

18-9226  
In the  
**Supreme Court of the United States**

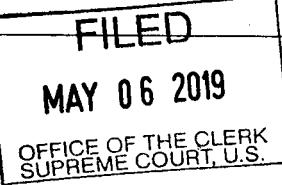
ANNE A. SEARS, *Petitioner*

v.

ORIGINAL  
PETITION

LUCAS D. BOTTORFF, ET. AL., *Respondent*

**On Petition For A Writ Of Certiorari To  
The Tennessee Court Of Appeals**



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**PETITION FOR WRIT OF CERTIORARI**

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Pro Se

## QUESTIONS PRESENTED FOR REVIEW

- I. What is the minimum level of judicial checks and balances constitutionally required of the judiciary and each judge when reviewing litigation involving a pro se party?
- II. What is the constitutional balance between the exercise of state police power to protect assets of elderly persons and their estate weighed against the 13<sup>th</sup> Amendment and Contracts Clause, where the state voids after the death of the mother, a fully executed, performed contract for caregiving aid and orders all payments for services returned to the estate?

## LIST OF PARTIES

All parties appear in the caption on the cover page. However, Rebecca C. Blair, a Tennessee attorney representing Ian S. Sears, son of decedent Sally F. Sears, [hereinafter referred to as a mother] although not a named party appeared at trial and has been noticed and present at numerous proceedings.

## Table of Contents

OPINIONS BELOW .....	1
JURISDICTION .....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASON FOR GRANTING THE PETITION .....	7
CONCLUSION.....	31
TABLE OF AUTHORITIES.....	33

## INDEX OF APPENDICES

Appendix A Letter extending filing of Writ by Justice Sonya Sotomayor, on February 26, 2019 to and including May 6, 2019.

Appendix B Supreme Court of Tennessee per Curium decision, declining to hear, No. M2017-01363-SC-R11-CV entered December 6, 2018

Appendix C Court of Appeals per Curium decision, declining to rehear the case, entered, August 8, 2018

Appendix D Court of Appeals, three-judge panel decision, published as No. M2017-01363-COA-R3-CV, entered July 25, 2018

Appendix E Williamson Chancery Court supplemental opinion, entered June 6, 2017

Appendix F Williamson Chancery Court opinion, entered May 31, 2017

## Appendix G

- 1) Williamson County Circuit Court, Order of Eviction, June 7, 2018
- 2) Williamson County Chancery Court denial of indigent status, December 20, 2017

## Appendix H Full text of

- 1) Tennessee Code Annotated, 71-6-120. Right of elderly person or disabled adult to recover for abuse or neglect, sexual abuse, exploitation, or theft.
- 2) Tennessee Code Annotated, 24-1-203. Transactions with decedent or ward -- Dead man's statute.

## Appendix I May 12, 2017, Trial transcript with glossary

## Appendix J Articles

- 1) *Nursing home chain HCR ManorCare to sell itself in bankruptcy*, Rucinski, Roumeliotis, **Reuters**, March 2, 2019,
- 2) *Nursing Home Costs Top \$100,000 a Year*, Sackett, **AARP** (<https://www.aarp.org>) October 24, 2018
- 3) *O'Donnell, Liz, The Crisis Facing America's Working Daughters*, **THE ATLANTIC**, February 9, 2016 <https://www.theatlantic.com/business/archive/2016/02/working-daughters-eldercare/459249>

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review appears at Appendix B at No. M2017-01363-SC-R11-CV.

The opinion of the Court of Appeals en banc refused to rehear the case, No. M2017-01363-COA-R3-CV appears at Appendix C

The opinion of the Court of Appeals is at Appendix D to the petition and is reported as No. M2017-01363-COA-R3-CV

The opinion of the Williamson Chancery Court, No. 45788, supplemental opinion, appears at Appendix E it has not been reported

The opinion of the Williamson Chancery Court, No. 45788, opinion, appears at Appendix F it has not been reported.

## JURISDICTION

The date on which the highest state court decided my case is December 6, 2018. A copy of that decision appears at Appendix B. Justice Sonya Sotomayor granted an extension to file the petition for writ of certiorari to and including May 6, 2019, on February 26, 2019. The jurisdiction for the U.S. Supreme Court is invoked under 28 U.S.C. §1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### U.S. CONSTITUTION AND AMENDMENTS, PROVISIONS SPECIFICALLY AFFECTED

Bill of Rights,

13<sup>th</sup> Amendment

14<sup>th</sup> Amendment

Contracts Clause

4<sup>th</sup> Amendment and all other provisions and statutes related to substantive and procedural  
due process

### TENNESSEE STATE CONSTITUTION AND AMENDMENTS

### TENNESSEE STATE STATUTES AT ISSUE

- 1) Tennessee Code Annotated, 71-6-120. Right of elderly person or disabled  
adult to recover for abuse or neglect, sexual abuse, exploitation, or theft.
- 2) Tennessee Code Annotated, 24-1-203. Transactions with decedent or ward --  
Dead man's statute.

## STATEMENT OF THE CASE

Petitioner after 15 years of caregiving aid to her mother, through unlawful state action, has lost her home and personal property. As a pro se party Petitioner experiences a disgraceful display of bias, harassment, and intimidation by the trial judge who before two officers of the Tennessee bar and court, violates most of the judicial canon, every substantive and procedural due process right along with the Bill of Rights, and a few criminal statutes. The trial judge, without flinching, suborns perjury and misuses his office, court facilities, and court personnel, to threaten, humiliate and eventually throw Petitioner into a holding cell when she attempts to exercise her right to be heard and defend. In open court, before the Williamson County Bar, this trial judge continues to threaten her in subsequent hearings with the holding cell if she speaks. To be clear, the Petitioner has a right to object; in fact, it is critical to preserve her objections at trial. As she prepares to do so, is thrown into a holding cell. It isn't rude speech, obscene speech, inane speech he seeks to prohibit-- it is speech. Bad things happen, no system is perfect, but there are supposed to be safeguards in place to correct these abuses. Petitioner appeals, moves for rehearing and pleads her case before the highest court in Tennessee. Not one judge finds his conduct offensive.

Putting the problem in context, in Middle Tennessee, tremendously aggressive development is occurring. "Gentrification" is taking over much older, historic neighborhoods. Homes standing for 80 years are being torn down alongside other homes just as old disturbing the ground's lateral supports and causing cracks in the homes still standing. Developers have absorbed a large number of home improvement companies,

leaving private homeowners especially in more impoverished neighborhoods or persons on a fixed income to use less reputable companies. Homes built on speculation and not immediately sold are being opened to Air B & B disrupting neighborhoods with wild bachelor and bachelorette parties.

