No. _____

In the Supreme Court of the United States

PAMELA B. STUART,

Petitioner,

v.

CATHERINE S. RYAN and
DEBORAH A. STUART,

Respondents.

On Petition for a Writ of Certiorari To The Fourth District Court of Appeals of the State of Florida

PETITION FOR A WRIT OF CERTIORARI

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July 9, 2018

QUESTIONS PRESENTED

1. Whether the Takings Clause applies to the decisions of state courts, and, if so, under what circumstances may this Court review and remedy state judicial takings claims.

2. What remedies are available to a private property owner whose established property rights under state law are extinguished by a state court by a decision that is contrary to established property law in that state?

3. Whether the judicial decisions of the Florida state trial and appellate courts that contravened Petitioner's established property rights under Florida law in her permanent residence in Florida (a homestead protected from forced sale by the Florida Constitution), her one-third interest in her father's homestead which she acquired by inheritance, and a one-third interest in the personal property belonging to her deceased parents under the property laws and Constitution of the State of Florida constituted judicial takings in violation of the Takings Clause and the Due Process Clause of the Fifth Amendment to the U.S. Constitution as applied to the States by the Fourteenth Amendment thus entitling her to just compensation by the State of Florida?

4. Whether state judicial decisions that invalidated the domiciliary status and voting rights of Petitioner, a permanent resident of the State of Florida, contrary to established Florida and federal law violated Petitioner's Constitutionally protected right to travel and to move from state to state guaranteed by the Fourteenth Amendment and her Constitutional right to due process and equal protection of the laws?

5. Whether state judicial decisions that imposed equitable liens upon residences in which Petitioner had a constitutional right of protection against forced sale under Article X, section 4 of the Florida Constitution in contravention of Petitioner's clearly established property rights under Florida's Constitution and statutes and in violation of precedents of the United States and Florida Supreme Courts constituted a judicial taking of those established property rights under the Fifth and Fourteenth Amendments that entitle Petitioner to just compensation by the State of Florida or are they merely void?

PARTIES TO THE PROCEEDING

Petitioner *pro se,* the defendant and appellant below, is Pamela B. Stuart, who is domiciled in and a permanent resident of the State of Florida and is also a resident of the District of Columbia. She is an attorney by profession.

Respondent Catherine S. Ryan, M.D. and Deborah A. Stuart, the plaintiffs and appellees below, are residents of New Jersey and Washington State, respectively, and are the sisters of the Petitioner.

Attorney General Pam Bondi of the State of Florida is being served with a copy of this Petition because, even though the State of Florida is not a party to this proceeding, the interests of the State of Florida are implicated by Petitioner's claim that Florida judges, acting as agents of the State of Florida, violated the Takings Clause and Due Process Clause of the Fifth Amendment as applied to the States by the Fourteenth Amendment which would entitle Petitioner to just compensation.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner *pro se,* a member of the bars in New York and Virginia and a former Assistant United States Attorney, respectfully petitions this Court for a writ of certiorari to review the judgment of the Fourth District Court of Appeals of Florida affirming the Final Order on Distribution of the assets of her father's trust by the Circuit Court of Indian River County, Florida. The rulings of those courts effected a complete loss of Petitioner's established property rights in her permanent home that she bought in 2000 and her interest in her father's homestead and her deceased parents' personal property and various rights she had to trustee fees and reimbursement of expenses and constituted judicial takings in violation of the Takings Clause and Due Process Clause of the Fifth Amendment as applied to the States by the Fourteenth Amendment. After Florida's Fourth District Court of Appeals ("4th DCA") declined to rehear the case, the Supreme Court of Florida denied a petition for a writ of certiorari on April 9, 2018. Since each parcel of real estate is unique and the Florida tort claims act limits the liability the state will assume, "just compensation" from the State is not a remedy and the lower courts orders must be reversed.

In *Stop the Beach Renourishment v. Florida Department of Environmental Protection,* 560 U.S. 702 (2010), Justice Scalia, writing for a four-Justice

plurality of this Court, held that "[i]f a legislature *or a court* declares that what was once an established right of private property no longer exists, it has taken that property, no less than if the State had physically appropriated it or destroyed its value by regulation." (emphasis in the original). The Takings Clause of the Fifth Amendment requires just compensation as the remedy for takings by the government. *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles,* 482 U.S. 304, 314-15 (1987).

Six Justices in *Stop the Beach* agreed that there are constitutional limits to the judicial elimination of established property rights, but did not determine whether the Takings Clause, the Due Process Clause or both were the source of the limitations. The Court's decision left open practical questions such as how, where, when or even if a property owner may raise a judicial takings claim and what remedies are available when established property rights are eliminated by judicial action. Justice Kennedy was amenable to the judicial takings doctrine but observed that it posed "difficult questions" about "how a party should properly raise a judicial takings claim" and "what remedy a reviewing court could enter after finding a judicial taking." *Stop the Beach,* 560 at 740.

Petitioner's case involving loss of a home she has owned and cherished for 18 years due to judicial action presents an opportunity to address the

question that divided this Court in 2010: whether and under what circumstances a state court decision constitutes a judicial taking, and if so, what remedies are available. By clarifying the law on judicial takings, the Court would provide litigants and the lower courts with much needed guidance.

OPINIONS AND ORDERS BELOW

1. Order of the Florida Supreme Court denying Petitioner's petition for a writ of certiorari dated April 9, 2018.

2. Order of the Fourth District Court of Appeals denying Petitioner's motion for rehearing and suggestion for rehearing *en banc* dated January 24, 2018.

3, Opinion of the Fourth District Court of Appeals of the State of Florida dated November 29, 2017.

4. Final Order on Distribution of the Circuit Court for Indian River County, Florida dated October 21, 2016.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). On April 9, 2018, the Supreme Court of Florida declined to exercise certiorari

jurisdiction over the November 29, 2017 decision of the Fourth District Court of Appeals of the State of Florida that affirmed the October 21, 2016 order of the Circuit Court for Indian River County, Florida that divested Petitioner of her established property rights in her permanent residence in Florida (and her right to vote in Florida), her one-third interest in her deceased father's homestead, and her one-third interest in her parents' personal property contrary to established Florida property law. These rulings were in violation of the Takings Clause and the Due Process Clause of the Fifth Amendment as applied to the states by the Fourteenth Amendment and in violation of the Constitutionally guaranteed right to travel and move from one state to another as one of the privileges and immunities of citizens under the Fourteenth Amendment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution:

Amendment I to the U. S. Constitution

Amendment V to the U. S. Constitution

Amendment XIV to the U.S. Constitution

Federal Statutes

12 U. S. C. § 1715z-20

28 U. S. C. § 1257(b)

52 U.S.C. § 20501 et seq.

Constitution of the State of Florida

Article X, Section 4:

SECTION 4. Homestead; exemptions

Florida Statutes

§§ 90.702, 95.011, 95,11, 97.041, 196.012, 196.015, 196.031, 222.01, 222.17, 718.104(7), 732.401(1), 736.0708, 736.0709, 736.0816(6) and (19), 736.1001, 736.1009, 768.28, Florida Statutes.

