

No. _____

In the Supreme Court of the United States

LISA FISHER,

Petitioner,

—v—

BESSIE HUCKABEE, KAY PASSAILAGUE SLADE,
and SANDRA BYRD; South Carolina Case No. 2018-000566,
Respondents.

LISA FISHER,

Petitioner,

—v—

BESSIE HUCKABEE, KAY PASSAILAGUE SLADE,
and SANDRA BYRD; South Carolina Case No. 2017-000743,
Respondents.

On Petition for Writ of Certiorari to the
Supreme Court of South Carolina

PETITION FOR WRIT OF CERTIORARI

LISA FISHER, ESQ.
PETITIONER PRO SE
P.O. Box 91112
LONG BEACH, CA 90809-1112
(562) 965-3267
LFISHER6736@YAHOO.COM

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(888) 958-5705



BOSTON, MASSACHUSETTS

QUESTIONS PRESENTED

Petitioner Lisa Fisher's involvement in this case was for the sole purpose of assisting her great aunt, Alice Shaw-Baker. Alice Shaw-Baker was a woman dedicated to her community, church, and animal welfare. However, Petitioner's effort to protect her great aunt led from a conservatorship to help her with her daily living to litigation, both as representative and attorney, where both Alice Shaw-Baker's and Petitioner's constitutional rights were and continue to be violated. As set forth in these questions presented, the issues raised are at the forefront of the public debate regarding Elder Abuse and demonstrate how the fight against Elder Abuse may put individual fiduciaries in peril of sanctions both formal and in the loss of compensation:

1. Did petitioner, in her capacity as conservator, have Standing to assert the Due Process rights of the decedent when she had knowledge that an underlying will was revoked and/or the will required Reformation to ensure that her desires to benefit Animal Charities was preserved?
2. Did petitioner receive the process due her under the Fifth Amendment to the federal constitution where she was subjected to unfair and biased proceedings where the court was engaged in ex parte communications with respondents, subjected to "independent investigation" by the judge of purported facts without judicial notice or being allowed to object or rebut said evidence, threatened with contempt proceedings and sanctions in the amount of \$100.00 per day, deprived of notice of a "secret meeting" by the trial judge with the respondents, subjected to

exorbitant sanctions causing her to lose her local counsel, referred to the South Carolina Disciplinary Commission 6 days after filing of the application for filing this petition, subjected to unnoticed Complaint to the Bar referencing investigation into purported wrongdoing in California due to petitioner's wins/losses in the California Appellate Courts, and ultimately sanctioned by the South Carolina Supreme Court which claimed that she "has certainly engaged in abusive litigation tactics that amount to sanctionable conduct" without any further description?

3. Did the refusal to grant petitioner any mandatory reasonable compensation amount to a Takings under the Fifth Amendment, amount to an unlawful sanction, and deprive petitioner of Equal protection as it treated her differently than all other professionals assigned in the Conservatorship proceeding?

LIST OF PARTIES

Petitioner

- Lisa Fisher

Respondents

- Bessie Huckabee
- Kay Passailague Slade
- Sandra Byrd (deceased)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Lisa Fisher (“Petitioner”) respectfully petitions for a writ of certiorari to review the judgments of the South Carolina Supreme Court.



OPINIONS BELOW

Petitioner filed for extensions in two cases, Case nos. 18A10461 and 18A10452 in this Court’s docket. These two South Carolina Supreme Court rulings may be combined into a single Petition for Writ of Certiorari since they involved closely related questions to the same court. *See* U.S. Sup. Ct. R. 12.4.

It appears that the alleged wrongs are more appropriately considered in one petition. The issue involving takings and unnoticed sanctions occurred in the South Carolina Supreme Court, as the underlying

¹ The South Carolina Supreme Court case no. is 2018-000566. This case found petitioner did not have standing to pursue equitable causes of action for her great aunt, Alice Shaw-Baker, and the South Carolina Supreme Court reduced the lower court’s sanctions award under Rule 11 from the original amount of \$483,568.81 (which was modified twice by the lower court) to \$16,680.28.

² The South Carolina Supreme Court case no. is 2017-000743 (“related case”). This case involved the *sua sponte* reversal of an order of remand to determine conservator fees. This amounts to an unnoticed sanction and unlawful taking. This wrong occurred in the South Carolina Supreme Court.

Court of Appeal decision had remanded the case back to the lower court. No other party appealed or sought review of the order of remand, and the South Carolina Supreme Court *sua sponte* reversed the decision with no notice or opportunity to be heard.

Therefore, Petitioner files only one petition for judicial economy and clarity, under the principles of consolidation in *Jones v. Rath Packing Co.*, 430 U.S. 519, 524, n. 7 (1977); *United States v. Swank*, 451 U.S. 51 (1981); *Consolidated Rail Corp. v. Gottschall*, 512 U.S. 532, 540-41 (1994) and *Rodriguez v. Compass Shipping Co.*, 451 U.S. 596, 598 (1981).

The per curium memorandum opinion of the South Carolina Supreme Court as modified, Opinion no. 2018-MO-039 and dated January 16, 2019 and is reproduced at Petitioner's Appendix ("Pet. App.") at 6a. Petitioner's petition for rehearing was granted and the South Carolina clarified the partial affirmation was only based on Rule 11. (*See also* Pet.App.12a)

In the related case, Memorandum of Opinion 2017-00743, the South Carolina Supreme Court issued its unpublished opinion and is related in that the South Carolina Supreme Court altered the order of remand, which was not before it. Petitioner contends that such action amounted to an unnoticed sanction and a taking under South Carolina.

