

original

No. 21-5680

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2021

Heather Matthews, Petitioner,

v.

California State University Respondent.

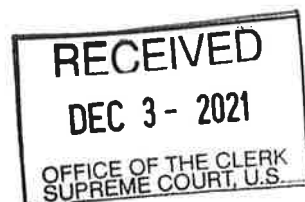
ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES Supreme Court

PETITION FOR REHEARING

Heather Matthews  
Heather Matthews  
Wanting Equal Justice For ALL  
P.O. box 1625  
Carson City, Nevada  
89702

December 1, 2021

IMPORTANT CASE



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Forshey v. Principi, 284 F.3d 1335, 1353-57  
(Fed. Cir. 2002) [emphasis provided]

## STATUTES

Nevada Revised Statute 121.010..... 2  
Jurisdiction of Offense Committed in...  
State. Every person, whether an inhabitant  
of this state, or any other state, or of a  
territory or district of the United States,  
is liable to punishment by the laws of this  
state for a public offense committed  
therein, except where it is by law cognizable  
in the courts of the United States.

## MISCELLANEOUS

George Floyd's law - obliterates many 5  
types of immunity defenses in the  
United States including any form of  
sovereign immunity defenses or claims.  
This new legislation was passed while  
my appeal was pending so the United State  
Supreme Court has a legal obligation to apply the  
law as Congress intended retroactive application  
even though the issue wasn't decided yet in my case.

## PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.1, ~~Heather Matthews~~ respectfully petitions for rehearing of the Court's per curiam decision issued on November 15, 2021 involving case No. 21-5680 (Nov. 15, 2021) ~~Heather Matthews~~ moves this Court to grant this petition for rehearing and consider her case with merits briefing and oral argument. Pursuant to Supreme Court Rule 44.1, this petition for rehearing is filed within 25 days of this Court's decision in this case.

### REASONS FOR GRANTING THE PETITION

Since the passage of the *Franchise Tax Board vs Hyatt* case and up until the issuance of its opinion in this case, this Court has never issued a per curiam opinion, without briefing or argument, reversing a lower appellate court's grant of immunity relief where the constitutional claim received no state appellate court review.<sup>orally</sup> But that is precisely what happened here: the United States Supreme Court has never heard a case like mine to overturn Franchise Tax Board vs. Hyatt.

The United States Supreme Court is making a final determination without addressing the merits of this case orally and with full briefing. If my case is not heard in the United States Supreme Court where will it be heard? This is a court of last resort, and no other appellate court has heard this case orally or with full briefing violating my 1st and 14th amendment rights.

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the Nevada Supreme Court, and the United States Supreme Court never relegated the decision of whether the Constitution prohibits an impending review of sovereign immunity and then made the decision unreviewable by any state appellate court, including Nevada, prohibiting

review of Nevada court's immunity. Nevada Revised Statute 171.010 was never addressed at all by any appellate court, and the case of Franchise Tax Board of California v. Hyatt, 139 S. Ct. 1485 (2019) was never addressed by any appellate court. This case claims Heather Matthews suit against CSU is void because CSU is supposedly an "arm of the state of California," which it is not.

This Court did not acknowledge Nevada's lack of any state appellate review for sovereign immunity orally in court when it applied the "demanding standard" of the Franchise Tax Board vs Hyatt and its summary disposition did not address the complicated questions about the parameters of immunity law in the context of the unique procedural posture of this case. Rehearing is appropriate for this Court to consider the following substantial questions:

- I. Should the Most Demanding Standard of immunity Under the Franchise Tax Board vs Hyatt apply Where No State Appellate Court Reviewed the Claim orally and with the petitioner Heather Matthews present? There was no oral argument in this case as there almost always is in Nevada Supreme Court appellate cases and United States Supreme Court appellate cases. A motion to dismiss with prejudice should not be allowed without oral argument and a pro bono attorney being present arguing the case for plaintiff Heather Matthews. This is not fair due process under the 14th amendment or my 1st amendment rights. So far all that has been handed down are opinions. If there was a judgment I would have gotten my day in court.

