No. _____

In The
Supreme Court of the United States

ROSA AND RAYMOND PARKS INSTITUTE FOR SELF DEVELOPMENT and ELAINE STEELE,

Petitioners,

v.

SYLVESTER McCAULEY, DEBORAH ROSS, ASHEBER MACHARIA, ROBERT D. McCAULEY, YVONNE TRUSEL, ROSALIND BRIDGEFORTH, SUSAN McCAULEY, SHIRLEY McCAULEY, SHEILA McCAULEY KEYS, RICHARD McCAULEY, CHERYL McCAULEY, RHEA McCAULEY and WILLIAM McCAULEY, as individuals and as joint venturers,

Respondents.

On Petition For Writ Of Certiorari To The Michigan Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The present petition involves the iconic winter coat worn by Rosa Parks at the time of her arrest on a Montgomery, Alabama bus on December 1, 1955. Mrs. Parks died in 2005. The Respondents, who are Mrs. Parks' nieces and nephews, failed to deliver the coat to Petitioners in breach of an agreement executed by the parties in 2007. Petitioners, who are Mrs. Parks' closest friend and the charity they established together in 1987, filed a breach of contract action against Respondents in 2013. Despite lacking jurisdiction over a controversy involving property Mrs. Parks had given to her family thirty years before she died, the probate court judge presiding over her estate arrogated authority over the action (that had originally been filed in the court of general jurisdiction). He then proceeded to issue, in continuation of a pattern established years earlier, a series of bizarre and grossly biased rulings against the Petitioners, including the novel and impossible ruling that his denial of Petitioners' 2009 procedural motion to compel arbitration of the controversy constituted a final decision on the substantive merits that barred litigation of the action and required its dismissal.

The question presented for review is as follows:

WHETHER THE ARBITRARY, BIASED AND CORRUPT PROCEEDINGS CONDUCTED BY THE WAYNE COUNTRY PROBATE COURT IN A SIMPLE AND UNCONTESTED BREACH OF CONTRACT ACTION VIOLATED THE DUE PROCESS GUARANTEED BY THE FIFTH AND

QUESTION PRESENTED – Continued

FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

LIST OF PARTIES

PETITIONERS

Petitioners are represented by Steven G. Cohen.

RESPONDENTS

Respondents are represented by Howard E. Gurwin.

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STATEMENT OF JURISDICTION

Final orders were entered by the Wayne County Probate Court on March 22, 2016, July 26, 2016 and July 6, 2017. These final orders were timely appealed by Petitioners to the Michigan Court of Appeals, which affirmed the probate court on March 20, 2018. A timely motion for reconsideration was filed on April 9, 2018, and denied on April 25, 2018. Petitioners filed a timely application for leave to appeal to the Michigan Supreme Court on June 1, 2018. The Michigan Supreme Court declined to grant leave by order dated December 4, 2018.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). This petition was filed within 90 days of the date of the order entered by the Michigan Supreme Court denying leave to appeal.

CONSTITUTIONAL PROVISIONS

5TH AMENDMENT TO THE UNITED STATES CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in

the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

14TH AMENDMENT TO THE UNITED STATES CONSTITUTION

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

1. FACTUAL BACKGROUND OF THE ROSA PARKS ESTATE

This case involves the iconic coat worn by Rosa Parks at the time of her arrest on a Montgomery, Alabama bus on December 1, 1955. A related petition, Docket No. 18-822, was filed in this Court on December 26, 2018.

Mrs. Parks, who survived her husband, Raymond, and did not have any children, died on October 25, 2005 in Detroit, Michigan. She had a modest estate consisting of cash in the amount of approximately $373,000.00. Her detailed estate plan gifted the entire estate to her closest friend, Elaine Steele, and the charity they established together in 1987, the Rosa and Raymond Parks Institute for Self Development. Steele and the Institute may be collectively referred to herein as "Petitioners." Mrs. Parks nominated Steele and a former judge, Adam Shakoor, as estate fiduciaries.

Several months after Mrs. Parks' death, her 13 nieces and nephews (collectively, "Respondents"), who were consciously omitted from Mrs. Parks' estate plan, filed a baseless will and trust contest in the Wayne County, Michigan Probate Court. The presiding judge, Freddie G. Burton, Jr., who has a long and unfortunate history of corruption, used the contest as a pretext for the removal of Steele and Shakoor and their replacement with two long-time court cronies, John Chase, Jr. and Melvin Jefferson, Jr.

These cronies, following a long-standing methodology, immediately began creating unnecessary controversies for the express purpose of generating obscene "administrative" fees. In just the first year of administration, Chase and Jefferson were awarded over $106,000.00 in such fees.

The will and trust contest was resolved in March of 2007 in a confidential settlement agreement (App. 174) which confirmed the validity and enforceability of Mrs. Parks' estate plan and awarded none of the estate

to the Respondents. App. 175. The settlement agreement also required the prompt dismissal of Chase and Jefferson from their fiduciary positions and the reinstatement of Steele and Shakoor. App. 175.

Pursuant to paragraph three of the settlement (App. 175-77), Respondents received a 20% interest in potential revenues generated by valuable intellectual property rights in the name, likeness and image of Mrs. Parks, which she had assigned to the Institute in 2000 (the "Publicity Rights").

Pursuant to paragraph five of the settlement (App. 177-80), Respondents received a 20% interest in potential revenues generated by a collection of personal property denominated as "Marketable Property." The Marketable Property collection was comprised almost exclusively of thousands of photos, letters and other personal items that Mrs. Parks had given to the Institute years before her death, as itemized on Exhibit A to the settlement (referred to herein as the Institute's "Artifacts"). Respondents promised to contribute just one particularly iconic item to the Marketable Property collection to increase its value: The wool coat worn by Mrs. Parks at the time of her arrest in Montgomery, Alabama on December 1, 1955, which she had given to her niece, Susan McCauley, in the 1970s. App. 171.