The relevant orders of the state trial courts are unpublished and are reproduced at Pet.App.3a-5a for case no. 2018-000566. The original probate court orders considered by the Supreme Court are numbered Pet.App.74a-96a.



JURISDICTION

The South Carolina Supreme Court issued its modified opinion on January 16, 2019 in South Carolina Case no. 2018-000566 after grant of rehearing. (Pet.App.6a)

The South Carolina issued its opinion on December 12, 2018 in South Carolina Case no. 2017-000743. On January 16, 2019, rehearing was denied. (Pet. App.48a, 50a)

On April 11, 2019, 2016, Chief Justice Roberts extended the time for filing a petition for a writ of certiorari to and including June 15, 2019. Although these were 2 separate applications, after review of the facts and law, filing one petition was appropriate to consider the magnitude of harm suffered by petitioner.

This Court has jurisdiction under 28 U.S.C. § 1257(a).



RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. Amend. V:

No person shall . . . be deprived of life, liberty, or property, without due process of law . . . The Fifth Amendment to the U.S. Constitution provides, “nor shall private property be taken for public use, without just compensation.”

U.S. Const. amend. XIV, § 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.

The relevant statutory provisions of South Carolina law are reproduced at Pet.App.97a.



INTRODUCTION

There can be no doubt that the issues surrounding Elder Abuse are of national importance. Discussions about the far reaching problem are included in the media, scholarly studies, and through judicial review.

Recently, Congress implemented the Elder Abuse Prevention and Prosecution Act in 2017 to allow the federal government to combat elder abuse and financial exploitation. An indicator of Financial Elder Abuse can include: “coercing or deceiving an older person into signing any document.”³

³ Hafemeister TL, *Financial Abuse of the Elderly in Domestic Setting*. National Research Council (US) Panel to Review Risk and Prevalence of Elder Abuse and Neglect; Bonnie RJ, Wallace RB, editors. *Elder Mistreatment: Abuse, Neglect, and Exploitation*

While these issues are of great public import, sometimes, the personal stories behind the Elder Abuse are lost—as the individual story is forgotten.

Here, the individual story is that of Alice Shaw-Baker, a woman, who not only served in our military, but was devoted to her church, community, and animal welfare. Instead of being lauded for her charitable nature and loving spirit, her case turned into a vendetta against her great niece, conservator, Petitioner herein. Laws that are seemingly accepted best practices and considered the ethical norm were ignored, because petitioner, now without counsel, could be sanctioned and could be subjected to a takings of her compensation without any notice or ability to respond. The Highest Court in South Carolina *sua sponte* reversed their Court of Appeals' decision to remand to consider compensation for petitioner, who was the only person in the statutory scheme enacted who was denied compensation. This done, without any explanation.

The individual story of Alice Shaw-Baker is one of a woman entitled to make her disposition of her property, however without the grant of Standing to petitioner, the voice of this single woman was silenced.

As this petition sets forth, the per curiam orders allowed the South Carolina Supreme Court to avoid proper inquiries into 1) the misconduct of the lower court, 2) the animus of the lower court toward petitioner, and 3) the unwillingness to consider extensions

of the law in the modern view of estate litigation, trust standing and equitable relief.

Petitioner was in effect made to participate in the fraud against her great aunt—as she was silenced from seeking redress to ensure that Alice Shaw-Baker’s estate benefitted Animal Charities. Instead, the court order required her to participate in handing over property to those who were not entitled to receive it—either by Alice Shaw-Baker’s revocation in January, 2009 or by the changing nature of law governing charitable trusts and reformation of estate planning documents.



STATEMENT OF THE CASE

A. The Purpose for the Litigation, Alice Shaw-Baker’s Devotion to Animals

Petitioner Lisa Fisher (“Petitioner”) is an attorney in California. In 2008, her great aunt Alice Shaw-Baker (“Alice”)⁴ was being involuntarily conservated. Petitioner and her family was not given notice of the pending hearing. Petitioner traveled to Charleston South Carolina to help and ultimately consent to appointment as her guardian and conservator. She was at all times represented by local counsel, John Hughes Cooper, Esquire.

Prior to trial on the conservatorship, the probate court appointed Jane Orenstein, a stranger, to act as

⁴ Use of Ms. Shaw-Baker’s first name is for convenience, as Petitioner would never disrespect her in these proceedings.

co-guardian over Alice, over her objections pending the trial on the conservatorship. Alice nominated and wanted petitioner to act solely on her behalf. Jane Orenstein attempted to have Alice placed on anti-psychotics. Petitioner intervened to ensure that Alice was living happily and without unnecessary medication.

Petitioner worked diligently to help Alice. She assisted in fixing her house up, obtaining caregivers, and helping her great aunt Alice Shaw-Baker from being institutionalized. She did all things to help make her happy and stay in her home.

The probate court found that Alice could consent to the conservatorship, could vote, could remain in her home, and ordered an examination by a psychologist. The conservatorship was supposed to be limited. However, at the conclusion of the hearing on the conservatorship, the probate judge imposed a condition that Alice could not change her will. None of the petitions or documents set forth that this power invading her right to dispose of her estate assets was being sought. (Pet.App.80a)

Alice had a home, savings, personal property, and life insurance policy and deferred compensation.

Although happy that petitioner was helping her, Alice was upset that her friends refused to help her. Alice had informed petitioner, her mother, and others that her monies were going to animal charities. Respondents Bessie Huckabee and Kay Passailague Slade (“Slade”) told Alice that Slade owned a “dog rescue.”

