

No. \_\_\_\_\_

In the  
**SUPREME COURT OF THE UNITED STATES**

\_\_\_\_\_  
Susan R. Gokool,  
*Petitioner*

v.

Oklahoma City University,

*Respondent*

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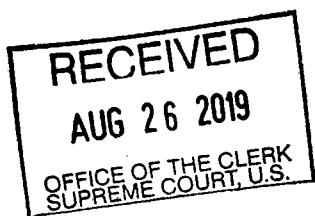
On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the  
Tenth Circuit

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Due Process is a course of legal proceeding for the enforcement and protection of private rights guaranteed by the Constitution that requires a notice, opportunity to be heard, and to defend.

The question presented is whether the circuit court's failure to notify Petitioner to be heard and object to its sanction under Fed. R. Appl. P. 38 for costs under Fed. Appl. P. 39(a)(2) deprived Petitioner of due process of law, thereby making its judgment void?

2. This court decided in *Scheuer v. Rhodes*, 416 U.S. 232, (1974) that whether on jurisdiction or failure to state a claim, "[w]hen a judge does not follow the law, the Judge loses subject-matter jurisdiction and the judges' orders are... VOID...."

The question presented is whether the district and circuit court acted prematurely and hence erroneously by their failure to follow precedent law of *Pacheco* for discovery before deciding that Petitioner failed to state a claim and was frivolous, thus losing subject-matter jurisdiction, therefore their judgments are void?

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This Court has jurisdiction under § 86(1) of the Constitution to decide whether the Bill of Rights was violated in this case.

## CONSTITUTIONAL PROVISIONS

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## PETITION FOR WRIT OF CERTIORARI

Petitioner, Susan Gokool respectfully prays that a writ of certiorari issue to review the judgment and order(s) below.

### OPINIONS BELOW

The opinion of the Tenth Circuit Court of Appeals appears at (App. A, 1a-9a) to this petition. The opinion is unpublished. The District Court's order appears at (App. B, 10a).

### JURISDICTION

The opinion of the court of appeals was entered on April 30, 2019. A petition for rehearing was not filed. This Court has jurisdiction under 28 U.S.C. § 1254(1).

### CONSTITUTIONAL PROVISIONS

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

### **RULES**

**Fed. Rule Appl. P. 38** -If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

**Fed. R. Civ. P. 11(b)(3)** -The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for investigation or discovery.

### **STATEMENT OF THE CASE**

Petitioner, a female minority of West Indian heritage attended Oklahoma City University (herein referred to as OCU) from August 2013-May 2014. OCU stated that Petitioner was dismissed from the law program for failure to meet the required grade point average and placed an administrative hold on her account that prevented access to her grades and other records. None of OCU's handbooks contain a policy for an administrative hold, but only a financial hold, and Petitioner was not in any violations for any holds. Other dismissed students did not have said administrative hold. When Petitioner had permission to view her grades, she had seven days as compared to other dismissed students who had fourteen days to appeal dismissal, and there were discrepancies in her grades, for which Ms. Joey Croslin (Compliance Coordinator) refused to investigate, clarify, and preserve exams upon Petitioner's request. The holds relevant to this suit were deleted from Petitioner's 'record of holds,' and she was later told that there were no holds, but the "other requirement" was on her account though emails and letter(s) stated otherwise, and OCU does not have a policy for the "other requirement." Petitioner requested a meeting to review her records under the Federal Education Right to Privacy Act (FERPA), but OCU refused to comply with the FERPA and did not meet.

About two months prior to her dismissal Petitioner filed a complaint on a professor with Dean Eric Laity, academic dean. Petitioner referenced how complaints are viewed at OCU in the words of Professor May; "be silent or be gone." *See May v Oklahoma City Univ.*, Case No. 5:16-cv-00145 and *Bernard v. Oklahoma City Univ.*, Case No. 5:16-cv-00146, companion cases.

