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SUPREME COURT, U.S.

IN THE
Supreme Court of the United States

IN RE SUPERVISED ESTATE OF AL KATZ:

LAWRENCE T. NEWMAN
Petitioner,
v.

ROBERT W. YORK
as Personal Representative,
INTERNAL REVENUE SERVICE, and
STATE OF INDIANA
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF INDIANA

PETITION FOR A WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

1. Whether the refusal of the trial court to hear Newman's administrative expense motions violates the Fourteenth Amendment's Due Process Clause and other Constitutional provisions.
2. Whether the Indiana Court of Appeals' and Indiana Supreme Court's decisions, which denied Newman a genuine bona fide Appeal on the merits, violate the Fourteenth Amendment's Due Process Clause and other Constitutional provisions.

RELATED CASES

United States Supreme Court
Case No. 19-89

Indiana Supreme Court
Case No. 49A05-1710-ES-2475

Supervised Estate of Al Katz
Lawrence T. Newman, Appellant,
v.
Robert W. York, Appellee

Trial Court Case No. 49D13-1009-ES-040244

Date of entry of Order denying transfer:
April 12, 2019

Indiana Supreme Court
Case No. 18A-ES-01721

In re the Estate of Al Katz, Deceased
Lawrence T. Newman, Appellant
v.
Robert W. York, Internal Revenue Service,
and State of Indiana, Appellees

Trial Court Case No. 49D13-1009-ES-040244

Date of entry of Order denying transfer:
June 18, 2019

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Lawrence T. Newman, respectfully requests that this Court issue a writ of certiorari to review the judgments of the Indiana Court of Appeals and of the Indiana Supreme Court in a case of multiple deprivations of basic due process rights to a hearing, relative to the refusal of the trial court to ever hold any hearings on Newman's six Motions for reimbursements/payments to him of administrative expenses in an estate; the subsequent denial of Newman's Appeal thereof by the Indiana Court of Appeals without consideration of the merits of said Appeal; and the denial of Transfer by the Indiana Supreme Court, resulting in the denial of Newman's due process rights at all levels of the Indiana judiciary.

OPINIONS BELOW

The order of the trial court authorizing sale of Estate real property and distribution of proceeds, dated June 12, 2018, is set forth in Appendix A. The order of the Indiana Court of Appeals denying Newman's Appeal, dated December 31, 2018, is set forth in Appendix B. The order of the Indiana Court of Appeals denying Newman's Petition for Rehearing dated March 6, 2019, is set forth in Appendix C. The order of the Indiana Supreme Court denying transfer dated June 18, 2019, is set forth in Appendix D.

JURISDICTION

This cause arises from the failure of the Indiana trial court to grant any hearing(s) to

Lawrence Newman on six (6) Motions. The Court of Appeals denied Newman's Appeal on December 31, 2018, and denied Newman's Petition for Rehearing on March 6, 2019. The Indiana Supreme Court denied transfer on June 18, 2019.

Accordingly, the jurisdiction of this Court is invoked under 28 U.S.C § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the following Constitutional provisions, the pertinent portions of which are set forth below:

This Constitution... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby....

U.S. Const. art. VI.

Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I.

No person shall ... be deprived of life, liberty, or property, without due process of law

U.S. Const. amend. V.

.... 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.

U.S. Const. amend. XIV, Section 1.

STATEMENT OF THE CASE

Petitioner Lawrence Newman ("Newman") is the husband of Dr. Beverly Newman and the son-in-law of Dr. Newman's father, Al Katz, a Holocaust Survivor and domiciliary of Indianapolis, Indiana, since 1947. Al Katz also owned a condominium in Bradenton (Manatee County), Florida, where he normally spent the winter months.

In September 2009, Al Katz was put into an involuntary guardianship in Manatee County, Florida, and the Newmans immediately thereafter traveled from their home in Indianapolis to Bradenton to care for him. After Beverly Newman was appointed Guardian of the Person of Al Katz in November 2009, the Newmans cared for him in his Bradenton condominium for the remaining eight months of his life.

In July 2010, at age 90, Al Katz passed away in Florida, and Dr. Newman opened his Estate in the Marion County, Indiana, Probate Court, which appointed her as Personal Representative of the Al Katz Estate in October 2010.

In less than one year in guardianship, Al Katz's guardians had spent hundreds of thousands of dollars of Al Katz's funds, leaving him destitute of liquid assets at the time he passed away. His Estate was opened with approximately \$400.00 in its bank account. The Estate was chronically short of liquid assets from its inception, and Lawrence Newman, as the son-in-law of Al Katz, personally paid for many of the ongoing administrative expenses of the Estate, including, *inter alia*, expenses for the upkeep of Al Katz's domiciliary home at 4727 North Ritter Avenue, Indianapolis, Indiana ("Ritter Property"), including, *inter alia*, utilities, insurance, maintenance, and property taxes.