Upon learning that Respondent Slade did not own a dog rescue, on January 1, 2009, Alice revoked a

copy of her will in her possession. She was under the belief that the monies were for animal rescue, and when she found out, she took action to tear up the will.

Less than two months later, Alice died on February 25, 2009. Petitioner had flown out to pick her up (by medical ambulance) to bring her to California to try and get her some additional medical help on the very day of her death. Petitioner and her family were devastated.

B. The Proceedings in This Case—the Will Contest and Equitable Relief Sought to Benefit Alice Shaw-Baker’s Testamentary Capacity

Shortly thereafter, Respondent Bessie Huckabee (“Huckabee”) filed an informal petition for probate without notice to Alice’s niece Betty Fisher (and mother of petitioner).

Betty Fisher and petitioner objected to and filed a formal will contest on April 27, 2009. Among other things, the will contest sought revocation of the will and declaratory relief. This began a long and difficult lawsuit.

Petitioner reviewed the law and believed that she had to protect that property and deliver it to the proper person, as she had a fiduciary duty to protect the property under the law. While South Carolina did not follow the principal of *cy pres*, it did have law supporting constructive trusts, equitable deviation, and reformation. These concepts supported Petitioner’s belief that modern concepts of third party standing were proper.

In the will contest litigation, the lower court issued a restraining order precluding the use of her monies by Respondent without issuance of a bond. Respondent Huckabee refused to get the bond and it was never filed.

Later, the probate court made *sua sponte* orders freezing Alice's assets. Petitioner continued to pay the upkeep of the property, including taxes and maintenance pending resolution of the filed appeals. Respondents continued to allow Petitioner to pay all expenses on Alice Shaw-Baker's property and took no action to gain control of the property, merely allowing the appeals to go forward.

After the filing of the will contest, Petitioner sought appointment as *pro hac vice* in both the will contest and the appeals. Local counsel signed all pleadings, except for affidavits. At all times, Petitioner believed that the legal claims set forth were warranted under existing law or that there was a good faith and reasonable argument existing for the extension, modification, or reversal of, delay, existing law. Moreover, the pleadings were not filed to harass or injure any party, to delay, or properly adjudicate the case.

Still, the case has been fraught with what petitioner believes is legal error. There was a pending Petition for Writ of Certiorari in the related case which dealt with the constitutional and statutory errors with the appointment of a Special Fiduciary, freezing orders related to the bank accounts, and failure of the probate court to grant petitioners' fees. During this appeal, the Court of Appeal came down with its decision remanding the issue of fees to the lower court. Petitioner did not seek any change to

this order, but filed the Petition for Writ of Certiorari asserting her standing to protect the assets. Still no effort was made to release the property by Respondents, instead they waited for the court's decision on appeals.

Respondents brought Motions for Summary Judgment based on standing. Said motions were denied.

C. Trial and Beyond—the Beginning of Sanctions

The will contest was bifurcated. The jury trial proceeded, with instructions essentially forbidding the consideration of the revocation of the will. The judge presiding further precluded evidence of Alice's intent to benefit of animal charities.

The second trial was on the equitable matters. However, the trial was less about the issues related to animal charities than an investigation into petitioner. Prior to trial, the Court indicated that it had reviewed the entire conservatorship file, the probate file, demanded Lisa Fisher's accounting in the conservatorship case, demanded all discovery that had been conducted in the case, and in the middle of Petitioner's case, the trial court ordered disclosure of Petitioner's finances and that of their attorney.

Petitioner objected to his independent investigation, his consideration of documents without judicial notice to the parties, and to the disclosure of her finances. The court admitted that there was no legal authority for the grant of these documents in the middle of trial. The court threatened petitioner and her mother with contempt proceedings.

After the trials were over, the lower court continued to sanction petitioner. Respondents filed post- trial

motions seeking attorney fees from petitioner, Betty Fisher, and Attorney John Hughes Cooper, however they did not seek these fees under Rule 11. Petitioner filed objections to the motion. When the circuit court did grant the fees, they were not based on the motion. The subsequent orders certainly demonstrate disfavor for Petitioner, but they never explain the wrongful conduct.

On April 3, 2018, the court also sanctioned Petitioner during a “secret meeting” conducted without notice to petitioner and which Respondents’ counsel attended. At that time, he went so far as to enjoining petitioner from filing any motions, and ordering that all motions be filed in the Supreme Court. (Pet.App. 28a) Petitioner later learned about this meeting and about the ex parte phone calls between the court and Respondent’s counsel.

On July 9, 2018, the court found them in contempt, ordered petitioner (and her mother) confined in the Charleston County Detention center, and ordered them to pay \$100.00 per day, although he stayed said order on appeal. (Pet.App.18a)

Petitioner formerly objected to the trial court’s independent investigation of the case. At the conclusion of trial, the court issued its order dated March 21, 2018. Sanctions against petitioner were imposed based on Appendices created presumably by the circuit court’s staff, however the information was in a different format and valuation was unclear. Despite the fact that the issue of Petitioner’s fees were not before the court, Judge Hughston denied all conservator fees to Lisa Fisher.

The circuit court Judge also referred petitioner to the Office of Disciplinary Counsel. A preliminary investigation was opened but no formal charges were made. Petitioner just learned that on September 27, 2018, the circuit court judge sent another letter to disciplinary counsel without notice to petitioner. This correspondence included reference to “six cases reported from California involving Lisa Fisher that I think again support the conclusion that she has a pattern of frivolous suits.” (Pet.App.107a) These unpublished cases demonstrated that petitioner won at least two of the cases, and this effort discloses further animus toward petitioner, as it is unclear how losing an appeal, or even several appeals, is evidence of any unethical conduct which mandates discipline.