After confirmation of Petitioner's dismissal with OCU's refusal to address the reasons for holds, the alteration of her "record of holds" and discrepancies in her grades, Petitioner filed suit against OCU on June 10, 2016 in the State Court of Oklahoma County to avoid a potential bias in the federal courts since some administrative members of OCU were previously members of the District and Tenth Circuit federal courts.<sup>1</sup> She claimed a breach of an implied contract; fraud; negligence; civil conspiracy; disparate treatment; and unjust enrichment. OCU removed the case to the federal district court for federal and supplemental jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1337 and filed a Fed. R. Civ. P 12(b)(6) motion to dismiss for failure to state a claim which the district court granted without discovery.

Based on this court's decision in *Ascroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) for plausibility, the Tenth Circuit Court has set a standard that "plaintiffs will need discovery before they can satisfy plausibility requirements when there is asymmetry of information, with the defendants having all the evidence."<sup>2</sup> See *Gee v. Pacheco*, 627 F.3d 1178, 1185 (10th Cir. 2010); see also *Khalik v. United Airlines*, 671 F.3d 1188 (10th Cir. 2012).

Petitioner filed a motion to alter judgment and disputed OCU's allegations with its emails and letters. The district court affirmed its previous decision without discovery.

Petitioner then appealed to the Tenth Circuit Court of Appeals, cited the precedent law of *Pacheco*, detailed some information solely within OCU's knowledge for her claims such as disparate treatment, fraud and civil conspiracy and asked for a remand for

discovery. The panel judges there, Judges Tymkovich and Hartz ruled in *Pacheco*, and Judge O'Brien in *Khalik*, therefore they had first-hand knowledge of the plausibility standard. The circuit court did not remand for discovery but affirmed the district court's decision of December 29, 2016 even though the district court acknowledged that there was information asymmetry by stating that Petitioner did not show the elements for fraud with intent to deceive; information solely in OCU's possession.

After filing her Appellant brief, Petitioner filed a motion for a limited remand to the district court to address fraud-on-the-court which the circuit court denied without prejudice stating that the district court still had jurisdiction over a Rule 60(b) motion. In her Appellant reply brief, Petitioner asked the circuit court to address the fraud-on-the-court, under its inherent power, but it did not do so. Petitioner filed for a panel and en banc rehearing, stated information solely within OCU's knowledge, cited the doctrine of stare decisis, and asked for a remand for discovery under *Pacheco*, but the rehearing was denied.

After the first mandate of February 20, 2018 was issued, Petitioner returned to the district court and filed a motion to reopen and vacate its December 29, 2016 judgment for fraud-on-the-court and/or fraud, not as a second claim for fraud, but to state the fraudulent acts to support her claim of fraud-on-the-court. She also filed a motion for recusal of the district court. Petitioner cited that "plaintiffs will need discovery when there is information asymmetry, See *Pacheco*," and argued that she needed discovery to discern whether the factual allegations for which there were no sworn statements were made by OCU's employees or OCU's attorneys to further advance her

claim. The district court denied both motions for the reasons that Petitioner did not show a basis for jurisdiction and the circuit court has already affirmed its judgment.

Petitioner filed two motions for recusal of the district court for the following: (1) the district court accepted OCU's factual allegations as true and repeated them in its order of December 29, 2016 even though OCU's emails and letter(s) contradicted those allegations rather than viewing Petitioner's complaint in the light favorable to her; (2) the court blindly accepted OCU's fabricated law on *Gonzaga Univ. v. Doe*, 536 U.S. 73 (2002) and repeated it in its order though Petitioner countered the fabrication with the holding in *Gonzaga*; (3) the district court knew that Petitioner did not need a new basis for jurisdiction for fraud-on-the-court when its inherent power was invoked, and by its citation to Fed. R. Civ. P. 8(a), and from its prior rulings where no new basis for jurisdiction was shown; (4) one of Petitioner's argument for fraud-on-the-court was that OCU deceived the court into believing that it was in compliance with Fed. R. Civ. P. 11(b) when the evidence contradicts its allegations. Yet, the court did not ask OCU to show cause, but asked Petitioner to show cause under 11(b). Given the facts above, a reasonable observer would question the district court's impartiality. Petitioner cited [u]nder the Judicial Code of 28 U.S.C. § 455(a), "[a]ny ... judge ... of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned," "to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." See, *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, (1988)."