The U.S. Supreme Court and state court remedies has failed to afford a full and fair adjudication of the federal contentions raised, either because the state affords no remedy . . . or because in this particular case the remedy afforded by state law proves in practice unavailable or seriously inadequate . . . a federal court should entertain her petition for rehearing, else she would be remediless." In two years of litigation Heather Matthews has not seen the inside of a courtroom. These processes are ineffective to protect the rights of the fair due process under the 14th amendment, and violates her first amendment rights.

Consistent with this view, circuit courts have recognized that "full and fair consideration" of a petitioner's Fourth Amendment claim in state court includes "at least one evidentiary hearing in a trial court and the availability of meaningful appellate review when there are facts in dispute, and full consideration by an appellate court when the facts are not in dispute." Lawhorn v. Allen, 519 F.3d 1272, 1287 (11th Cir. 2008) (citations omitted);<sup>8</sup> see also

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Willet v. Lockhart, 37 F.3d 1265, 1272-73 (8th Cir. 1994) ("As Stone suggests, a breakdown in the mechanism can occur in either the trial court or the state appellate court.").

In the context of determining whether a *pro bone attorney* case has deprived the *plaintiff of her* right to appellate counsel, this Court and other courts have recognized the importance of an independent review of the record by a state appellate court and discouraged "one tier" review. See Smith v. Robbins, 528 U.S. 259, 265, 281 (2000) (approving California's procedure, under which "[t]he appellate court, upon receiving a 'Wende brief,' must 'conduct a review of the entire record,' regardless of whether the defendant has filed a pro se brief"); Hughes v. Booker, 220 F.3d 346, 351 (5th Cir. 2000) ("Indeed, neither the Supreme Court nor this court has approved of a procedure for *pro bono* counsel that affords an indigent defendant only one level of review of the record for potentially meritorious appellate issues."); cf. Eskridge v. Wash. State Bd. of Prison Terms and Paroles, 357 U.S. 214, 216 (1958) (holding that one level of review – by trial judge only – "cannot be an adequate substitute for the right to full appellate review available to all defendants in Washington who can afford the expense of a transcript"); Griffin v. Illinois, 351 U.S. 12, 18-19 (1956) All of the States now provide some method of appeal from a state trial court recognizing the importance of appellate review to correct judicial error and inconsistency. Oral appeal in a state supreme court is a must with the plaintiff present in order to allow full fair due process and to eliminate bias and possible bribe taking.



Some form of meaningful Appellate review is an essential safeguard against arbitrary and capricious imposition of decisions by appellate courts that do not review claims orally or with full briefing or with a pro bono attorney representing a proper plaintiff. This is not fair due process under the 14th amendment and the first amendment rights of freedom of speech, press, and religion. The per curiam opinion in this case could permit the denial of Heather Matthews case to proceed based on a determination made without oral arguments and full briefing in the Nevada Supreme Court and the United States Supreme Court. While Petitioner believes this is untenable under the 8th 14th amendments, it should at a minimum be resolved by the United States Supreme Court after Heather Matthews is represented by a pro bono attorney and an adequate opportunity is made to brief the issue fully and full oral arguments in this case are heard!

Moreover, full briefing and oral argument is appropriate in light of the US Supreme Court's denial of my case, and a determination made without these factors or a pro bono attorney representing the plaintiff.

Because the issue of sovereign immunity and its obliteration in the George Floyd case wasn't addressed, the U.S. Supreme Court lacked the constitutional authority to issue a final decision in this case.