None of the above items (the Publicity Rights, the Artifacts or the coat) were owned or possessed by Mrs. Parks or her trust at the time of her death. Therefore, these items were never assets of her

estate and were beyond the jurisdiction of the probate court.

Despite their mandated removal Chase and Jefferson remained in their fiduciary offices while Judge Burton blocked repeated efforts by Petitioners to have them dismissed. By the end of calendar year 2008, Chase and Jefferson had bankrupted the estate. They then concocted a controversy for the purpose of acquiring control over assets that were much more valuable than those in the estate. On May 28, 2009 they filed a "*Cy Prey* Petition" falsely asserting that Petitioners' counsel (attorney Steven G. Cohen) had caused a breach of confidentiality in violation of paragraph seven of the 2007 settlement agreement during a sparsely attended Court of Appeals hearing earlier that year. The petition demanded the forfeiture and confiscation of the Institute's Artifacts and Publicity Rights, assets worth over $5,000,000.00: "Wherefore, the [fiduciaries] ask that this Honorable Court: Find that Elaine Steele and the Institute's violation constitutes a forfeiture of their share of the proceeds."

The petition was facially absurd. Chase and Jefferson did not have standing to assert breach of contract because they were not parties to the settlement agreement (and they were supposed to have been discharged as fiduciaries two years earlier). They did not identify any clause in the settlement that was disclosed (because none was disclosed). Nor did they identify any person at the hearing who heard the phantom disclosure. Chase and Jefferson did not identify any discernable basis for the probate court to exceed its

jurisdiction and confiscate the Institute's non-estate property, let alone arbitrarily award this property to two court-appointed cronies having no connection to Mrs. Parks or the Institute.

As an added dose of intimidation, Chase and Jefferson demanded ***imprisonment*** of Steele and Cohen for this non-existent breach of contract: "Wherefore, the [fiduciaries] ask that this Honorable Court: Find that Elaine Steele and the Institute have violated this court order for confidentiality pursuant to the settlement agreement at paragraph no. 7, and that the party be held in contempt and remanded to the Wayne County Jail." Significantly, there was no confidentiality order, only a contractual confidentiality in paragraph seven of the settlement (that neither the Petitioners nor their counsel breached). In fact, Petitioners were the only persons involved in the estate that did not make a disclosure from the confidential settlement. Respondents, Chase, Jefferson and Judge Burton had all made significant disclosures to the public well prior to the filing of the *Cy Pres* Petition.

Steele and the Institute filed a vigorous objection to the petition, citing the foregoing defenses as well as the existence of a binding arbitration clause in paragraph 14 of the settlement that governed resolution of the alleged breach of contract.

Judge Burton then decided the transparently contrived controversy by judicial fiat, ruling in favor of Chase and Jefferson solely on the initial pleadings, without discovery, motion practice,

evidence, trial or proceedings of any kind. On August 10, 2009 he issued an order (App. 105) that confiscated and awarded to Chase and Jefferson the Institute's valuable Artifacts and Publicity Rights that were never part of the estate. App. 108. Judge Burton supported this order with an opinion containing his own testimony, acting as an express witness and advocate for his court cronies.

Judge Burton followed up that order with another on January 13, 2010 (App. 102), which confirmed that the earlier confiscation applied to "all forms of property or compensation received by the Institute or Elaine Steele, including intellectual or non-intellectual property." App. 104. As above, this order was entered solely on initial pleadings filed by Chase and Jefferson, without trial or proceedings of any kind and supported by Judge Burton's own testimony and advocacy. For good measure, the January 13th order also granted, on a purely ***oral*** request by Chase and Jefferson at a hearing conducted on an unrelated matter, a six-figure money judgment against Petitioners. App. 102.

The above orders contain language indicating that the Institute's Artifacts and Publicity Rights would be given to another charitable organization to be selected by the probate court. This was window dressing for what was, in essence, simple theft. Chase and Jefferson immediately took possession and control over the Artifacts and the Publicity Rights and barred Petitioners from access to and use of this property. Judge Burton never took any action to identify another "charitable

organization" to receive the Institute's confiscated property.

In Docket No. 18-822, Judge Burton admitted entering the 2009 and 2010 confiscation orders without proceedings of any kind, an obvious and gross violation of due process, fundamental fairness and virtually the entirety of the Michigan Court Rules:

> Q: So the *Cy Pres* action was a petition, correct?
>
> A: Correct.
>
> Q: All right. And that petition is an action under the Court Rules, correct?
>
> A: Yes.
>
> Q: Okay. And an objection was filed to that action by the Institute and by Mrs. Steele, right?
>
> A: Correct.
>
> Q: Okay. And that objection hotly contested the factual assertions set forth in the Petition for *Cy Pres*, correct?
>
> A: I believe so, yes.
>
> Q: Okay. And that objection hotly contested the legal issues set forth in the Petition for *Cy Pres*, right?
>
> A: Yes.

Q: And some of those legal issues were whether the arbitration clause applied, right?

A: I guess so. I am not sure. Again, I am hamstrung by the fact I have not had a chance to look at the exhibit in advance. But I'm assuming that that's the case.

Q: Okay. Another one of the hot legal issues was interpretation of the word "compensation" as set forth in the Settlement Agreement, correct?

A: I haven't had a chance to read it, but I would imagine that's correct.

Q: Okay. There was another hot legal and factual dispute over whether there was an actual breach of the confidentiality, correct?

A: I believe that's correct.

Q: And there was a hot legal dispute over whether other parties had, in fact, breached confidentiality, correct?

A: Yes.

Q: All right. So the question was, you resolved the question of the breach of confidentiality on behalf of the fiduciaries and against my clients, correct? Yes? It is a yes or no. You resolved it in favor of the fiduciaries?

A: I resolved it in favor of the Estate and Trust, and in this case actually the heirs.

Q: And your resolution was based solely on the pleadings, correct?

A: Based on the arguments and the pleadings.