In response to denial of Petitioners motions, she filed a motion to reconsider for an error in law and stated that she did show jurisdiction when she invoked the court's inherent power by citing "[a]ll courts have the inherent... power to vacate a judgment for fraud upon the court. See *Universal Oil Prods. Co. v. Root Ref Co.*, 328 U.S. 575, 580 (1946)." And, further showed no need for new jurisdiction under Fed. R. Civ. P. 8(a), and that "there are no formal requirement for asserting a claim of fraud-on-the-court, and the court may assert that power sua sponte under *United States v. Buck*, 281 F.3d 1336 (10th Cir. 2002); and in a later pleading stated that the district court allowed similar motions without a new basis for jurisdiction in *Reeves v. Oldham et al*, Case No. cv-03-0019 and *Brady v. Reddick*, Case No.civ-03-009.

Instead of acknowledging that the motion to reconsider showed there was a basis for jurisdiction and allowed discovery under *Pacheco*, the district court again barred Petitioner's motions by ordering her to show cause why her conduct did not violate Fed. R. Civ. P. 11(b), or to withdraw Doc. 41-(motion to reconsider) and Doc.42-(second motion of recusal).

Petitioner showed compliance with Rule 11(b) by stating the laws, facts and evidence that supported her claims were non-frivolous and stated it was "to the best of her knowledge, information, and belief, with the information accessible to her," and identified information solely within OCU's possession that can be obtained by discovery, for which Petitioner asked under Rule 11(b)(3). The district court did not allow targeted discovery under Rule 11(b)(3), responded that Petitioner "failed to show that she is entitled to relief. See Doc. 45," without stating how Petitioner

was in violation and struck Documents 41, 42, &44. The court sanctioned Petitioner to obtain an attorney for further pleadings to show that her pleadings were non-frivolous. (See App. B, 10a).

Petitioner responded with a motion for relief under Fed. R. Civ. P. 60(b) that the court's sanction violated her constitutional right to represent herself under 28 U.S.C. § 1654 and cited. "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as by the rules of such courts ..." and asked the court to issue a final judgment so she can proceed to an appeal. Petitioner also filed a motion to suspend proceedings for a writ of certiorari to this court for her first appeal, but the district court struck both motions.

Petitioner then filed her second appeal to the Tenth Circuit Court and asked for a remand for discovery to advance her claim of fraud-on-the-court. The circuit court acknowledged that the district court had jurisdiction to address Petitioner's motions (see App. A-3a) and that there was information asymmetry since Petitioner did not show the requisite 'intent to deceive' for fraud-on-the-court, yet denied discovery; the means to show intent, with the excuse of judicial cost and efficiency, and sanctioned Petitioner under Fed. Appl. P. 39(a)(2) with costs.

Petitioner became aware of the circuit court's opinion of April 30, 2019 on May 22, 2019 in the mandate, twenty-two days later, so the fourteen days to file a petition for rehearing had passed. Petitioner contacted the Tenth Circuit clerk on May 23<sup>rd</sup> for a copy of the opinion via email; the means by which she signed-up to receive court documents. Petitioner's email search box does not show any emails from the tenth circuit's clerk between 8/27/18- 5/22/2019

issuance of the mandate. (See App. C-11a), and the clerk verified that a separate notice for sanction was not sent. (See App. D-11a).

Petitioner now seeks this writ of certiorari.

**REASONS FOR GRANTING PETITION**

I. The circuit court's failure to allow due process conflicts with prior decisions of this court and violates statutory provisions of fairness guaranteed by the Constitution of the United States.

This court has decided that "[a] fundamental requirement of due process in any proceeding which is to be accorded finality...is notice ...to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *See Armstrong v. Manzo*, 380 U.S. 545 (1965) where this court held that "[f]ailure to give petitioner notice...deprived him of his rights without due process of law." *See also Carey v. Piphus*, 435 U.S. 247 (1978) where this court decided that "the right to procedural due process is "absolute" in the sense that it does not depend upon the merits of a claimant's substantive assertions...," and remanded for deprivation of due process.