Homeowners are finding themselves, in higher numbers, involved in the legal system or requiring redress from poor construction, broken promises, or damages caused by construction occurring around their homes. Mostly poor or persons on a fixed income, the value of the home in some cases isn't enough to cover the litigation. However, they are homes that have been in families for decades. Developers should be responsible for these problems; deceptive and dishonest contractors should be held accountable--but--try and find an attorney to represent you. Petitioner couldn't. With open hands, homeowners on their own are forced to enter the court system or face financial ruin or devaluation of one of Americans most significant investments. They seek only fair treatment. Certainly, the Petitioner did. That is not what happened. How many thousands have lost their homes and other property to this unconstitutional system, blind to its pro se citizen's rights and neglectful of its duty and responsibility to them? This should not even be our fight.

The Tennessee Judicial Canons and codes are a commitment to non-lawyers that attorneys will self-regulate and ensure a minimum of constitutional accountability in the conduct of the courts and practice. Rule 10, Code of Judicial Conduct, Rule 2:15 provides:

**Responding to Judicial and Lawyer Misconduct**

(A) A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

Sua sponte judicial action is an essential part of that promise. Ever vigilant, the higher courts are tasked to do something to ensure a constitutional system. What is the minimum level of check's and balances each state, each judge should meet? This case provides the Court an opportunity to set those minimum standards.

Second, with the aging of the “Baby Boomer’s” and the failure of many nursing homes, family members, specifically the daughters, are finding themselves assuming greater responsibility in the care of their elderly parents. In these cases, rarely are boundaries set, financial compensation discussed prior to the beginning of the help, and the development of the medical and health issues of the ailing parent so gradual that inch by inch, caregivers find themselves trapped into a caretaking role that consumes their time, money/retirement, health, and future employability. This case gives the Court an opportunity, to balance the rights a caregiver has under the Contracts Clause and the 13<sup>th</sup> Amendment to contract and receive compensation for her labors, and the exercise of state police power to protect the resources of the person receiving the care and the estate after death.

## REASON FOR GRANTING THE PETITION

Petitioner provides care and assistance to her mother in increasing levels of responsibility for fifteen years. Mother, born with congenital scoliosis, eventually losing strength in her arms and legs requiring a wheelchair. Just before her death, a psychiatrist at Centennial's Parthenon Pavilion diagnoses her with depression and limited cognitive impairment. Mother is never diagnosed with dementia or Alzheimer's. Mother frequently fell requiring numerous trips to the ER. These falls are especially dangerous as the scoliosis severely limited her ability to get up. Without aid, she could remain in one position for hours causing further injury or death. The falls require Petitioner to limit her employment, hours and dash home. Other medical conditions are Sjogren's disease, TIA's, stroke, high blood pressure, kidney disease, and low thyroid. None of these conditions are terminal and controlled with treatment. Mother was a problematic person, prone to "narcissistic" like rages, not inclined to apologize or say, "Thank you"—a weak candidate for institutional care. Yet, her physical needs require assisted living. Eventually, Petitioner is caring for her mother 24/7. Mother agrees to compensate Petitioner's time, expenses and lost employment opportunities. A Veteran's Administration application [hereinafter referred to as Application] reduces this oral agreement to writing reflecting the agreed amounts and purpose of payment and is signed in five different places on the application by mother upon the VA's request. After some time where mother is exclusively in her son's care, concerns for her safety and continued care motivate her to sign a notarized document, revoking his benefit as her power of attorney leaving Petitioner with the benefit. In furtherance of the agreements, the Petitioner exercised the Power of Attorney, [hereinafter referred to as POA] mother's stock and transferred the income and

other assets to Petitioner's account. Mother's stockbroker, Bank of America and Navy Federal Credit Union all require an interview with mother before honoring the POA. She willingly gives permission three times. Transfer of assets to Petitioner is intended first to compensate Petitioner for 15 years of caregiving aid. However, also, to protect her assets. During the week the Petitioner is on vacation, Ian, mother's only son, ransacks her house. Because Petitioner returns home early, with concerns for mother's care, he doesn't go off with her furniture, but does abscond with her only reliable car, and who knows what other assets. Mother is a brilliant woman and understands precisely what Ian is trying to do during the week of August 8 through 14. Only after mother's death, and Ian's denial of what she thought are random or careless occurrences, and watching her mother's interview 3 or 4 times did Petitioner finally understand why mother is so terrified during the interview. Mother wants her assets transferred to Petitioner because, after 15 years, Petitioner has shown loyalty, dependability, and care for her mother and mother knew she would continue to do so.

With the appointment as mother's POA, a document drafted and executed by a Tennessee lawyer, Petitioner, following its provisions the terms of which the Application reflects, Petitioner transferred the assets both real and personal to herself, writes a quit claim deed, leaves her mother a life estate and transfer of the property to Petitioner upon her death. Mother fell and broke her hand during this time--unable to sign the deed; Petitioner signs it on her behalf. All asset transfer occurs during mother's lifetime with her consent and necessary cooperation.

The trial court decision on its face makes no sense and not constitutionally supportable. Digging deeper it makes even less. This fact alone should prompt a sua

sponte reversal by both the Court of Appeals and the Supreme Court of Tennessee for clarity. But in her brief to the Court of Appeals, Petitioner details a lengthy list of failures in finding of fact, and law, of unsupportable behavior by the trial judge, his willingness to suborn perjured testimony and in fact, leave the testimony in his decision, and his use of his position, court personnel and facilities to intimidate and coerce Petitioner from exercising her rights. Still, they affirm.

The Court of Appeals decision is poorly drafted, and fails in standard legal analysis, reading legislative material, contracts and constitutional law 101--leading Petitioner to ask, what level in the court services pecking order do pro se litigant briefs descend, and did an attorney even read her brief?

#### **I. WHAT IS THE MINIMUM LEVEL OF JUDICIAL CHECKS AND BALANCES CONSTITUTIONALLY REQUIRED OF THE JUDICIARY AND EACH JUDGE WHEN REVIEWING LITIGATION INVOLVING A PRO SE PARTY?**

Petitioner did not intend to be a pro se litigant. First, two Franklin attorneys turn her down. She then goes to legal aid. The receptionist/gatekeeper refuses to let her speak to any attorney, stating the matter isn't what they cover and refers her to a general number for attorneys who do pro bono work. Petitioner receives no help so calls legal aid again. The receptionist/gatekeeper again refuses to let her even speak to an attorney and tells her of a weekly clinic held by legal aid. Petitioner gets up early, pays \$20.00 for parking, waits, waits to discover she has too many issues to be covered by the clinic. Not even attempting to help with one, she is referred to a lawyer in private practice. She calls this lawyer, angry at the referral, he hangs up. Again, Petitioner calls Legal Aid,

desperate, confused, again the receptionist/gatekeeper will not let her speak to an attorney.