Q: All right. But not based on any actual testimonial evidence, correct?

A: Not that I can recall that there was any testimony offered one way or the other.

Tr., May 16, 2016, Pgs. 64-69.

Q: In other words, no proceedings were conducted other than the receipt by the Court of initial pleadings, a petition and an objection and some oral argument; correct?

A: It's possible.

Q: Okay. And you proceeded to make findings of fact based on the initial pleadings, hotly contested factual legal issues and oral argument; is that correct?

A: Correct.

Q: Was that a proper discharge of your judicial duties?

A: Absolutely.

Tr., May 13, 2016, Pg. 211.

Judge Burton acknowledged citing himself as a fact witness in his opinions supporting the confiscation orders:

Q: Page 12, starting on the first line of Page 12, "In the Court's opinion of August 10, 2009, and according to the reconciliation letter from CMG to the Institute dated May 13, 2009, it

was believed that in excess of $20,000.00 had been received between 2007, and the present by the Institute and Ms. Steele without the knowledge of either co-fiduciaries or the heirs in contravention of the settlement agreement." Do you see that?

A: I do.

Q: Who are you talking about having a belief in that sentence?

A: I don't know.

Q: You said it was believed, and I know you can't identify who you're telling us has a belief, I'm asking could it have been you? Could you have been talking about yourself here?

A: I suppose it could have been me.

Tr., June 6, 2016, Pgs. 192-93.

Q: Last paragraph, "Lastly, even if arbitration were warranted in this case, Steele and the Institute are estopped under the equitable doctrine of unclean hands from obtaining the relief they seek because it is believed, based upon a letter addressed to the Institute from CMG dated May 13, 2009, that the real reason Attorney Cohen may have tried to block an accounting from CMG is that Steele and the Institute have received funds from CMG unbeknownst to the interested parties." Do you see that?

A: I do.

Q: From looking at this paragraph, can you tell the Panel who you are referring to as the person or party having the belief?

A: No.

Q: Did you receive testimony from any person concerning what they believed?

A: I don't recall.

Tr., June 6, 2016, Pg. 128-29.

Q: Turn to page 31. About four lines down on page 31, "Cohen was acutely aware of the presence of his confidentiality agreement and the fact that a news reporter was present when he acted." Do you see that?

A: I do.

Q: How did you know that I knew that a news reporter was present during oral argument?

A: I may have gotten this from pleadings or I may have gotten this from any arguments that were offered. Every single petition that came before me involved this matter, there's been a hearing on it, there have been opportunities to make arguments.

Q: But pleadings aren't evidence, right?

A: ***The Court is in a position to make a decision about whether or not information should be relied upon by the Court, even if there hadn't been testimony offered by witnesses.***

Tr., June 6, 2016, Pgs. 139-40.

Q: How did you as the trial judge know that's what the word "compensation" meant in the Settlement Agreement?

A: It is a general interpretation of the Settlement Agreement – excuse me, of the word "compensation." ***I mean, I didn't go to a dictionary and look up the word. It is just my understanding of what they meant by compensation was all things that were related to value that would come into the estate.***

Q: You did not go to a dictionary to look up the meaning of the term "compensation"?

A: No.

Q: Okay. And you did not – and you understood that Steele and the Institute were taking an opposite interpretation of the word "compensation" than was taken by the fiduciaries?

A: Correct.

Q: And ultimately, you sided with the fiduciaries, correct?

A: Yes.

Tr., May 16, 2016, Pgs. 119-21.

Q: How did you know that CMG was the main scrivener of the settlement agreement?

A: I actually saw them, as I told you before, they were sitting at my administrative

> assistant's desk, I think it's Mr. Pollack or, I forget the other gentleman's name, and they were actually writing and typing or actually they were typing at the end and a bunch of people were standing around, a bunch of lawyers. There must have been ten or twelve lawyers there.
>
> Tr., June 6, 2016, Pgs. 126-27.

Judge Burton acknowledged having no record evidence on the critical question of whether any person actually heard the phantom disclosure that comprised the alleged breach of confidentiality:

> Q: Okay. So you would agree that a disclosure requires a discloser, such as a person stating the disclosure, and a disclosee, someone receiving the disclosure, correct?
>
> A: Yes.
>
> Q: Okay. So your opinion found that I was the discloser, that I disclosed something from the Settlement Agreement, correct?
>
> A: Correct.
>
> Q: Who was the disclosee?
>
> A: The reporter in the – in the courtroom at the time that you were offering arguments before the Court of Appeals.
>
> Q: What is the reporter's name?
>
> A: I have no idea. That's based on the information that was included in the pleadings.

Q: So the fiduciaries asserted that there was a court reporter present in the courtroom when I spoke, right?

A: Yes.

Q: And my clients asserted that she was not there, correct?

A: Correct.

Q: Okay. So we have a conflict of the evidence, and we have them in pleadings. How did you resolve the conflict?

A: I reviewed all of the filings and accepted the arguments and made a decision.

Q: And that decision was that the court reporter was present in the room?

A: I made a determination that there was a breach of the forfeiture clause of the Settlement Agreement.

Q: But I am talking about who received that disclosure. Did you conclude that the court reporter was in the courtroom and heard the statements?

A: I concluded that the allegations in the brief that was offered by the co-fiduciaries was – I believed it, I accepted it.

Q: All right. Did the court reporter testify whether he or she was present at the time?

A: Not that I am aware of.

Q: Why not?

A: I don't know.

Q: Did the court reporter testify that he or she was present and actually heard the alleged disclosure?

A: Not that I know of.

Q: As the judge in the case, did you have an obligation to determine whether the court reporter was, in fact, in the courtroom when the statements were made by myself and that the court reporter actually heard the statements?

A: I had an obligation to make a determination based on the pleadings and based on their arguments that were offered. And if there was any testimony offered, to include that testimony in making a decision on the matter.