In the related case involving appointment of a special fiduciary, orders freezing assets, and orders relating to petitioner’s reasonable compensation as conservator, case no. 743, the South Carolina Court of Appeals reversed the issue relating to the grant of petitioner’s fees remanding for consideration these fees on December 21, 2016. (Pet.App.48a) Although the matter was submitted via petition for writ of certiorari to the Supreme Court on the related matters, the issue of petitioner’s fees was not subject to further review. Respondents did not seek review of the order of remand.

D. South Carolina Supreme Court Rulings—Formal and Informal Sanctioning Implicating the Constitution

On or about December 12, 2018, the Supreme Court of the State of South Carolina issued its Per Curium opinion, entitled Memorandum Opinion No.

2018-M0-039. The decision affirmed the jury verdict making no comment on the lack of authority to deprive Alice Shaw-Baker of her right to revoke.

The decision also found that Petitioner had no standing to assert the imposition of a constructive trust, stating that Petitioner’s “argument in support of standing borders on frivolity.” (Pet.App.6a)

Turning to the imposition of sanctions upon petitioner, the Supreme Court affirmed in part and reversed in part the trial court’s award of sanctions against petitioner, stating that she

certainly engaged in abusive litigation tactics that amount imposed on her, we find the trial court’s orders contain addition and subtraction errors, double-counting of certain portion of the award, a lack of evidence as to other portions of the award, and a number of other errors, mathematical and otherwise. Nonetheless, we are able to affirm a sanctions award of \$16,680.28 against Lisa Fisher, but only to that extent. We have endeavored to further reconcile the various numbers cited in the sanctions orders, yet despite our best efforts, are unable to do so. Accordingly, we reverse the balance of the sanctions award, including the award of attorneys’ fees to Respondents’ counsel.

(Pet.App.10a)

The Supreme Court further explained the errors by the lower court in its footnote:

We recognize the trial court drafted the orders, which Respondents’ counsel lamented

at oral argument. The errors in terms of the sanctions award are numerous. For example although this is by no means the exclusive error, in the 2018 orders dated June 29, July 9, July 23, the trial court stated it was crediting Lisa Fisher with \$11,462.85 in proper expenditures of estate assets for certain categories of expenses, including paying the property taxes and insurance on Shaw-Baker's real property in the years following her death. However, the trial court did not actually credit her with that, or any, amount from the remaining total of improper estate expenditures it listed.

In the wake of this decision, Petitioner Fisher petitioned the court for a rehearing of the claims. She argued that the procedure employed by the Court was a violation of Due Process and failed to take into account the modern view of standing and the need to help preserve the goal of charitable trusts. Respondent also filed a petition for rehearing requesting the court increase the sanctions order.

On January 16, 2019, the Supreme Court granted petitioner's Petition for Rehearing granting a Substitute Opinion. Respondent's Petition for Rehearing was denied. The only change in the opinion was clarification that the authority was based on Rule 11.

At the same time, in the related case, the Supreme Court issued its per curium memorandum opinion finding the issues in the petition moot, due to the court's decision in the underlying will contest. (2018-000566) However, the court *sua sponte* reversed the court of appeals decision as to remand to deter-

mine reasonable compensation. The Supreme Court “affirming the lower courts’ determination that Lisa Fisher is not entitled to any additional conservator fees.” Petitioner contends this further demonstrates the error, as she received no conservator fees while all other professions were paid from Alice Shaw-Baker’s monies.

Petitioner’s prior counsel, and local counsel on her behalf as pro hac vice, also was relieved of liability for sanctions by the Supreme Court. (Pet. App.105a) In its per curium memorandum opinion, the Supreme Court found:

We have painstakingly reviewed the record and find there is no evidence to support an award of sanctions or a finding of misconduct against Cooper.

So petitioner was the only person sanctioned in this case, and as set forth herein, she contends judgment must be vacated on the sanction award as it does not meet the constitutional mandates and procedures.

Petitioner has now petitioned this Court for a writ of certiorari to seek redress and consideration of the legal authority. This is an excellent vehicle to overturn both the sanctions award and provide third party standing to ensure that the life works of Alice Shaw-Baker.

The United States Supreme Court granted its extension order on or about April 11, 2019, making this petition timely.

Six days after the grant of this extension, the South Carolina Supreme Court Office of Discipline filed formal charges against Petitioner.



REASONS THE COURT SHOULD GRANT THIS PETITION

I. THE PRINCIPLES OF THIRD PARTY STANDING AUTHORIZED PETITIONER TO SEEK REDRESS FOR THE DUE PROCESS VIOLATIONS PRECLUDING THE REVO- CATION OF THE WILL AND TO SEEK TO REFORM ANY WILL NOT IN CONFORMITY WITH BENEFITTING ANIMAL CHARITIES

South Carolina's law is clear that a conservatee still is deemed to have capacity to execute a will, thus she also had the right to revoke a will.⁵ The circuit court judge refused to allow any testimony related to this right, despite the fact that Alice Shaw-Baker was never informed that she would lose her right to revoke her will.⁶

Alice had every reason to revoke a will, when she discovered that the beneficiaries had no intent on

⁵ South Carolina provides that a person under a conservatorship is not incompetent to make a will. (*See In re Estate of Weeks*, 329 S.C. 251 (1997), 495 S.E.2d 454.) Therefore, she was also competent to revoke a will. The circuit court's instruction undermined the jury's decision and led the astray as to the law on the matter.