At the time he paid for Estate administrative expenses, Newman expected for the Estate to have, in the future, sufficient funds to reimburse him for such necessary expenses through, *inter alia*, the sale of the Ritter Property as well as through four damage lawsuits filed by the Estate in Florida relative to Al Katz's guardianship; however, the lawsuits were all abandoned by the Estate in 2015 at the instance of successor Personal Representative and Estate attorney Robert York shortly after his appointment.

On April 27, 2013, Newman filed his "[Second] Verified Motion for Reimbursement of Payment of Al Katz Estate Administrative Expenses," in the amount of \$42,284.54, seeking reimbursement of Estate administrative expenses Newman had advanced and paid for from his personal funds on behalf of and to support the Estate.

On August 28, 2013, Newman filed his "Third Verified Motion for Reimbursement of Payment of Al Katz Estate Administrative Expenses" in the amount of \$2,054.11, and in the aggregate amount of \$44,338.65.

After Judge Zore, the initial judge supervising the Al Katz Estate, was recused for cause, the Indiana Supreme Court appointed Judge Rosenberg as successor judge on August 29, 2013.

On October 9, 2013, Newman filed his "Fourth Verified Motion for Reimbursement of Payment of Al Katz Estate Administrative Expenses" in the amount of \$1,075.48, and in the aggregate amount of \$45,414.13.

On March 19, 2014, Newman filed his "Fifth Verified Motion for Reimbursement of Payment of Al Katz Estate Administrative Expenses" in the amount of \$5,422.68. Accordingly as of March 19, 2014, the aggregate amount of administrative expenses for which Newman sought reimbursement from the Estate totaled \$50,836.81.

Newman's four administrative expense reimbursement Motions were set for hearing on March 19, 2014, but not heard on said date; reset for hearing on May 2, 2014, but not heard on said date; and the trial court adjourned said May 2, 2014, hearing without ever resetting said hearing and without ever holding a subsequent hearing on said claims, as documented by the trial court's CCS entry on May 5, 2014:

Administrative Event. Per jacket entry L. Newman in person. Court adjourns without addressing 5 motions set for 3/19/14 File Stamp: 05/02/2014.

Further, the "Notice of Executive Director's Determination Pursuant to Trial Rule 53.1(E)" dated June 2, 2015, relative to a Rule 53.1 motion filed by Newman against then-Judge Rosenberg (for removal of Judge Rosenberg under Indiana's "Lazy Judge" rule), ruled in pertinent part as follows:

A review of the Chronological Case Summary (CCS) shows that Lawrence Newman filed his fourth praecipe seeking withdrawal of the submission of this case on May 18, 2015, alleging that the court failed to set a hearing for or rule on four motions filed by him. However, the CCS also shows that the court commenced a hearing on Mr. Newman's claims on May 2, 2014, but adjourned the hearing due to the absence of the personal representative of the Estate, Mr. Newman's wife. Trial Rule 53.1 does not dictate the time in which a court must complete a hearing that has been adjourned.

Critically, said adjourned hearing was never thereafter reset, and Newman's Estate administrative expense reimbursement Motions were never heard or determined by the trial court.

In addition to his four administrative expense reimbursement Motions, Newman subsequently filed on January 25, 2016, a "Verified Petition for Payment of Estate Attorney Fees" for administrative expenses in the amount of \$52,050.00, in payment for his attorney fees earned while representing Estate Personal Representative Dr. Beverly Newman in the Estate from the opening of the Estate through his withdrawal on February 3, 2012. Said Petition for administrative expenses was never heard or determined by the trial court.

Newman thereafter filed on May 9, 2016, a "Notice to Court of Transfer of Interest of Administrative Expense Claim and Motion for Approval and Payment of Claim" (relative to the "Verified Motion for Reimbursement of [Property Tax] Payment of Al Katz Estate Administrative Expenses" that had been filed in the Court on or about July 8, 2015), in the amount of \$1,554.20 for payment of Estate property taxes. Said claim for administrative expenses was never heard or determined by the trial court.

The aggregate amount of administrative expenses claimed by Newman in his six administrative expense Motions, each of which claims was never heard or determined by the trial court, totals \$104,441.01. Dr. Newman never filed a claim for her services as Personal Representative from 2010-2015.

In January 2015, the court appointed Indianapolis attorney Robert York as both the successor Personal Representative and attorney for

the Al Katz Estate and retained him in said positions over Newman's objections and despite its knowledge of York's decade-long, intense conflict of interest with and hostility against Lawrence Newman, who had worked for years as an associate attorney in York's law firm and was fired by York after refusing York's demand that Newman cease his public exposure of child abuse at the Indianapolis Jewish Community Center. Further, York has been hired for years upon appointment by the Indiana Supreme Court as a hearing officer for the Court, a position for which his compensation by the Supreme Court has been scores of thousands of dollars.