Q: All right. Were my clients due an opportunity, either by motion or trial, to counter the allegation that there was a news reporter in the courtroom at that time?

A: I thought you did with your objections that you filed or response to the pleadings.

Q: Right. But were my clients entitled to introduce evidence that she was not present?

A: I made a determination that I had sufficient information to make a decision about the matter pending before the Court.

Q: Okay. And that information solely comprised of the allegations in the initial pleading that the court – that the newspaper reporter was there?

A: And the arguments that were offered and the possibility that there were witnesses in the courtroom.

Tr., May 16, 2016, Pgs. 90-94.

Judge Burton testified that jury trials, guaranteed by Michigan's Constitution and explicitly demanded by Petitioners in their pleadings, are conducted only by his leave:

Q: Had my clients agreed to the petition for *Cy Pres* or had they objected with multiple objections?

A: They did object.

Q: So the facts were hotly disputed by my clients, right?

A: Yes.

Q: So the legal arguments were hotly disputed by my clients, right?

A: Yes.

Q: My clients demanded a jury trial; correct?

A: Yes.

Q: Didn't get a jury trial?

A: No.

Tr., May 13, 2016, Pgs. 210-11.

Judge Burton admitted that he has a long-standing practice of resolving hotly contested

factual issues purely by fiat, and without motion, evidence, hearing or trial:

> Q: Other than this instance have you ever issued a final ruling and judgment including findings of facts and conclusions of law merely on pleadings and oral arguments?
>
> A: In terms of this case?
>
> Q: No, in any case.
>
> A: I make decisions every day, Mr. Cohen, on matters that involve petitions that are filed, they come before the Court. We have a hearing on the matter. People have an opportunity to offer testimony and they have an opportunity to provide pleadings and then I make a decision every single day.
>
> Q: And you do this in cases where the issues or the factual issues are hotly contested by the parties?
>
> A: Yes.
>
> Q: You resolve that contest?
>
> A: Receive the information and make a decision.
>
> Q: ***And you've done this hundreds of times?***
>
> A: ***Thousands.***
>
> Tr., May 13, 2016, Pgs. 212-13.

Petitioners undertook multiple appeals of Judge Burton's confiscation rulings, at substantial effort and

expense. While these appeals were pending, Judge Burton used the powers of his office to oppress and intimidate Steele and Cohen, repeatedly hauling them into court to account for and turn over the Institute's pre-confiscation Publicity Rights revenues that were simply no business of the probate court. During these contrived proceedings, Judge Burton issued multiple show cause orders and menacing verbal remarks, threatening Steele and Cohen on over a dozen occasions with contempt of court sanctions and ***imprisonment*** for purely imagined transgressions as minor as using the wrong court forms to report these revenues: "Failure to use the State Court Administrative Office forms will again explicitly subject Elaine Steele and Steven G. Cohen to contempt sanctions."; "In fact, we'll ask the sheriff's deputy to come down and make sure that we can enforce that ruling."; "They better plead the Fifth."; "Plan to bring a toothbrush."

The Michigan Court of Appeals, for reasons that are entirely unclear, rubber-stamped Judge Burton's rulings. The Court confirmed its indifference to the conflict, and to the damage inflicted on the law of Michigan by Judge Burton's corrupt practices, with severable remarkable holdings, including that Chase and Jefferson had standing to assert breach of the 2007 settlement even though they had not signed the agreement, but that Chase and Jefferson were not bound by any of the obligations of the settlement (including the arbitration clause) because they had not signed the agreement. On December 29, 2011, the Michigan Supreme Court reversed Judge Burton on the broadest

grounds possible, emphatically holding that no breach of confidentiality had been committed by Petitioners or their counsel. App. 163. The Court ordered Judge Burton to vacate his confiscation orders, immediately remove Chase and Jefferson from their fiduciary offices and reinstate Steele and Shakoor as fiduciaries.

Two weeks later, on January 13, 2012, Judge Burton sent an *ex parte*, three-page letter to the Court seeking reconsideration of the Court's discharge of Chase and Jefferson. App. 157. The letter falsely asserts that it was responding to a query from the Supreme Court, recites a litany of false, invented and defamatory allegations against Mrs. Steele, unfairly tars her with filing "over 100 pleadings" in a fit of "buyer's remorse" over the 2007 settlement and asserts misconduct by Steele and Cohen in the filing of the unnecessary Publicity Rights "accountings." Not only was Judge Burton advocating a motion for reconsideration in favor of his cronies, he was supplying his own (false) testimony in support of the motion. ***In Docket No. 18-822, Judge Burton freely admitted acting as an express advocate for Chase and Jefferson in connection with his "motion":***

> Q: So shifting gears here for a minute, we know that the Supreme Court reversed your finding of breach of confidentiality, correct?
>
> A: Yes.
>
> Q: Then you wrote a letter to the Supreme Court and that's Exhibit CCC, triple C. Do you have that? It should be in front of you.

> Q: In this letter it's true that ***you are advocating for not removing Mr. Chase and Mr. Jefferson, right?***
>
> A: ***I am advocating not to reinstate your client.*** In fact, I had no problem at all with Judge Shakoor being reinstated, but he agreed to get back on, which is a good thing but he had previously grown weary of this and withdrew back in 2006, as the personal representative.
>
> Tr., June 6, 2016, Pg. 199.

A few days later, Chase and Jefferson filed their own motion for reconsideration of the Supreme Court's reversal order.

On January 27, 2012, the Court denied Chase and Jefferson's motion, curtly dismissed Judge Burton's reconsideration request (finding it nonresponsive to the Court's December ruling) and repeated its instruction to immediately remove Chase and Jefferson. App. 153.

Ironically, Chase and Jefferson had attached the entire confidential 2007 settlement agreement as an exhibit to their motion for reconsideration without first obtaining an order keeping the agreement under seal as Petitioners had always done. Their untimely motion to seal was denied by the Court in a separate order issued on January 27, 2012. App. 151. On February 5, 2012, the Detroit Free Press obtained the unsealed settlement agreement from the court file and published it on their web site. App. 145.

