

No. 18-8191

In The
Supreme Court of the United States

MARIANNE E. BURKE,

Petitioner,

vs.

RAVEN ELECTRIC, INC. AND LIBERTY
MUTUAL INSURANCE COMPANY,

Respondents.

**On Petition For A Writ Of Certiorari
To The Alaska Supreme Court**

PETITION FOR REHEARING

MARIANNE E. BURKE
401 North Main St.
#875595
Wasilla, AK 99687
907-727-7043
marianneb8@yahoo.com
Petitioner Pro Se

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ARGUMENT

I. Reason for Petition of Rehearing:

I'm doing this Petition because my daughter's life *deserves it*.

Abigail was a wonderful young woman; "such a sweet person" as many people have told me around town.

She volunteered at her church for all of the Sunday services, doing the lighting.

She loved children and animals, especially her three rabbits. She worked with children much as she grew up.

She did Not deserve to die at such a young age as 26.

Absolutely nothing, was given for her life, your Justices. **How can that be called Justice?**

I'm sorry, but I don't care what the lawyers, Justices, or Courts say – if they do not give us Value for Abigail and consequence to the employer responsible for her death, then we have Not been given our Constitutional Rights to "Life, Liberty and the Pursuit of Happiness".

If this was your daughter, would you feel *justice* by the employer's gross negligence merely paying for her funeral costs??

Human Life is worth more than that!!!

II. God – the Maker of All Law.

ALL Law is Given by God. He Created us, this universe and this world. His Creation of Life is obvious. To this day, Man cannot make Any form of life, but what Life is already here by God's Hand and Wisdom.

But the laws today have gotten convoluted, confusing, and hard to understand by the average person.

God's laws are simple, yet deep; obvious, but of great understanding. That's how Nature, created by God's Hand Is –

Modest, but Beautiful,
Pure but complicated,
of Insightful Knowledge, yet not understood
by the greatest of scientists.

That's why the scientific world *studies* Nature so extensively – it is full of the Great Wisdom of the Universe *and* of God.

Yet today, in contrast, if someone cannot understand “*the laws of the land*”, then that person cannot get justice.

And if he/she cannot get a lawyer, because the lawyers want cases that will pay them well – which is usually from big business, then justice *evades* them, as it has me with my daughter's life. The common people get no justice in this rather corrupt system that man has taken away from the path of our godly Forefathers.

We all have a right to Life, Liberty and the Pursuit of Happiness. We all are to have access to the Courts and access to Justice. ***Yet where is This Justice??***

III. Two Decisions Before You

Your Justices, I believe that **you have two separate issues of Justice requested before you:**

A. Justice is needed for a *single person* killed in the workplace. In Alaska and other states, there is literally No Remedy, Nor any Benefit to the family . . . No Due Process.

In Alaska, the Statute's "**benefit**" is **\$10,000 for the funeral costs**. NOTHING IS GIVEN FOR THE LOSS OF *HUMAN LIFE*!!

Funeral costs go to the funeral home and *not* to the family. And funeral costs would not often need to be there, *if the employer had not been negligent* – which leads to the second need for justice in America:

B. Justice is needed for the negligent and grossly negligent employer who has little or no deterrent to be safe. Yet, with the insurance company paying for the funeral costs *and* OSHA fines (which were a mere \$11,200 for Abigail's death), absolutely nothing is paid by the employer to deter him from unsafe practices.

If you want to keep the Workers' Comp system, then it seems to me that the easiest way to solve both of these problems is to require a decent benefit amount for workplace deaths.

This would give Justice to the families, and hopefully, a higher Worker Comp premium that would deter grossly negligent employers.

You *must* make changes that will bring back Justice to America in the workplace! You are in the high position to make these changes.

If you don't, who will?

IV. Response to Defendants:

A. I did not understand that I could file a Reply Brief after Defendants' Opposition Brief:

I, Marianne E. Burke, upon filing my Certiorari Petition and then receiving the Opposition Brief from the Defendants, ***did not know that I could file a Reply Brief to the Defendants' Opposition Brief.*** I did not know that the same principle of Brief, Opposition Brief and Reply Brief applied to *each Court*.