⁶ Federal decisions addressing void state court judgments include *Kalb v. Feuerstein* (1940) 308 U.S. 433, 60 S.Ct 343, 84 L.Ed 370; *Ex parte Rowland* (1882) 104 U.S. 604, 26 L.Ed. 861.

assisting her and that the main beneficiary did not have an animal rescue. Petitioner contends and the evidence demonstrates that her intentions regarding her property were for the benefit of animal charities. Therefore, Petitioner relied on South Carolina's law that she was duty bound to deliver the funds to the proper person. South Carolina Code § 62-5-425(d) and § 62-7-707(a).⁷

Ordinarily, a party "must assert his own legal rights" and "cannot rest his claim to relief on the legal rights . . . of third parties." *Warth v. Seldin*, 422 U.S. 490, 499 (1975). But we recognize an exception where, as here, "the party asserting the right has a close relationship with the person who possesses the right [and] there is a hindrance to the possessor's ability to protect his own interests." *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004) (quoting *Powers v. Ohio*, 499 U.S. 400, 411 (1991)); *See Miller v. Albright*, 523 U.S. 420, 450 (1998) (O'Connor, J., concurring in judgment); *See Hodel v. Irving*, 481 U.S. 704-712, 723,

⁷ This issue has been discussed extensively in 2A Austin W. Scott & William F. Fratcher, 7 The Law of Trusts § 185 at 562-80 (4th ed. 1987):

"Where the holder of the power holds it solely for his own benefit, the trustee can properly comply and is under a duty to comply with his directions, provided that the attempted exercise of the power does not violate the terms of the trust. But where the holder of the power holds it as a fiduciary, the trustee is not justified in complying with his directions if the trustee knows or ought to know that the holder of the power is violating his duty to the beneficiaries as fiduciary in giving the directions."

n. 7 (1987) (children and their guardians may assert Fifth Amendment rights of deceased relatives).

The court in *Singleton v. Wulff*, 428 U.S. 106 (1976) also explained in these third party standing questions. Two distinct issues exists:

First, whether petitioner alleges “injury in fact” that is a sufficiently concrete interest in the outcome of their suit to make it a case or controversy subject to a federal court’s Art. III jurisdiction, and second, whether as a prudential matter, petitioner is the proper proponent of the particular legal rights on which they base their suit. (*cf. Lexmark v. Static Control Components, Inc.*, 572 U.S. 118 (2014) [zone of interests and statutory interpretation of federal claims changes the prudential argument of standing.])

Here, petitioner suffers concrete injury from being forced to deliver property to a person with knowledge of revocation and the intentions of the decedent. Petitioner is forced to participate in a fraud, no different than if she watched a con artist forge a deed and was prevented from informing authorities or the court. She suffers potential liability for not protecting the charitable interest.

There clearly exists between Petitioner and Respondents a case or controversy in the constitutional sense. Moreover, Petitioner’s close relationship with Alice Shaw-Baker, and her role as conservator, touches on her individual rights, and the obstacle to Alice Shaw-Baker’s assertion of her rights is that she is now deceased. Petitioner is the only person who can protect these rights.

The far reaching effect of standing is not limited to federal law and cases. As here, the denial of standing as to petitioner amounts to a Due Process violation. Scholars have also discussed the public policy reasons for allowing third party/special interest standing as essential to protecting the viability of a decedent's wishes.

In the scholarly article by author Edward C. Halbach entitled *Standing to Enforce Trusts: Renewing and Expanding Professor Gaubatz's 1984 Discussion of Settlor Enforcement*, Univ. Of Miami Law Review, Vol. 62:713,

... A recognition of Special Interest Standing reflects society's interest not only in enhancing the enforcement of charitable trusts but also in honoring the reasonable expectations of settlors and the donor public. *See Halbach, See p. 718.*

Petitioner's position throughout the litigation was, and is, that she had standing to object to distributing the conservatorship assets to Respondent Huckabee under the Will. Petitioner had personal knowledge that Alice Shaw-Baker revoked the will once she learned that Respondent Kay Passailaigue Slade did not own an animal charity.

Petitioner was the appointed conservator and personally chosen by Alice. Petitioner had the duty to ensure that the intention of the decedent was honored. South Carolina's conclusion in the Per Curium Memorandum order that Petitioner's "argument in support of standing borders on frivolity" is not supported by accepted legal authority, nor by the modern view regarding third party standing. If not the conservator,

than who will protect these important rights? On a national level, what happens to the single, older woman, living alone, subject to deception, who has no one to voice her loss, when she dies and those, like respondents, come in to gather the spoils?

Petitioner submits that this issue alone warrants consideration by this Court to put an end to the constricting views of Standing, and to really help change the face of Financial Elder Abuse by authorizing petitioner to act on behalf of Alice Shaw-Baker thus reversing the Supreme Court's Per Curium order.

II. CERTIORARI SHOULD BE GRANTED, BECAUSE THE STATE COURT ADJUDICATION VIOLATED FUNDAMENTAL DUE PROCESS AND WAS INADEQUATE TO RELIABLY PROTECT HER RIGHTS

Petitioner was originally sanctioned nearly half a million dollars pursuant to South Carolina Rule 11 and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 to-100.

