

No. _____

**In the Supreme Court of the
United States**

Nicholas Harding, *Petitioner*

v.

Google, LLC, *Respondent.*

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Eleventh Circuit

**PETITION FOR A WRIT OF
CERTIORARI**

Nicholas Harding
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Petitioner

QUESTIONS PRESENTED

The questions presented are:

1. Does the “state wherein they reside” provision of the Fourteenth Amendment define state citizenship for purposes of Article III diversity jurisdiction?
2. Did the 11th Circuit abuse their discretion in dismissing petitioner’s appeal?
3. Does 9 U.S.C. § 16 violate Equal Protection by granting a facially unequal right of appeal?

PARTIES TO THE PROCEEDING

Petitioner is Nicholas Harding.

Respondent is Google LLC.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Nicholas Harding, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-2a) is unreported .

The opinion of the court of appeals (App. 3a-4a) is reported at WL 5691004.

The district court's order (App. 5a-13a) is reported at WL 3981375

JURISDICTION

The 11th Circuit Court of Appeals dismissed the appeal on September 5, 2023. App 3a.

The 11th Circuit Court of Appeals entered its judgment denying rehearing on September 19, 2023. App. 1a.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent constitutional and statutory provisions are reproduced in the appendix to this petition.

RELATED PROCEEDINGS

United States District Court (M.D. Fla.):

Harding v. Google, No. 3:23-cv-00321-
BJD-JBT (June 8, 2023)

United States Court of Appeals (11th Cir.):

Harding v. Google, No. 23-11974
(September 19, 2023)

INTRODUCTION

The issues in this case are of great importance to the Constitution.

Petitioner was a user of respondent Google LLC's advertising platform, Google Ads. On December 29th, 2022, petitioner's account was suspended and he was not provided a "thorough rationale" as required by Florida law. After attempting to resolve the matter informally, on February 21st, 2023, Petitioner brought suit against Google LLC in Florida's 4th Judicial Circuit under Fla. Stat. § 501.2041. This law was intended by the state of Florida to prevent large technology companies from censoring users without providing them with an explanation.

After Petitioner filed suit, Respondent removed the case from Florida's 4th Judicial Circuit into the Federal District Court for the Middle District of Florida on the grounds that there exists "complete diversity" between the parties (DC Doc. 1). Respondent further moved to compel arbitration (DC Doc. 12).

Petitioner objected to the removal on the grounds that Google is subject to the jurisdiction of Florida's courts (DC Doc. 13) and that the 14th amendment's "state wherein they reside" provision governs citizenship, and accordingly, Google is a

citizen of Florida by virtue of their residence in Florida (DC Doc. 21).

Petitioner preserved this argument in his objection to the magistrate judge's report and recommendation (DC Doc. 23).

The district court overruled the petitioner's objection and concluded that the petitioner's argument that the 14th Amendment's "state wherein they reside" clause necessarily and conclusively proved Google's Florida citizenship was "meritless." The court issued an order compelling arbitration, staying the case and administratively closing the file (DC Doc. 24).

Petitioner appealed to the 11th circuit court of appeals, noting that, despite the order being an interlocutory order compelling arbitration, the issue being appealed was one which was permitted as an exception, as the interlocutory order addresses a discrete and important issue that is entirely separable from the merits of the action *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546, 69 S. Ct. 1221, 1225, 93 L. Ed. 1528 (1949).

The appeal was rejected *Sua Sponte* by the 11th circuit using a standardized order used in several other cases which reasoned that 9 U.S.C. § 16(b)(1)-(3) states that an appeal may not be taken from an interlocutory order compelling arbitration (App. 3a-4a).

Statement

I

Over the past 130 years, the interpretation of the Fourteenth Amendment has evolved to include corporations and non-incorporated entities within its scope, granting them legal personhood.

However, this broad interpretation appears to neglect the Amendment's clause clearly defining citizenship as based on physical presence. This oversight raises significant questions about the principles of federalism and the original intentions for the federal judiciary.

In Federalist No. 80, Alexander Hamilton articulates the scope and limits of the federal judiciary, emphasizing its distinct role in the framework of federalism. Hamilton argues for a judiciary system with defined jurisdiction, primarily to ensure consistency in the application of federal laws while respecting the sovereignty and judicial independence of the states. This balance, a cornerstone of federalism, suggests that the federal judiciary was not intended to override or supplant state courts.

