to show how a decision as to whether this particular statute that proscribes defamation will have any bearing on the application of the First Amendment to no-fraudulent false statements related to the selling of goods to the Government, or to State action that "seeks to restrict directly the offer of ideas by a candidate to the voters." *Weaver v. Bonner*, 309 F.3d 1312, 1319 (11th Cir. 2002), *quoting Brown v. Hartlage,* 456 U.S. 45, 53-54, 102 S.Ct. 1523, 1529, 71 L.Ed.2d 732 (1982).

III. The Minnesota Supreme Court correctly decided that the statute is constitutional.

The Minnesota Supreme Court's decision in *State v. Crawley* is correct. They engaged in meticulous analysis of the statute under this Court's First Amendment jurisprudence, and found it to be constitutional. The Minnesota Supreme Court narrowed the statute to allow the criminalization of defamation only, and then evaluated it against the three exceptions this Court outlined in R.A.V., finding that the statute was constitutional. Although the parties may not fully agree with every aspect of the Court's analysis,

the fact remains that they engaged in the appropriate analysis and reached a decision that the facts and law support.

CONCLUSION

The best use of this court's resources is to focus on cases where there is a true conflict of federal law between the courts. There is no conflict between the Minnesota Supreme Court's decision in *Crawley* and this Court's decisions in *Alvarez* or *R.A.V.* There is no conflict between the Minnesota Supreme Court's decision in *Crawley* and the Ninth Circuit's decision in *Chaker*. There is no conflict between the Minnesota Supreme Court and the California Supreme Court's decision in *Stanistreet*. The Minnesota Supreme Court reviewed and applied this Court's First Amendment jurisprudence correctly and reached the conclusion that Minn. Stat. § 609.505, subd. 2, is constitutional. This Court should deny certiorari.

Respectfully submitted,

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