But her problems don't stop there. She receives no help from court employees, all of them refusing to distinguish between providing legal advice and legal information. Virtually every question outside of "may I borrow a pen?" met with "I'm sorry we cannot give legal advice." Petitioner with the transcript in two formats asks which is customarily left with the court. No answer—legal advice.

A. The Due Process Clause of the 14<sup>th</sup> Amendment provides, "[N]or shall any State deprive any person of life, liberty, or property, without due process of law" (§ 1). This promise has evolved to mean, "[a] fundamental, constitutional guarantee that all legal proceedings will be fair and that one will be given notice of the proceedings and an opportunity to be heard before the government acts to take away one's life, liberty, or property Legal Dictionary, The free dictionary by Farlex, <https://legal-dictionary.thefreedictionary.com/Due+Process+of+Law>, 2019. On the record, the trial judge shows, bias partiality, a clear agenda to remove Petitioner from her home leave her penniless and that the home be sold at its lowest value. Every due process right is denied, and yet, not one Judge in the Court of Appeals and Supreme Court have chosen to act.

Specific problems at trial are:

- 1) The court corrects Mr. Bottorff's stipulations, see TR page 12, *infra* 30-31
- 2) Personal pronouns, see, e.g., page 6-8 and throughout the transcript, See, TR. page 12.

But see,

MR. BOTTORFF. I'd just like to point out that those three exhibits are offered for the Court to be able to rule on whether or not the respondent had the authority to make those transfers, whether or not the revocation gave the respondent the authority to act, and whether the respondent had the authority base on the

language within the power of attorney that the transfers must benefit Sally Sears. They're also offered for the purpose of the court ruling on whether the respondent breach her fiduciary duty in the Adult Protection Act.

THE COURT: All right. Those are matters for argument. Right now we're [emphasis added] just getting the factual record complete.

Tr. page 21

The court is not using the judicial we, in fact, he handles the entire factual development of the Plaintiff's case. Ian's testimony is an astonishing well-manufactured lie. He cannot have so boldly testified without the court's help. The trial judge removes all evidence that conflicts with Ian's testimony and refuses to show the most damaging in court, Mother's complete contradiction of his testimony. In court, Petitioner informs Judge Ian is lying, and that mother's statements completely contradict his sworn testimony. See, TR. pages 128-129. With each lie, Petitioner attempts to narrow Ian's response, remove wiggle room, but Ian is shielded by the judge—who actively engages in protecting Ian's testimony. He interrupts, orders Petitioner to move on, once, even answers Ian's question for him. All this while Ian's own attorney, Rebecca Blair, is present in the courtroom.

BY MS. SEARS:

Q Do you recall kidnapping her?

A No

MR. BOTTORFF: Objection. She's testifying in her question. T

THE COURT: He answered the question. That's--that's overruled.

BY MS. SEARS:

Q So you didn't take her to have Mexican food where (inaudible)

THE REPORTER: I'm sorry? Can you speak up?

MS. SEARS: Lach my nephew Lachlan, L\_A\_C\_H\_L\_A\_N.

THE COURT: So this is the first I've heard about Mexican food. What is your question, Ms. Sears?

MS. SEARS: The meals that were that she ate.

MR. BOTTORFF: Your Honor, I'm going to object to relevance in this line of questioning.

THE COURT: Ma'am, could you explain the relevance of that question?

MS. SEARS: It goes to the care that he took of her during that period of time.

THE COURT: Did you take your mom out to eat at a Mexican restaurant?

THE WITNESS: No.

THE COURT: The answer is no. What is your next question?  
BY MS. SEARS: Q So it's it is your recollection that you did not take her to any restaurant?  
THE COURT: No he just said in response to the question about a Mexican restaurant.  
BY MS. SEARS: Q Is that your testimony?  
THE COURT: That was his testimony, ma'am. Ask another question.

Tr. 118-119.

B) The judge to unsettle, intimidate, confuse and distract the Petitioner from testifying uses several techniques.

Ordering to stand, See, TR. page 8, 22, 25

Of course, the judge has every right to expect decorum, but it also gives him the opportunity to distract and intimidate the Petitioner. The same is true with his claims of interruptions. The transcript fails to reflect the timing, intervals, and pauses of the judge. There is a pause at the end of a finished thought, and when the petitioner believes he is finished, would start answering only to discover he is not finished. He interrupts to distract and misdirect for example,

THE COURT: Ma'am, what position are you taking? Are you taking the position that you—took these actions to preserve your mother's property so that they could be used for her benefit during her lifetime and distributed by her estate plan after her death or are you saying that I was paid to you as compensation? I don't see how you can have it both ways. Can you—can you resolve that –

MS. SEARS: Yes.

THE COURT: -apparent contradiction?

MS. SEARS: The – the issue is – and the issue will be presented – whether or not there were actions that my brother took during—during July 8<sup>th</sup> through 14<sup>th</sup> that cause us to be very concerned about what –

THE COURT: No, ma'am, this is case is not—this case is not5 about your brother's actions; this case is about your actions. This case is—

MS. SEARS: My actions were—

THE COURT: This is about –

MS. SEARS: --a response of—

THE COURT: Ma'am, you know, I've – I've told you once about interrupting me. I'm going to remind you gain. Please try not to interrupt me because the court reporter has to take everything—

MS. SEARS: I understand

THE COURT: --that is said, and it's hard for the court reporter to do that if—if we're talking over each other.

So this case is about your actions and the actions that you took, and I have asked you to ex—to resolve for me, if you can, explain to me the apparent contradiction between the two things that you have said about your use of the power of attorney. On the one hand, you've told me that you used the power of attorney in order to preserve your mother's assets. Those were the words you used. But you also introduced into evidence a document where you told the VA that your mother had transferred to you a hundred thousand dollars, which you identified as being the—the Navy Federal Credit Union account as compensation to you. That's not preserving your mother's assets; that's paying them to you. How can you resolve that contradiction?

MS. SEARS: To the extent that she was living with me and the—and I was caring for her, and I had indeed been caring for her for the past 15 years. She understood that I would continue to care for her, but our concern was would we end up in litigation not only over a Volvo but over her—all her assets. My brother had power of attorney or Navy Federal. He was a signer to Bank of America. He had the record, the power of attorney and we were very concerned. I mean, if we couldn't get a police officer to go and get my mother's Volvo, our only form of reliable transportation—

THE COURT: Well, ma'am, I have no—I didn't receive into evidence the police report. You're going to have to testify about that

First, please note, in a nonjury trial, the judge is refusing to admit a police report.

Further, throughout the trial, he is permitting highly technical and time-consuming objections from Mr. Bottorff, for hearsay. See, TR, 29, 32, 33, 41, 45, 49, 50, 51, 52, 53, 54, 55, 56, 69, 71, 80, 94, 96, 97, 98, 99, 129. In this way, through lengthy dialog, a willingness to entrap highly technical objections, he ran down the clock—demanding Petitioner stop at a certain time. She never got back to testify about the police report and numerous other matters.

