ORIGINAL

NO. 21-6153

* * *

In the Supreme Court of The United States

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Suran Wije, *PETITIONER*

v.

David A. Burns, The University of Texas at Austin, Jane Doe, and John Doe, *RESPONDENTS*

* * *

ON PETITION FOR A WRIT OF CERTIORARI TO THE FIRST COURT OF APPEALS, CAUSE NO. 01-19-00024-CV

* * *

PETITION FOR WRIT OF CERTIORARI

* * *

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Unrepresented or Pro Se Litigant

QUESTIONS PRESENTED

Despite the freedoms and privileges of U.S. citizenship, for over 17 years, petitioner has been imprisoned within an illiberal democracy[1], having lost his home (absolute immunity), his education (sovereign immunity), and his employment (qualified immunity). Regarding this lawsuit, upon discovering a due process or nondisclosure trap—known only to the courts and the respondents but not to the unrepresented petitioner—a leave to amend for corrective action was denied.

Issue 1: **Perfidy Nondisclosure Trap** – Do the interests of 'justice so require' a leave to amend, when purposeful obfuscation, legal trickery, and nondisclosed affirmative defenses like immunity enable the crushing of Americans' inalienable and equal rights like liberty?

Issue 2: **Macro Sovereign Immunity** – Notwithstanding Eleventh Amendment state sovereign immunity, are state-bankrolled discrimination (secretly segregated meeting) and retaliation (alleged bribed blacklisting[2]) immunity-cabined by Section 5 of the Fourteenth Amendment and buttressed by the still-standing legal precedent of *Fitzpatrick v. Bitzer* (1976)?

Issue 3: **Micro Qualified Immunity** – Although southern Governor George Wallace later apologized for screaming, "Segregation now! Segregation tomorrow! Segregation forever!" that invidious attitude remains veiled within the hearts and minds of some Americans; therefore, is qualified immunity cabined by *Hope v. Pelzer* (2002) when 'segregation now' (secretly segregated meeting) and 'segregation forever' (alleged bribed blacklisting[2]) are still practiced by some state officials[3] while financed by all taxpayers' dollars?

[1] The word "liberal" is not stated in a political-parties sense such as conservative or liberal. It arises out of the root verb "liberate," meaning to set free. Thus, in an illiberal democracy, elections and voting occur as in normal western liberal democracies; however, due to a strong state or government with unrestrained powers or immunities, its citizens lack basic inalienable and civil liberties such as those enshrined by the United States Bill of Rights. **Important article**, https://www.washingtonpost.com/opinions/2021/07/29/world-is-reminding-us-that-democracy-is-hard/ (Fareed Zakaria, 2021).

[2] Please review the appellate filing titled, "Tab 4: Alleged Hush-Money Bribery," on May 9, 2019 at 11:07 PM for a detailed analysis of this serious allegation. https://search.txcourts.gov/Case.aspx?cn=01-19-00024-CV&coa=coa01 . It is also included in the appendix at Tab 5.

[3] "Segregation now! Segregation tomorrow! Segregation forever!" was howled by southern Governor George Corley Wallace in 1963 during his inaugural address. https://kinginstitute.stanford.edu/encyclopedia/wallace-george-corley-jr . This reemerging and evolving exploitation by public officials is also found in *Wije v. Ann Stuart*, et al., (now *Wije v. U.S.A.*) revealing unconstitutional political fiefdoms, coercing students to join college professors' political parties for fair grading assessment! https://www.theatlantic.com/magazine/archive/2014/05/segregation-now/359813/ .

LIST OF PARTIES

The following constitutes a list of all parties to the trial court's final judgment and the names and addresses of all trial and appellate counsel:

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RELATED CASES

- Texas Trial Court: The 201st District Court for Travis County, Austin, TX, Cause No. D-1-GN-18-002435, Plea to the jurisdiction granted on November 26, 2018.

- Texas Appeals Court: The First Court of Appeals, Houston, TX, Cause No. 01-19-00024-CV, Rehearing denied on May 25, 2021.