On July 13, 2016, Judge Rosenberg and his supervising judge both recused themselves for cause, and the Indiana Supreme Court thereupon appointed Judge James Joven, a legal colleague of Robert York from the small town of Lawrence, Indiana, as successor judge on July 20, 2016.

Although Judge Rosenberg had never heard or determined any of Newman's six administrative expense Motions and the court's own written record conclusively documented that Newman's Motions had never been heard or determined, Judge Joven upon his appointment thereafter erroneously and repeatedly held that the court had previously denied or dismissed Newman's Motions during Judge Rosenberg's tenure. In doing so, Judge Joven never cited to any actual court order so denying or dismissing Newman's Motions, notwithstanding Newman's repeated documentation that no such order(s) had ever been issued at any time by the court, notwithstanding Newman's repeated requests

that Judge Joven cite the specific alleged court orders, and notwithstanding that Judge Joven himself had previously listed on his November 29, 2016, Order Setting Pretrial Conference as unheard and undetermined Newman's Motion for administrative expense attorney fees filed on January 25, 2016, a claim in and of itself for more than \$50,000.00.

In 2017, York attempted to consummate a sale of the Ritter Property without consideration of Newman's six unheard administrative expense Motions, thereby excluding Newman from sharing in the proceeds of the sale of the Ritter Property, which was the last asset of substantial value held by the Estate. On August 4, 2017, the trial court issued its "Order Directing Sale of Ritter Avenue Property and Distribution of Proceeds."

Newman thereafter filed an interlocutory Appeal on October 22, 2017 (the "2017 Appeal"), challenging the trial court's order which authorized the distribution of the proceeds of the sale of the Ritter Property without consideration of Newman's six administrative expense Motions that still had never been heard or determined by the trial court. Said 2017 Appeal was challenged as late and untimely by York and was thereafter dismissed with prejudice by the Court of Appeals, before any briefs were filed, by order of January 4, 2018, on the basis that Newman had filed an untimely interlocutory Appeal.

Because no briefs were filed in the interlocutory 2017 Appeal before it was dismissed for untimeliness, the appellate court never considered or issued any determinations on the merits of Newman's

position that his Constitutional due process rights had been violated by the trial court through its refusal to hear Newman's six administrative expense Motions before ordering the distribution of the proceeds from the sale of the Ritter Property, thereby precluding Newman from sharing in the proceeds of said sale.

After said 2017 Appeal was dismissed, the Ritter Property sale was not consummated, and York subsequently sold the property to a different buyer under a new purchase agreement. On May 17, 2018, York filed his Petition for Instructions Regarding Sale of Ritter Avenue Property, informing the trial court that a new buyer had been found for the Ritter Property. According to York, "the sale is expected to result in net sales proceeds to the Estate in the approximate amount of \$54,191.00." York intended to distribute the bulk of said proceeds to the United States of America for unpaid federal income taxes of Al Katz and to the State of Indiana for unpaid state income taxes of Al Katz (which taxes were unpaid because Al Katz's Florida guardian of the property had refused to pay), while making no distributions to Newman.

On May 31, 2018, Newman filed his "Verified Response to Petition for Instructions Regarding Ritter Avenue Property and Verified Petition for Payment of Administrative Expenses," in which he stated in pertinent part:

Lawrence Newman submits to this Court that any distributions to the United States of America and to the

State of Indiana for their respective tax claims without payment of Lawrence Newman's administrative expense claims will be a violation of probate law and of Lawrence Newman's due process rights under the United States Constitution and the Indiana Constitution, as well as a violation of Lawrence Newman's rights of access to the courts guaranteed by the Indiana Constitution....

As Lawrence Newman further repeatedly notified this Court and as he does so herein, it is necessary that this Court hear and determine Lawrence Newman's six (6) administrative expense claims prior to any distribution of the sale proceeds of the Ritter Property in order to facilitate the compromise of the IRS's tax lien on the Ritter Property in accordance with the IRS policy referenced above and to subordinate the State of Indiana's tax lien to his administrative expense claims.

Lawrence Newman submits to this Court that his federal and state Constitutional due process rights and his rights to access to the courts guaranteed by the Indiana Constitution compel: (1) that Lawrence Newman's six administrative expense claims be heard by this Court and paid to Lawrence Newman in the distribution of the

anticipated proceeds of the sale of the Estate's Ritter Property; and (2) that Lawrence Newman be given the reasonable opportunity to obtain a compromise from the Internal Revenue Service of its tax claim in accordance with the Internal Revenue Service's written policy to compromise tax claims in an Estate in favor of administrative expense claims.

On June 12, 2018, the trial court issued its Agreed Order of Instructions as to Sale of Ritter Avenue Property, in which order the trial court set forth the distributions to be made from the proceeds of the sale of the Ritter Property to the United States of America and to the State of Indiana relative to their tax claims, with any remaining amount of said proceeds to be paid to the Estate. Said order did not mention Newman or provide for any payment to Newman from the Ritter Property sales proceeds for his administrative expense claims.