Florida Rules

Florida Rule of Civil Procedure 1.120(g)

STATEMENT OF THE CASE

Petitioner purchased real property located at 111 John's Island Drive #7, Vero Beach, Florida 32963 with her own funds and a mortgage on January 27, 2000. Petitioner determined she needed to spend more time in Florida taking care of her elderly mother 's affairs and administering her father's trust. Along with the house, Petitioner purchased furniture and a membership in a private

social club that was required to live in her community. Petitioner intended her Vero Beach home to be her permanent residence, but retained her residence in Washington, D.C. where she had worked for the government and had a law office. Petitioner has resided in the Vero Beach property since January 2000 as well as in Washington, D.C.

In September 2004, after determining that she met the requirements to vote in Florida, § 97.041, Florida Statutes. Petitioner registered with the Supervisor of Elections and has voted regularly in Florida ever since. She established a law office in Vero Beach in 2006,[1] joined a local church, purchased a burial plot next to that of her deceased father in the town cemetery open only to town residents, joined civic organizations in Vero Beach, contributed to the local art museum and theater, and volunteered for philanthropic and voter protection causes.

Petitioner's Vero Beach property meets the size and contiguity requirements of Art. X, § 4, Florida Constitution, which provides protection against forced sale under process of any court to satisfy creditors debts. Protection of homesteads against forced sale to satisfy debts to creditors has

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[1] Petitioner sat for and passed the Florida Bar exam and became a member of the Florida Bar in 1994.

been the established law and public policy in the State of Florida since its first Constitution was adopted in 1868.

Almost fourteen years after Petitioner's purchase of her Florida home, Respondents, the sisters of Petitioner, brought an action in the local Circuit Court seeking to remove Petitioner as trustee of their father's trust, to recover funds Petitioner had borrowed from the Trust, an accounting, return of trustee fees and a constructive trust. Petitioner's father established the J. Raymond Stuart Irrevocable Trust (the "Trust") in 1990 and named Petitioner, the eldest daughter, as co-trustee and executor of his will. Her mother, Marion Stuart, did the same.

Respondents' complaint failed to allege any "special damages" as required by Florida Rule of Civil Procedure 1.120(g). Under established Florida law, absent a specific plea of special damages in the complaint, no lien or judgment could be placed against Petitioner's property interests such as her Vero Beach residence, the one-third interest she inherited in her father's homestead in Vero Beach, or her one-third interest in the personal property of her parents governed by their wills.[2]

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[2] **Florida Rule of Civil Procedure 1.120(g) – Special Damage.** When items of special damage are claimed, they shall be specifically stated.

Petitioner acknowledged she failed to provide annual accountings for the Trust after 2002 when she became overwhelmed with responsibilities for the care of her elderly mother, the clients of her solo law practice, ongoing litigation on behalf of clients, and management of an LLC that owned a failed real estate investment. She reasoned that Respondents received or had access to the monthly brokerage statements of the Trust accounts showing all income and withdrawals,[3] knew that her mother employed nurses beginning in 2006 until she died in 2012 at a cost of over $10,000 per month, and were aware of Petitioner's frequent trips between Washington and Vero Beach to care for their mother, her parents' residences, and for trust administration. Petitioner also acknowledged borrowing from the Trust against her right to inherit and to get trustee fees and expense reimbursements as permitted by the Trust and Florida statutes. §§736.0708, 736.0709, and 736.0816(6) and (19). Petitioner claimed she relied upon the Trust document for guidance in administration and was not liable for any breach. § 736.1009, Florida Statutes.

From 1998 to 2001, Petitioner administered

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[3] A federal court in Florida declared under similar circumstances that the claimants' claims were barred due to their receipt of monthly brokerage statements. *Figel v Wells Fargo, N.A.*, case no. 10-cv-60737 Cohn/Selzer (S.D.Fl. 2011).

her father's Trust with the assistance of a co-trustee and outside counsel. She withdrew money for trustee fees and trustee expense reimbursements in accordance with Florida law in consultation with the co-trustee and counsel.[4] When the first co-trustee resigned for health reasons in April 2000, Petitioner appointed Edward Ryan, her sister's husband, as successor trustee, because others she asked refused to serve.

In 2001, Petitioner agreed to a $150,000 second mortgage on her Vero Beach home to raise funds for The Stuart Building L.LC, a limited liability company she established to purchase a commercial townhouse in Washington D.C. that Petitioner intended to use as an office and for rental income. Petitioner's plans were blocked due to zoning and building code requirements. Petitioner concluded that she could not pay the carrying costs for the J. Raymond Stuart Building on her earnings as a solo lawyer.

After consulting with her family and Edward Ryan, Pamela Stuart began taking loans from the Trust in 2001 as permitted by its terms. Petitioner's right to receive an inheritance, trustee

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[4] The successor trustee characterized the trustee fees and reimbursements paid during those years as loans to Petitioner and added them erroneously into the inflated loan amount.

fees and trustee expense reimbursements served as collateral and she memorialized that in a promissory note in 2009 which was made retroactive to 2001.

In 2006, Pamela Stuart refinanced the mortgages on her Vero Beach home to raise money for legal fees for The Stuart Building LLC for its fraud case against the seller of the D.C. commercial townhouse named after her father. The Stuart Building LLC repaid the refinanced mortgage on Petitioner's Vero Beach home in December 2009 when the J. Raymond Stuart Building was sold. So, no Trust funds were used to acquire her residence in Vero Beach. Respondents were advised of this plan in advance and did not object. Following the sale of the J. Raymond Stuart Building, Petitioner repaid $705,000 of the loans she had taken from the Trust.

Petitioner did not anticipate borrowing from the Trust again but between 2009 and 2013, she underwent ten surgeries to alleviate medical problems and had to spend more time in Vero Beach taking care of her mother whose health was declining and supervising her nurses. Pursuant to the terms of the Trust and the Florida law, Petitioner resumed borrowing against her inheritance due to her lost income.