The Supreme Court thereafter modified the sanction award to \$16,680.28. In making that order, the Court noted that: "The errors in terms of the sanctions award are numerous." (Pet.App.10a, fn. 1.) In the Memorandum Opinion issued after a Petition for Rehearing, the Supreme Court clarified our partial affirmation of the sanctions award rests solely on Lisa Fisher's violations of Rule 11.⁸

⁸ The original motion for sanctions by Respondents did not include any reference to Rule 11. (South Carolina's Rule 11 notes it is substantially similar to the federal rule.) Objections filed with regard to this motion demonstrated errors in calculation and application of the standard. Ultimately, once granted,

In the related case, Petitioner was denied any reasonable compensation for her acts as conservator of her great aunt. While the Memorandum opinion references that she was not entitled any further conservator fees, the reality is that she received no fees or reimbursements whatsoever despite working in excess of 465.85 hours. This order reversed the Court of Appeals order for remand. Respondents did not seek review of this order, and the reversal was *sua sponte* by the South Carolina Supreme Court. Petitioner contends that this deprivation of fees was done without notice or any opportunity to be heard, and therefore amounted to an informal award of sanctions without Due Process.

Petitioner submits that the proceedings in Circuit Court and the Supreme Court by which petitioner was sanctioned deprived her of the process due her under the Fifth and Fourteenth Amendments to the Federal constitution in the following ways: she was subjected to unfair and biased proceedings where the court was engaged in *ex parte* communications with respondents, subjected to “independent investigation” by the judge of purported facts without judicial notice or being allowed to object or rebut said evidence, threatened with contempt proceedings and sanctions in the amount of \$100.00 per day, deprived of notice of a “secret meeting” by the trial judge with the respondents, subjected to exorbitant sanctions causing

the sanctions order is ambiguous whether it is based on Petitioner’s acts as counsel or pro se. (*See Pet.App.105a*, [the order related to local counsel found that the South Carolina Supreme Court had “painstakingly reviewed the record and find there is no evidence to support an award of sanctions or a finding of misconduct against Cooper”]).

her to lose her local counsel, referred to the South Carolina Disciplinary Commission 6 days after filing of the application for filing this petition, subjected to unnoticed Complaint to the Bar referencing investigation into purported wrongdoing in California due to petitioner's wins/losses in the California Appellate Courts, and ultimately sanctioned by the South Carolina Supreme Court which claimed that she "has certainly engaged in abusive litigation tactics that amount to sanctionable conduct" without any further description.

A. Petitioners' Property Interest

Under the Due Process clause, the starting point in defining Petitioner's property interest or liberty interest at risk in these proceedings.

The Court has ruled that whether financial or liberty interest, Due Process is required. This loss can fairly be characterized as important; and it depends upon the extent to which the individual will be "condemned to suffer grievous loss." *Morrissey v. Brewer*, 408 U.S. 471, 481(1972) quoting *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring). *Goldberg v. Kelly*, 397 U.S. 254, 262-263 (1970).

The sanction imposed on Petitioner is significant as a sole practitioner, both economically and reputationally, and it constitutes a final, lasting deprivation of property entitling her to the protection of the Due Process clause. *See Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 538; 541 (1885) ("The point is straightforward: the Due Process Clause provides that certain substantive rights—life, liberty, and prop-

erty—cannot be deprived except pursuant to constitutionally adequate procedures") (emphasis added); *see also Los Angeles v. David*, 538 U.S. 715, 717 (2003) (deprivation of money is the deprivation of property for purpose of evaluating Due Process protection).

Petitioner's property interest at stake in the proceedings below is just as clear. She was originally sanctioned \$483,568.81 on March 21, 2018. This was modified by the circuit court to \$249,219.70. (Pet. App.32a, 17a) As were her local counsel and mother.

The circuit court had a secret hearing outside her presence and without notice to her. Additional orders were made at that time on April 3, 2018. (Pet. App.28a)

On July 9, 2018, the circuit court also held her in contempt, fined her \$100.00 per day, stating: "I have never in 33 years held and attorney or party in Contempt of Court." (Pet.App.XX) This order was stayed during the appeal process. Although the South Carolina Supreme Court reduced the sanction, Petitioner still has no explanation as to how she violated Rule 11 in light of the fact that she did not sign pleadings on her own (accept for affidavits) until she was pro se.

Besides these money sanctions, the Supreme Court of South Carolina Office of Disciplinary Counsel filed a formal complaint against her, six days after this Court granted an extension to file this Petition.

These draconian actions have directly implicated her property right to the continued practice of law. In this respect, the monetary sanction goes beyond the

dollar amount and acts “as a symbolic statement about the quality and integrity of an attorney’s work —a statement which may have tangible effect upon the attorney’s career. . . .” *Zimmerman v. Corino*, 27 F.3d 58, 64 (3rd Cir. 1994).

The stigmatic effect of this sanction upon the petitioner’s legal practice directly affects her right to pursue a livelihood, a property right deserving of Due Process protection. *Loudermill*, 470 U.S. at 538. *Barry v. Barchi*, 443 U.S. 55, 69-70 (1979) (Brennan, J., concurring in part). *Board of Regents v. Roth*, 408 U.S. 564, 576-578 (1972).

It is well settled that the Due Process Clause mandates that sanctions “should not be assessed lightly or without fair notice and an opportunity for a hearing on the record.” *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766-767 (1980).

Here, both the lower court and South Carolina Supreme Court imposed sanctions without any disclosure of specific wrong and the ability to respond.

B. Due Process Owed to Petitioner

Once it is determined that the Due Process Clause applies to the proceedings below, “the question remains what process is due.” *Loudermill*, 470 U.S. at 541 quoting *Morrissey v. Brewer*, 408 U.S. at 481.

The seminal case of *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976) explains that the process due in any given instance is determined by weighing “the private interest that will be affected by the official action” against the government’s asserted interest, “including the function involved” and the

burdens the government would face in providing greater safeguards. *Id.* at 335. The analysis turns on “the risk of an erroneous deprivation” of the private interest if the process were reduced and the “probable value, if any, of additional or substitute procedural safeguards.” *Id.* See *Hamdi v. Rumsfeld*, 542 U.S. 507, 528-529 (2004).