Newman appealed said order to the Indiana Court of Appeals on July 12, 2018, but the court denied Newman's Appeal on the basis that its order dismissing "with prejudice" Newman's 2017 Appeal for untimeliness, prior to the filing of any briefs or arguments on the merits, was nonetheless a judgment on the merits of the prior Appeal and thus was *res judicata* as to Newman's subsequent 2018 Appeal, ruling:.

As we dismissed Newman's [prior 2017] appeal with prejudice, we do not disturb

the trial court's finding that it had denied Newman's claims for administrative expenses, and this issue is foreclosed for our review.

In addition to denying his Appeal, the Court of Appeals assessed appellate attorney fees against Newman "[i]n light of Newman's appellate briefs and arguments," thus further penalizing Newman for seeking his basic Constitutional rights to due process by having his administrative expense Motions heard by the Indiana court.

On January 29, 2019, Newman filed a Motion for Rehearing that was denied on March 6, 2019. He filed a Petition To Transfer to the Indiana Supreme Court on April 5, 2019, challenging the actions of both the trial court and of the Court of Appeals in denying Newman Constitutional due process of law, which Petition To Transfer was also denied on June 18, 2019.

As a result of the trial court's aforesaid orders and the appellate court's decision not to consider the issue on the merits, Newman did not receive any payment from the proceeds of the sale of the Estate's Ritter Property, and his six administrative expense Motions remain unheard, undecided, and unpaid.

REASONS FOR GRANTING THE WRIT

1. The refusal of the trial court to hear Newman's administrative expense Motions violates the Fourteenth Amendment's Due Process Clause and other Constitutional provisions.

This case concerns a first impression issue of total deprivation of due process by the refusal of a trial court to ever hold a hearing on issues of substantial property rights, thus depriving the litigant, Lawrence Newman, of both his due process rights and his property rights guaranteed to him under the United States Constitution.

While this Court has considered many cases of due process considerations dealing with issues of insufficiency of notice, timing of hearings, and substance of hearings, this case presents the unique circumstance where no hearing whatsoever was granted to Newman on any of his six administrative expense Motions, thus denying him any opportunity to present his case on the merits in a court of law, an egregious deprivation of the fundamental Constitutional right to due process right enacted in the Bill of Rights over two centuries ago.

In this respect, the United States Constitution is applicable to the courts of the several states, including the state courts of Indiana:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. art. 6.

Over 150 years ago, even prior to the enactment of the Fourteenth Amendment, in *Baldwin v. Hale*, 68 U.S. 223 (1 Wall. 223, 17 L.Ed. 531) (1863), this Court clearly recognized the right of a litigant in American courts to have his case actually heard, as established in cases dating back to 1850:

Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defence. *Nations et al. v. Johnson et al.*, 24 How., 203; *Boswell's Lessee v. Otis et al.*, 9 How., 350; *Oakley v. Aspinwall*, 4 Comst., 514

With the amounts at issue totaling over \$104,000.00 relative to Newman's unheard administrative expense reimbursement/payment Motions, Newman has substantial property rights in his claims against the assets of the Al Katz Estate, which property rights were disregarded by the trial court; without being afforded any hearings on his Motions, Newman was unable to assert his property rights for reimbursement and/or payment from Estate assets.

The Fourteenth Amendment's protection of "property" has never been interpreted to safeguard only the rights of undisputed ownership. Rather, it has been read broadly to extend protection to "any

significant property interest." *Boddie v. Connecticut*, 401 U.S. 371,379 (1971).

"It is enough to invoke the procedural safeguards of the Fourteenth Amendment that a significant property interest is at stake, whatever the ultimate outcome of a hearing. . . ." *Fuentes v. Shevin*, 407 U. S. 67,87 (1972).

Procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment. *Mathews v. Eldridge*, 424 U.S. 319 (1976). "[S]ome form of hearing is required before an individual is finally deprived of a property [or liberty] interest." *Id.*, 424 U.S. at 333.

Newman has been deprived by the state of significant property interests without any form of hearing, in violation of Constitutional law.

"Both liberty and property are specifically protected by the Fourteenth Amendment against any state deprivation which does not meet the standards of due process" *Giaccio v. State of Pennsylvania*, 382 U.S. 399 (1966).

Mindful of his Constitutional rights to a hearing, for a period of over five years, Newman actively asserted his due process rights to a hearing, taking repeated unsuccessful actions in both the trial and appellate courts to obtain a hearing on his administrative expense Motions.

In this respect, "Due process has been interpreted by this Court as preventing the states from denying litigants use of established adjudicatory procedures, when such an action would be the equivalent of denying them an opportunity to be heard upon their claimed right[s]." *Boddie v. Connecticut*, 401 U.S. 371,380 (1971).

