No. 18-7891

In The

Supreme Court of the United States

LESLIE ANN HAYMOND,

Petitioner,

v.

HELMAND INVESTMENT, LLC,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Virginia

PETITION FOR REHEARING

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Pursuant to Supreme Court Rule 44, petitioner respectfully petitions this Court for rehearing *en banc* of their June 3, 2019, denial of her writ of certiorari. The petitioner, hereby respectfully petitions for rehearing of this case before a full nine-Member Court.

The magnitude of Constitutional violations before this Honorable Court is unprecedented in American jurisprudence and mandates a rehearing: Constitutional challenges related to due process rights cannot be ignored or dismissed to possible fraudulent concealment.[1]

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution provides, in relevant part: "*No person shall be . . . deprived of life, liberty, or property without due process of law. . . .*"[2]

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[1] Whether intentionally or accidentally, the initial law clerks from the "cert pool" that screened Petitioner's request for a Writ of Certiorari, took for granted a *'pro se'*. The ABA Journal may shed some light on why Petitioner was not granted Cert.: "*Some have suggested the law clerks in the cert pool are reluctant to recommend a cert grant because they don't want to appear foolish if a case is later dismissed as improvidently granted. . . .*"

Petitioner believes this may have contributed to the denial of her Writ and why the cert pool failed or feared to summarize a *pro se's* Petition.

[2] U.S. Constitution Amendment V.

The Fourteenth Amendment to the U.S. Constitution provides *"No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . ."*[3]

ARGUMENT
(Demonstrates Significant Public Importance)

The question before us today, is twofold: 1) Did the Virginia State Supreme Court and the Lower Courts in Virginia deprive me of due process of property, by granting a Writ of Possession when they lacked subject matter jurisdiction?

Due process was denied when the district court and circuit court didn't follow the guidelines from the Virginia State Supreme Courts District Benchbook for Judges, which states in Section 24. Foreclosure – Issues Involving Title:

> The Virginia Supreme Court in *Parrish v. Fannie Mae*, 292 Va. 44 (2016) presents a new set of rules for the handling, by General District Court judges, of foreclosure cases. When the defendant prior owner objects to the Unlawful Detainer action on the basis of defect of title of the foreclosing entity, the case makes it clear that the General District Court does not have the authority to determine the validity of the title. It does, however, have the obligation to determine whether there might be a

[3] U.S. Constitution Amendment XIV.

> valid issue, which might require the Circuit Court to make such a determination. If the Court finds that there is a valid issue, the case must be dismissed without prejudice, and the landlord must then proceed with its unlawful detainer in the Circuit Court. The case suggests that the General District Court should evaluate the defendant's title challenge in the same manner as it would evaluate a demurrer to a complaint. . . .[4]

The lack of due process deprived me of my personal property interest, and despite appeals the state deprived me of due process. It clearly identifies that it is a constitutionally inadequate process. *Grayden v. Rhodes,* 345 F.3d 1225, 1232 (11th Cir. 2003). Federal courts look to state law to define the scope of a plaintiff's property interests. *Marine One, Inc. v. Manatee Cty.,* 898 F.2d 1490, 1492 (11th Cir. 1990). Generally, a person enjoys a protected property interest in continued residency under a lease or tenancy arrangement. *E.g., Grayden,* 345 F.3d at 1232 (citing *Greene v. Lindsey,* 456 U.S. 444, 450-51 (1982), and *Ward v. Downtown Dev. Auth.,* 786 F.2d 1526, 1530-31 (11th Cir. 1986)). "As a general rule, an eviction must be preceded by notice and an opportunity to be heard" unless "exigent circumstances" justify a postponement of the hearing.

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[4] District Court Judges' Benchbook, 2018 Edition, ASSOCIATION OF DISTRICT COURT JUDGES OF VIRGINIA with the assistance of The Office of the Executive Secretary Supreme Court of Virginia Richmond, Virginia, pg 122-123, available at: http://www.courts.state.va.us/courts/gd/resources/manuals/districtcourtbencbook.pdf

Id. at 1236. The appeal to the Virginia State Supreme Court should have postponed execution of the Writ of Possession until a decision was made by the higher court.

2) If *stare decisis* means "to stand by things decided,"[5] there should be a sensible way to determine what "things" have in fact been "decided." Gibson states "Adhere to the decisions, and do not unsettle questions put at rest. It is more important for litigants to have the laws known, and fixed. What is fixed is certain, and can be conformed to.[6]

The highest court in Virginia must follow their own precedent under the doctrine of *stare decisis.* A commitment to the doctrine of *stare decisis* should not vary depending on the court. The proper respect for precedent must be the rule at all levels of our judicial system. The Virginia Supreme Court overlooked the precedent they established in *Parrish v. Fannie Mae*, 787 S.E.2d 116 (2016). The District Court of Loudoun County overlooked the guidelines provided by the Virginia Supreme Court District Judge Benchbook that clearly identifies the standard to dismiss a case for lack of subject matter jurisdiction for questions related to property and title. The Circuit Court of Loudoun County furthered the lack of due process by not considering that I had already appealed to the higher court. That a Loudoun County Circuit Judge further

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[5] Black's Law Dictionary 1537 (9th ed. 2009).