When this disclosure came to light, Judge Burton unsealed the entire 2007 settlement agreement on his own motion, in an obvious attempt to immunize Chase and Jefferson's improper disclosure (the order attempts to conceal this unseemly action by claiming it was prompted by Petitioners' motion, but Petitioners had only requested the unsealing of probate court ***orders and opinions*** that were improperly sealed in violation of the Michigan Court Rules). App. 143. ***Thus, while Judge Burton issued a virtual death sentence against Steele and the Institute for a phantom disclosure of an unidentified portion of the settlement agreement to unidentified persons, he treated an actual disclosure of the entire settlement agreement by Chase and Jefferson to the public at large as an occasion to unseal the settlement on its own motion.***

On remand from the Supreme Court, Judge Burton slow-walked the removal of Chase and Jefferson, eventually dismissing them later in 2012 after awarding them tens of thousands of dollars in additional "administrative" fees. In all, Chase and Jefferson were awarded over $418,000.00 in fees, well in excess of the gross value of the estate. As they had bankrupted the estate in calendar year 2008, a large portion of these fees, including substantial amounts incurred in the corrupt confiscation actions, were directly assessed against Petitioners, another risible action executed by Judge Burton in excess of his jurisdiction.

Although the Institute's ownership interests in the Publicity Rights and Artifacts were

eventually restored, Judge Burton left Chase and Jefferson in actual control of the Artifacts for another two and one-half years due to their subsisting appointment (by Judge Burton) as the third and controlling member of the Marketing Committee established in paragraph five of the 2007 settlement. App. 178. During this period, Chase and Jefferson prosecuted a new round of non-meritorious and oppressive litigation against Petitioners, seeking more unearned compensation and the ***imprisonment*** of their counsel for, in essence, having prosecuted the successful Supreme Court appeal. In June of 2014, Petitioners were able to pry the Artifacts loose from the cronies and escape their intimidation only by "bribing" them with an additional $200,000.00 payment.

The estate remains open to the present date, with additional travesties regularly visited upon Petitioners by Judge Burton, including his misconduct in the coat dispute, as discussed below.

2. THE COAT DISPUTE

As referenced above, the 2007 settlement established the Marketable Property collection, comprised almost entirely of the Institute's Artifacts. In paragraph 5a of the settlement, Respondents represented and promised as follows: "The Heirs claim to possess the coat worn by Rosa Parks on the date of her arrest on the bus (the 'Coat'), and the Heirs acknowledge and agree that the Coat shall be included in Marketable Property." App. 178.

For over a year, however, the Respondents refused to produce the coat or divulge its location. On August 27, 2008, Defendant Susan McCauley testified by affidavit that she had not had possession of the coat for almost twenty years and that "It was, and remains, my belief that I donated the coat to the Martin Luther King Center, but I cannot state with certainty that I did so." App. 172.

The wool coat is inextricably linked to Mrs. Parks and the civil rights struggle. She is wearing the coat in multiple, famous photos of the time, and is invariably depicted wearing the coat in public statuary, including a bronze currently residing in Statuary Hall of our nation's Capitol Building. It is inconceivable that McCauley or any other family member would lose track of such a valuable and historical family heirloom.

The Respondents persisted, however, in their refusal to deliver the coat, in obvious breach of the 2007 settlement. Under paragraph 14 of the settlement all controversies were to be resolved by binding arbitration (but tendered to the probate court for informal resolution prior to invoking arbitration). App. 182. On April 21, 2009, Petitioners attempted to comply with these requirements by filing a motion in the probate court to compel arbitration of the Respondents' breach of contract and fraud. App. 166.

In retrospect, Petitioners believe it was error to do so, at least in part. While the Petitioners were contractually required to tender the controversy to the probate court prior to arbitration, the court did not have

jurisdiction to ***compel*** arbitration of the controversy because none of the property involved – the Institute's Artifacts and the coat – was part of Mrs. Parks' estate and none of the Marketable Property proceeds were payable to the estate.

The probate court denied the motion as part of its August 10, 2009 confiscation order as follows:

> **IT IS HEREBY ORDERED THAT** the Rosa & Raymond Parks Institute and Elaine Steele's Motion to Compel Arbitration is DENIED for the reasons and grounds stated in the Court's Opinion of this date. App. 106.

Petitioners did not file an appeal of the arbitration denial, in part because they were prepared to move forward with litigating the dispute in a court of proper jurisdiction.

Unfortunately, Judge Burton did not stop at simple denial of the motion. He proceeded to enter further orders that were not requested or contemplated by Petitioners' simple motion:

> As to the Heirs' failure to locate and deliver the coat worn by Mrs. Parks during her arrest on the bus, this Court finds the proper remedy for this apparent breach of ¶ 5 of the Settlement Agreement is not arbitration. Attorney Cohen is entitled to his reasonable costs and attorney fees associated specifically with the Institute and Steele's efforts to retrieve this coat from the Heirs as promised. In this regard, Attorney Cohen may submit such a

> request for approval of such fees within fourteen (14) days of the date of this opinion. App. 106.

This bizarre ruling was an improper advisory order, well beyond the scope of the Petitioners' motion and clearly in excess of the probate court's jurisdiction. Petitioners did not file the invited request for attorney fees, in part because they intended to file an action for ***damages*** in a court of proper jurisdiction.

Inexplicably, Judge Burton issued a further ruling on the coat controversy as part of his January 13, 2010 confiscation order, even though there were no proceedings concerning the coat pending at that time. This was another improper (and incoherent) advisory ruling:

> Upon its filing, a hearing will be set by the Court to reconcile the Account and determine the amount of any setoffs, including but not limited to any setoffs owed to Steele and the Institute for the Heirs' failure to turn over Mrs. Park's (sic) Coat according to the Settlement Agreement. App. 103.