On April 27, 2013, Newman filed his (Second) Motion for Reimbursement of Payment of Al Katz Estate Administrative Expenses, requesting an immediate hearing thereon and advising the court that "time is of the essence." On June 5, 2013, Newman filed a Lazy Judge motion seeking removal of the initial trial court judge, Judge Zore, for failure to timely hear Newman's April 27, 2013, Motion for reimbursement of Estate administrative expenses. Judge Zore was removed, and Judge Louis Rosenberg was appointed as Special Judge on August 29, 2013.

On August 28, 2013, Newman filed his Third Verified Motion for Reimbursement of Payment of Al Katz Estate Administrative Expenses, requesting an immediate hearing thereon and advising the court that "time is of the essence," and on October 9, 2013, Newman filed his Fourth Verified Motion for Reimbursement of Payment of Al Katz Estate Administrative Expenses, again requesting an immediate hearing thereon and again advising the court that "time is of the essence."

On October 10, 2013, Judge Rosenberg held a status hearing at which he was informed that Newman's Motions for administrative expense reimbursements needed to be heard by the court.

On March 19, 2014, Newman filed his "Fifth Verified Motion for Reimbursement of Payment of Al Katz Estate Administrative Expenses," once again requesting an immediate hearing thereon and again advising the court that "time is of the essence."

Also on March 19, 2014, Judge Rosenberg held a hearing at which he had scheduled Newman's reimbursement Motions to be heard. Although Newman requested to participate telephonically, Judge Rosenberg compelled Newman to be personally present at said hearing, requiring Newman to fly from Florida to Indianapolis for the hearing, at significant personal expense of time and money. At hearing, despite Newman's mandated presence, Judge Rosenberg declined to hear Newman's administrative expense Motions.

Judge Rosenberg thereafter set a hearing on Newman's administrative expense reimbursement Motions on May 2, 2014, again compelling Newman to be personally present. Again Newman flew from Florida to Indianapolis at significant personal expense of time and money, and again Judge Rosenberg declined to hear Newman's Motions, instead adjourning the hearing, and stating:

... I'm going to delay ruling on your --- on
your five (5) (sic) requests for
reimbursement.

On February 10, 2015, Newman filed a "Lazy Judge" Motion against Judge Rosenberg, stating in pertinent part:

As of February 10, 2015, 654 days since the filing of his Second Motion for Reimbursement, and 328 days since the filing of his Fifth Motion for Reimbursement, the Judge herein has failed to set Lawrence T. Newman's four Motions for Reimbursement for hearing, nor has Judge Rosenberg ruled on said four Motions for Reimbursement.

On May 6, 2015, Newman filed his "Response to Personal Representative's Report Regarding Claims Filed by Beverly and Lawrence Newman" in which Newman stated to the trial court in pertinent part:

Further, as Lawrence Newman has advised this Court multiple times in filing his successive subject Motions, *inter alia*:

Time is of the essence with respect to the granting of the Order sought herein since Al Katz's Indiana house is in the process of being sold and the award of Administrative Expenses to Lawrence Newman is needed for purposes of compromising the federal income tax debt secured by a tax lien placed upon Al Katz's Indiana house by the Internal Revenue Service for Al Katz's unpaid federal income taxes for the years 2007, 2008, 2009, and 2010, in order to conclude the sale of said house. Said

debt was not paid by Al Katz's Guardian of his Florida property

Accordingly, this Court should immediately and expeditiously grant Lawrence Newman's Verified Motions for Reimbursement in full without hearing.

On May 25, 2015, Newman filed another "Lazy Judge" motion against Judge Rosenberg, stating in pertinent part:

It has now been over two years that the Court has failed to hear Lawrence Newman's (Second) Verified Motion for Reimbursement of Payment of Al Katz Estate Administrative Expenses and well over one year that the Court has failed to hear Lawrence Newman's Fifth Verified Motion for Reimbursement of Payment of Al Katz Estate Administrative Expenses, all in violation of Rule 53.1, denying Lawrence Newman his due process rights as a creditor of the Estate of Al Katz.

On January 25, 2016, Newman filed his Verified Petition for Payment of Estate Attorney Fees, stating in pertinent part:

Petitioner [Newman] has personally appeared before this Court on March 19, 2014, and May 2, 2014, relative to its approval of Petitioner's four Verified

Motions for Reimbursement of Payment of Al Katz Estate Administrative Expenses; but none of said Petitions has ever been heard.

Pursuant to I.C. 29-1-10-13, Petitioner requests that this Court immediately approve the within Petition for attorney fees and approve the Petitioner's afore-referenced Verified Motions for Reimbursement.

On April 7, 2016, Newman filed his Verified Motion for Disqualification of Judge Rosenberg for Cause, stating in pertinent part:

[T]he essential pivotal question of the removal of Judge Rosenberg is whether an "average person on the street" would question the impartiality of Judge Rosenberg if he refuses to remove himself in a case in which he, *inter alia*: has refused to hear any of Lawrence Newman's four outstanding Motions for reimbursement of Estate expenses for two to three years;....