### PRO SE APPELLANT'S ARGUMENT IS TIMELY

While it is true that Federal Appellate Courts do not generally consider issues not passed upon below or entertain arguments not presented to a lower tribunal (*immunity wasn't addressed in this case*) in the precedential *Hylete LLC, v. Hybrid Athletics, LLC* (Case 17-2057, p.7), the Court recently again confirmed that exceptions are made in cases where, as here, an Appellant is pro se:

We have articulated limited circumstances in which considering arguments made for the first time on appeal is appropriate: (1) "[w]hen new legislation is passed while an appeal is pending, courts have an obligation to apply the new law if Congress intended retroactive application even though the issue was not decided or raised below"; (2) "when there is a change in the jurisprudence of the reviewing court or the Supreme Court after consideration of the case by the lower court"; (3) "appellate courts may apply the correct law even if the parties did not argue it below and the court below did not decide it, but only if an issue is properly before the court"; and (4) "**where a party appeared pro se before the lower court, a court of appeals may appropriately be less stringent in requiring that the issue have been raised explicitly below.**"

Golden Bridge, 527 F.3d at 1322-23 (quoting Forshey v. Principi, 284 F.3d 1335, 1353-57 (Fed. Cir. 2002)). [emphasis provided]

George Floyd's Law obliterates many types of immunity defenses in the United States. This new legislation was passed while my appeal was pending, thus the U.S. Supreme Court can consider retroactive application of this law even though my case wasn't decided or raised at that point, and the court may be less stringent in its standards as I am a pro per plaintiff. This case must be heard!

Statistics show that a substantial proportion of ~~decisions of trial courts~~ are reversed by state appellate courts. *No court heard my case orally!*

Rehearing is appropriate for this Court to review *Nevadas* decision to insulate an arguably unconstitutional decision about whether *California State University* can claim it is an arm of the government both because it results in the inconsistent application of the law, cf. Ornelas v. United States, 517 U.S. 690 (1996) (in Fourth Amendment context, "[i]ndependent review is therefore necessary if appellate courts are to maintain control of, and to clarify, the legal principles"), and because it increases arbitrariness and the likelihood of error. See Jones v. Barnes, 463 U.S. 745, 756 n.1 (1983) (Brennan, J., joined by Marshall, J., dissenting) There are few, if any situations in our system of justice in which a single judge is given unreviewable discretion over matters concerning *important legal issues and fair due process*.

II. Is Applying the Demanding Standard of *immunity* Under the *Franchise Tax Board* versus *Hyatt* Claim Where No State Appellate Court Reviewed the Claim <sup>Orally</sup> Inconsistent with the 14th Amendment's Heightened Need for Reliability in *fair due process* Cases?

The 14th Amendment prohibits the courts from making a determination that is final in a case unless there has been fair due process and this includes oral arguments and a full briefing in the case. In the context of the 8th and 14th amendments Courts have repeatedly recognized that state appellate review and United States Supreme Court review of a case with full oral arguments and briefs is necessary to protect against arbitrariness, capriciousness, bias, and error.

III. This Court should not resolve the Substantial and Important Factual Issues in this case without Full Briefing and Argument.

Somebody needs to tell me legally why this case isn't being heard. How can I get justice without seeing the inside of a courtroom? How can I address the issues of this case when I don't know what reasons they denied my writ of certiorari on?

These are precisely the type of factual issues that need to be resolved in full briefing and argument and for this reason, rehearing is appropriate. See

Schweiker v. Hansen, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting)

(summary disposition only appropriate in cases where "law is settled and stable,

the facts are not in dispute, and the decision below is clearly in error"). I need a pro bono attorney to represent me in this case.

#### CONCLUSION

Heather Matthews respectfully requests that this Court grant the petition for rehearing and order full briefing and argument on the merits of this case.

Respectfully Submitted,

Heather Matthews  
Heather Matthews  
P.O. Box 1625  
Carson City, Nevada  
89702

December 1, 2021

CERTIFICATE OF COUNSEL PRO PER

I hereby certify that this petition for rehearing is presented in good faith  
and not for delay.

Heather Matthews

Heather Matthews

No. 21-5680

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Heather Matthews  
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Respondent.

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On Petition for a Writ of Certiorari to  
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RULE 44 CERTIFICATE

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As required by Supreme Court Rule 44.2, I certify that the Petition for Rehearing is limited to "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented," and that the Petition is presented in good faith and not for delay.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 1, 2021

Heather Matthews

Petitioner

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