The probate court did not conduct the indicated hearing. It should be noted that entry of incoherent advisory orders is a standard practice of Judge Burton, who invariably interprets these orders at a later time to have whatever meaning he wishes to ascribe to them. In fact, as discussed below, Judge Burton would later hold that the 2009 and 2010 orders somehow comprised a ***final ruling on the substantive merits of the coat controversy against Petitioners, barring further litigation of the controversy***.

Petitioners did not take any further action in the coat controversy for three years, focusing for much of that time on reversing the confiscation orders. On February 14, 2013, Petitioners filed a civil action against Respondents in Wayne County ***Circuit*** Court (a court of general jurisdiction) asserting ***for the first and only time*** an action against Respondents for their failure to produce the coat. App. 133. The complaint contains claims for breach of contract and fraud (for simplification, the remainder of the present petition will focus on the breach of contract count only). The complaint contains a demand for jury trial and the appropriate fee was paid.

Respondents did not file an answer. Instead, they filed a motion seeking transfer of the action to the probate court. Petitioners filed a brief opposing the transfer, noting that the controversy did not fall under the jurisdiction of the probate court because the coat was never an asset of the estate and the only tangential connection between the controversy and the estate was the (irrelevant) fact that the controversy arose under the 2007 settlement agreement that happened to contain separate provisions that did fall under the jurisdiction of the probate court. The Circuit Court, however, entered an order on July 16, 2013 transferring the action to the probate court, without any supporting opinion or apparent logic. App. 100.

After the transfer, the probate court required Petitioners to re-caption the complaint to reflect the transfer and Petitioners did so on October 1, 2013 (the "Amended Complaint"). The Amended Complaint,

which is substantially identical to the original complaint, also contains a jury trial demand, and another jury fee was paid. Respondents did not file an answer. Instead, they filed a motion on February 26, 2014 seeking dismissal on the grounds of *res judicata* and collateral estoppel, arguing that the 2009 and 2010 advisory orders operated as a final decision on the merits of the coat controversy. Petitioners filed a detailed brief in response to this absurd motion, noting that the 2009 and 2010 orders were clearly non-final and did not address the substantive merits of the coat controversy.

For no particular reason, the summary disposition motion was not decided for over two years. During this period, in May of 2014, philanthropist Howard Buffett expressed interest in purchasing the Marketable Property collection for $4,500,000.00, ***sans* coat**. As referenced above, before the sale could be completed Petitioners had to ransom the collection from Chase and Jefferson.

The sale of Marketable Property was completed on June 27, 2014. Pursuant to the 2007 settlement, the Respondents received their 20% share of the net proceeds, $787,500.00, despite their failure to produce the coat. Mr. Buffett subsequently donated the collection to the Library of Congress, which is preparing, with the considerable assistance of Steele and the Institute, an exhibition of the collection slated to open in December of 2019. The iconic coat should have been a part of the sale to Mr. Buffett so that it could be exhibited with the other Artifacts. Failing that, Respondents remained liable for breach of contract damages and/or

disgorgement of the unearned sale proceeds. Accordingly, the parties executed an agreement permitting the continued prosecution of the Amended Complaint.

Almost two years later, on March 22, 2016, Judge Burton dismissed the Amended Complaint in reliance on Respondents' bizarre *res judicata* and collateral estoppel arguments. App. 86. In his accompanying opinion Judge Burton treated his 2009 decision denying Petitioners' procedural motion to compel arbitration as the equivalent of a final resolution of the coat controversy on the substantive merits, which it obviously cannot be:

> Here, Steele and the Institute's 2009 Motion to Compel Arbitration in the Parks Estate proceeding was decided on the merits and a valid final judgment was entered on August 10, 2009. The allegation in the 2009 motion [to compel arbitration], that the heirs' (sic) breached the settlement agreement by failing to locate and deliver the coat, is identical to the claims raised in the 2013 amended complaint. The 2009 action involved the same parties as the current one – Steele, the Institute, and the heirs – and are (sic) based on the same issue, the heir's (sic) failure to deliver the coat. App. 96.

To add insult to injury, the March 22nd dismissal order declared the coat action frivolous and granted Respondents' request for sanctions. In his opinion, Judge Burton doubled down on his transparently distorted *res judicata* reasoning:

> The issue of the coat was addressed by the Court in 2009 and 2010. Specifically, the breach of settlement agreement argument was raised by Steele and the Institute in their Motion to Compel Arbitration filed in 2009 and was rejected by the Court. Steele and the Institute's claims in the Amended Complaint are devoid of arguable legal merit and are frivolous. App. 98.

Again, Judge Burton's legal contortions are transparent. Petitioners only raised "the issue of the coat" in the context of a procedural motion to compel arbitration. They had not asked for a substantive decision on the conflict, Judge Burton did not have jurisdiction to resolve the conflict and neither of his advisory orders purported to resolve the breach of contract controversy on the substantive merits.

The probate court subsequently entered an order on July 26, 2016 assessing sanctions against Petitioners in the amount of $19,456.08. App. 84. Had Judge Burton rendered his dismissal decision in a timely fashion, Petitioners would have received the small comfort of being spared almost $20,000.00 in sanctions. Petitioners filed separate, timely appeals of the March 22nd dismissal order and the July 26th sanctions order.

In continuation of Judge Burton's practice of issuing incoherent advisory orders, the March 22nd order contains the following remarkable provision:

> As to the heirs' failure to locate and deliver the coat that Mrs. Parks wore during

> arrest on the bus, Steele and the Institute may file a petition regarding the valuation of the coat and a setoff. . . . App. 87.

This apparent invitation to continue the coat litigation comprised a rather substantial logical flaw in Judge Burton's holding that the matter was completed with finality on the merits back in 2009. It was also irrational; why would Judge Burton reignite the litigation after just dismissing it?