On July 1, 2016, Newman filed his Motion To Appear at July 19, 2016, Hearing by Telephone, in which he stated in pertinent part:

Lawrence Newman has twice flown from Florida to Indianapolis for hearings on March 19, 2014, and May 2, 2014, in this cause on his own motions for

reimbursement of Estate administrative expenses at great personal expense in terms of time expended, worktime lost, and significant money spent for travel, which motions were specifically set by this Court for hearing on said dates. Notwithstanding this Court's setting of Lawrence Newman's motions and his personal appearance at said hearings, this Court decided during said hearings not to hear Lawrence Newman's motions, and, over two years later, said motions have never been heard by this Court Lawrence Newman's motions for reimbursement of Estate administrative expenses are not amongst the motions specifically listed on this Court's subject Order Setting Hearing on All Pending Matters

On July 11, 2016, Newman filed his Verified Motion for Disqualification of Judge Rosenberg for Cause, in which he stated in pertinent part:

In his Order Setting Hearing on All Pending Matters issued on May 27, 2016, Judge Rosenberg enumerated certain pending motions he intends to hear at the hearing scheduled on July 19, 2016. Lawrence Newman's four unheard Motions for Reimbursement of Estate Administrative Expenses are not enumerated in said Order, notwithstanding the fact that Lawrence Newman has made numerous filings

over the past two years seeking to have
said Motions heard by Judge Rosenberg.

Consequent to Newman's Motion for Disqualification, Judge Rosenberg and his supervising judge recused themselves on July 13, 2016, and Judge Joven shortly thereafter was appointed.

In his March 17, 2017, Verified Motion for Disqualification of Judge Joven for Cause, Newman stated in pertinent part:

...for the third time in this cause, Lawrence Newman was required by this Court to travel from Florida to Indianapolis at great personal expense in time, lost work, and costs to appear in person at a hearing for which his open and unheard Motions had been specifically set by this Court to be heard and/or scheduled for future hearing, but his subject Motions were, in fact, not heard and/or scheduled....

On July 10, 2017, Newman filed his Motion To Vacate Hearing on Sale of Ritter Property, in which he stated in pertinent part (emphasis added):

Lawrence T. Newman's due process rights will be violated by a sale of the Ritter property at this time because Lawrence T. Newman has statutory priority rights in his multiple administrative expense claims over the tax claims of the Internal Revenue

Service and of the State of Indiana, which priorities Lawrence T. Newman has been prevented and precluded from asserting because this Court has intentionally failed and refused to hear and determine Lawrence T. Newman's multiple outstanding administrative expense claims....

[F]ederal law regarding federal income tax claims also recognizes the priority of administrative expense claims over federal income tax claims as follows from the Internal Revenue Service Legal Reference Guide for Revenue Officers, Section 5.17.13.5: "... courts have held that certain classes of claim can be paid before the tax debt. These excepted classes include administrative expenses." Additionally, years ago Lawrence T. Newman was advised that the Internal Revenue Service would recognize the priority of administrative expense claims over the IRS's tax claims in the Estate.

On July 14, 2017, Newman filed his Motion for Certification of Interlocutory Order for Immediate Appeal, in which he stated:

The issues to be addressed in the interlocutory appeal are this Court's Order Setting Hearing on Petition for Hearing Regarding Sale of Ritter Property dated June 27, 2017, without this Court having first scheduled, heard,

and determined Lawrence T. Newman's six (6) Motions for payment of administrative expenses, one Motion being unheard for well over four years....

The court denied Newman's Motion; held the scheduled hearing on the sale of the Ritter Property; the Ritter Property was thereafter sold by the Estate; and most of the proceeds therefrom were distributed by the Estate to the Internal Revenue Service and to the Indiana taxing authorities. None of the proceeds from the Ritter Property sale was distributed to Newman.

Newman thereafter appealed the order of sale, but the Court of Appeals denied his Appeal without consideration on the merits of the issue of the refusal of the trial court to hold a hearing on Newman's administrative expense Motions, instead sanctioning Newman for having brought the Appeal with an order to pay York appellate attorney fees, without stating the required factual and legal grounds for imposing its appellate attorney fee sanction.

To date, the trial court has never heard or determined any of Newman's subject expense Motions, and the Estate has never made any payments to Newman on said claims. The trial court's actions produce a chilling effect on probate attorneys and devastating effects on public trust and confidence in the American judiciary.

In *Fuentes v. Shevin*, 407 U.S. 67 (1972), this Court held (emphasis added):

For more than a century, the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard." *Baldwin v. Hale*, 1 Wall. 223,233.

....the prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of governmental interference.