To me, the Opposition Brief and Reply Brief were the same thing. I didn't realize this difference until just recently – though, you would think I would have understood this.

The trauma of this case has often kept me having a difficult time understanding, not being able to even read the defendants' filings, or has kept me away from doing further research. This is the problem of not having a lawyer who can be objective.

B. Below is my Reply to Defendants' "Brief in Opposition to Petition for a Writ of Certiorari". (*Page #s at end of section is Defendants' Brief page(s)*):

1. The Second Injury fund mentioned has *nothing to do with justice for Abigail* – nothing was received from it to her family. (P.iii, Opposition Brief)

2. The State *should* be liable for not providing benefits for a single person killed in the workplace without dependents. The states are supporting this "business no liability" with \$0 compensation to the naïve, later injured single employee. The state has no consequence to themselves when these family's' victims can't go to Court. But the state is too powerful for the average person to sue, especially without a lawyer! (P.v)

3. To me, it is *hypocrisy* that if the employer *did not carry Workers' Comp Insurance*, then the employee *would have full rights* to sue in civil court! (P.vi)

4. **These benefit amounts have not been raised for over 20 years in Alaska!** (P.vii)

5. Conclusion of Alaska Statutes: **Absolutely Zero Justice!**

a. \$0 compensation to a single person killed in the workplace who has no dependents.

b. \$0 cost to the employer for gross negligence death. (P.viii)

Result? That leaves the DA to prosecute criminally negligent employers.

But what happens when *the DA does not file charges* against the “bad” employer, as with my daughter’s case? We filed criminal charges against Raven Electric in Anchorage, Alaska 1 ½ yrs. ago, but the DA’s office has done Nothing. This is a Republican state that is very “business sided”. *What then?*

6. There were NO benefits! Funeral costs were sent to the Funeral home; nothing was given to the family for Abigail’s human life *Value*. The Legislatures and Justices of America are *wrong* to think that the funeral costs are benefits! (P.1)

7. As defendant said, the *real* Constitutional issue of justice for Abigail was not decided at the State Supreme Court. (P.2,12)

8. “The Petition raises no issue. . . . no basis for granting a writ of certiorari exists.” Are you kidding me? Except that a human life was *killed unnecessarily* in the workplace with No Justice for that Life lost! (P.3)

9. Workers’ Comp Statutes do not mention the parent as having to be the Estate Representative as the defendants’ argued. AS Sec. 23.30.055 states the “*employee’s legal representative, . . . parents.*” They are two different entities.

Section AS 23.30.022 describes a Representative needed *if* the employer did Not pay for Workers’ Comp insurance.

Section AS 23.30.105 says “. . . pay the employee or the legal representative of the employee *or other person* entitled to compensation by reason of the employee’s injury or death . . . ” That could be a parent! (P.4,12,19)

Yet the defendants have continually stated that I had to be a representative or an estate holder.

10. Also, according to Word Program, using “Find”, the only mention of “estate” in Workers’ Comp laws is two references to a **“qualified real estate licensee”**. (See Statute AS Sec. 23.30.230). **This is the only mention of “estate” in Alaska Workers’ Comp laws!**

Not being able to find a lawyer is a huge burden on the victims’ families, but beneficial to businesses because, then, the businesses don’t have to pay for their own negligence. (P.4,12,19)

11. Defendant leaves out important documents that I filed regarding the lack of due process for Abigail’s life: Depositions of wrong doing by the Journeyman and co-workers, the Bill of Rights that Workers’ Comp was violating, the Police Reports, Statutes that were pertinent for Abigail’s justice, emails from aghast electricians in our community, etc. (P.5)

12. Defendant has been insulting me since the beginning: I marked on the original OSHA copy because, initially, I was a mother trying to understand what happened to my daughter. I provided a clean OSHA file to the defendants, but they continued to use my written on, highlighted one!

I later realized, that the highlighting in copies made it difficult to see the important words, yet the defendants kept the “bad” copy in their filings and in my Excerpt of Record that they filed.

Without a lawyer, the defendants were continually attacking my character, intelligence, and motive, saying that I was after money for my daughter . . . **I wanted Value for Abigail and Justice for her life all along!!** (P. 6,13)

13. Defendant makes nonchalant statements, like we have been talking about a weeks worth of wages – Not a human life killed by her client’s gross negligence.