After her sisters sued her, on advice of counsel, Pamela Stuart resigned as trustee and agreed to an order entered March 4, 2014 requiring

her to forward trust records and not to encumber her homes in Vero Beach and Washington, D.C. The order appointed a successor trustee who had worked previously with Respondents' counsel and acted throughout as if she were working for Respondents.

After timely turning over Trust records, Pamela Stuart began compiling the trustee expenses she paid over sixteen years for which she was owed reimbursement under Florida law, § 736.0709, Florida Statutes. In September 2015, Respondent filed a motion to approve inaccurate and incomplete accountings prepared by the successor trustee, but neglected to attach the accounting for 1998 to 2014. Petitioner opposed the motion. On November 23, 2015, *based solely on the allegations of Respondents' complaint, the motion, and argument of counsel,* Judge Cynthia Cox approved the accounting (which the plaintiffs did not file and the judge had not read) after a 36 minute *non-adversary* hearing. Without taking any evidence, the judge essentially granted Respondents a default judgment. The court criticized Petitioner, the time she spent caring for a dying friend rather than compiling expense records, and said she would report Petitioner to the Florida Bar.[5] The court

[5] Edward Ryan filed a complaint with the Florida Bar that had been dismissed but when Judge Cox filed her order, Petitioner negotiated a

ordered a hearing to "give the defendant an opportunity to present her entitlement to a setoff or credits for trustee fees or services rendered," pre-judged an award of attorneys' fees to Respondents, and refused to consider the defense of laches under §§ 95.011, 95.11, Florida Statutes (Respondents had notice of their claims since 2003 or 2007). The court ordered Pamela Stuart to produce her claims for expenses and fees and substantiating documents by January 22, 2016 which she did. The original receipts for trustee expenses went to Respondents' counsel and by email to the successor trustee.[6]

Judge Cox ordered a hearing to "determine the precise sum to be allocated to each beneficiary, the amount of loan and interest payable by the Defendant together with attorneys' fees and costs and the corresponding sale or transfer of [Pamela Stuart's] properties to the trust," and ordered that

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one year suspension based upon her failures to account and excessive borrowing. With no income, she could not pay her condo fees and assessments and her condo association filed a lien on her Vero Beach home.

[6] Summaries of the expenses were received in evidence in summary form pursuant to § 90.956, Fla. Statutes, but were never reviewed by the successor trustee, credited to Petitioner in the accounting or by the court.

the trust was to have an equitable lien upon her residences in Florida and Washington D.C. despite the lack of any evidence justifying such a lien and the Florida court's lack of jurisdiction over the D.C. residence. *DeMello v. Buckman,* 916 So.2d 882, 890 (Fla. 2005). Judge Cox said the laches issue would an affirmative defense at the evidentiary hearing.

Judge Paul Kanarek took over and ordered a hearing but his notice of hearing did not mention Petitioner's homestead, her interest in her father's homestead or personal property of her parents. Despite objections from Petitioner, Judge Kanarek treated Judge Cox's order approving the accounting after a non-evidentiary hearing as the "law of the case" contrary to established Florida law which applies "law of the case" treatment only to appellate orders. *Florida Dept. of Transportation v. Juliano,* 801 So.2d 101, 106 (Fla. 2001)(law of the case doctrine is "limited to rulings on questions of law actually presented and considered on a former appeal.") He incorporated Judge Cox's order approving the accounting into his final order, and ignored its errors amounting to over $500,000. The court made rulings unsupported by competent substantial evidence (the successor trustee, who resolved all issues in favor of Respondents, was never qualified as an expert, never looked at Petitioner's trustee expenses, testified falsely about a mortgage held by the Trust in order to apply a 6% interest rate to Petitioner's loans, and gave her own opinions as to how the case should be resolved in

favor of Respondents in violation of § 90.702, Florida Statutes). The judge denied Petitioner's laches challenge (twice) contrary to established Florida law. *Corya v. Sanders,* 155 So.3d 1279 (Fla. 4th DCA 2015). In effect, Petitioner was denied her right to access to the courts.

Based upon the court's notice, Petitioner thought the hearing was to determine Petitioner's claims for trustee fees and expense reimbursements, not the homestead status of Petitioner's residence, her domiciliary status or her right to vote. Much to Petitioner's surprise, the court's ruling found that Pamela Stuart was not entitled to vote in Florida[7] and was not a permanent resident of Florida[8] – issues not raised in the complaint. The court ordered an equitable lien in favor of Respondents placed on Petitioner's Vero Beach home, her interest in her father's homestead which she inherited when he died, and her interest in her parents' personal property which was never part of the Trust assets. The court's findings did not comport with established Florida property law and this Court's precedents, including *Dunn v. Blumstein,* 405 U.S. 330 (1972).

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[7] Unauthorized voting is a felony in Florida. § 104.011, Florida Statutes.

[8] *See* § 196.012(16) and (17), Florida Statutes.

In support of its finding that Pamela Stuart's permanent residence was in Washington, D.C, the court cited the federally guaranteed reverse mortgage on her D.C. home which required her to reside there at least 183 days annually,[9] the time Petitioner spent on her trustee duties in Vero Beach from 1998 to 2014, her home and law office in Washington, DC, her address of record with the Florida Bar (a fact not in evidence), her use of the DC address on tax returns (which was true until 2005), her use of a DC driver's license as identification for her Declaration of Domicile. The court discounted Petitioner's membership in the Florida Bar since 1994, her service on the Executive Council of the Florida Bar's Real Property, Probate and Trust Law Section for ten years, her Florida homestead tax exemption, evidence of her Florida driver's license and title for her car, that she had voted in Florida since 2004, that she had a law office in Vero Beach since 2006, that she satisfied almost all of the criteria established in § 196.015, Florida Statutes for evidencing domicile, and her filing of a Notice of Homestead and Declaration of Domicile under oath with the Circuit Court

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[9] This type of mortgage is available only to elderly homeowners for what the regulations define as a "principal residence" – a home occupied by the homeowner for the majority of the time annually. 12 U.S.C. § 1715-20, 24 C.F.R, § 206.3.

pursuant to §§ 222.01(1) and 222.17, Florida Statutes.

The court's ruling made many factual errors. It said falsely that Petitioner said she intended to make her residence in Florida her home in the future, but her home was in Washington, D.C. In reality, the evidentiary record of what Petitioner said was, "It is my domicile. It's been my domicile for quite some time, and I've been coming here to Vero Beach since 1987 [the year her parents moved there] with the intent of remaining." Petitioner testified that she bought a burial plot next to her father in 2007 in the town cemetery open only to residents. "I don't know how you get more homesteading than that," she testified.