Petitioners filed the invited petition (App. 129) as a defensive measure without having a solid idea what "a petition regarding the valuation of the coat and a setoff" actually was. The petition expressly notes the irregular decisions that caused its filing and Petitioners' belief in the probate court's lack of jurisdiction in the controversy. Petitioners demanded a jury trial and paid the jury fee. Respondents did not file an answer to the petition. Instead, they filed a motion for dismissal, ***asserting that the iconic coat that Susan McCauley might or might not have donated to the MLK Center did not actually exist***:

> The heirs did not produce the coat allegedly worn by Rosa Parks when she was arrested on a Birmingham, Alabama bus on December 1, 1955 because there was a mere innocent mistake and they never had the coat. . . . The heirs are entitled to summary disposition under MCR 2.116(C)(10), no genuine issue of material fact, as ***Petitioners have failed to establish that the coat ever existed, that Rosa Parks actually wore a***

> ***coat at the time of her arrest on December 1, 1955***. Emphasis supplied.

Respondents also filed a motion to strike Petitioners' jury demand. Petitioners filed an opposition to these motions that placed them in the odd position of arguing that the probate court did not have jurisdiction to hear the petition that they had just filed. Petitioners also noted that they were at an extreme disadvantage in opposing the motions on the merits because Judge Burton never defined the elements or nature of the "valuation and setoff" action Petitioners were invited to file. Petitioners respectfully asserted that "it is incumbent on the court to clarify the nature of the proceedings" before ruling on the motions. Such is the torment of litigating a matter in Judge Burton's courtroom, where it is his conscious strategy to slice and dice disfavored legal actions beyond all recognition.

The probate court issued an order on February 28, 2017 which denied the motion for summary disposition but granted the motion to strike the Petitioners' jury demand. App. 64. In his accompanying opinion, Judge Burton again acknowledged that the coat controversy was anything but resolved with finality. He also revealed that his sole purpose for dismissing Petitioners' breach of contract action and resurrecting it as a "valuation and setoff" was to quash Petitioners' right to a jury trial and maintain control over the outcome:

> ***It has already been determined that the heirs failed to produce the coat as agreed***

> ***upon. What remains to be determined is the value of the coat.*** App. 77.
>
> ***[A] determination as to the value of the coat will not result in damages but will be a sanction due to the heirs' failure to locate and deliver the coat. The only issue to be heard and determined by the court, not a jury, at trial is the value of the coat.*** App. 83.

Given the narrow scope of the valuation issue, the parties agreed to conduct the bench trial on written documents only. On March 27, 2017, the Petitioners filed a trial brief (App. 126) which included an 84-page appraisal of the coat (App. 109) performed in accordance with the standards of the International Society of Appraisers (ISA) and the Uniform Standards of Professional Appraisal Practice (USPAP) (App. 124). Due to space limitations, only a partial copy of the appraisal has been reproduced. A substantial amount of the appraisal's content is reproduced in Judge Burton's opinion dated July 6, 2017 (App. 49-60).

The appraisal contains a detailed analysis of the coat's value, comparing it to numerous famous historical/celebrity artifacts such as Jesse Owens' 1936 Olympic gold medal ($1,466,574.00), Mike Eruzione's 1980 "Miracle on Ice" game-worn hockey jersey ($657,250.00), Marilyn Monroe's *The Seven Year Itch* dress ($4,600,000.00), the Cowardly Lion's *Wizard of Oz* costume ($3,077,000.00), and the Montgomery, Alabama bus on which Mrs. Parks was arrested, which now resides at the Henry Ford Museum in Dearborn,

Michigan ($427,919.00). ***The appraisal values the coat at $1,350,000.00.*** App. 125.

On April 10, 2017, the Respondents submitted a trial brief, but did not include their own appraisal of the coat or any other documentary evidence controverting the value assessed in Petitioners' appraisal. Instead, Respondents again argued that the existence of the coat was an "urban legend."

Faced with a lack of record evidence impeaching the Petitioners' appraisal, Judge Burton entered the litigation on behalf of Respondents, performing an *ex parte* Google search which apparently led him to the website of the American Society of Appraisers (ASA), a competitor to the ISA. App. 60-61. Judge Burton also apparently accessed, on an *ex parte* basis, a volume called "Property Assessment Valuation," authored by the International Association of Assessing Offices (IAAO), a membership organization concerned with ***real property tax assessment***. App. 61-62. Judge Burton then proceeded to disparage, in a completely biased and incoherent manner, the Petitioners' appraisal methodology with reference to the alleged approaches used by the ASA/IAAO, without proper citation of these approaches or explanation of their relevance. He held, without any prior notice to Petitioners or opportunity for rebuttal, that their ISA/USPAP-compliant appraisal contained "no basic steps demonstrating the critical four steps" outlined by the IAAO. App. 62. Judge Burton then dismissed the valuation petition in its entirety, holding that Petitioners' uncontroverted evidence failed, under the standards located

by his *ex parte* research, to support a "definitive" value, another (impossible) standard invented by Judge Burton. App. 63.

Petitioners filed a timely appeal of the July 6th order, which was then combined with the previous two appeals. The Michigan Court of Appeals affirmed the probate court in a vague and dismissive March 20, 2018 decision that was entirely bereft of analysis of Judge Burton's bizarre and unprecedented *res judicata* ruling. App. 4. The Michigan Supreme Court then denied leave to appeal in an order dated December 4, 2018. App. 1.

The present petition has been filed to obtain a long overdue remedy for Petitioners and to shine a light on the corrupt practices of Judge Burton, which have had a deleterious effect on the residents of Michigan's largest city for decades.

ARGUMENT

THE ARBITRARY, BIASED AND CORRUPT PROCEEDINGS CONDUCTED BY THE WAYNE COUNTRY PROBATE COURT IN A SIMPLE AND UNCONTESTED BREACH OF CONTRACT ACTION VIOLATED THE DUE PROCESS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

A fundamental requirement of due process is a fair trial before a fair tribunal. *Goldberg v. Kelly*, 397 U.S.

