

Docket No. _____

In the
Supreme Court of the United States

T. MATTHEW PHILLIPS *and* ALI SHAHROKHI,
Petitioners

vs.

VINCENT OCHOA, MATHEW HARTER, *and* AARON FORD,
Respondents

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
No. 21-16030

UNITED STATES DISTRICT COURT, LAS VEGAS, NEVADA
2:21-cv-00483-APG-NJK

APPLICATION *for an* EXTENSION *of* TIME
to* FILE *a* PETITION *for a* WRIT *of* CERTIORARI *to the
U.S. COURT *of* APPEALS *for the* NINTH CIRCUIT

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PARTIES *to the* PROCEEDING

The Petitioners are T. Matthew Phillips and Ali Shahrokhi. Respondents are Vincent Ochoa, as Eighth Judicial District Judge, Nevada, Matthew Harter, (deceased by suicide), as Eighth Judicial District Judge, Nevada, and Aaron Ford, as Nevada Attorney General.

CORPORATE DISCLOSURE STATEMENT

As per Rule 29.6, Petitioners, Shahrokhi and Phillips, are both natural persons. There is no parent corporation.

RELATED PROCEEDINGS

1. Related Cases for Petitioner Ali Shahrokhi.

U.S. SUPREME COURT CASE:

- SHAHROKHI v. BURROW- DOCKET NO. 22-6224

STATE of NEVADA CASES:

- BURROW V. SHAHROKHI – A PATERNITY PETITION, CUSTODY DISPUTE, CURRENTLY OPEN, CASE NO. D-18-581208-P, (A SEALED CASE).
 - BURROW V. SHAHROKHI – A CHILD SUPPORT CASE, CURRENTLY OPEN, CASE NO. R-21-218156-R.
- STATE OF OREGON CASES:

• BURROW V. SHAHROKHI, A REGISTRATION OF FOREIGN CUSTODY ORDER, CHANGE OF JURISDICTION, CASE NO. 22DR14283.

STATE of NEVADA—APPELLATE CASES:

• SHAHROKHI V. EIGHT JUDICIAL DISTRICT, NOVEMBER 6, 2019, GRANTING PETITION FOR A WRIT OF MANDAMUS IN PART AND DENYING PETITION IN PART, CASE NO. COA-79336, NEVADA COURT OF APPEALS

• SHAHROKHI V. EIGHT JUDICIAL DISTRICT, JUNE 9, 2020, GRANTING PETITION FOR A WRIT OF MANDAMUS, CASE NO. 82803, NEVADA SUPREME COURT.

• SHAHROKHI V. EIGHT JUDICIAL DISTRICT, JANUARY 2, 2020, DENYING PETITION FOR WRIT OF MANDAMUS, CASE NO. COA-80277, NEVADA COURT OF APPEALS.

• SHAHROKHI V. EIGHT JUDICIAL DISTRICT, FEBRUARY 6, 2020, DENYING PETITION FOR WRIT OF MANDAMUS, CASE NO. COA-80447, NEVADA COURT OF APPEALS.

• SHAHROKHI V. EIGHT JUDICIAL DISTRICT, JULY 28, 2020, DENYING PETITION FOR WRIT OF MANDAMUS, CASE NO. COA-81218, NEVADA COURT OF APPEALS.

• SHAHROKHI V. EIGHT JUDICIAL DISTRICT, SEPTEMBER 18, 2020,

DENYING PETITION FOR WRIT OF MANDAMUS, CASE NO. COA-81791,
NEVADA COURT OF APPEALS.

- SHAHROKHI V. BURROW, MAY 12, 2022, APPEALS AFFIRMED,
THREE COMBINED CASES, CASE NOS. 81978, 82245, 83726, NEVADA
SUPREME COURT.

- SHAHROKHI V. EIGHT JUDICIAL DISTRICT, JULY 30, 2021,
DENYING PETITION FOR WRIT OF MANDAMUS, CASE NO. 83164,
NEVADA SUPREME COURT.

- SHAHROKHI V. EIGHT JUDICIAL DISTRICT, OCTOBER 13, 2021,
DENYING PETITION FOR WRIT OF MANDAMUS, CASE NO. 83558,
NEVADA SUPREME COURT.

- SHAHROKHI V. EIGHT JUDICIAL DISTRICT, NOVEMBER 16, 2021,
DENYING PETITION FOR WRIT OF MANDAMUS, CASE NO. 83772,
NEVADA SUPREME COURT.

- SHAHROKHI V. BURROW, OCTOBER 28, 2021, DISMISSING APPEAL
FOR LACK OF SUBJECT-MATTER JURISDICTION, CASE NO. 83726,
NEVADA SUPREME COURT.