It also falsely stated that Petitioner wanted the Trust to pay appraisal costs for her art work, mortgaged her home in DC in the amount of $938,250 effectively shielding her DC home from potential creditors on the same day she authored a Plan of Trust Administration, filed for a homestead exemption and Declaration of Domicile for her Vero Beach home in an attempt to shield it from creditors rather than confirming the existing state of the home, that Petitioner netted $1.95 million from the sale of the J. Raymond Stuart Building, that she made secret loans after setting up Trust accounts with Charles Schwab, that Petitioner was involved in establishing a mortgage on Deborah Stuart's home, and used her DC address on federal tax

returns beyond 2005.

The court ordered an equitable lien imposed on Pamela Stuart's one-third interest in her father's homestead in favor of Respondents contrary to § 732.401(1) that provides that a homestead descends at death to the owner's descendants with a life estate in his surviving spouse. The court ordered her parents' personal property which was never part of the Trust to be divided solely by her two sisters. These equitable liens were ordered by the court based upon its findings that Petitioner engaged in "reprehensible conduct." This finding was in violation of the standards established by this Court in *State Farm v. Campbell,* 538 U.S. 408, 419 (2003) cited by the Florida Supreme Court in *Schoeff v. R. J. Reynolds Tobacco Co., Inc.*, 232 So.3d 294, 306 (Fla. 2017) for a finding of "reprehensibility" which require a component of physical harm for a finding of "reprehensible conduct."

Without assessing the factors required by the applicable Florida precedents, *West Coast Hospital Ass'n v. Florida National Bank of Jacksonville,* 100 So.2d 807 (Fla. 1958) and *Rauschenberg Foundation v. Grutman,* 198 So.3d 685, 686-87 (Fla. 2d DCA 2016), the trial court denied Petitioner credit for trustee fees earned for sixteen years of service as well as credit for over $325,000 Pamela Stuart paid for expenses as trustee. Established Florida property law, § 736.0709, Florida Statutes, requires

reimbursement of trustee expenses reasonably incurred and imposes a lien against trust assets to secure reimbursement. § 736.0708, Florida Statutes, provides for the payment of trustee fees, but a court may reduce or deny trustee fees in cases of a breach of trust. § 736.1001(2)(h), Florida Statutes.

On appeal of the October 21, 2016 Final Order on Distribution, the Fourth District Court of Appeal of the State of Florida ("4th DCA") found in *Stuart v. Ryan,* 232 So.3d 418 (Fla. 4th DCA 2017) that the trial court determined that Petitioner's Florida home *was* protected homestead when it had not and that Petitioner testified that she "intended" to make her permanent residence in Florida "in the future" when she had not so testified. It found that

> Her current permanent residence is in Washington, D.C., and she executed a reversible [sic] mortgage on that property as recently as 2013. Notably she was seeking to have the court determine two separate pieces of property in Florida as her homestead. (slip opinion at 3).

The 4th DCA did not distinguish, as the Florida Constitution clearly does in Article X, § 4 between homesteads acquired by purchase and homesteads acquired by inheritance. The 4th DCA agreed that the Florida Constitution's protection against forced sale of a homestead would apply if Petitioner were

domiciled in Florida. It concluded, despite her seventeen years as a resident and long-time Florida bar membership and lack of evidence that she abandoned that status, that she Petitioner was not a permanent resident of Florida and not entitled to homestead protection for her residence or her father's homestead. The 4th DCA announced a new rule of law that a Florida resident with a reverse mortgage on an unrelated property cannot be a permanent resident of Florida. The 4th DCA upheld the trial court's ruling against Petitioner's other challenges including the failure to afford her access to the courts and due process (Petitioner's motion for discovery was denied), failure to apply laches, and legal error in finding "reprehensible" conduct based upon breaches of trustee duties. . On January 28, 2018, the 4th DCA denied a motion for rehearing. The Florida Supreme Court denied certiorari on April 9, 2018.

Meanwhile, in the lien foreclosure case filed on behalf of Petitioner's condominium association, the court ignored the failure of the condo association's Board of Directors to authorize the suit as required under the Declaration of Condominium which Florida law treats as a covenant running with the land.§ 718.104(7), Florida Statutes. Judge Kanarek ordered a hearing on dispositive motions less than a month after Petitioner became a party to the case (effectively precluding discovery). The court ordered Petitioner's home sold at a foreclosure auction on June 27, 2018, and gave Respondents a

bid credit up to the amount of their judgment in the prior case. Petitioner's homestead, with an appraised value of $560,000 was sold at the auction to Respondents for $71,100. Petitioner filed an objection to the sale due to the startling inadequacy of the price and procedural irregularities.

The rulings by Florida state courts summarized above were contrary to established Florida property law, violated Petitioner's Constitutional right to travel (to move freely from one jurisdiction to another), and were a judicial taking of her permanent residence in violation of the Fifth and Fourteenth Amendments. Uncertain as to how best to raise these issues in light of the conflicting opinions in *Stop the Beach*, Petitioner filed a motion for relief from the judgment with the trial court on June 19, 2018, filed a complaint in the U.S. District Court for the Southern District of Florida on June 26, 2018, and is now filing this petition for a writ of certiorari as suggested by Justice Scalia's opinion in *Stop the Beach,* 560 U.S. at 727.

REASONS FOR GRANTING THE WRIT

I. This case squarely presents the question of whether a state court's decision that eliminates established property rights can effect a Fifth Amendment taking and, if so, how courts may hear

and remedy the taking.

In *Stop the Beach Renourishment v. Florida Department of Environmental Protection,* 560 U.S. 702 (2010), a plurality of this Court said that when a state court makes a decision wiping out established property rights in contravention of established state property law it would be an unconstitutional judicial taking. The resulting decision was divided as to whether a state court decision could effect an unconstitutional taking, the standard necessary to reach that conclusion, and provided very little practical guidance for resolving judicial takings claims. Review by this Court is necessary to resolve questions left open by *Stop the Beach.*

Using traditional Fifth Amendment Takings jurisprudence, the plurality in *Stop the Beach* concluded that "the Takings Clause bars the State from taking private property without paying for it, no matter which branch is the instrument of the taking," and held that a judicial taking occurs when a court "declares what was once an established right of private property no longer exists." *Id.,* 560 U.S. at 715. No more special treatment should be accorded to a taking effected by the judicial branch than to a regulation imposed by the executive or a law enacted by the legislature. *Id.*, at 714-15. Justice Kennedy, joined by Justice Sotomayor, agreed that "If and when future cases show that the usual principles, including constitutional

principles that constrain the judiciary like due process, are somehow inadequate to protect property owners, then the question whether a judicial decision can effect a taking would be properly presented." *Id.*, at 742. Justice Kennedy found it "unclear" how a plaintiff would raise a judicial takings claim. *Id.*, at 740. Justice Scalia thought a petition for certiorari to this Court after a state court action was a solution. *Id.* at 727.