- Review Petition: The Supreme Court of Texas, Austin, TX, Cause No. 21-0382, Petition for review denied on July 30, 2021.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

No "nongovernmental corporations" are involved, as this suit is against the State of Texas for both short-and-long term deprivation of constitutional rights "under color of state law."

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INTRODUCTION: A NONLAWYER'S PERSPECTIVE

In the Bible, leviathan is a giant sea monster. In English philosopher Thomas Hobbes' (1588–1679) book, *Leviathan*, it described a commonwealth or powerful state ruled by an absolute sovereign or protector. People first gather and associate as cliques, tribes, or castes. Some tribes become too aggressive and turn into violent gangs, cartels, or mafias. Consequently, the victims of lawlessness, violence, and murder—ordinary and endangered individuals—collectively reach a compromise by limiting some freedom to enhance their stability. They form a state or government with the main goal of protecting everyone's rights. So, one of the primary purposes of a state is to establish stability or govern by consolidating power. Another sometimes competing purpose is to defend an individual's liberty but *within reason*.

Defending an individual's liberty necessitates granting leviathan or government various immunities, which are exemptions from penalties that "[un]shackled Leviathan[1]," **https://www.washingtonpost.com/opinions/2021/07/29/world-is-reminding-us-that-democracy-is-hard/** . As mentioned on page "i" and footnote 1, despite the freedoms and privileges of U.S. citizenship, for over 16 years, petitioner Wije has been imprisoned within an illiberal democracy, having lost his home (absolute immunity), his education (sovereign immunity), and his employment (qualified immunity). Given the current contentious political climate, it must be underscored that the word "liberal" is not stated in a political-parties sense such as conservative or liberal. It arises out of the root verb "liberate," meaning to set free.

Thus, in an illiberal democracy, elections and voting occur as in normal western liberal democracies; however, due to a strong state or government with unrestrained powers or immunities—an *unreasonably* unshackled leviathan—its citizens lack basic inalienable and civil liberties such as those enshrined by the United States Bill of Rights. If one of the main goals of government is the harmonization of freedom with stability,

then the degree to which leviathan is shackled (more freedom) or unshackled (more stability) becomes a balancing act. Accordingly, the set of balance scales held high by the blindfolded Lady Justice statute represents not only the fair measuring of evidence at the micro-level (local lawsuits) but also the balancing of liberal (shackled) versus illiberal (unshackled) democracy at the macro-level (national or global policies).

After discussing petitioner Wije's lived-experiences (1) with three types of immunities, (2) how two of them are cabined, and (3) describing the statement of facts offered to the Supreme Court of Texas, it is argued (Issue 1 on page "i") that short-and-long term segregation enabled or qualified by a due process violating nondisclosure is illustrative of a "constitutional question beyond debate" (*Rivas-Villegas v. Cortesluna* (20-1539) (*per curiam*), please scroll to recent decisions, **https://www.supremecourt.gov** , citing "*White [v. Pauly]*, 580 U.S., at ___ (slip op., at 6) (alterations and internal quotation marks omitted)").

ABSOLUTE IMMUNITY: Upon graduating college, (past) plaintiff (as distinguished from present petitioner) could not afford to buy a house but could afford a unit within a condominium complex. To transition from a renter to an owner, plaintiff purchased and remodeled a condo. However, as a novice owner, plaintiff hired a referral company that guaranteed to send only licensed, insured, and background-checked contractors. Unfortunately, the visiting contractor destroyed plaintiff's condo on the first day and went on vacation on a tour bus in Mexico on the second day. Unable to afford a construction law attorney but still eligible for limited student legal services, plaintiff had his draft original petition reviewed by a team of lawyers to correctly state a claim and sued unrepresented or pro se.