- SHAHROKHI V. EIGHT JUDICIAL DISTRICT, FEBRUARY 2, 2022,
DENYING PETITION FOR WRIT OF MANDAMUS, CASE NO. 83973,
NEVADA SUPREME COURT.

- SHAHROKHI V. EIGHT JUDICIAL DISTRICT, DECEMBER 23, 2021,

DENYING PETITION FOR WRIT OF MANDAMUS, CASE NO. 83927,
NEVADA SUPREME COURT.

- SHAHROKHI V. EIGHT JUDICIAL DISTRICT, FEBRUARY 18, 2022, NO ACTION WAS TAKEN ON PETITION FOR WRIT OF MANDAMUS, CASE NO. 84043.

- SHAHROKHI V. NEVADA COMMISSION ON JUDICIAL DISCIPLINE, FEBRUARY 10, 2022, DENYING PETITION FOR WRIT OF MANDAMUS, CASE NO. 84124, NEVADA SUPREME COURT.

- SHAHROKHI V. EIGHT JUDICIAL DISTRICT, APRIL 29, 2022, DENYING PETITION FOR WRIT OF MANDAMUS, CASE NO. 84189, NEVADA SUPREME COURT.

- SHAHROKHI V. EIGHT JUDICIAL DISTRICT, MARCH 18, 2022, DENYING PETITION FOR WRIT OF MANDAMUS, CASE NO. 84341, NEVADA SUPREME COURT.

- SHAHROKHI V. EIGHT JUDICIAL DISTRICT, DECEMBER 6, 2022, DENYING PETITION FOR WRIT OF MANDAMUS, CASE NO. 85655, NEVADA SUPREME COURT.

- SHAHROKHI V. EIGHT JUDICIAL DISTRICT, CURRENTLY PENDING, CASE NO. 85705, NEVADA SUPREME COURT.

U.S. DISTRICT COURT of NEVADA:

• SHAHROKHI V. HARTER, ET. AL., 2:20-CV-01019-APG-VCF, CASE DISMISSED UNDER YOUNGER ABSTENTION.

• SHAHROKHI V. HARTER, ET. AL., 2:20-CV-01623-JAD-NJK, CASE CURRENTLY STAYED UNDER YOUNGER ABSTENTION.

• SHAHROKHI V. TAO, ET. AL., 2:20-CV-02346-GMN-VCF, CASE DISMISSED.

• PHILLIPS, ET. AL., V. OCHOA, ET. AL., 2:21-CV-00483-APG-NJK, CASE DISMISSED UNDER YOUNGER ABSTENTION.

• SHAHROKHI V. HARTER, ET. AL., 2:21-CV-00557-APG-BNW, ERRONEOUS DISMISSAL BY THE DISTRICT COURT STATING: THE PLAINTIFFS HAVE NO CASE PENDING BEFORE JUDGE HARTER, SO THEY CANNOT SHOW THEY HAVE SUFFERED PARTICULARIZED AND CONCRETE INJURY IN FACT. THEY THUS LACK STANDING TO ASSERT THESE CLAIMS. [SPOKEO, INC. V. ROBINS, 578 U.S. 330, 339-40 (2016)].

• SHAHROKHI V. THRONE, ET. AL., 2:22-CV-00001-JAD-VCF, CASE DISMISSED UNDER YOUNGER ABSTENTION.

NINTH CIRCUIT COURT of APPEALS:

• PHILLIPS, ET. AL., V. VINCENT OCHOA, ET. AL., 0:2021CV16030, AFFIRMED, COURT STATED YOUNGER ABSTENTION DOES NOT APPLY TO THIS CASE YET AFFIRMED BASED ON ISSUE PRECLUSION.

• ALI SHAHROKHI, ET. AL., V. USDC-NEVADA, 0:2021OP71158, PETITION FOR WRIT OF MANDAMUS DENIED, PETITIONERS HAVE NOT DEMONSTRATED THAT THIS CASE WARRANTS THE INTERVENTION OF THIS COURT BY MEANS OF THE EXTRAORDINARY REMEDY OF MANDAMUS.

• ALI SHAHROKHI V. TAO, 0:2021CV16171, AFFIRMED.

• ALI SHAHROKHI V. DAWN THRONE, ET. AL., 0:2021CV16171, CURRENTLY PENDING BEFORE THE THREE-PANEL COURT.

• ALI SHAHROKHI V. HARTER, ET. AL., 0:2022CV15276, CURRENTLY PENDING BEFORE THE COURT.

* * *

2. Related Cases for Petitioner T. Matthew Phillips

U.S. SUPREME COURT:

- *Phillips vs. Korpak*, [Docket No. 22-5622]; cert. denied, (Nov. 21, 2022)].