The Court in *Stop the Beach* also failed to resolve the proper remedy for a judicial taking but considered two – just compensation and invalidation of the unconstitutional court decision. In cases of real property which is always unique, it is questionable that "just compensation" would ever be just. In the case of Florida property, the state's tort claims act limits the amount that may be awarded, absent action by the state legislature, to $300,000, *see* § 768.28(5), and § 768.28 (18), Florida Statutes.[10]

Justice Breyer, joined by Justice Ginsburg, found it unnecessary to decide what was a judicial taking to dispose of *Stop the Beach.* Instead, he said, the constitutional question was "better left for

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[10] The Florida Legislature, by enacting section 768.28, Florida Statutes., has waived the State's immunity from tort liability to the extent provided therein. Section 768.28(1), Florida.Statutes.

another day." *Id.* at 742. Petitioner submits that her case presents that day.

II. The decisions of the Florida courts in Petitioner's cases were contrary to established Florida property law and extinguished Petitioner's property rights in her permanent residence, her father's home, and her parents' property contrary to the Takings and Due Process Clauses of the Fifth Amendment as applied to the States by the Fourteenth Amendment.

Legal protection for the home from debt collectors may have originated in the Spanish Civil Code which provided that the houses of knights and noblemen could not be taken in execution except for the payment of debts owed to the king.[11]

The Homestead Act[12] was passed by Congress and took effect January 1, 1863. It granted adult heads of families 160 acres of public land for a minimal filing fee and five years of

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[11] Dennis J. Wall, *Homestead and the Process of History: The Proposed Changes in Article X, Section 4*, 6 FLORIDA STATE UNIV. L. REV. 877, 879-80, 888 (1978).

[12] Act of May 20, 1862 (the Homestead Act), Public Law 37-64.

continuous residence on that land.

Article IX of Florida's first Constitution (1868) provided that a homestead owned by a head of family residing in Florida shall be exempted from forced sale under any process of law except for taxes, payment of obligations constructed for the purchase of the homestead, for improvements or for labor on the homestead. The exemptions accrued to the heirs of the owner who benefitted from the homestead exemption. Thus, for over a century, the Florida Constitution exempted the homestead of Florida residents from the claims of creditors except in three limited circumstances. *Public Health Trust of Dade County v. Lopez,* 531 So.2d 946, 948 (1988) citing *Baker v. State*, 17 Fla. 406 (1879).

Florida law and public policy with respect to homesteads remain unchanged. The purpose of the homestead exemption is to promote the stability and welfare of the state by securing to the homeowner a home, so that the homeowner and heirs may live beyond the reach of financial misfortune and the demands of creditors who have given credit under such law. *Id.,* citing *Bigelow v. Dunphe*, 143 Fla. 603, 197 So. 328 (1940).

Section 4 of Article X of the Florida Constitution adopted in 1968, is the present homestead exemption. It exempts homesteads owned by natural persons from forced sale (except to pay taxes, mortgages against the homestead, or a

mechanic's lien). 160 acres of contiguous land plus all improvements (if located outside a municipality) or 1/2 acre of contiguous land plus all improvements (if located inside a municipality) constitute homesteads regardless of the property's value. Upon the owner's death, the exemptions extend to surviving spouses and heirs. In 1985, the homestead exemption was extended to a "natural person," not just a head of family with support obligations. Article X, § 4 serves to exempt a homestead property from forced sale for the benefit of creditors even after it descends to adult children not dependent upon the decedent. As the Florida Supreme Court said in *Public Health Trust of Dade County v. Lopez,* 531 So.2d at 951:

> The homestead protection has never been based upon principles of equity, [citation omitted] but always has been extended to the homesteader and, after his or her death, to the heirs whether the homestead was a twenty-two room mansion or a two-room hut and whether the heirs were rich or poor. In sum, we conclude that the homestead exemption formerly only enjoyed by a head of a family can now be enjoyed by any natural person. The exemption continues after the homesteader's death without regard to whether the heirs were dependent on the

> homestead owner. Thus, the homestead descends directly to the spouse or heirs free and clear of creditor's claims.

When inherited by a qualified heir (those persons entitled to receive property under the laws of intestacy), a decedent's homestead property is not distributed as part of the decedent's estate or trust, but passes directly to the heir. *Estate of Shefner v. Shefner-Holden*, 2 So.3d 1076, 1078 (Fla. 2d DCA 2009), citing *McKean v. Warburton*, 919 So.2d 341, 347 (Fla.2005).

Generally, this homestead protection can only be breached only in the limited situations specifically set forth in the Florida Constitution:

> (1) government entities with a tax lien or assessment on the homestead property;
>
> (2) banks or other lenders with a mortgage on the homestead property which originated from the purchase of the property; and
>
> (3) creditors with liens on the property which originated from work or repair performed on the homestead property.
>
> Florida courts are required to liberally apply

the homestead exemption and strictly construe the three exceptions. *Butterworth v. Caggiano*, 605 So.2d 56, 58, 61 (Fla. 1992); *Havaco of America, Ltd.*, 790 So.2d 1018, 1021 (Fla. 2001), quoting *Milton v. Milton*, 63 Fla. 533, 58 So. 718, 719 (1912). "[T]he constitutional homestead exemption ... 'protects the homestead against every type of claim and judgment except those specifically mentioned in the constitutional provision itself.' " *Osborne v. Dumoulin*, 55 So.3d 577, 582 (Fla. 2011) (quoting *Olesky v. Nicholas*, 82 So.2d 510, 513 (Fla.1955)). So, homestead protection from forced sale in Florida except for the exemptions specified in the Florida Constitution with rare exceptions[13] must be

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[13] *Palm Beach Sav. & Loan Ass'n, F.S.A. v. Fishbein*, 619 So.2d 267, 270-71 (Fla. 1993) created an exception to the Article X, § 4 exemption of homesteads from forced sale in cases of "unjust enrichment" but the Florida Supreme Court said that a creditor could not enforce a claim when the money unjustly acquired was not used to benefit the homestead in question. Any judgments specific to the property, such as foreclosures, past due association fees, a protection. Former spouses who egregiously, reprehensibly, or fraudulently withhold alimony payments do not enjoy homestead protection. *Spector v. Robert L. Spector*, 226 So.3d 256 (Fla. 4th DCA 2017)

considered established Florida property law.