The county court judge insisted on a bench trial and dismissed the suit for failure to state a claim—without any explanation. Plaintiff proved that defendant sent over an incompetent and dangerous contractor who was not licensed and who had served time in prison for assaulting an armed police officer! The judge was unmoved. Plaintiff also

proved that defendant had spoiled or falsified a key piece of evidence—the remodeling contract—and submitted it to the court as exonerating evidence despite its fraudulent redactions. The judge was still unmoved and a findings of fact was never granted. Plaintiff was ordered to pay the legal fees of defendant, which approached or exceeded six-figures! Since the judge was an elected official, like a politician, and the parent company of defendant was Sam's Club/Walmart, plaintiff left that experience believing that if the judge wanted to get reelected, he had no choice but to rule in favor of a wealthy and powerful corporation (*Suran Wije v. The Home Service Store, Inc.*, 2005, Travis County #268579). When money equals speech, the weight of money—not evidence—tips the scales of justice and a democracy becomes an oligarchy. Judges, prosecutors, legislators, and executive officials are protected from lawsuits by absolute immunity for their official duties.

SOVEREIGN IMMUNITY: In a confederate government (for instance, the 1781 Articles of Confederation or the first failed governance attempt in the United States), ultimate power or sovereignty resides with the local or regional government such as a colony or state. That proved catastrophic until 1788. In a federal government, though, power is shared between a state and the central government with a commanding yet limited sovereignty-cabining constitution (for example, the 1788 United States Constitution or second successful governance attempt). After the U.S. Supreme Court's ruling in *Chisholm v. Georgia* (1793), however, national uproar quickly ratified the Eleventh Amendment in 1798 granting states sovereign immunity from lawsuits.

Then, immediately following the U.S. Civil War, the Fourteenth Amendment was ratified in 1868 as part of the Reconstruction Amendments to address the original sin of slavery. Regrettably, over the years, Eleventh Amendment state sovereign immunity expanded so greatly that there was a danger of the United States becoming "We the States" rather than "We the People." According to *Fitzpatrick v. Bitzer* (1976), the Fourteenth Amendment trumps the Eleventh Amendment when there is a constitutional

clash (Section 5). Yet, in *City of Boerne v. Flores* (1997), the Supreme Court of the United States created a "congruence and proportionality" test to more fairly harmonize the Eleventh and Fourteenth amendments and maintain our system of checks-and-balances. Fortunately, that test is inapplicable for direct violations of the Fourteenth Amendments (*United States v. Georgia*, 2006) as are the subject matter of *Wije v. Ann Stuart*, et al (now *Wije v. U.S.A.*) and *Wije v. Burns*, et al: both involve short-and-long term segregation in education and employment, respectively.

QUALIFIED IMMUNITY: Good faith immunity, also called qualified immunity, arose out of a whistleblower case, *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); interestingly, petitioner Wije also suffers (appendix, Tab 5) from internal-only whistleblowing while trying to help his State of Texas and beloved alma mater avoid a costly security breach (Tab 4). Courts have interpreted *Harlow* to mean that—by default—*all* government workers are immune from constitutional liability.

Imagine paying insurance premiums (or federal taxes) to your insurance company for decades, but then your car is struck from behind and totally destroyed. Yet, the insurance company utilizes unreasonable technicalities to avoid accountability, for example, by telling you that your car was not on the required road (or jurisdiction), and that it was not struck by a precisely similar car that had struck another car on that very same road sometime in the past (or a "clearly established" car).

Next, consider that the insurance company (or federal judiciary) does not even bother to investigate the scene of your accident; now, your car cannot be included in the list of past clearly established cars eligible for insurance claim repairs. That is what occurred in *Pearson v. Callahan* (555 U.S. 223, 2009), which causes "constitutional stagnation" or a blockage of the accumulation of new and different cars eligible for claim repairs. You have paid your insurance premiums or federal taxes for a lifetime but dishearteningly realize that the often-advertised promises of "**Equal Justice Under Law**" do not apply to you!