The Workers’ Comp Board tried to shut down my case many times. That’s why I had to fight all the way up. (P.7-9)

14. Responding to defendants’ assertion that I have had no wrongful death right or benefits allowed me under the law (Opp. p. 10): according to *Schiel v. UNOCAL* in footnote 63, the Court said,

“Counsel for UNOCAL agreed at oral argument before us that at a certain level, inadequate benefits could violate a workers’ due process rights”. (emphasis added)

Note that Schiel *had the ability* to later get compensation thru Workers’ Comp for the injury of his hand:

“we hold that Schiel’s right of access to the courts is not infringed by the 2004

amendment to the worker compensation act because *he still had a substantial and efficient remedy available.* (Schiel supra. P. 18, emphasis added)

Whereas, with Abigail's loss of life, there have been no other legal remedies or "benefits" but the funeral costs.

15. The higher law, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States" of the Bill of Rights *trumps* the Statutes that the defendant quotes. (P.10)

16. Defendant says that my case is without "merit". Standing back and looking at my situation, the reverse is true: I have great *merit* in wanting justice of my daughter's ill-timed workplace death. There is No Merit in a system that does not give me justice. (P.16)

17. **There is No "quid pro quo" in the "trade off" of my daughter's life for the "benefits" of her funeral costs!** (P.18)

18. Addressing the defendants that I was not the "employer, nor the employee and was not the personal representative": *My daughter was the employee* that the defendants' clients grossly, negligently killed. And Workers' Comp laws says nowhere that I needed to be the representative . . . I was her mother. (P.19)

19. Due Process is *Not* defined by “where there is no unequal treatment there can be no violation of the right to equal protection of the law” *Burke*. **That is saying that I received no different treatment than the other victim families! That is Not Due Process!** (P.20)

20. ***My substantive right is the right of justice for my daughter’s life!*** This is a human life lost by gross negligence!

Is common law, where it’s important, gone completely from our nation? (P.22)

V. Recent Court Decisions

1. *Schiel v. UNOCAL*, Scheil sought relief thru the Supreme Court, though, his case was one of injury and not death! **Far more rights, obviously, should be given to someone who is killed rather than that of someone injuring his hand.**

Restating, footnote 63 quotes, “. . . . at a certain level, inadequate benefits could violate a worker’s due process rights.

2. Also, in refuting Defendants continual attack on my lack of right to access the courts, *Schiel* stated: **“We held in *Bush v. Reid* that the Due Process Clause of the Alaska Constitution encompasses a right of access to the courts. Article 1, Section 7 . . . no person shall be deprived of life, liberty, or property without due process of law.”**

3. *Patrick v. Lynden Transport*: “It is clear that under both federal and Alaska law, an unlitigated claim is considered a *property interest*; “access to the courts to litigate a property interest is an ‘important right’”.

My “property” was my daughter.

4. *Wells v. Oklahoma Roofing & Sheet*, 06/18/2019:

Plaintiff, daughter Crystal Wells of workplace death victim father Robert Young, sought declaratory relief that **the exclusive liability provision of the Workers’ Compensation Act was unconstitutional . . .**

“The Oklahoma Supreme Court found the portion of section 12 that included intentional torts was **‘not within the walls of the workers’ compensation scheme or jurisdiction.’**”

5. Discussion: “It is well-settled that the common law divides actionable tortious conduct into two categories: (1) accidental and (2) willful acts that result in intended or *unintended* harm. *Graham v. Keuchel* . . . *Parret v. UNICCO Serv. Co.*, reflects that dichotomy. (emphasis added)

6. *Parret*: “Cloaking an employer with immunity from liability for their intentional behavior unquestionably would not promote a safe and injury-free work environment. An employer’s impunity to commit an intentional act with the knowledge that, at the very most, his workers’ compensation premiums may rise

slightly is not in accord with Oklahoma's public policy.
(emphasis added)

"*Parret* denotes that when an employer "(1) desire[s] to bring about the worker's injury or (2) [acts] with the knowledge that such injury was substantially certain to result from the employer's conduct, "an intentional tort action will lie."" (emphasis added)

VI. Older, Foundational Court Decisions of the U.S. Constitution

I have been reading many older Landmark Court cases that support my position of the Constitution's definition of Due Process, the 14th Amendment, Equal Protection, Right to a Jury, Value of a Human Life, the definition of "Life, Liberty and the Pursuit of Happiness".