The trial judge threatens her with “time out.”

MS. SEARS: I was concerned about it.

THE COURT: --concerned about? All right. So this was an apprehension or a fear that you had because you discovered an empty envelope in your mother's bedroom when you were changing beds?

Ms. SEARS: Which she acknowledged—which she acknowledged had important documents in it.

THE COURT: Okay. So you want me to consider that evidence as giving—

MS. SEARS: It is the reason—it is the reason why I did what I did.

THE COURT: All right. Ma'am?

MS. SEARS: Yes, sir.

THE COURT: **That's absolutely the last time. Now, you've interrupted me for the last time that I'm going to tolerate it. Now, I told you that I could have you put in time-out so you could think about things. I'm not going to do that, but I am going to say I'm done hearing your testimony because you cannot control your tendency to interrupt the Court, and— and I'm just not going to put up with it anymore. So you can have a seat. Are there any other witnesses that you want to call?** [emphasis added]

MS. SEARS No, sir.

THE COURT: Do you rest?

MS. SEARS: I am

Tr. page 151

From pages 152 to 157 the trial court conducts a discussion with Ms. Blair and Mr. Bottorff excluding Petitioner. Without reviewing any of Petitioner's evidence, he has already come to a decision and is particularly interested in a remedy that sells the property. Eventually, Petitioner attempts to enter into the dialog and gets thrown into a holding cell.

MS. SEARS No, sir.

THE COURT Do you rest?

MS. SEARS I am.

THE COURT: All right. Any rebuttal?

MR. BOTTORFF: No, Your Honor. Would--

THE COURT: Okay.

MR. BOTTORFF: --Your Honor entertain a directed verdict?

THE COURT: I would.

MR. BOTTORFF: I would make a motion for a directed verdict. If you take all the testimony and the evidence in the light most favorable to the respondent, which in our opinion would be that she thought she was protecting assets according to her testimony, then

THE COURT: Well, she testified in response to my question that part of her motivation was to compensate herself for services that she believed that she was due, and I—

MR. BOTTORFF: Certainly.

THE COURT: -- specifically asked her that question, and she admitted that that was her motivation now--she said it was part of her motivation. So...

MR. BOTTORFF: In either event, I would

MS. BLAIR: I—I believe we just looked at this issue the other day. I believe that the will gives the administrator the ability to bring the--the real property into the estate or

THE COURT: Into the estate.

MS. BLAIR: -- to address it. I don't know that it disposes of it. It--it may be, as Your Honor is correctly pointing out, like a function of law that would be --

THE COURT: But it gives it--it gives the personal representative the authority to deal with the asset and then **dispose of it in accordance** [emphasis added] with its title?

MS. BLAIR: Definitely.

THE COURT: All right.

.....  
TR page 155

MS. BLAIR: -- and then perhaps to give—because the house is the primary asset of the estate and obviously Mr. —there's going to be some expense—estate expenses, certainly Mr. Bottorff's time, that sort of thing—to give him the authority to bring the house then into the estate to—to be used for—for purposes of addressing all of the obligations of the estate.

THE COURT: Would he have the authority to **sell** [emphasis added] it?

MS. BLAIR: I—I believe he would, if I'm looking at if I'm looking at this properly, that

COURT: Okay. All right- Pending the Court entering a memorandum and order with more detailed findings, the Court is going to grant some interlocutor-- order some interlocutory relief from the bench. First thing I 'm going to order is, Ms. Sears, you are to without--without unreasonable delay, you are to transfer and remit to the clerk and master of this Court the balance of all fund transfers that you made exercising your power as attorney in fact from your mother's investment accounts through her account at the Navy Credit Union and into your account at wells Fargo. I believe that's what you told me. Was it Wells –

MS. BLAIR: American

THE COURT: -- Fargo?

MS. BLAIR: -- Express.

THE COURT: Beg Your Pardon?

MS. BLAIR: The testimony was American Express.

THE COURT: American Express. Sorry. American Express. Thank you. I knew it was a different bank. And you are--you are to do that without unreasonable delay, and you're to —

MS. SEARS: So it's my understanding that

you completely do not --I mean --

THE COURT: Well, ma'am, if you'll sit there quietly, you'll find out what my intent is. All right. So sit-- sit down. Please be--

MS. SEARS: Because I'm going to be without a home and money. Is that--

THE COURT: Would --

MS. SEARS: -- correct?

THE COURT: Would you please escort Ms. Sears to the holding cell for a few minutes?

THE COURT OFFICER: Yes, sir.

THE COURT: Ma'am, I've told you repeatedly you are not to interrupt me, but you keep doing it, and I've told you you'd be put in time-out until you decide that you're going to behave yourself. Take a break in the holding cell. We'll take recess till 5:00 p.m.

(Recess observed.)

THE COURT: All- right. We ask the deputies to please bring Ms. Sears back out in the courtroom.

courtroom.

(Ms. Sears returns.)

THE COURT: All right. Ms. Sears, please have a seat.

Tr. pages 152-159

The above dialog although lengthy shows numerous elements of the trial. First, the trial court is not as sensitive to being interrupted, pausing and allowing each attorney a chance to speak. Second, at no time has selling the house come up. Mother's cash estate is sufficient for all her debts, including to Mr. Bottorff. There is no need to sell the home. Petitioner did not want to sell. In addition to wanting the home sold, the trial judge refuses to consider making necessary repairs and set in motion Petitioner's eviction. *See*, Tr. 163-164, Circuit Court Williamson County Tennessee, 2018-185-2017CV3155, June 7, 2018.

C) The videos of mother are vital and fully admissible. A transcript of the dialog between mother of Petitioner is submitted to both the trial judge and Court of Appeals.

- 1) Three recordings show mother as independent, of free mind and under no one's will. The heightened evidentiary standard of clear and convincing evidence in Tennessee can be overcome with a showing that the person is not subject to the Petitioner's will. See, *Matlock v. Simpson*, 902 S.W. 2d 384 (Tenn. 1995) On this matter alone they are not hearsay. However, still, the Courts reject.
- 2) The Court of Appeals rejects the videos because Petitioner admits mother had physical and mental disabilities. Absurd. Mental and physical disability as agreed to at trial can include Trimethylaminuria (fish odor syndrome) and nail-biting--neither of which makes you incapable of contracting. The wording in TCA 71-6-120 Right of elderly person or disabled adult to recover for abuse or neglect, sexual abuse, exploitation or both [hereinafter referred to as TCA 71-6-120, Elderly Person] on its face does not support the findings of either Court., See discussion infra at 31-33
- 3) The dialog between mother and Petitioner is highly explosive. In it Mother accuses Ian of drugging her through injections, disposing of her property against her will, leaving her for long periods in bed, she suffers from severe diarrhea, when she generally suffered from opioid-induced constipation and is served very spicy meals in no way appropriate for her diverticulitis. Here are a few examples of Ian's testimony versus Mother's.