When a person acquires real property and makes it a home, the property is "impressed with the character of a homestead, and no action of the Legislature or declaration or other act on [the owner's] part [is] required to make it [the owner's] homestead, for it [is] already such in fact." *Hutchinson Shoe Co. v. Turner*, 100 Fla. 1120, 130 So. 623, 624 (1930) (citing *Baker v. State*, 17 Fla. 406, 408–09 (Fla.1879). No Floridian needs to claim homestead protection. It is self-executing. However, "Sections 222.01 and 222.02 provide a means whereby a person may claim property as homestead and notify judgment creditors of the property's exempt status under Article X, section 4, either pre- or post-levy." *Osborne v. Dumoulin*, 55 So.3d at 583. Failure to employ these statutory methods for asserting a homestead exemption claim does not waive the right to the homestead exemption. *Albritton v. Scott*, 73 Fla. 856, 74 So. 975, 975 (Fla. 1917) ("When a homestead to which the exemption from forced sale is attached is sold in violation of the exemption rights conferred by the Constitution, such sale is void. A mere failure to resist the sale is not a waiver of the exemption rights."); *see Fidelity & Cas. Co. of New York v. Magwood*, 107 Fla. 208, 145 So. 67, 68 (1932) ("As the right of homestead once acquired continues until terminated in the manner provided by law, the protection of the right may be exercised by one entitled thereto so long as the homestead character

and attributes of the property exist."); *see also Chames v. DeMayo*, 972 So.2d 850, 862 (Fla.2007) (holding that waiver of the homestead exemption from forced sale in an unsecured agreement is unenforceable) "Where a homestead has been acquired it can be waived only by abandonment or by alienation in the manner provided by law." *Olesky v. Nicholas*, 82 So.2d at 512;

The homestead exemption is available to legal residents of Florida who intend to be permanent residents. This Court has said the domicile of an individual is his true, fixed and permanent home and place of habitation. It is the place to which, whenever he is absent, he has the intention of returning. *Vlandis v. Kline* , 412 U.S. 441 (1973). *See Walker v. Harris*, 398 So.2d 955 (Fla. 4th DCA 1981). For adults, domicile is established by physical presence in a place in connection with a certain state of mind concerning one's intent to remain there. *Mississippi Band of Choctaw Indians v. Holyfield,* 490 U.S. 30, 48 (1982), citing *Texas v. Florida*, 306 U.S. 398, 424 (1939). Accord, *Chisholm v. Chisholm*, 98 Fla. 1196, 125 So. 694 (1929).

The intention to establish a permanent residence in Florida by law is a factual determination to be made, in the first instance, by the property appraiser under § 196.015, Florida Statutes. Although any one factor is not conclusive of the establishment or nonestablishment of

permanent residence, the statute lists factors that may be considered. Petitioner established compliance with § 196.015 (1), (3), (5), (6), (7), (9), and (10) at the hearings. One may establish a homestead tax exemption in Florida by complying with § 196.031, Florida Statutes, Petitioner was granted a homestead tax exemption for her Vero Beach home. Petitioner also filed a Notice of Homestead pursuant to § 222.01, Florida Statutes, and a Declaration of Domicile under oath with the Circuit Court in conformity with § 222.17, Florida Statutes.

In comparison with "residence," the concept of "domicile" connotes a legal relationship with the state. A person may have several temporary local residences, but can have only one legal residence. *Keveloh.v. Carter*, 699 So.2d 285 (Fla. 5th DCA 1997). In *Herron v. Passailaigue*, 92 Fla. 818, 110 So. 539, 543 (1926), the court stated:

> The rule is well settled that the terms "residence," "residing," or equivalent terms, when used in statutes, or actions, or suits relating to taxation, right of suffrage, divorce, limitations of actions, and the like, are used in the sense of "legal residence"; that is to say, the place of domicile or permanent abode, as distinguished from temporary residence.

A legal residence, or domicile, is the place where a person has fixed an abode with the present intention of making it their permanent home. *Minick v. Minick*, 111 Fla. 469, 149 So. 483 (1933). "[T]he best proof of one's domicile is where he says it is." *Ogden v. Ogden*, 159 Fla. 604, 33 So.2d 870, 873 (1947). Accord, *Bloomfield v. City of St. Petersburg Beach*, 82 So.2d 364 (Fla.1955).

The Florida Supreme Court's jurisprudence on domicile is based upon intention not a duration of residency. Indeed, the homeowner does not need to reside in the home at all to claim it as his domicile if his dependents reside there. *Garcia v. Andonie,* 101 So.3d 339 (Fla. 2012)(no residency required), *Ostendorf v. Turner,* 426 So.2d 529, 545 (Fla. 1982)(durational residency requirement is a violation of equal protection), *Bloomfield v. City of St. Petersburg,* 82 So.2d 693, 698 (Fla. 1957)(intent to reside permanently is the required intent for domicile), *L'Engle v. Forbes*, 81 So.2d 214, 215-16 (Fla. 1955), *Reid v. Leitner,* 86 So. 425, 426 (Fla. 1920)(the necessities of business and the responsibilities imposed upon the breadwinner to absent himself from the family home place for extended periods of time will not necessarily result in an abandonment of his homestead rights so long as it remains his intention to return and absent a clear-cut-intention to abandon the homestead privilege). The prevailing law of Florida that since 1952 has declared any durational residency requirement for homestead exemption status to be

unconstitutional. *Sparkman v. State ex rel. Scott,* 58 So.2d 430, 431 (Fla. 1952)(*en banc).*

Once established, a domicile continues until it is superseded by a new one. *Wade v. Wade*, 93 Fla. 1004, 113 So. 374 (1927). A domicile is presumed to continue, and the burden of proof ordinarily rests on the party asserting the abandonment of one domicile to demonstrate the acquisition of another. *Texas v. Florida*, 306 U.S. 398 (1939). One does not lose Florida homestead status by leaving the homestead temporarily for business reasons or any other reason as long as there is an intent to return. *Olesky v. Nicholas*, 82 So.2d 510, 512, citing *Reid v. Leitner,* 86 So. 425, 426 (Fla. 1920) So Petitioner, who was an attorney licensed in five jurisdictions, had a right to leave Florida to conduct business from time to time, own a home with a reverse mortgage in another jurisdiction, without losing her domicile as long as she had an intent to return which she did.