....For when a person has an opportunity to speak up in his own defense, and when the State must listen to what he has to say, substantively unfair and simply mistaken deprivations of property interests can be prevented

Indiana's judicial system from bottom to top has forfeited Newman's "right to enjoy what is his, free of governmental interference" because the State has refused to give him "an opportunity to speak up in his own defense...[and to] listen to what he has to say" in order to prevent "substantively unfair....deprivations of [Newman's] property interests...."

Indeed, as documented above, the initial judge (Judge Zore) was removed because he would not timely hear Newman's first subject administrative expense reimbursement Motion; therefore, it is indisputable that Judge Zore did not hear any of

Newman's subject Motions. Newman's successive five additional administrative expense Motions were all filed while Judge Rosenberg was in charge of the Al Katz Estate proceeding, but verifiably never heard by Judge Rosenberg; yet, Judge Joven erroneously insisted that a predecessor judge had denied/dismissed Newman's administrative expense Motions without ever citing to any actual court order(s) so denying/dismissing Newman's Motions. Newman repeatedly requested that Judge Joven identify any such alleged court orders, hearing dates, transcripts, or statutorily-required recordings, but Judge Joven refused to do so.

In this respect, Indiana Trial Rule 53.1(C) provides that "a court is deemed to have set a motion for hearing on the date the setting is noted in the Chronological Case Summary, and to have ruled on the date the ruling is noted in the Chronological Case Summary." The Katz Estate CCS establishes that no hearing on Newman's administrative expense Motions was ever conducted by the trial court; but Judge Joven repeatedly erroneously ruled otherwise, consequently repeatedly denying Newman his Constitutional due process rights.

The trial court repeatedly erroneously stated in various orders that Newman's administrative expense claims have either been denied or dismissed; however, in none of said statements did the trial court ever identify any alleged: (1) hearing date(s), (2) date(s) of order(s), (3) specific order(s) of the court upon which its erroneous statement rests, or (4) transcript excerpts from any alleged hearings on the matters of administrative expense payments.

For example, in its Order Directing Sale of Ritter Avenue Property and Distribution of Proceeds issued on August 4, 2017, the trial court stated:

Lawrence [Newman] had also previously asserted (and continues to assert) claims against the Estate totaling more than \$50,000 purportedly expended on behalf of the Estate

The Court has repeatedly denied Lawrence's claims for administrative expenses. Time and again, Lawrence has (unsuccessfully) attempted to have the Court recognize that his administrative claims were still in existence. During the July 21, 2017, hearing, the Court restated from the bench that the Court had long ago denied Lawrence's purported claims against the Estate.

The trial court's repeated erroneous rulings, made contrary to the record, have served to deprive Newman of his most basic Constitutional rights to due process in the form of a hearing on his legal grievances involving substantial property rights. This Court has repeatedly and consistently ruled that the right to a meaningful hearing is amongst the most basic of Constitutional due process rights.

"It is a violation of due process for a state to enforce a judgment against a party to a proceeding without having given him an opportunity to be heard

sometime before final judgment is entered.” *Postal Telegraph Cable Co. v. Newport*, 247 U.S. 464,476 (1918).

“...[T]he opportunity to be heard must be granted at a meaningful time and in a meaningful manner.” *Armstrong v. Manzo*, 380 U.S. 545,552 (1965).

“[A] purpose of procedural due process is to convey to the individual a feeling that the government has dealt with him fairly, as well as to minimize the risk of mistaken deprivations of protected interests.” *Carey v. Piphus*, 435 U.S. 247 (1978).

“Because 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 because of the importance to organized society that procedural due process be observed, *see Boddie v. Connecticut*, 401 U. S. 371 (1971); *Anti-Fascist Committee v. McGrath*, 341 U.S. at 171-172 (Frankfurter, J., concurring), we believe that the denial of procedural due process should be actionable for nominal damages without proof of actual injury.” *Carey v. Piphus*, 435 U.S. 247 (1978).

“This right is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment . . .” *Fuentes v. Shevin*, 407 U.S. 67,80–81 (1972).

Indeed, Newman's property deprivations are "arbitrary encroachment[s]" by Indiana's judicial system from bottom to top, reflecting bias against Newman for his outspoken public opposition to child abuse at the Indianapolis Jewish Community Center, which has long-time ties to the appellate courts and to Robert York, hearing officer for the Indiana Supreme Court.

Accordingly, the failure of the trial court to afford Newman the most rudimentary aspects of due process is a direct affront to the basic characteristics of due process long established by this Court. "Due process guarantees a "fair hearing in a fair tribunal." *In re Murchison*, 349 U.S. 133,136 (1955). Due Process requires "the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319,333 (1976). The "Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged". *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982).

Due process rights are considered as so fundamental that they are guaranteed in multiple clauses in the United States Constitution. See *Christopher v. Harbury*, 536 U.S. 403,415 n.12 (2002) (holding the right to be "grounded in the Article IV Privileges and Immunities Clause, the First Amendment Petition Clause, the First Amendment Petition Clause, the Fifth Amendment Due Process Clause, and the Fourteenth Amendment Equal Protection and Due Process Clauses."). See also *id.* at 415 (access to the courts is a "fundamental right"

that is a “separate and distinct right to seek judicial relief for some wrong.”).