**Ian's Testimony**

Q. And did she want to get rid of all these things? Did you get rid of things?

A The things that were -- yeah, things that were gotten rid of she gave her assent to and agreed.

Tr. 123

**Interview**

Anne: And did he ask you if things should be thrown out? ...Do you recall him ever asking is this trash?  
Mother: [nods]  
Anne: So you gave him permission to throw somethings out?  
Mother: No I was, he was throwing things out that I didn't want him to.  
Anne: You didn't want thrown out?  
Mother: [shakes head in agreement...long pause...shakes her head...]...no they did a great job.  
Anne: With what?  
Mother: The whole situation. The whole lie...[long pause]...strangely I didn't see...long pause...I only saw the children one at a time and I didn't see each one of them except...what's his name,

Ex. 18 Interview, time 13:11-29:07

### **Ian's Testimony**

THE COURT: Now, before you go there, I -- I got to I've just got to know. Sir, did you ever use your status as attorney in fact or your status as having signature authority on your mother's Wells Fargo account, execute any self-dealing transactions where you transferred your mother's assets to yourself?  
THE WITNESS: NO.  
THE COURT: All right.  
Ms. SEARS  
Q. What was the Volvo?  
A. What was  
Q. Was was the Volvo in Mom's name?  
A. Yes.  
Q. Was that an asset?  
A. Yes.  
Q. Where is her Volvo?  
A. She had gifted the Volvo to Lachlan to use.  
Q. And when did she gift the Volvo to Lachlan?  
A. Well, she had she had officially clarified the gifting of the Volvo in December as a Christmas gift and  
THE COURT: Of what year?  
THE WITNESS: Of '15.  
THE COURT: Thank you.  
BY MS. SEARS:  
Q. Did we celebrate Christmas together, 2015?  
Tr. 135-137

### **Interview**

Anne: He just did that...um...have you, did you give Ian the car?

Mother: ...no you did...not Ian...  
Anne: Andrew...but you didn't want Ian to permanently have the car? Did you?  
Mother: No, because before all this was going on he borrowed the car and returned it and then he didn't return it.  
Anne: Aha, So you didn't want him to borrow the car again?  
Mother: ...[nods yes]...  
Anne: Because he doesn't return it....  
Ex. 18 Interview time 4:05-8:21

### Ian's Testimony

Q So there was lasagna there. Did you feed her Lasagna?  
A I may have cooked lasagna.  
Q Okay. Do you know if she ate it?  
A My recollection was we ate it together.  
Q So you had lasagna with Mom?  
MR. BOTTORFF: Objection  
THE COURT: That's what  
MR. BOTTORFF: asked and answered.  
THE COURT: -- he said his recollection was, ma'am. Are you going to repeat every answer he gives?

Tr. 120

This example shows the Judge actively protecting Ian and his perjured testimony by ordering Petitioner not to clarify and narrow his response, also, where is Ms. Blair? Ian denied mother had diarrhea Tr. 126

### Interview

Mother: [rocking back and forth...long pause]  
...Ian was...[long pause]...Ian was very cold I can see when ...I don't remember how I got...I was in my house so Anne ah Anne either Lachlan or Emily were in the kitchen and Ian marched in this large plate [using her hands] about this big of lasagna piled high and made some dry funny mood and he left the plate with me and left the kitchen with whomever it was.  
Anne: Was anyone else eating the Lasagna?  
Mother: No, nobody touched it except to carry it in...and I thought to myself, I thought it would be with them at the table. And thought to myself, is this days old. And they left me and it must have been injections because I didn't see that's all I must have gone to bed right away. And I don't think I saw anybody. The next thing I knew I was lying in bed and I was mortified because I was just covered with excrement and

was apologizing to them there were two of them that came into the bedroom and think it was Anne but I heard a voice out in the hall and then someone came in to say they were sorry I think and kept apologizing... [laughter]...I don't remember anything. The excitement that you have come, I can't think of anything. It is remarkable...[long pause...shakes head]...Were you with me at all.

Anne: I was there on the... I was supposed to be there till the 8th and I was there on the 7th and I when I came back you were by yourself staring.

Ex. 18 Interview, time 19:50-29:07

D. Court distorted use of the "Dead Man's Statute." *See also*, 12-13, 17, 39, 48, 75, 77, and 84.

MS. SEARS: I think the primary motivation-- and that is what I tried to present-- is why did what I did. It was not an attempt to take all my mother's stuff. It was an attempt to make sure that my mother who wanted to live in her home and who wanted to live outside of an institution be given that flexibility. Now, Ian-- So are you telling me, ma'am--are you telling me that you took title to the real estate and transferred the investment accounts to preserve those assets during your mother's lifetime? Is that what you're telling me?

THE COURT: Yes, it is.

MS. SEARS: All right.

THE COURT: However—

MS. SEARS: Well—then why didn't you

THE COURT: --there was a —

MS. SEARS: --turn --ma'am, why then don't you turn over those assets to the administrator of your mother's estate so that they can be distributed in accordance with her will?

THE COURT: Because there was an event that occurred-- I mean, I was going to say it's-- there's another reason and that reason -- my mother finally acknowledged that I had provided her

MS. SEARS: Well, ma'am

THE COURT: -- with a great

MS. SEARS: -- your mother didn't --did not --did not revoke her will, did she?

THE COURT: But she did

MS. SEARS: Ma'am, did she revoke her will?

THE COURT: Judge, she did to me —

MS. SEARS: That's a-- that's a yes or no. Did she—

THE COURT: But that doesn't—she did to me, but that doesn't —I mean—

MS. SEARS: I can't receive that testimony. That—that violates the dead man statute.

Tr. at 77-78

In fact, as a beneficiary, the Petitioner's statement fell under an exception to the dead man's statute, as a will contest. *In re Estate of Smallman*, 398 S.W.3d 134, 159 (Tenn. 2013). Interrupting, argumentative the trial judge numerous times stopped the Petitioner from finishing her sentences. In the above circumstance, she isn't interrupting him; he is shouting her down, not letting her finish answering his question. Ironically, the Court of Appeals uses this circumstance as an example of Petitioner interrupting the trial judge.

E. The Court of Appeals affirms the trial court practice of forcing parties to virtually try their evidence before the case is tried. Tr. 19-76

F. The trial judge didn't shy from yelling and throwing a "fit" when he didn't get the right response.

COURT: What does it say?

MS. SEARS: It says, "plus have reduced [sic] relief totaling 100,000 for past assistance. Still providing service"

COURT: What was the \$100,000 of relief that you were referring to when you wrote that?

MS. SEARS: For the past ten year—well, for the past three years I had no salary. I had been living off of my own savings—

THE COURT: No, no ma'am, you—no, you're not understanding my question.