Fed. Rule Appl. P. 38 and the amendment "requires that before a court of appeals may impose sanctions, the person to be sanctioned must have notice and an opportunity to respond...A statement inserted in a party's brief that the party moves for sanctions is not sufficient notice." The circuit court's failure to issue a separate notice to Petitioner with an opportunity to respond to its sanction before making its judgment of April 30, 2019 effective as of May 22, 2019 by the mandate violates Fed. R. Appl. P. 38, therefore deprived Petitioner of her due process right and

conflicts with the decisions of *Manzo*, *Piphus*, and *Piper*. "Every person is entitled to an opportunity to be heard in a court of law upon every question involving his rights or interests, before he is affected by any judicial decision on the question." *See Earle v. McVeigh*, 91 US 503 (1875). Petitioner needed discovery as a matter of law to be fully heard.

It was unfair to Petitioner when other litigants who showed information asymmetry were allowed discovery, but she was not after four requests. *See Pacheco*. "When a person is treated unfairly by the government, including the courts, they are said to have been deprived of or denied due process." *See United States v. Carolene Products Co.*, 304 U.S. 144 (1938). This court has decided that "[a] judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere." *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). Both the circuit and district court violated Petitioner's due process therefore, their judgments and orders are void and should be vacated as a matter of law.

**II. The lower courts' failure to follow precedent law conflicts with precedents of this court under the doctrine of stare decisis which is a departure from the usual course of judicial proceeding which is of interest to the public on the consistency of judicial ruling and calls for an exercise of this Court's intervention, and to address the split among the circuit courts on discovery before plausibility.**

**A. Failure to follow precedent law of *Pacheco***

"Whether in relation to jurisdiction or failure to state a claim, when a judge does not follow the law, the judge loses subject-matter jurisdiction and the judge's

orders are...void." *See Scheuer v. Rhodes*, 416 U.S. 232, (1974). The doctrine of stare decisis "provides that today's Court should stand by yesterday's decisions...." *See Kimble v. Marvel Enterprises*, 576 U.S. 45 (2015). "[And,]it is a legal doctrine "that is not based upon an arbitrary discretion." *See Patterson v. McLean Credit Union*, 491 U.S. 164, 172 (1989). On the doctrine of stare decisis the Tenth Circuit has decided, "until the Supreme Court determines otherwise we will continue to follow applicable precedents." *See United States v. Moore*, 401 F.3d 1220 (10<sup>th</sup> Cir. 2005).

Contrary to the circuit court's opinion, Petitioner advanced five arguments for fraud-on-the-court listed A-E, in her motion to vacate judgment for fraud-on-the-court and 1-5 in her appellant brief, but the circuit court selected to address two arguments (see App. A-3a), and ignored the arguments that showed that both the district and circuit court accepted OCU's allegations as true and repeated them in their orders though those allegations are contradicted by evidence of OCU's emails and letter(s).

In its opinion of April 30, 2019, the circuit court discussed that Petitioner did not show the requisite intent to deceive for fraud- upon-the -court. Intent is a fact about a state of mind often exclusively within a person's head for which discovery is needed to obtain, therefore by the circuit court's own acknowledgment there was information asymmetry. The court erred, in that before the circuit court decided that Petitioner did not show the element of intent, discovery should have occurred. *See Pacheco*. However, the circuit court denied discovery; the means necessary to obtain 'intent' and then decided that Petitioner's appeal was frivolous.

Furthermore, the circuit court did not state another means than discovery by which Petitioner could have obtained ‘intent’ when assessing if a Plaintiff meets the requisite for discovery due to information asymmetry as it did in *Glaser v. The City of Denver*, 557 F.App’x 689 (10<sup>th</sup> Cir. 2014) and *Burnett v. Mortgage Electronic*, 706 F.3d 1231 (10<sup>th</sup> Cir. 2013). The circuit court’s excuse of judicial cost and efficiency for deviation from its precedent is contrary to its precedent law, in that “one panel of [the circuit] court cannot overrule the judgment of another panel absent en banc consideration or an intervening Supreme Court decision that is contrary to or invalidates [their] previous analysis.” See *United States v. White*, 782 F.3d 1118 (10<sup>th</sup> Cir. 2015) where the circuit court had to follow precedent because neither exception to the stare decisis rule was present. The circuit court did not provide that there was an en banc consideration or an intervening Supreme Court decision that is contrary to or invalidates its previous analysis in *Pacheco* to deviate from its ruling on discovery.