Petitioner had a legitimate private interest not to be sanctioned with monetary fines unfairly or to have their livelihood threatened with disciplinary action against the judicial system’s need for efficient administration.

Therefore, the process due her consists of the following elements:

1. Adequate Notice

Petitioner was entitled to notice that was reasonably calculated, under all the circumstances, to apprise her of the precise nature of this proceeding. *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 314 (1950).

The notice was required to be of a kind which would reasonably and fairly convey to them the required information so that they could appear and respond effectively with their objections in whatever form was allowed. *Id. Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 13-14 (1978).

2. A Full Evidentiary Hearing on Contested Fact Issues

The procedures to be employed should be “tailored to the capacities and circumstances of those who are to be heard.” *Goldberg v. Kelly*, 397 U.S. at 268-269.

There were fundamental fact questions to be determined before either the circuit court or the Supreme Court of South Carolina could impose sanctions. Neither court gave any indication of what Petitioner did wrong in any specific terms. Therefore, a hearing on any contested fact questions was required as a matter of Due Process.

Under *Morrissey v. Brewer*, 408 U.S 471, 485-489 (1972), the minimum requirements of Due Process require more procedures prior to final determination. Rather, these fact questions couldn't be resolved by just oral argument or by requiring that the parties submit their respective positions only "on the papers."

Instead, "[i]n almost every setting where important decisions turn on questions of fact, Due Process requires an opportunity to confront and cross examine adverse witnesses." *Goldberg v. Kelly*, 397 U.S. at 269-270 citing *ICC v. Louisville & N. R. Co.*, 227 U.S. 88,93-94 (1913) and *Willner v. Committee on Character and Fitness*, 373 U.S. 96, 103-104 (1963). See *Arnett v. Kennedy*, 416 U.S. at 142-146.

Here, the exorbitant sanction by the circuit court judge, the reversal of the sanction against local counsel, the acknowledged errors in the Supreme Court decision, and the lack of clarity of wrongdoing made this process more important.

3. A Fair and Impartial Tribunal

Due Process requires a neutral and detached judge in the first instance. *Hamdi v. Rumsfeld*, 542 U.S. at 533 quoting *Ward v. Monroeville*, 409 U.S. 57, 61-62 (1972). *Withrow v. Larkin*, 421 U.S. 35, 46-47 (1975). *Arnett v. Kennedy*, 416 U.S. at 197. *Goldberg*

v. Kelly, 397 U.S. at 271. *In re Murchison*, 349 U.S. 133, 136 (1955).

It is well settled that a judge cannot become an advocate or otherwise use his judicial powers to advantage or disadvantage a party unfairly. *Quercia v. United States*, 289 U.S. 466, 470 (1933). Nor “should [he] give vent to personal spleen or respond to a personal grievance.” *Offutt v. United States*, 348 U.S. 11, 14 (1954).

Further, the code of judicial conduct prohibits judges from “investigat[ing] facts in a matter independently” and requires that they “consider only the evidence presented and any facts that may properly be judicially noticed.” The rule was in commentary to Canon 3B(7) of the 1990 American Bar Association Model Code of Judicial Conduct and was moved to the text, in Rule 2.9(c), in the 2007 model code. Also in 2007, a new comment 6 was added clarifying that “the prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

Also, an independent factual inquiry raises questions about a judge’s impartiality as he or she is undertaking to fill gaps in the evidence with information that may benefit one party over another.

Here, Petitioner was not only subjected to unauthorized independent factual investigations, during trial, which impugned on the circuit court’s impartiality. She was further thrown into a situation where the circuit court and respondent’s counsel admitted to a “secret meeting” where orders were issued, and petitioner was not given notice. Respondents’ counsel spoke directly to the circuit court judge. These factors

combined with the troubling referral to the Office of Disciplinary Counsel, wherein the circuit court judge further investigated her record in California to try and bolster allegations of wrongdoing.⁹ As the court in *Tumey v. State of Ohio*, 273 U.S. 510 (1927) made clear that even when there is no evidence of actual bias, any “ . . . procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict . . . ” denies Due Process because the judge’s impartiality is put into question. Although this is not a criminal action, ex parte contacts present a “possible temptation” that might impugn a decisionmaker’s impartiality.

All of these problems at trial coupled with the sanction (both formal and informal) hold petitioner a hostage to the whims of a court with obvious animus toward petitioner. Only this Court can rectify the harm involved to ensure that: “[t]he system assumes that adversarial testing will ultimately advance the public interest in truth and fairness.” *Polk County v.*

⁹ Judge Thomas L. Hughston, Jr. wrote, “I am enclosing copies of six cases reported from California involving Lisa Fisher that I think again support the conclusion that she has a pattern of frivolous suits.” (Pet.App.107a) He had to make an effort to again investigate petitioner, reviewing legal websites to investigate a minuscule amount of cases.

This desire to harm petitioner was not even supported by the cases he found, as at least two of the cases provided to the commission, petitioner “won”.

Every case heard by this court someone is defeated, however that does not mean that these highly respected attorneys are engaged in frivolous suits. As petitioner’s practice deals with the elderly and the disabled, her efforts would be meaningless if she did not stand by them—win or lose.

Dodson, 454 U.S. 312, 318 (1981). The circuit judge's unbending disapproval of Petitioner and her conduct in other cases not before him irredeemably tainted his treatment of her in the proceedings below; predisposed him to deny her a fair hearing of her evidence in opposition to the respondents' motion; and rendered him incapable of believing that she had not brought this civil action unreasonably and vexatiously.

