

White House asks Supreme Court to block suit of man arrested for criticizing Cheney

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Last Monday, at the Obama administration's request, the Supreme Court accepted review of a lower court decision which allowed an opponent of the Iraq war, Steven Howards, to sue agents of the United States Secret Service for arresting him after a brief verbal confrontation with then-Vice President Dick Cheney.

As with many other cases this term, the Obama administration is lining up with law enforcement and seeking a Supreme Court ruling that curtails or eliminates suits to enforce democratic rights.

Reichle v. Howards will be argued next March or April and then decided before the current Supreme Court term ends in late June. Associate Justice Elena Kagan, who was Obama's solicitor general before being appointed to the Supreme Court, has disqualified herself, leaving the decision to the other eight justices.

The United States Court of Appeals for the Tenth Circuit, which includes Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming, had ruled that Howards had enough evidence that Secret Service agents retaliated against him to justify a trial based on violations of his First Amendment rights to freedom of speech and expression.

While private attorneys hired by the government to represent the Secret Service agents petitioned for certiorari (review) in the Supreme Court, lawyers from the Obama administration voluntarily supported them with an amicus curiae "friend of the court" brief. As they have done repeatedly this term, the Obama lawyers openly appealed to the high court's four reactionaries—Chief Justice John Roberts and Associate Justices Antonin Scalia, Clarence Thomas and Samuel Alito—and the fifth very conservative "swing" justice, Anthony Kennedy, for a pro-police, anti-democratic ruling.

The facts speak volumes. In June 2006, Howards

accompanied his family to his son's piano recital in Beaver Creek, Colorado. While outside talking on a cell phone, Howards saw Cheney walk out of a store at a shopping mall, attracting a number of onlookers.

Secret Service agents supposedly heard Howards say into his cell phone, "I'm going to ask him how many kids he's killed today." Howards approached Cheney, who was greeting and posing for photographs with various people, and told him the administration's "policies in Iraq are disgusting" while touching Cheney's shoulder. Cheney responded, "Thank you."

Howards walked away, without incident, and joined his family at his son's piano recital. Later, as he left the recital, a Secret Service agent accosted him and accused him of assaulting Cheney. Howards responded, "If you don't want other people sharing their opinions, you should have him avoid public places."

The Secret Service agents then arrested Howards for assault and turned him over to the local sheriff's department, which released him several hours later with a charge of harassment. The local prosecutor dismissed the charge. Howards filed a lawsuit against the Secret Service agents for violating his constitutional rights.

The lower court ruled that Howards' suit could proceed regardless of whether the Secret Service agents had probable cause to arrest him for assault because there was evidence that the agents were "substantially motivated by Mr. Howards' speech when he was arrested," and "there can be no question that an arrest in retaliation for the exercise of protected speech constitutes an injury cognizable under our First Amendment jurisprudence."

Constitutional rights about which there were once "no question," however, are under attack from all quarters within the ruling elite. "Speech can be an entirely legitimate consideration in deciding whether to make

an arrest,” the Obama amicus brief argued.

It continued: “Expressive activity is often relevant to an officer’s decision about whether an arrest would make sense under the circumstances. Officers do not—and could not—arrest every person as to whom probable cause exists, and there is accordingly a ‘well established tradition of police discretion’ in deciding whether a custodial arrest is warranted.”

In other words, police officers are free to contrive grounds for hauling someone off to jail if they don’t like the person’s “speech” or “expressive activity.”

Echoing every advocate of police-state measures in history, the Obama brief justifies its attacks on democratic rights with inflated concerns about “public safety,” as if the Secret Service agents had some basis in reality to believe that Howards was going to burst out of his son’s piano recital and assassinate the vice-president.

“It was not merely legitimate, but prudent, for petitioners [the Secret Service agents] to take account of respondent’s vocal criticism of the Vice President as part of the totality of circumstances in assessing whether respondent presented a threat and should be arrested and removed from the area,” the Obama administration lawyers argued.

Explicitly criminalizing dissent, the brief continues, “The Secret Service can reasonably conclude that someone whose disagreement with the Vice President has already led to unsolicited physical contact presents more of a security risk than someone who, for example, bumped into the Vice President accidentally.”

At bottom, the Obama administration wants the Supreme Court to eliminate all civil lawsuits based on constitutional violations. “The court of appeals erred in subjecting petitioners [the Secret Service agents] to potential damages liability for exercising their professional judgment about the need for an arrest to ensure the Vice President’s safety,” the brief concludes.

On this final point, the Obama administration lawyers cited a concurring opinion by Scalia, who found it “worthwhile to establish that this Court will not let such a mistake stand with respect to those who guard the life of the President.”

In another action, at an oral argument Monday, Obama administration lawyers supported the appeal of a Los Angeles Police Department detective sued for

serving a warrant which authorized the seizure of broad categories of material, including all firearms, from the home of an adult suspect’s foster mother.

The case was unusual because both the American Civil Liberties Union (ACLU) and the National Rifle Association (NRA) filed amicus curiae briefs pointing out that such wide-ranging searches amount to a “general warrant,” the specific evil against which the warrant clause of the Fourth Amendment was directed.



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