I would therefore, like to list these Court cases here with a Summary statement of their decisions taken from the book, High Court Case Summaries, Constitutional Law. (Ibid)

A. Judicial Power, Due Process: *Marbury v. Madison*, p. 5, Top:

1. "Federal Courts have authority to review acts of Congress and the Executive Branch and to invalidate acts that violate the Constitution."

2. "... an individual who is injured has a right to a remedy." (2nd line from the bottom)

**B. Due Process: *Slaughter-House Cases*,
p. 257, 258 under “Decision and Rationale”:**

1. “The Thirteenth and Fourteenth Amendments . . . do not apply only to blacks. They forbid enslaving any race . . .” (or people, including employees; Abigail had not planned on there being No Value for her life when she walked in and started her first day at Raven Electric!)

“The language is ‘**No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. . . .**’ That clause has been interpreted as protecting those rights that are fundamental, such as the right to acquire and possess property and **to pursue and obtain happiness and safety.**” (emphasis added)

2. That Amendment *does not* say that we should have those privileges except in the workplace!

C. Equal Protection: *U.S. Dept of Agriculture v. Moreno*, p. 383:

“Black Letter Rule: Even under rational basis scrutiny, a challenged classification must rationally further some legitimate government purpose.”

Workers’ Comp is to protect workers and yet, it does NOT when employers don’t have to be safe, lives are lost, and then those lives are uncompensated.

Also, pure simple logic: If a bank customer walked into the bank where Abigail was killed and got electrocuted, a huge justice would be won on their account.

Yet, how is Workers' Comp "benefit" of the mere funeral costs, in *any way, equal protection* for workplace employees *in death*??

D. Right to a Jury Trial: *Duncan v. Louisiana*, p. 263:

"Black Letter Rule – The Sixth Amendment right to a jury trial is fundamental and is applicable to the states pursuant to the Due Process Clause of the Fourteenth Amendment."

... The right to a jury trial is protected under the Due Process Clause of the Fourteenth Amendment and must therefore be respected by the States."

Yet, I was not ever offered a jury trial by Workers' Comp system; the Superior Court was skipped!

E. "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States": *Marsh v. Alabama*, p. 267:

Black Letter Rule: "A private entity that acts like a governmental body and performs a public function is subject to the Constitution."

Workers' Comp needs to be subject better to the U.S. Constitution in regards to due process,

value for human life, a jury trial, and equal protection for the common worker.

VII. Criminal Filings: Justice of Wrongful Death in the workplace.

These 5 cases showed the conviction of workplace/ wrongful death:

1. *United States v. George*, PA
2. *People v. Cueva*, N.Y.
3. *People v. Schirripa*, N.Y.
4. *People v. Harco Constr. Co.*, N.Y.
5. *United States v. RPI Coating Inc.*, CO

However, our Anchorage, Alaska DA is not convicting against Raven Electric, even though they were fined with 5 “Serious” OSHA Citations!

What does a person do when there is NO JUSTICE whatsoever for a Workplace Gross Negligent death of one's daughter?

What will you do?

**VIII. CONCLUSION: The Value of Human Life in
the Workplace; in our Nation**

U.S. Justices, this case is about Life and Death, the Value of Life, and the *Preservation* of Life in our Country! *Please* make this injustice right, however you can. The laws of our land need to be changed for the people to get their needed Justice!

“For He is coming to judge the earth with righteousness, He shall judge the world and the people with *equity*.” Psalm 98:9

Respectfully submitted,

MARIANNE E. BURKE
401 North Main St.
#875595
Wasilla, AK 99687
907-727-7043
marianneb8@yahoo.com
Petitioner Pro Se

CERTIFICATE OF GOOD FAITH

Pursuant to Rule 44.2, I certify that the Petition is restricted to the grounds specified in the Rule with substantial grounds not previously presented. I certify that this Petition is presented in good faith and not for delay.

MARIANNE E. BURKE