On this record, the circuit court was bound to disqualify himself because his partiality against petitioner might reasonably be questioned.

For all of these reasons, the proceedings below sanctioning the petitioners violated the Due Process guaranteed her by the Fifth and Fourteenth Amendments.

III. THE SOUTH CAROLINA SUPREME COURT'S *SUA SPONTE* ORDER TO DEPRIVE PETITIONER OF REASONABLE COMPENSATION CONSTITUTED AN UNCONSTITUTIONAL TAKING AND DEPRIVED PETITIONER OF THE EQUAL PROTECTION

The Fifth Amendment of the United States Constitution includes the Takings Clause, which states that "private property [shall not] be taken for public use, without just compensation." It is well settled that determining compensation for government takings is "a judicial inquiry" (*See Monongahela Navigation Co. v. United States*, 148 U.S. 312, 327 (1893).)

In *Ex Parte Brown*, 393 S.C. 214, 711 S.E.2d 899 (2011), the South Carolina Supreme Court found "that the Takings Clause of the Fifth Amendment to the United States Constitution is implicated when an attorney is appointed by the court to represent an

indigent litigant. In such circumstances, the attorney's services constitute property entitling the attorney to just compensation."

While petitioner was not acting as an attorney, instead she was acting in her capacity as guardian and conservator, for her great aunt, the effect is the same. Petitioner provided the same services as the original temporary conservators appointed before notice to petitioner. So the temporary guardians and conservators, the court appointed visitors, the doctors, the guardian ad litem, the lawyers—all received compensation pursuant to the statute, S.C. Code § 62-5-414.

The probate court refused Petitioner's fees and refused to take testimony or allow proper argument, however the Court of Appeals remanded the matter to the lower court for determination. Petitioner did not seek any further review on this issue, Respondents did not seek further review, however when the Supreme Court ultimately decided the matter, they *sua sponte* reversed the Court of Appeals' decision and refused to remand. They did so, without any warning, or ability to be heard or respond to any allegations of wrongdoing. This deprived petitioner of compensation for 465.85 hours and reimbursement for costs expended.

As set forth herein, this amounted to a Taking, and was known to be a Taking by the very court that decided *Ex Parte Brown, supra*. The desire to punish Petitioner created a sanction without notice and without an opportunity to be heard. The court in *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) explained that "Private biases may be outside the reach of the law, but the law cannot, directly or indirectly give

them affect.” The South Carolina Supreme Court’s decision denied petitioner’s constitutional rights and gave effect to the bias set forth in the orders challenged herein.

In cases based on race, the Court has held that “constitutional rights may not be denied simply because of hostility to their assertion or exercise.” (See *Watson v. Memphis*, 373 U.S. 526 (1963); cf. *Bowers v. Hardwick*, 478 U.S. 186 (1986).) While this case may not be based on race, the same principles must apply when dealing with Standing, Due Process, and the Takings Clause.

In Justice Story’s legal treatise on the Constitution, he declared the Takings Clause to be “an affirmation of a great doctrine established by the common law for the protection of private property. It is founded in natural equity, and is laid down by jurists as a principle of universal law.” Joseph Story, *Commentaries on the Constitution of the United States*, Due Process, 547-48 (T. Cooley, ed. 1873); see *Chicago, Burlington & Quincy R.R. Co. v. Chicago*, 166 U.S. 226, 236 (1897).

This case is the proper vehicle for this court to consider the effect of a Taking in the context of “just compensation” for fees. Petitioner helped her great aunt, while the Courts ensured those who refused to help her, the purported beneficiaries of her will, received the benefits of her life’s work. On its face, these courts rejected natural equity, and this Court through this writ of certiorari can restore the confidence that fiduciaries who take on the plight of the elderly are entitled to expect.



CONCLUSION

The questions presented herein rely on concrete principles of law. This case provides an excellent approach to afford the elderly and disabled the same protections under the law to protect and distribute their property. It further allows this Court to prevent other courts from chilling effective advocacy for the elderly, by the imposition of improper formal and informal sanctions.

It was required that Petitioner be afforded the protections of Due Process. Her underlying effort to obtain Standing on behalf of her great-aunt was supported by her understanding of the current state of the law and long held principles of third party standing, especially in charitable trust matters. The decision of the South Carolina Supreme Court to deny her “reasonable compensation” when all other professionals providing the same types of services to a disabled adult or senior was both a Taking under the Fifth Amendment and a violation of Equal Protection where the court allowed the Unconstitutional application of animus to support an unlawful, informal sanction.

These principles are not shackled by the circuit court and the Supreme Court’s decision to ignore petitioner’s rights, because the underlying facts should only have put Petitioner in the position of the very deserving Alice Shaw-Baker, a citizen stigmatized by a conservatorship and limited by the unsupported proposition that she could not revoke her will and

petitioner could not take action to ensure her true intent—to have her life works benefit Animal Charities.

It is well settled that the Government may not unnecessarily penalize the exercise of constitutional rights. (*Wilkie v. Robbins*, 551 U.S. 537, 585 (2007), (Ginsberg, dissent). As “The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.” (*Marbury v. Madison*, 5 U.S. 137, 1 Cranch 137, 163, 2 L.3d. 60 (1803)).

For all of these reasons, Petitioner seeks relief from this Court and asks that this petition for a writ of certiorari be granted.

Respectfully submitted,

LISA FISHER, ESQ.

PETITIONER PRO SE

P.O. Box 91112

LONG BEACH, CA 90809-1112

(562) 965-3267

LFISHER6736@YAHOO.COM

MEMBER OF THE SUPREME COURT BAR

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