U.S. DISTRICT COURT of NEVADA:

- *T. Matthew Phillips vs. Vincent Ochoa*, Case No. 2:22-cv-02086-RFB-BNW. Open case; (case filed on Dec. 16, 2022).
- *T. Matthew Phillips vs. Vincent Ochoa*, Case No. 2:19-cv-00425-JCM-PAL. Case dismissed, (on Mar. 12, 2020).

STATE of NEVADA:

- *T. Matthew Phillips vs. Amber Korpak*, COA No. 84411; case closed.
- *T. Matthew Phillips vs. Amber Phillips*, COA No. 82724; case closed.
- *T. Matthew Phillips vs. Amber Phillips*, COA No. 82693; case closed.
- *T. Matthew Phillips vs. Amber Phillips*, COA No. 82414; case closed.
- *T. Matthew Phillips vs. Amber Phillips*, COA No. 78959; case closed.
- *T. Matthew Phillips vs. Amber Phillips*, COA No. 77900; case closed.

To the Honorable Justice Elena Kagan:

Pursuant to Supreme Court Rule 30.3, Petitioners, Ali Shahrokhi, (“Shahrokhi”), and T. Matthew Phillips, (“Phillips”), now make this application to the Court, *respectfully*, for an extension of sixty (60) days to file a *Petition for a Writ of Certiorari*. Petitioners need ample time to research the applicable law and they wish to present well before this court.

The Ninth Circuit below entered a final judgment dismissing Petitioners’ case on Nov. 29, 2022. The Ninth Circuit incorrectly imposed issue-preclusion, however, there is no overlapping identity of parties; as a result, issue-preclusion was an improper basis for dismissal.

Perhaps more importantly, the Nevada Supreme Court never resolved the issue concerning which is paramount?—(1) the best interest of the children, or (2) the constitutional rights of the children (and their parents)?

Where one parent has exclusive sole physical custody and legal custody, and the other parent has no parental rights, (*i.e.*, no care, no custody and no control), Nevada defines this as “primary custody.” But this definition is misleading.

In Nevada custody disputes, the state claims that the sole consideration is the "child's best interest," but this ignores the child's constitutional rights as well as the parents' constitutional rights, which are protected by the First Amendment's right to familial association.

The State of Nevada contends there are no substantive due process rights in custody proceedings, and that the judge’s opinion on “best interests” is controlling. But this Nevada's “best interests” policy violates substantive due process, [Fourteenth Amendment]. Nevada uses its “best interest” policy to intrude on the lives of two fit parents, interfering with their child decision-making rights.

In Nevada, the state uses the “best interest” policy to violate the constitutional rights of children and parents, to illegally terminate the parent’s custodial rights (as well as the child’s right to be parented). All too often, the “best interest” policy grants “sole and exclusive” custody to one parent, which the State refers to as “primary custody,” which leaves the other parent with no “care, custody or control” of the minor children, which the State refers to as “the right to visitation.” In reality, the losing parent is handed a civil death sentence—*i.e.*, termination of parental rights.

In truth, the “best interest” standard is used to summarily terminate the parents’ fundamental “right to parent,” and the children’s corollary “right to be parented.”

Again, in the State of Nevada, when one parent gets “sole and exclusive” custody of the children, they label this as “primary” custody, but such term is misleading. They do this to terminate the rights of one parent without going through the actual process of terminating custody—for fear of losing Title IV-D dollars. But again, this is unconstitutional because the rights of the outlier parents are routinely terminated, though the State pretends otherwise.

Petitioners here challenge the constitutionality of the state’s child custody statute that allows a single state actor, exercising unfettered discretion, to determine what’s in a child’s best interests while violating the child’s constitutional rights and ultimately substituting its judgement over the judgement of a fit parent, (viewpoint discrimination), with no regard for the constitutional rights of the children (or their parents).

When two fit parents are forced to litigate—to maintain “care, custody and control” of their own children, the state employs the “best interest” standard to terminate custody; but, when all’s said, the “best interest”

standard is merely a grab-bag of opinions from state-court judges who believe they have *carte blanche* discretion.

The “best interest” standard is essentially used as a penal code and this court is wise to regard it as such. Where state-court judges believe that a parent has violated the venerable “best interest” standard, the judge then *punishes* the culpable parent—*i.e.*, by divesting his or her custodial rights and legal rights. The “best interests” standard has become a legal tool to willy-nilly strip parents of custodial rights under color of law.

Nevada’s child custody statute is unconstitutionally vague. By way of analogy, traditional notions of due process require that “penal” statutes must be sufficiently definite and certain—to enable a person to know which types of conduct he or she must avoid. However, in Nevada family courts, parents have no way of knowing which types of conduct may violate the highly-subjective “best interest” standard.

Petitioners here contend that the term, “best interest,” is vague and ambiguous; such terminology is *vague*—because no one can really know what it means; and, it’s *ambiguous*—because it may mean more than one thing.