Surprisingly, Congress did not create the doctrine of qualified immunity, it is not found in the U.S. Constitution, and it was never a defense to a Section 1983 action: qualified immunity is the ill-fated result of judicial policymaking (**Institute for Justice**, 2020). In our vertically integrated nation of "We the People," now from all over the world, government thrived without qualified immunity before 1982, and in *Hope v. Pelzer* (536 U.S. 730, 2002) and *Taylor v. Riojas* (No. 19–1261, 2020), the Supreme Court of the United States cabined qualified immunity. Consequently, this Court should again pronounce against illiberal democracy and that the resurrection of "Segregation now! Segregation tomorrow! [and] Segregation forever!" within the hearts and minds of some public servants is an obvious violation of all Americans' constitutional rights (Clark Neily, 2021; **https://www.cato.org/blog/conservative-case-against-qualified-immunity**).

STATEMENT OF FACTS: Presented to the Supreme Court of Texas

Petitioner Wije's motion for en banc reconsideration (appendix, Tab 2) enumerated nine issues for objection or clarification within the appellate court's memorandum opinion (Tab 2, Table of Objections (TOO), p. 2). The important facts of that case demonstrated an institutional or systemic deprivation of constitutional rights by taxpayer-funded public officials—now a *continuing violation* lasting more than 16 years:

1. HIRED: Petitioner earned a Bachelor of Arts (BA) and a Bachelor of Science (BS) from respondents before returning to his alma mater on January 12, 2000 (CR 26) as a full-time Information Technology (IT) systems analyst and a part-time student (CR 25).
2. TRANSFERRED: Upon discovering supposedly serious labor law violations such as alleged federal overtime pay fraud by dean(s), petitioner laterally transferred from the MBA Department to the IT Department (CR 20, #6).
3. FIRST HARM: "Segregation now!" As a result of the first targeted segregation, a staff meeting, petitioner was the *only* systems analyst unaware of a security policy

change, the *only* systems analyst falsely accused of violating that secretly changed security policy, and the *only* systems analyst still sanctioned for that entrapping policy change (Affidavits: CR 19; CR 184; CR 215)—despite independent *exoneration* from high-level UT security officials (CR 57).

4. FORCED RESIGNATION: Due to the many acts detailed within the record demonstrating a hostile work environment (Affidavits: CR 19; CR 184; CR 215), petitioner cogently contends that he suffered a constructive discharge and would not have fled his beloved alma mater but for more than one year of relentless retaliation, forcing a resignation (CR 52).
5. SECOND HARM: "Segregation forever!" Secretly, respondents placed not one or two but four or five falsehoods (CR 387-389; Table 5) in petitioner's personnel file (CR 29 and CR 35), then uploaded it to State of Texas internet databases where it spread online like revenge porn permanently preventing petitioner from being rehired by the State or any state-affiliated employers due to a de facto blacklisting (CR 21, #8; CR 193-202) caused by the now weaponized personnel file.
6. SECURITY BREACH: Now even more vigilant for security concerns because of the segregated security policy meeting, during the last weeks, days, and hours of his employment at his alma mater, petitioner was an internal-only whistleblower for a preventable security breach (CR 41; Tab 4) that actually occurred about six months after his forced resignation!
7. BRIBED BLACKLISTING: Respondents' human resources policies required petitioner to receive, read, and sign-off (CR 29) on his personnel file upon departure from employment; however, an alleged hush-money bribe masquerading as a tax-deductible charitable donation obstructed petitioner from even knowing about the existence of that weaponized personnel file (Tab 5).
8. PERJURIOUS AFFIDAVITS: During the trial, respondents evidently lied under oath or the penalty of perjury in their affidavits. That was done to conceal the institutional or systemic deprivation of constitutional rights from minorities by

taxpayer-funded white public officials: specifically, the wrongdoer, Mr. Burns, received pay raises, promotions, and praise (CR 63) (Tab 6) after the costly and catastrophic security breach, while the victim and internal-only whistleblower, Mr. Wije, received joblessness and a forever-ban from his beloved alma mater for bravely forewarning about that security breach (Tab 4).