The recent *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122, 129 (2023) decision, illustrates a contemporary instance where corporations exploit their foreign character to evade responsibilities in state courts.

In *Hertz Corp. v. Friend*, 559 U.S. 77 (2010), this Court's approach to corporate citizenship - determining it based on a corporation's 'nerve center' and state of incorporation - while practical, strays from these foundational principles. The approach overlooks the Fourteenth Amendment's specific language on citizenship and its implications for state sovereignty in legal matters involving corporations and unincorporated entities.

Furthermore, the interpretation of the Fourteenth Amendment, as it relates to corporate citizenship, raises concerns about adhering to the Amendment's original intent and the federalist structure that Hamilton and other framers advocated.

The fourteenth amendment defines citizenship. This court determined that in the *Slaughter-House Cases*, and when the constitution provides a definition, the only authority by which Congress may modify it is found in Article 5 of the Constitution.

The first clause of the fourteenth article was intended . . . secondly to give definitions of citizenship of the United States, and citizenship of the States, and it recognizes the distinction between citizenship of a State and citizenship of the United States by those definitions.

Slaughter-House Cases, 83 U.S. 36, 37, 21 L. Ed. 394 (1872).

Carden v. Arkoma Associates, 494 U.S. 185 (1990), which is the current standard by which the citizenship of unincorporated entities is determined, while addressing these entities' citizenship, does not fully reconcile with the Fourteenth Amendment's residency definition.

Therefore, the application of the Fourteenth Amendment to corporations must be re-evaluated in light of the principles of federalism and the intended role of the federal judiciary. This case offers an opportunity to align the judicial interpretation of artificial entity citizenship with foundational constitutional principles because, as a result of the fourteenth amendment, the constitution has the exclusive authority to define citizenship (not congress via 28 U.S.C. § 1332) and that definition applies equally to individuals, corporations, and unincorporated associations. To be clear, that definition is one based simply on physical residence within a state.

II

The Eleventh Circuit's *sua sponte* dismissal of the Petitioner's appeal for lack of jurisdiction overlooked the individual merits of the case.

The repetitive language and format of orders in other cases, such as *Bulent Cosgun v. Seabourn Cruise Line Limited, Inc.*, (No. 23-11396) and *Gold Coast Prop. Mgmt., Inc. v. Certain Underwriters at Lloyds, London*, (No. 19-12720-EE), suggest a pattern of dismissal based on the nature of the appeals rather than their specific merits. Furthermore, the Eleventh Circuit's unexplained denial of the petitioner's

petition for rehearing, which emphasized the appeal's basis in the Collateral Order doctrine, further supports this concern.

The principles outlined in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949), regarding the separability of issues for interlocutory appeal, are relevant to this case. The District Court's order compelling arbitration and dismissing the Petitioner's argument regarding Google LLC's citizenship in Florida was the crux of the appeal, however the issue being appealed was the jurisdiction of the District Court.

The Eleventh Circuit's dismissal of the appeal without a detailed explanation appears to be an abuse of discretion, echoing the Respondent's failure to provide a comprehensive rationale to the Petitioner.

III

Section 9 U.S.C. § 16, which allows certain orders favoring arbitration to be non-appealable and others opposing arbitration to be appealable, presents a disparity impacting litigants' rights. This asymmetry raises significant equal protection concerns under the Fourteenth Amendment. The amendment's primary intent, though initially aimed at prohibiting racial discrimination, broadly mandates equal protection of the laws for all citizens.

As Justice Thomas observed in *U.S. v. Vaello Madero*, 596 U.S. 159, 180 (2022), the Citizenship Clause's conferment of American citizenship may implicitly prohibit the Federal Government from

imposing unequal civil rights. Therefore, a critical examination of this statute's alignment with the Fourteenth Amendment's equal protection clause is warranted.

Conclusion

In light of these arguments, this Court should grant the petition. This case presents critical issues regarding the application of the Fourteenth Amendment to corporate and unincorporated entity citizenship as well as the equitable treatment of litigants under federal statutes, which merit the Court's thorough consideration.

Respectfully Submitted,



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