MS. SEARS: Okay

Tr. page 45

And, indeed yes, the Judge is yelling at Petitioner.

Petitioner has a constitutional right to speak, present an argument without intimidation and ridicule from the bench. In addition to the above the judge also:

- 1) Within seconds of Petitioner entering 30 pages of medical records, the trial judge finds a statement--he reads it into the record, and orders Petitioner to move on when she attempts a respond. *See*, Tr. page 86

- 2) Rejects a police report that shows mother did not want Ian to have her car. *See*, page 3.
- 3) Calls Petitioner Ms. Spears. Tr. page 16. Petitioner is frequently asked if she is Jewish, black, further she has a large chest. This play with her name in the past is always derogatory.
- 4) Ian refers to an “August issue with the police” the judge is familiar with but the incident is never discussed in court. See Tr. page 138

#### G. Court decision

- 1) Under Tennessee rules of evidence, the videos are to be classified as photographs. See Rule 1001, Definitions. The trial judge refuses to admit them, states he will watch the recordings before rendering a decision, doesn't, renders a decision relying on Ian's testimony. In a supplemental decision, claims to watch the videos, is therefore aware and hears mother accuse Ian of numerous abuses and contradict his entire testimony, yet, the court, instead of taking action to correct his decision in light of the perjured testimony, claims the recordings are hearsay or have no relevance, and continues to affirm Ian's perjured testimony in the decision.
- 2) Decision makes no sense. No finding of facts to support the application of TCA 71-6-120 Elderly Persons. No finding that there is abuse or neglect, sexual abuse, exploitation, or theft. No finding of incompetence a matter distinct from dysfunctioning or disability in the four corners of the statue. It's not clear if he is even applying this law. He questions the legitimacy of the revocation for no reason, and without factual basis. Mr. Bottorff without reservation--admits the document. Competence is presumed with a notarized document Mr. Bottorff has the burden to rebut. He doesn't—so?

- 3) Recordings show an independent woman with a sharp mind but deems them irrelevant when a showing of independence overcomes the evidentiary standard of clear and convincing evidence and use of the videos for this purpose is not hearsay. However, even with the higher standard, 15 years of caregiving aid, which the court acknowledges occurred, should overcome the evidentiary standard. Without any explanation, he finds it doesn't.
- 4) Includes a discussion of the petitioner on vacation in Florida. No such testimony. Petitioner's sister in law, also Anne Sears frequently visits her father who lives in Naples, Florida, but the Petitioner never mentions Florida and in fact, hasn't been for 55 years.
- 5) Despite all of this, the Court of Appeals and the Tennessee Supreme Court find this decision sufficient to employ state action to deprive Petitioner of home and property. Pro se litigants have long been treated as chum thrown to the sharks. This Court has a long history of case law requiring protections to pro se litigants, the question as it arises in this case if no one wants to "mind the store" upon whom does the duty fall? And what does it look like?

The court without fear of correction or retribution, tramples on all of Petitioner's civil liberties, false imprisonment, theft of personal and real property, continued threats and intimidation at subsequent hearings, forcing her into poverty and homelessness and not one judge on the Court of Appeals or one judge on the Supreme Court of Tennessee assumes responsibility to correct his actions. Undoubtedly this is why he felt so bold to conduct these abuses on the record.

II. WHAT IS THE CONSTITUTIONAL BALANCE BETWEEN THE EXERCISE OF STATE POLICE POWER TO PROTECT ASSETS OF ELDERLY PERSONS AND THEIR ESTATE WEIGHED AGAINST THE 13TH AMENDMENT AND CONTRACTS CLAUSE, WHERE THE STATE VOIDS AFTER THE DEATH OF THE MOTHER, A FULLY EXECUTED, PERFORMED CONTRACT FOR CAREGIVING AID AND ORDERS ALL PAYMENTS FOR SERVICES RETURNED TO THE ESTATE?

Stepping back and taking a broader view, today we face a crisis in elderly care. As the baby boomers age, more significant stress is being placed on existing institutions, by numbers, but also longevity. With advanced surgical and medical techniques, our elderly are living longer. Already, this nation's second largest nursing home provider has filed for bankruptcy. *See, Rucinski, Tracy, Roumeliotis, Greg, Nursing Home Chain HCR Manorcare To Sell Itself In Bankruptcy, Reuters, March 2, 2018,* <https://www.reuters.com/article/us-hcr-manorcare-bankruptcy-quality-carenursing-home-chain-hcr-manorcare-to-sell-itself-in-bankruptcy-idUSKCN1GE1V4>. The cost of nursing care is rising with the stress to the system. According to AARP nursing costs are now around \$100,000 per year. *See, Sackett, Victoria, Nursing Home Costs Top \$100,000 a Year, Survey: As charges skyrocket for long-term care facilities, increases in home-care costs are more moderate, AARP, October 24, 2018, https://www.aarp.org/caregiving/financial-legal/info-2018/nursing-home-costs-rising.html*. The pressure has just begun. This responsibility generally falls on the daughter. *See, O'Donnell, Liz, The Crisis Facing America's Working Daughters, THE ATLANTIC, February 9, 2016,* <https://www.theatlantic.com/business/archive/2016/02/working-daughters-eldercare/459249> "there are currently 44 million unpaid eldercare providers in the United

States according to the U.S. Census Bureau and the majority are women." Id. The family caregiver, through the familial, social structure, pressure and duty, stumbles into the position, taking on more and more responsibility, without forward discussion of boundaries, compensation, breaks, vacation, etc. However, also, finding her responsibilities as caregiver lasting longer than expected. Id.

There is a public policy interest to ensure that caregivers of the elderly when they are finally relieved of the duty, do not emerge destitute dependents on public assistance. Wading through issues of compacity, and disability, lies at the heart of this case the fundamental question, under the U.S. Constitution and Tennessee Constitution, can a parent or the state, demand, manipulate, request, plead, bully or otherwise persuade an adult child or family member to provide labor without compensation. Petitioner contends this is prohibited under the 13th Amendment. That Petitioner has a fundamental right to be compensated at the time the labor is provided. There is no dispute that Petitioner provided the labor, the length or the type of labor; there is no dispute as to the sacrifice to her career or her financial wellbeing. No dispute that mother entered into an oral agreement to compensate the Petitioner. This oral agreement evidenced in mother's signature in five different places on the Veteran's Administration Application, acknowledging the transfer of her assets.

Further, there is no dispute that mother signed a POA drafted by a Tennessee attorney and signed a notarized statement revoking Ian Sears as her POA leaving her daughter, through the operation of law designated in the instrument, as her next POA. Mother's stockbroker, knew her for 17 years, Navy Federal Credit Union and Bank of America all required an interview with Mother and her consent before Petitioner could exercise the

POA. Moreover, last, there is no dispute that the POA gave Petitioner access and authority to pay mother's bills and debts promptly through the use of all of the resources both personal and real.