Contrary to Rule 8 of the Federal Rules of Civil Procedure for federal claims, both the trial court and the appeals court overlooked the fact that the Texas Office of the Attorney General (TxAG), presenting respondents at public expense, resorted to purposeful obfuscation and legal trickery by not pleading sufficient facts for petitioner to recognize Eleventh Amendment state sovereign immunity or even an individual governmental official's qualified immunity. Moreover, neither court granted a findings of fact and conclusions of law. Consequently—and raising the specter of a Jim Crow literacy test—unrepresented or pro se petitioner was denied a fair or just opportunity to cure any hidden or surprise defects within his pleadings.

OPINIONS BELOW

Nature of the case:	This suit hopes to recover constitutional rights lost, potentially, for an entire lifetime due to de facto—not de jure—segregation financed by all taxpayers' dollars.
Disposition:	The trial court authored a plea to the jurisdiction opinion in favor of defendants-respondents. The court of appeals affirmed the judgment. Amendment and rehearing motions were denied.
Status of opinion:	Only the Westlaw citation is currently available, 2020 WL 5269414. *Wije v. Burns*, et al., is not reported in the *Southwest Reporter* (2020) as of October 26, 2021.

JURISDICTION

The date on which the highest state court decided this case was July 30, 2021. A copy of that decision appears at appendix Tab 8 and below. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a):

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

FILE COPY

RE: Case No. 21-0382 DATE: 7/30/2021
COA #: 01-19-00024-CV TC#: D-1-GN-18-002435
STYLE: WIJE v. BURNS

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

SURAN WIJE
* DELIVERED VIA E-MAIL *

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Fed. R. Civ. P. Rule 8 (General Rules of Pleading): "a short and plain statement" and "in short and plain terms."

- Fed. R. Civ. P. 15(a)(2) (Amended and Supplemental Pleadings): "The court should freely give leave when *justice so requires*."

STATEMENT OF THE CASE

Petitioner, Suran Wije, brought a civil rights action (Title VII and Section 1983) against his employer for (1) federal overtime pay fraud (unaffected), (2) targeted staff meeting segregation, (3) forced resignation via a hostile work environment, (4) retaliation for internal-only whistleblowing about a catastrophic security breach, and (5) de facto bribed blacklisting masquerading as a tax-deductible charitable donation. The state trial court granted a plea to the jurisdiction, the appellate court affirmed, and the Supreme Court of Texas denied the petition for review. Having overcome a purposeful obfuscation and legal trickery strategy, which is never in the public good and raises the specter of a Jim Crow literacy test, petitioner now asks the Supreme Court of the United States whether the interests of 'justice so require' a leave to amend, when nondisclosed affirmative defenses like immunity enable the crushing of Americans' inalienable and equal rights like liberty.

REASONS FOR GRANTING THE PETITION

- Due Process Conflict: Requiring affirmative defenses like immunity to be disclosed in *Gomez v. Toledo* but not in *Ashcroft v. al-Kidd* implicates the due process rights of every unrepresented litigant.

- Due Process Trap: When only two of the three entities in a lawsuit—plaintiff, defendant, and the court—are aware of particular affirmative defenses, a due process or nondisclosure trap results for the inexperienced pro se (*Hamer v. Neighborhood Housing Services of Chicago*).

- Equal Protection Conflict: Due to the full disclosure of evidence and facts, criminal litigants are unburdened by anticipatory pleading requirements (good or bad faith irrelevant in *Brady v. Maryland*) but civil litigants bear that burden (*Ashcroft v. al-Kidd*), creating unequal protections when liberty is at stake.

- Circuit Split on Anticipatory Pleading: The Fifth, Sixth, and D.C. Circuits require an anticipatory pleading of a qualified immunity defense from the plaintiff while the Third, Fourth, Seventh, Eighth, and Ninth Circuits place that burden on the defendant (Michael J. Daugherty and LABMD, Inc., v. Alain H. Sheer, et al.; petition denied).

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

/s/ Suran Wije October 28, 2021

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