[6] *Staten v. State*, 191 Tenn. 157, 232 S.W.2d 18 (1950).

deprived me of due process when he held another hearing after the appeal was submitted, to increase the bond, that I was not privy to.

The petitioner is unaware of any comparable method of adjudication, where courts are free to reject properly-raised arguments without ever meaningfully considering them. Indeed, "[t]he core of due process is the right to . . . a meaningful opportunity to be heard." *LaChance v. Erickson*, 522 U.S. 262, 266 (1998). The Civil Rights Act of 1871, after all, guarantees "a federal forum for claims of unconstitutional treatment at the hands of state officials," and the settled rule is that "exhaustion of state remedies 'is not a prerequisite to an action under [42 U.S.C.] §1983.'" *Heck v. Humphrey*, 512 U.S. 477, 480 (1994) (quoting *Patsy v. Board of Regents of Fla.*, 457 U.S. 496, 501 (1982)).

The petitioner takes great pride in the American legal system, and that it is based on the principle of *stare decisis* and the idea that like cases should be decided alike.[7] *Stare decisis* affects individual litigants that believe in the American Justice system and its ability to be fair and just. To the extent that *stare decisis* binds judges, it inevitably binds litigants as well. Indeed, when viewed from the perspective of an individual litigant, *stare decisis* often functions

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[7] *See* Thomas R. Lee, Stare Decisis in Historical Perspective: From the Founding Era to the Rehnquist Court, 52 V. and L. Rev. 647, 661-62 (1999).

like the doctrine of issue preclusion – it precludes the relitigation of issues decided in earlier cases. This preclusive effect is real, and it can affect an individual litigant dramatically. Courts and commentators, however, generally fail to focus on the way that *stare decisis* precludes individual litigants, much less on the question that occupies most of the discussion in the parallel context of issue preclusion: whether preclusion of litigants, particularly nonparty litigants, offends the Due Process Clause.[8]

Furthermore, "*stare decisis* obligate courts to follow the explicit rules stated by the precedent-setting court in its opinion? *Stare decisis* is at least the everyday working rule of our law."[9] There should be a sensible way to determine what "things" have in fact been "decided."[10]

The topic of *stare decisis* seems to be in the midst of a resurgence, as we grapple with issues such as the precedential impact of the Supreme Court's recent

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[8] Amy C. Barrett, Stare Decisis and Due Process, 74 U. Colo. L. Rev. 1011 (2003). Available at: https://scholarship.law.nd.edu/law_faculty_scholarship/450.

[9] Benjamin N. Cardozo, THE NATURE OF THE JUDICIAL PROCESS, 20 (1921).

[10] Henry P. Monaghan, Taking Supreme Court Opinions Seriously, 39 Md. L. Rev. 1, 3 (1979); see also Michael J. Gerhardt, The Role of Precedent in Constitutional Decision making and Theory, 60 Geo. Wash. L. Rev. 68, 76-77 (1991).

decision upholding the Affordable Care Act,[11] the *stare decisis* effect of interpretive methodology, and more.

REASONS FOR GRANTING THE PETITION

The petition should be granted to hold state judiciary to a higher standard. The Court most commonly grants certiorari because a decision . . . conflicts with . . . a decision of the highest court of a state.[12]

Respectfully submitted this 28th day of June 2019.

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[11] Monaghan, Stare Decisis and Constitutional Adjudication, 88 Colum. L. Rev. 723, 765 n.236 (1988); Precedent in Law (Laurence Goldstein ed., 1987); Michael Abramowicz & Maxwell Stearns, Defining Dicta, 57 Stan. L. Rev. 953 (2005); Larry Alexander, Constrained by Precedent, 63 S. Cal. L. Rev. 1, 3 (1989); Michael C. Dorf, Dicta and Article III, 142 U. Pa. L. Rev. 1997 (1994).

[12] J.R. Siegel, Federal Courts Cases and Materials. New York, NY: Wolters Kluwer (2019).

CERTIFICATE OF GOOD FAITH

Pursuant to Rule 44.2, I certify that the Petition is restricted to the grounds specified in the Rule with substantial grounds not previously presented. I certify that this Petition is presented in good faith and not for delay.

LESLIE ANN HAYMOND