254, 271, 90 S. Ct. 1011, 25 L. Ed. 2d 87 (1970). "The decisionmaker's conclusion . . . must rest solely on the legal rules and evidence introduced at the hearing. To demonstrate compliance with this elementary requirement, the decisionmaker should state the reasons for his determination and cite the evidence he relied on. . . ." *Id.* A trial court violates due process when it acts in an arbitrary and capricious manner (*Wolff v. McDonnell*, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974)); engages in shocking or oppressive behavior (*U.S. v. Salerno*, 481 U.S. 739, 746, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987)); or is motivated by bias or bad faith (*Withrow v. Larkin*, 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975)).

It is an unfortunate fact that Judge Burton is a garden-variety, corrupt public official. He openly declared himself such with his 2009 and 2010 confiscation rulings, his 2012 letter to the Michigan Supreme Court and his consistently oppressive conduct, all undertaken in service of the theft of the Institute's valuable property and the intimidation of Petitioners. His testimony in Docket No. 18-822 demonstrates palpable pride in eschewing the application of pesky substantive laws and basic rules of procedure in his courtroom.

Judge Burton's decisions in the coat controversy were infected at every stage with procedural travesties and arbitrary violations of fundamental laws, consistent with his established practice and leaving no possible doubt of his corruption, bias and violation of due process. His manipulation of the controversy

began with his grossly improper administration of Petitioners' 2009 motion to compel arbitration. Judge Burton had no authority to grant attorney fees, "set-offs" or any other substantive relief in favor of any party on a simple procedural motion. The 2009 and 2010 advisory orders arising from the motion had the intended effect of placing Petitioners into a seven-year legal vortex, created and controlled by Judge Burton.

Petitioners' 2013 breach of contract complaint was properly filed in the court of general jurisdiction. Probate courts in Michigan and elsewhere, by contrast, are courts of strictly limited jurisdiction. MCLA 700.1302 provides Michigan probate courts with *exclusive* jurisdiction over estate administration, construction of wills and trusts and other core matters arising in the management and distribution of estate assets. MCLA 700.1303 gives the probate court *concurrent* jurisdiction with the circuit court in a limited number of litigation matters, including actions ***by or against an estate*** and claims ***against a fiduciary for the return of property***. Neither of these statutes even hints at probate court jurisdiction over a breach of contract action between private parties involving property that was never under estate administration. Despite his clear absence of jurisdiction over a controversy involving a coat that left Mrs. Parks' ownership and possession thirty years before her death, Judge Burton arrogated control over the action for the express purpose of continuing his oppression of Petitioners.

Respondents' motion for dismissal of the Amended Complaint on the theory that the 2009 and

2010 advisory orders had already resolved the coat controversy on the merits was transparently non-meritorious. *Res judicata* bars a second action between the same parties where (1) the first action was decided on the merits in a final decision, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties. *Sewell v. Clean Cut Management, Inc*, 463 Mich. 569, 575, 621 N.W.2d 222 (2001). For the doctrine of collateral estoppel to apply a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment. *Nummer v. Michigan Department of Treasury*, 448 Mich. 534, 542, 533 N.W.2d 250 (1995). The 2009 and 2010 orders clearly did not address the substantive merits of the underlying breach of contract controversy and could not have provided the basis for application of the preclusion doctrines. This was no impediment, however, to Judge Burton, whose transparently distorted *res judicata* analysis, which intentionally blurs the distinction between deciding a procedural motion on its merits with resolving the substantive controversy on the merits, should live in infamy. His issuance of frivolousness sanctions against Petitioners for taking a position consistent with hundreds of years of *res judicata* case law demonstrates his unrestrained aggression in oppressing Petitioners.

Judge Burton's invention of an action, "valuation and setoff," with its contrived remedy of "sanctions," impossible burden of proving a "definitive" value for the coat and absence of jury trial rights was the

natural extension of his seven-year manipulation of the controversy. His unethical, *ex parte* research, performed to expand the trial record for the benefit of the Respondents, is consistent with his long-standing bias against Petitioners and follows the pattern of his earlier advocacy on behalf of Chase and Jefferson. *Valentine v. Malone*, 269 Mich. 619, 630, 257 N.W. 900 (1934) ("We know of no rule of law or practice which authorizes a trial judge, after a cause has been submitted to him for determination to search, of his own motion and without the consent of the parties, for extrinsic testimony and circumstances, and apply what he may learn in this way to corroborate the testimony upon one side or to cast discredit on the testimony of the adverse party. . . . It is elementary that the court must base its decree upon testimony given in open court."). The ultimate denial of relief to Petitioners on the elaborately artificial "valuation" petition was never in doubt.

CONCLUSION

Petitioners never received anything approximating a "fair trial by a fair tribunal." At every stage of the coat controversy, Petitioners received the opposite of the due process guaranteed by the U.S. Constitution by a trial judge that was personally and aggressively invested in their failure.

Judge Burton's corrupt actions are not a matter of mere private or local concern. His conduct has inflicted harm on the residents of Detroit for decades and, of

late, paralyzed a substantial swath of the appellate judiciary of the State of Michigan. The irony of Judge Burton's backhanded administration of Mrs. Parks' estate and related matters is inescapable, as there is little difference in the gross abuse of constitutional, ethical and moral dictates that occurred in Montgomery, Alabama on December 1, 1955 and the flagrant disregard of Mrs. Parks' last wishes, theft of property and diminishment of her beneficiaries committed here under the cloak of judicial process. If uncorrected, Judge Burton's re-victimization of Mrs. Parks will serve, at a minimum, as a lasting stain on our system of justice.

For the foregoing reasons, the Court is respectfully requested to vacate Judge Burton's dismissal and sanctions orders and remand the coat controversy to the Wayne County Circuit Court, from which it originated, to be heard under Petitioners' original 2013 complaint.

Respectfully submitted,

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