Florida's Constitutional homestead protection may be waived only in a manner consistent with the specific exceptions listed in Article X, § 4 of the Florida Constitution. Precedents from other jurisdictions are of limited value. *Snyder v. Davis,* 699 So.2d 999, 1001 (Fla. 1997). The Florida Supreme Court has refused to enforce a waiver of homestead protection contained in a promissory note executed by a debtor and a lender since 1884. *Carter's Adm'r v. Carter*, 20 Fla. 558 (Fla. 1884).

The court in *Sherbill v. Miller Mfg. Co.*, 89 So.2d 28, 31 (Fla. 1956), citing *Carter's Administrator v. Carter,* said, "this Court long ago determined that such a waiver was not an alienation of the homestead and not enforceable, and secondly, that such a waiver was contrary to the policy of the exemption laws of this State. . . No policy of this State is more strongly expressed in the constitution, laws and decisions of this State than the policy of our exemption laws." More recently, in *Chames v. DeMayo,* 972 So.2d 850 (Fla., 2007), the Florida Supreme Court reaffirmed its 123 years of precedent that homestead protection waivers are unenforceable unless consistent with the exemptions expressed in the state constitution, including its prior holdings in *Carter's Adm'r v. Carter* and *Sherbill v. Miller Mfg. Co.*

Thus, the decision of the Fourth District Court of Appeals in *Stuart v. Ryan,* 232 So.3d 418 (Fla. 4th DCA 2017) that found that Petitioner was not domiciled in Florida and had waived homestead protection by entering into a reversible [sic] mortgage on her residence in Washington, D.C. governed by federal, not Florida, law was not only unsupported by the evidence in the case but contrary to established Florida property law and effected a judicial taking of Petitioner's permanent residence. The court said (incorrectly) that the trial court had found Petitioner was eligible for the homestead exemption. It then opined that Petitioner, in effect, waived her Florida

Constitutional homestead protection by entering into a federally guaranteed mortgage on a non-homestead residence in Washington, D.C. An examination of Article X, § 4 of the Florida Constitution and its historical antecedent from 1868 show that the only exemption involving a mortgage that would pass Constitutional muster in Florida would be a knowing and voluntary mortgage entered on the Florida homestead property itself. In addition to not apply Florida precedents that it cited requiring the liberal construction of the exemption and strict construction of the exceptions, *Butterworth v. Caggiano,* 605 So.2d at 61, the Florida 4th DCA made other glaring errors in its opinion in *Stuart v. Ryan.* The appellate court said that Petitioner testified that she "intended" to make Florida her home sometime in the future and only spent an average of 59 days a year in the state. In fact, Petitioner never said anything about a "future" intention as an examination of the record on appeal would have shown. Not only did Petitioner insist that her intention to make her Florida residence a permanent home arose when she bought it in 2000 and solidified when she registered to vote in 2004 (when she considered it her domicile), but she presented evidence of the days she spent in Vero Beach *on trust administration duties* – not her total time spent in Florida each year. Even if she had spent less time in the state, this Court has held that a durational residency requirement for the establishment of domicile and voting is unconstitutional as a denial of equal protection and

the Constitutional right to migrate. *Dunn v. Blumstein*, 405 U.S. 330, 333 (1972). Congress eliminated durational residency requirements for voting with the passage of the National Voter Registration Act of 1993 (52 U.S.C. § 20501 et seq.). The act allows anyone over the age of 18 to register to vote while obtaining a driver's license. A durational residency requirement for the establishment of domicile offends the Constitutional right to travel is secured by the Privileges and Immunities Clause of the Fourteenth Amendment. *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974), *Shapiro v. Thompson,* 394 U.S. 618, 629-31 (1969)(the right to migrate, resettle, find a new job, and start a new life) The constitutional guarantee of personal liberty gave each citizen the right to travel throughout the United States without unreasonable restrictions. This fundamental right of travel is violated by the implied residency requirements in the 4th DCA's opinion that dismissed Petitioner's claim of Florida domicile after 17 years of permanent residency and regular voting because she spent too little time in the state doing trust administration and had a mortgage on an unrelated property that had a residency requirement in another jurisdiction.[14]

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[14] Federal loan guarantees for Home Equity Conversion Mortgages (so-called "reverse mortgages") are authorized under the Federal Housing Act, 12 U. S. C. § 1715z-20. These loans

The 4th DCA's opinion was an unconstitutional violation of Petitioner's fundamental right to travel and migrate from state to state guaranteed by the Fourteenth Amendment.

The trial court's decision upheld by the 4th DCA that Petitioner's established property right in one-third of her father's homestead which was acquired by operation of law when he died, see §§ 732.401(1), 733.607, 733.608, Florida Statutes, should go to Respondents because the court thought that result was "entirely appropriate" violated Petitioner's established property rights in her father's homestead under § 732.401(1), Florida Statutes, *DeMello v. Buckman,* 916 So.2d 882, 890 (Fla. 2005), *Aronson v. Aronson,* 81 So.3d 515, 519 (Fla. 3d DCA 2012). Its character as protected Florida homestead was long established by the time of Petitioner's father's death in 1998. No

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are aimed at elderly homeowners over age 62 who need to draw on the equity in a home that the federal regulations define as a "principal residence" because the regulation requires that the mortgagor ordinarily occupy the residence a majority of the time annually. 24 C.F.R. § 206.3. The reason for that requirement is to exclude investors from eligibility for such loans, not to exclude borrowers from availing themselves of benefits of homestead exemptions in other states for which they would otherwise qualify.

misconduct by Petitioner was involved in acquisition of her interest in her father's homestead. Because Mr. Stuart had a surviving spouse, the homestead was not subject to disposition through the Trust. *DeMello v. Buckman,* 916 So.2d at 890, *Aronson v. Aronson,* 81 So.3d 515, 519 (Fla. 3d DCA 2012), citing *In re Estate of Scholtz,* 543 So.2d 219, 221 (Fla.1989). Florida's protection against forced sale of Petitioner's interest in her father's homestead inured to her after his death and it was unavailable by law to her creditors. *Public Health Trust of Dade County v. Lopez,* 531 So.2d 946, 951 (Fla. 1988), *Engelke v. Estate of Engelke,* 921 So.2d 693, 697 (Fla. 4th DCA 2006).