Therefore, Petitioner with the proper legal documents and her mother's consent and cooperation, transferred the real and personal property during mother's lifetime to compensate for 15 years of caregiving aid, loss of employment opportunities and benefits. In reliance on these transfers of assets and continued promises of reimbursement for her labor and time, Petitioner continued to care for her mother until her death. Despite all this, Petitioner finds herself emerging from 15 years of caregiving, destitute and homeless.

The trial judge bullies a stipulation that mother the last three years of her life had both physical and mental disabilities. Tr. at 7-10

Petitioner still has no idea how TCA 71-6-120 Elderly Person and TCA 24-1-203 Transactions with descendant or ward--Dead Man Statute [hereinafter referred to as TCA 24-1-203 Dead Man's Statute] are being used by the Court of Appeals and the trial court. A plain reading of TCA 71-6-120 Elderly Person. reveals disability and dysfunction or distinct concepts.

- a) As all words have weight and purpose in legislative interpretation, it is significant that listed first is Capacity to Consent. The purpose of the legislation is to protect those who can't protect themselves. In the statute, disability, dysfunctioning are distinguished from each other and incompetence.
- b) distinguishes between disability and dysfunctioning. See, "Disabled adult" versus mental or physical dysfunctioning in section 3).

- c) There was no factual showing that the Petitioner is guilty of abuse or neglect, sexual abuse, exploitation, or theft.
- d) Petitioner contends the burden to show these elements rests with the Plaintiff.

By not requiring a finding of incapacity, the statute runs afoul of the Contracts Clause. The State's police power must be balanced against the Contracts Clause.

According to in *Construction Crane and Tractor, Inc. v. Wirtgen America, Inc.*, No. M2009-01131-COA-R3-CV (Tenn. App., 2010), there was a contract between mother and daughter. The Court observes that a contract can be "express or implied and either written or oral." at 10. It "must result from a meeting of the minds of the parties in mutual assent to terms, must be based upon sufficient consideration, must be free from fraud or undue influence, not against public policy and sufficiently definite to be enforced." at Id (Tenn. Ct. App. Aug. 12, 2008). Under this definition, Petitioner provided more than enough evidence that a contract for caregiving aid existed as evidenced in the Application, revocation and POA.

2) Use of 24-1-203. Transactions with decedent or ward -- Dead man's statute. Also violates the Contracts Clause. The purpose of the statute is to protect beneficiaries from fraudulent claims against an estate where the descendant is not available to confirm or deny the debt.

Payment and assistance occurred during mother's life placing the transactions outside of the stated purpose of use of police power. Still the Courts

retroactively bar evidence of intent to contract through the use of the Dead Man's statute.

MS. SEARS: I believe it is a – well, it is a reflection of what occurred and my mother's intent to transfer her asset.

THE COURT: Well, I'm not going to receive it as any evidence of your mother's intent because of the dead man statute, but I'm going to receive it as—

MR. BOTTORFF: Thank you.

THE COURT: -- evidence of your actions.

Tr. 48

The Court of Appeals upheld the trial court's use of the statute. *Lucas D. Bottorff v. Anne A. Sears*, No. M2017-01363-COA-R3-CV (2018). at 6.

Article I, Section 20 of the Tennessee Constitution provides that “no retrospective law, or law impairing the obligations of contracts, shall be made.” Tenn. Const. Art. I § 20.

The U.S. Constitution provides

“[n]o state shall ...pass any...Law impairing the Obligation of Contracts.” U.S. Const., Art. I §10, cl. 1.

The U.S. Supreme Court in *Sveen v. Melin*, 138 S.Ct. 1815 (2018) affirmed a two-part test to evaluate whether a statute or its application violates the Contract Clause; a) is there a substantial impairment to the contractual relationship and if so, b) is the statute written narrow enough to inflict the least harm for the highest good. The Tennessee Court's application of both statutes fails the test. According to the Court of Appeals, it is a legitimate use of the statute to void any contract after the death of a party if they are over 60, with a mental and or physical disability. Thus, any contract can be voided, especially if the Dead Man's statute is used to prevent a showing of intent to contract. This too is an absurd use of the statute. The Petitioner has been deprived of the quiet enjoyment of her real and personal property for 3 years because of these ridiculous interpretations.

Fundamentally Petitioner has a right to be paid for services provided.

The 13th Amendment provides,

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

In *Bailey v. Alabama*, 219 U.S 219 (1911) the Court observes,

The plain intention was to abolish slavery of whatever name and form and all its badges and incidents; to render impossible any state of bondage; to make labor free, by prohibiting that control by which the personal service of one man is disposed of or coerced for another's benefit, which is the essence of involuntary servitude.

"This is to say that no state or individual may demand, physically restrain, or otherwise manipulate a private individual, to provide services without pay." See, Oman, Nathan B., "Specific Performance and the Thirteenth Amendment" (2009). FACULTY PUBLICATIONS. PAPER 82 <http://scholarship.law.wm.edu/facpubs/82> at 2023 [hereinafter referred to as Oman]. Oman further adds,

Unlike most constitutional provisions, the 13th Amendment contains no state action requirements. Rather it forbids a particular set of conditions, slavery, and involuntary servitude categorically that they shall not exist within the U.S., regardless of how the conditions are brought about.

*Id.*

In *United States v. Kozminskis*, 487 U.S. 931, (1988) and *the United States v. Lewis*, 644 F. Supp. 1391 (W.D. Mich. 1986) have broadened the application of the amendment noting, "No longer is the slave always black and the master white. Moreover, while subtler forms of coercion have replaced the blatant methods of subjugation practiced in the antebellum South, these new practices are no less effective than their older counterparts." *Id* at 1401.

There is a deafening silence in both the trial court and the Court of Appeals opinions regarding the thousands of hours Petitioner spent in the care of her mother.

Assuming arguendo there is no contract, and that mother never wanted to pay for the care, Petitioner argues she still has every right to exercise the POA and pay herself as any other of her mother's creditors. Fifteen years is sufficient consideration to overcome an evidential finding of clear and convincing evidence. In open court, Petitioner detailed the care she provided, and the time required--that she asked for help and got none. Tr. at 87, Ex. 18. She detailed the conditions she worked under and provided several videos to substantiate her claims Tr. at 91-93. Petitioner provided ample testimony as to the assistance mother needed as well as a signed document from James MacDonald her Internist, confirming her physical needs, an affidavit signed by Petitioner describing her mother's care, signed by mother that she received the care, included in the Application. Ex. 10; along with Vanderbilt appointment schedules Ex. 16 and medical records submitted from Centennial Hospital Ex. 14. No one argues or contradicts the Petitioner's testimony that she provides unaided assistance to her mother from 2002 to 2016. The assistance is that which is regularly compensated in caregiving service, home health and assisted living.

