Student's advocates urge Supreme Court to take local case

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A civil rights lawsuit filed in 2017 in Jonesboro could result in holding public officials personally accountable for violations, if the U.S. Supreme Court would agree to consider the case. And the implications reach well beyond Jonesboro.

At issue is the court doctrine of "qualified immunity."

The high court on Monday refused to review the scope of the controversial legal defense to shield police accused of excessive force, turning away an appeal by a Black Cleveland man, the Reuters news agency reported. Shase Howse claimed he was slammed to the ground outside the house where he lived with his mother, struck in the back of the neck and jailed after white police officers deemed his actions suspicious.

In the Jonesboro case, six organizations are backing Ashlyn Hoggard's effort to overturn an appellate court's ruling in her lawsuit against Arkansas State University officials.

The groups have filed friend-of-the-court briefs encouraging the U.S. Supreme Court to take Hoggard's case against ASU officials. Alliance Defending Freedom attorneys representing Hoggard want justices to reverse a lower court ruling that allowed university officials to escape consequences for their violation of her free speech rights under the First Amendment.

Although the U.S. Court of Appeals for the 8th Circuit in St. Louis ruled that ASU officials violated Hoggard's constitutionally protected freedoms, it said that the officials can't be held responsible because they are entitled to "qualified immunity" from the lawsuit.

Groups filing the friend-of-the-court briefs include the Southeastern Legal Foundation, Young Americans for Liberty, Speech First Inc., the Foundation for Individual Rights in Education, the Center for American Liberty and the Cato Institute.

As a result of Hoggard's lawsuit, the state Legislature enacted the Forming Open and Robust University Minds (FORUM) Act in 2019 to underscore campus free speech rights, and ASU adjusted its policy accordingly.

ADF Legal Counsel Chris Schandevel, who argued the case on Hoggard's behalf, said in a news release, "Government officials shouldn't be allowed to escape responsibility for unconstitutional or illegal acts. And that's especially true for public university officials who should know by now that using speech codes to shut down student speech is unconstitutional. While we're pleased the 8th Circuit recognized that ASU officials violated Ashlyn's rights, those same officials shouldn't be allowed to hide behind the so-called 'qualified immunity' doctrine to skirt the consequences for their unconstitutional policies."

"This doctrine, which shields government agents even when they commit illegal acts, isn't found anywhere in the U.S. Constitution or federal law," said John Bursch, ADF senior counsel and vice president of appellate advocacy. "It is a judge-made doctrine that came about as the result of one U.S. Supreme Court decision decades ago, and it allows all sorts of constitutional abuses to go unpunished, including violations of the right to free speech and the free exercise of religion. It imposes cost-prohibitive burdens on civil rights litigants. And it undermines the public's trust in the very officials the doctrine seeks to protect. We hope the Supreme Court will take this case and use this opportunity to ensure that government officials don't get a free pass to violate the law."

Arkansas State's previous policies unconstitutionally gave university officials free rein to shut down student speech even in open areas of campus, restricted most expressive activities to small zones that totaled about 1 percent of campus, and required advance permission for students to speak anywhere on campus.

ADF attorneys argue qualified immunity should not apply because the officials violated Hoggard's clearly established First Amendment rights when they used those policies to stop her from recruiting other students to join her new student group.

"In four other circuits – the Sixth, Seventh, Ninth, and Eleventh – Ashlyn likely would have prevailed," the ADF petition to the Supreme Court explained. "Those courts all look to the reasoning of prior decisions for determining clearly established law, not just the outcome. Two circuits – the Fifth and the Tenth look only to prior outcomes ... And the Eighth Circuit is effectively in the latter camp ... The quagmire of lower-court, qualified-immunity rules – particularly on public-university campuses – is in desperate need of this Court's clarification."

Thanks to qualified immunity, "a shocking number of public colleges and universities across the country defy well-established precedent by still maintaining speech codes that prohibit student expression protected by the First Amendment," added the Foundation for Individual Rights in Education in its brief.

"[U]ntil and unless the 'clearly established law' standard is itself abandoned, it is crucial that the Court clarify its contours and confine its scope," wrote the Cato Institute in its brief. "Specifically, the Court should grant the petition to make clear that the reasoning of prior judicial decisions can be considered when deciding whether a defendant had 'fair notice' that their conduct was unlawful."

In another case Monday, the Supreme Court decided to revive a lawsuit brought by a Georgia college student who sued school officials after being prevented from distributing Christian literature on campus.

The high court sided 8-1 with the student, Chike Uzuegbunam, and against Georgia Gwinnett College. Uzuegbunam has since graduated, and the public school in Lawrenceville, Ga., has changed its policies. Lower courts said the case was moot, but the Supreme Court disagreed.

Groups across the political spectrum including the American Civil Liberties Union and the ADF had said that the case is important to ensuring that people whose constitutional rights were violated can continue their cases even when governments reverse the policies they were challenging.

At issue was whether Uzuegbunam's case could continue because he was only seeking so-called nominal damages of $1.

"This case asks whether an award of nominal damages by itself can redress a past injury. We hold that it can," Justice Clarence Thomas wrote for a majority of the court.