The “best interest” standard must not be used pretext to intervene in parent’s fundamental liberty interests. There’s nothing “standardized” about the best interest standard. It’s not a set of rules that any parent can refer-to or be reasonably expected to uphold.

The “best interests” standard must be subordinate to the Constitution, which trumps all state-law standards.

Under the “best interest” standard, fit parents lose fundamental rights for failing to live-up to the personal opinion of whimsical judges. Parents are penalized for parental or lifestyle choices made within the marriage, which were perfectly legal and acceptable within that marriage.

The “best interest” standard is unconstitutional and may be applied only in the context of *parens patriae*, *i.e.*, where both parents are declared “un-fit.” But here, Petitioners were never declared “un-fit”—*i.e.*, they were never found to have engaged in “child abuse” and/or “child neglect.” It’s unconstitutional for fit parents to be subjected to the loss of fundamental rights—merely for making the choice to dissolve their marriage.

In Petitioner's cases, the State of Nevada uses the “best interest” standard to issue illegal wiretap orders—to intercept private communications between parents and children. The State also uses this policy to violate privacy rights, and 4th Amendment rights, by issuing mental health evaluation orders—with no supporting probable cause.

In Nevada, the state uses the “best interest” standard to unlawfully impose time, place and manner restrictions on parents and children; the state uses the “best interest” standard for censorship in the private lives of two fit parents and their children.

The truth is; state-court judges have gone wild with termination of parental rights, and remarkably, the state’s highest court supports the terminations—but only because it generates Title IV-D revenue for the state.

In Petitioner’s cases, both state-court judges refused to recuse themselves—despite the fact that both judges were in litigation with Petitioners—and despite the fact that the judge have an interest in the outcome of the custody cases. Notably, this court holds that no judge should preside over a case where they are adversarial with a party, or where the judge has an interest in the outcome.

This court holds that individual decisions regarding marriage—to marry, not to marry, and to divorce—are privacy rights protected at strict scrutiny—choices which may not be punished by the state, and choices which

do not create jurisdiction for state-court judges to invade other protected family associations such as parent-child association, [*Zablocki v. Redhail*, 434 US 374, 399 (1978)], (state power over domestic relations is not without constitutional limits).

Petitioners' *Petition for a Writ of Certiorari* is due on or before Feb. 27, 2023. This motion is being filed more than ten (10) days prior to that due date as required by Rule 13.5.

Petitioners' current due date is **Feb. 27, 2023**. Petitioners respectfully seek a 60-day extension until **April 29, 2023**.

Dated: **Jan. 11, 2022**

Respectfully Submitted,



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EXHIBIT “A”

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 29 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

T. MATTHEW PHILLIPS; ALI
SHAHROKHI,

Plaintiffs-Appellants,

v.

VINCENT OCHOA, Clark County District
Court Judge, Family Division; et al.,

Defendants-Appellees.

No. 21-16030

D.C. No. 2:21-cv-00483-APG-NJK
District of Nevada,
Las Vegas

ORDER

Before: S.R. THOMAS, PAEZ, and LEE, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Appellants' petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 52) are denied.

No further filings will be entertained in this closed case.

EXHIBIT “B”

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 24 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

T. MATTHEW PHILLIPS; ALI
SHAHROKHI,

Plaintiffs-Appellants,

v.

VINCENT OCHOA, Clark County District
Court Judge, Family Division; MATHEW
HARTER, Clark County District Court
Judge, Family Division; C AARON FORD,
Nevada Attorney General,

Defendants-Appellees.

No. 21-16030

D.C. No. 2:21-cv-00483-APG-NJK

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Andrew P. Gordon, District Judge, Presiding

Submitted August 17, 2022**

Before: S.R. THOMAS, PAEZ, and LEE, Circuit Judges.

T. Matthew Philips and Ali Shahrokhi appeal from the district court's
judgment dismissing their 42 U.S.C. § 1983 action alleging constitutional claims

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

related to a family court proceeding. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the application of abstention under *Younger v. Harris*, 401 U.S. 37 (1971). *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014). We may affirm on any basis supported by the record. *Thompson v. Paul*, 547 F.3d 1055, 1058-59 (9th Cir. 2008). We affirm.

The district court did not err by dismissing plaintiffs' action because, due to the Nevada Supreme Court's recent decisions to affirm plaintiffs' custody orders in which plaintiffs raised the same constitutional issues brought in this action, plaintiffs' claims are barred by issue preclusion. *See Cook v. Harding*, 879 F.3d 1035, 1040 (9th Cir. 2018) (acknowledging that *Younger* abstention has been limited in civil cases but affirming dismissal on the basis of issue preclusion); *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 321 P.3d 912, 916 (Nev. 2014) (elements of issue preclusion under Nevada state law).

All pending motions and requests are denied.

AFFIRMED.