As dramatic as it sounds, the Petitioner had her mother's life in her hands. Mother was an irascible person who doesn't want people touching her. Tr. 88. She doesn't want to go into an institution, and her personality makes her a bad candidate. Tr. 91-92. Petitioner does not intend her labor to be free, she wants to be paid and that her mother makes promises but fails to follow through. Tr. 91 Further, in reliance on these promises, Petitioner continues to provide the care, to her emotional, physical and financial detriment. In every respect, the Petitioner finds herself indentured to her mother. Mother's burdensome familial demand on her binds and isolates Petitioner eventually

involuntarily forcing financial dependence — as well as sacrificing career opportunities and future financial security. *Id.* To leave meant retreating to a woman's shelter. However, even if the Petitioner makes this choice, she knows she will be signing her mother's death warrant. Petitioner is trapped.

The state has no authority to demand Petitioner provide uncompensated extensive caregiving aid without compensation. The 13th Amendment demands that she be paid for her labor and that payment be made within a reasonable time period. Mother knowingly and willingly appeared before a notary to revoke Ian's benefit as power of attorney. Petitioner's exercise of the power is legitimate and reasonable. Use of these statutes and state power to take her only financial resources, leaving her penniless and homeless is insupportable.

#### CONCLUSION

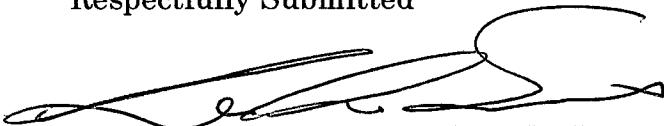
The trauma of the trial of May 12, 2019, still lingers not just in the everyday reminder that Petitioner is penniless and homeless, but the humiliation, yelling, trial judge's refusal to hear her, his deliberate fabrication of the record which included perjured testimony. Moreover, of course, flashes of the holding cell still pop into her head. Yellow stained walls with a dirty white toilet in the center. Toilet paper moistened by something thrown into the ceiling vents. Two sausages of fecal material carefully wrapped in toilet paper and placed in the corner of the room. I didn't want to breathe for fear of contamination. Petitioner's complaint regarding abusive use of the trial system, personnel and facilities by the trial judge has gone up to the Supreme Court of Tennessee, and not one judge has chosen to act.

It is tragic that the Petitioner is forced to elbow passed 10,000 others to correct this series of remarkably bad decisions. However, also, that this Court must be burdened with oversight and discipline of a state judge run wild. Apparently, in Tennessee his conduct is constitutional tolerable. This case provides the Court an opportunity to develop that minimum level of judicial checks and balances constitutionally required of the judiciary and each judge when reviewing litigation involving a pro se party.

Moreover, second, as America ages, many states through the exercise of their police power have put into place safeguards in protecting their elderly citizens. However, there is emerging and will continue to emerge in greater numbers, family caregivers of the elderly whose interests and rights under the constitution have not been well defined. This case provides the Court an opportunity to begin setting boundaries between these two competing interests.

For the following reasons, Petitioner prays this Court to grant her Petition for Writ of Certiorari.

Respectfully Submitted



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## TABLE OF AUTHORITIES

### PAGE NUMBER

#### Cases

<i>Bailey v. Alabama</i> , 219 U.S 219 (1911) .....	31
<i>Construction Crane and Tractor, Inc. v. Wirtgen America, Inc.</i> , No. M2009-01131-COA-R3-CV (Tenn. App., 2010).....	28
In re Estate of Smallman, 398 S.W.3d 134, 159 (Tenn. 2013).....	21
Lucas D. Bottorff v. Anne A. Sears, No. M2017-01363-COA-R3-CV (2018). .....	29
<i>Sveen v. Melin</i> , 138 S.Ct. 1815 (2018).....	30
<i>United States v. Kozminskis</i> , 487 U.S. 931, (1988) .....	31
<i>United States v. Lewis</i> , 644 F. Supp. 1391 (W.D. Mich. 1986).....	31

#### Statutes

TCA 24-1-203 Transactions with descendant or ward--Dead Man Statute.....	28
TCA 71-6-120 Elderly Person .....	27
TCA 71-6-120 Right of elderly person or disabled adult to recover for abuse or neglect, sexual abuse, exploitation or both.....	17

#### Other Authorities

Legal Dictionary, The free dictionary by Farlex, <a href="https://legal-dictionary.thefreedictionary.com/Due+Process+of+Law">https://legal-dictionary.thefreedictionary.com/Due+Process+of+Law</a> , 2019.....	10
O'Donnell, Liz, The Crisis Facing America's Working Daughters, THE ATLANTIC, February 9, 2016 <a href="https://www.theatlantic.com/business/archive/2016/02/working-daughters-eldercare/459249">https://www.theatlantic.com/business/archive/2016/02/working-daughters-eldercare/459249</a> .....	26

Rucinski, Tracy, Roumeliotis, Greg, <i>Nursing Home Chain HCR Manorc care To Sell Itself In Bankruptcy</i> , Reuters, March 2, 2018, <a href="https://www.reuters.com/article/us-hcr-mancare-bankruptcy-quality-carenursing-home-chain-hcr-mancare-to-sell-itself-in-bankruptcy-idUSKCN1GE1V4">https://www.reuters.com/article/us-hcr-mancare-bankruptcy-quality-carenursing-home-chain-hcr-mancare-to-sell-itself-in-bankruptcy-idUSKCN1GE1V4</a> .....	25
Sackett, Victoria, <i>Nursing Home Costs Top \$100,000 a Year, Survey: As charges skyrocket for long-term care facilities, increases in home-care costs are more moderate</i> , AARP, October 24, 2018, <a href="https://www.aarp.org/caregiving/">https://www.aarp.org/caregiving/</a> .....	25
The Due Process Clause of the 14 <sup>th</sup> Amendment provides, "[N]or shall any State deprive any person of life, liberty, or property, without due process of law" (§ 1 .....	10
<b>Rules</b>	
Rule 10, Code of Judicial Conduct, Rule 2:15.....	5
Rule 1001, Definitions .....	22
<b>Treatises</b>	
Oman, Nathan B., "Specific Performance and the Thirteenth Amendment" (2009).FACULTY PUBLICATIONS.PAPER 82 <a href="http://scholarship.law.wm.edu/facpubs/82">http://scholarship.law.wm.edu/facpubs/82</a> at 2023.....	31
<b>Constitutional Provisions</b>	
Article I, Section 20 of the Tennessee Constitution.....	30
U.S. Const., Art. I §10, cl. 1.....	30
The Due Process Clause of the 14 <sup>th</sup> Amendment provides, "[N]or shall any State deprive any person of life, liberty, or property, without due process of law" (§ 1 .....	10
The 13th Amendment.....	28