Cost and efficiency should have been considered upon Petitioner’s first request for discovery because she met the requisite information asymmetry. As this court decided, applying stare decisis “reduces incentives for challenging settled precedents...[t]o reverse course requires...a “special justification-over and above the belief that the precedent was wrongly decided.” See *Halliburton Co. v. Erica John, Inc.*, 573 U.S. \_\_\_\_ (2014). The circuit court did not present that the decision in *Pacheco* was wrongly decided and reversed. This court further decided that

“[a]pplication of the doctrine is the “preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” *See Payne v. Tennessee*, 501 U. S. 808, 827–828 (1991). The circuit court’s decision to deviate from stare decisis conflicts with *Scheuer*, *Kimble*, and *Payne*.

**B. Failure to follow Fed. R. Civ. P. 11(b)(3)**

In response to the district court’s order to show cause under Fed. R. Civ. P. 11(b), Petitioner identified specific information within OCU’s possession that could only be obtained by discovery under 11(b)(3), but the district court did not follow the law and allow for some discovery before deciding that Petitioner was in violation of 11(b).

Furthermore, under 11(b)(6), an order imposing sanctions must describe the sanctioned conduct and explain the basis for the sanction. The district court stated “without reliable evidence or reason—[Petitioner] had accused Defendants and the Court of committing fraud against her as a means of relitigating meritless claims.” (See App. B-10a).

However, OCU did not disputed that Petitioner’s evidence contradicted its factual allegations, nor did the district court asked OCU to support its factual allegations with evidence under 11(b) to show whether OCU was honest with the court.

The district court and the circuit court made premature decisions that Petitioner’s claims were frivolous before applying the relevant laws for discovery when both courts acknowledged that there was information asymmetry. Their failure to follow the applicable laws constitute loss of subject matter jurisdiction, therefore their orders are void.

### C. The Circuit Courts' split on discovery

The Circuit Courts are split on applying the plausibility standard set by *Twombly* and *Iqbal* on whether some discovery should occur before a showing of plausibility that requires a re-dress to create a more balanced solution with consistency to the information access problem that creates an opportunity for potentially meritorious cases to survive.

The Tenth Circuit Court has applied a standard "that plaintiffs will need discovery before they can satisfy plausibility requirements when there is asymmetry of information... ." See *Gee v. Pacheco*, 627 F.3d 1178 (10<sup>th</sup> Cir. 2010). In contrast, the Sixth Circuit decided "*Iqbal* specifically directs that no discovery may be conducted, ... even when the information needed to establish a claim ... is solely within the purview of the defendant." See *New Albany Tractor, Inc. v. Louisville Tractor, Inc.*, No. 10-5100 (6<sup>th</sup> Cir. June 21, 2011).

The First Circuit remanded on a failure to state a claim and decided that "it is reasonable to expect that 'modest discovery may provide the 'missing link' that will allow the appellant to go to trial..." See *Menard v. CSX Transp., Inc.*, 698 F.3d 40, 45 (1st Cir. 2012). Likewise, the Fifth Circuit remanded for limited discovery because there was knowledge "peculiarly with" the defendant. See *Loosier v. Unknown Medical*, 435 Fed. Appx. 302, 307 (5<sup>th</sup> Cir. 2010). And, the Seventh Circuit remanded for limited discovery while deferring a motion to dismiss. See *Swanson v. Citibank*, NA 614 F.3d 400, 412 (7<sup>th</sup> Cir. 2010).

Complaints that require a showing of intent is an almost impossible hurdle to overcome, whether intent to deceive which is a state of mind, or discriminatory