The interest belonging to Petitioner in her father's homestead and her parents' personal property also were not identified in the complaint as "special damages" and thus were not available to satisfy any judgment in that action pursuant to Rule 1.120(g) of the Florida Rules of Civil Procedure. Under established Florida property law, it was error to admit evidence of and award special damages not pled in the complaint. *Demello v. Buckman,* 916 So.2d 882, 888-89 (Fla., 2005), citing *Bialkowicz v. Pan Am. Condo. No. 3, Inc.,* 215 So.2d 767, 770 (Fla. 3d DCA 1968). Such an award should have been reversible error. *See Precision Tune Auto Care, Inc. v. Radcliffe,* 804 So.2d 1287, 1292 (Fla. 4th DCA 2002), citing *Augustine v. S. Bell Tel. & Tel. Co.*, 91 So.2d 320, 323 (Fla.1956).

The Florida Supreme Court has said that "Special damages are considered to be the natural but not the necessary result of an alleged wrong or breach . . . .they are such damages as do not follow by implication of law merely upon proof of the breach." *Augustine v. Southern Bell Telephone & Telegraph Co.*, 91 So.2d 320, 323 (Fla. 1956). General damages are those which the law presumes actually and necessarily result from the alleged breach or wrong. *Id.* Beyond that infirmity, Petitioner's father's homestead was not part of the subject matter of the litigation in the Circuit Court because, although titled in the name of the Trust, the property passed outside of probate and outside of the trust at the moment of Mr. Stuart's death.[15] The trial court agreed with that but ruled that Petitioner's 1/3 interest should go to Petitioner's sisters because it was "entirely appropriate." A judge's personal opinion is not a valid legal basis for imposition of an equitable lien. Since the entry of the order, the successor trustee hired at the behest of Respondent's former counsel's law firm has executed a trustee's deed to the property to Respondents in violation of Petitioner's established

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[15] The trial court denied a petition to partition the property because the Trust was not named as a party. When Petitioner filed a motion to amend the complaint naming the Trust as a party as the court had suggested, her motion was denied.

rights under Florida property law but presumably on authority of the trial court's order. A suit to partition the property had to be filed in the U.S. District Court for the Southern District of Florida, case no. 2:18-cv-14244-JEM and is pending.

A determination of whether a property is homestead property is a question of fact for which an evidentiary hearing is required in Florida. *Hillsborough Investment Co. v. Wilcox,* 13 So.2d 448, 452 (Fla. 1943). In this case, the trial court took the action against Petitioner's homestead and her father's homestead without proper notice or an evidentiary hearing devoted to that subject. "[W]hen a court considers issues not noticed for hearing, the court denies the litigant due process, and any ensuing order or judgment must be reversed."*Gaspar's Passage LLC v. Race Track Petroleum,* 2D17-55 (Fla. 2d DCA April 4, 2018), quoting *In re Estate of Assimakopoulos*, 228 So. 3d 709, 715 (Fla. 2d DCA 2017).

In theory, the state court system – including the right to appeal any adverse, final decision – should be an adequate remedy for such a procedural deprivation of due process, but the Fourth District Court of Appeals in *Stuart v. Ryan* and the Florida Supreme Court did not remedy the denial of access to the courts guaranteed by the First Amendment or due process guaranteed by the Fifth Amendment. *Zinnermon v. Burch*, 494 U.S. 113, 127 (1990), citing *Goss v. Lopez,* 419 U.S. 565, 579 (1975). *See*

Daniels v. Williams, 474 U.S. 327, 339 (1986), overruled in part on other grounds *Davidson v. Cannon*, 474 U.S. 344 (1986).

The trial court, without subject matter jurisdiction, also ordered that the personal property of J. Raymond Stuart and his wife, Marion Stuart, that was never part of the assets of his Trust or named as special damages in Respondents' complaint and governed by their wills be awarded to Respondents only. Thus, the trial court's order affirmed without comment by the 4th DCA was a radical departure from settled Florida property law and constituted an unconstitutional judicial taking.

Finally, the trial court, contrary to established precedents in this Court and Florida found that Petitioner's breaches of trust constituted "reprehensible conduct" to form a legal basis for imposing equitable liens on Petitioner's homestead and her father's homestead and personal property. As this Court noted in *State Farm v. Campbell,* 538 U.S. 408, 417 (2003):

> We have instructed courts to determine the reprehensibility of a defendant by considering whether the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had

> financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit or mere accident.

State Farm v. Campbell, 538 U.S. at 419. No physical harm or danger or fraud or tortious conduct was perpetrated on Respondents from these unfortunate circumstances. The trust document and Florida Statutes permit borrowing by the trustee with adequate security. No Florida court has found an equitable lien on a homestead property which the state Constitution protects against forced sale may be enforced absent some showing of fraud, egregious conduct or other unjust enrichment associated with the acquisition or improvement of the homestead itself. *Palm Beach Sav. & Loan Ass'n, F.S.A. v. Fishbein,* 619 So.2d 267 (Fla. 1993). Because Pamela Stuart acquired her interest in her father's homestead and her parents' personal property by death and acquired her Florida homestead with her own funds, the equitable liens imposed by the Florida courts were contrary to established Florida property law and an unconstitutional judicial taking.

CONCLUSION

Petitioner expected that the Florida courts would apply established Florida law and declare her

a permanent resident whose homestead and her interests in her father's homestead and personal property were protected from forced sale by a court as well as trustee fees and reimbursements owed her under established Florida law. They did not and effected an unconstitutional judicial taking. For the foregoing reasons, Petitioner respectfully requests that the Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX A

IN THE SUPREME COURT OF FLORIDA

No. SC18-328

Lower Tribunal No(s).:

4D16-3921, 312013CA001523 XXXXXX

PAMELA B. STUART, ETC.

Petitioner,

versus

CATHERINE S. RYAN, ET AL.

Respondent(s)

(April 9, 2016)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of

the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. *See* Fla. R. App, P. 9.330(d)(2).

LABARGA, C.J., AND LEWIS, QUINCE, CANADY, and POLSTON, JJ., concur.

A True Copy
Test:

/s/ John A. Tomasino

John A. Tomasino
Clerk, Supreme Court

dl

Served:

DAVID P. HATHAWAY
DAVID M. PRESNICK
PAMELA BRUCE STUART
HON. LONN WEISSBLUM, CLERK
HON. PAUL B. KANAREK, JUDGE
HON. JEFFREY R. SMITH, CLERK