Due process rights are the type of “fundamental rights” that are both “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty.” *Washington v. Glucksberg*, 521 U.S. 702,720-21 (1997).

This Court has stated that “some errors are so fundamental and pervasive that they require reversal without regard to the facts and circumstances of the case.” *Young v. U.S. ex rel. Vuitton*, 481 U.S. 787,810 (1987). An error is fundamental if it undermines confidence in the proceeding. *Id.*, at 812-813.

In sum, the failure of the trial court to even hold any hearing(s) on Newman’s administrative expense Motions and the consequent unconstitutional deprivation of Newman’s property rights are such fundamental errors that this Court should grant certiorari and reverse the decision of the trial court. The “fundamental and pervasive” errors in this case undermine [public] confidence in the proceeding” and in Indiana’s judicial credibility with adverse ramifications to public trust in American jurisprudence.

2. The Indiana Court of Appeals’ and Indiana Supreme Court’s decisions, which denied Newman a genuine bona fide Appeal on the merits, violate the Fourteenth Amendment’s Due Process Clause and other Constitutional provisions.

In addition to the trial court's violations of Newman's due process rights, as discussed above, the Indiana Court of Appeals also violated Newman's Constitutional due process rights by denying Newman his right to a substantive Appeal on the merits regarding the issue of the trial court's refusal to ever hold a hearing on any of Newman's six administrative expense Motions. Subsequently, upon Newman's Petition To Transfer to the Indiana Supreme Court, the Indiana Supreme Court further violated Newman's Constitutional due process rights by refusing to grant transfer, thus denying Newman his right to a substantive Appeal on the merits of the issue of the trial court's refusal to ever hold a hearing for years on Newman's administrative expense Motions.

Newman was never provided a substantive Appeal by the Court of Appeals; rather, by its various orders, the Court of Appeals denied Newman his right to appeal (a Constitutional right under the Indiana Constitution, Ind. Const. art. VII, § 6, under which there is an "absolute right to one appeal") by way of tortuous legal reasoning intended to give the illusion of appellate rights met, while piggybacking one wrongful appellate decision - namely dismissal with prejudice - upon another.

In its subject December 31, 2018, order denying Newman's instant Appeal, the Indiana Court of Appeals ruled *in toto* relative to the issue of the trial court's violations of Newman's due process rights:

With respect to Newman's argument that the trial court erred in determining

that his administrative claims were dismissed or denied, Newman cites the court's August 4, 2017, order in which the trial court stated that it had repeatedly denied Newman's claims for administrative expenses. Newman also cites the trial court's August 28, 2017, order in which the court mentioned it had previously dismissed his claims. However, Newman already sought an interlocutory appeal of these orders under Cause No. 2475 and the appeal was dismissed with prejudice. "It is generally recognized that a dismissal with prejudice is a dismissal on the merits." *In re Guardianship of Stalker*, 953 N.E.2d 1094, 1102 (Ind. Ct. App. 2011) (citing *MBNA America Bank, N.A. v. Kay*, 888 N.E.2d 288, 292 (Ind. Ct. App. 2008)). As such it is conclusive of the rights of the parties and *res judicata* as to the questions which might have been litigated. *Id.* As we dismissed Newman's appeal with prejudice, we do not disturb the trial court's finding that it had denied Newman's claims for administrative expenses, and this issue is foreclosed for our review.

The Court of Appeals' dismissal of Newman's interlocutory 2017 Appeal "with prejudice" based upon a belated interlocutory filing, did not comply with law, because, as an interlocutory Appeal in a probate proceeding, it could have been timely appealed by Newman at the conclusion of the probate proceeding,

as determined by the Indiana Supreme Court. "A claimed error in an interlocutory order is not waived for failure to take an interlocutory appeal but may be raised on appeal from the final judgment." *Bojrab v. Bojrab*, 810 N.E.2d 1008 (Ind. 2004), citing *Georgos v. Jackson*, 790 N.E.2d 448 (Ind. 2003)

Although the Court of Appeals characterized its dismissal of Newman's 2017 Appeal as "a dismissal on the merits" by invoking a "generally recognized" rule that "a dismissal with prejudice is a dismissal on the merits," the record clearly establishes that this characterization is erroneous because: (1) the merits of said 2017 Appeal were never even considered by the Court of Appeals, because it was dismissed as untimely before Newman had even filed his initial brief; and (2) under Indiana law, even if Newman had the legal right to an immediate interlocutory Appeal, he was not required to take an interlocutory Appeal, but could wait until the conclusion of the case to file his Appeal. Accordingly, any "untimely" interlocutory Appeal would not affect Newman's alternate right to Appeal the matter at the conclusion of the case. Clearly, any "general rule" could not apply to Newman's case because the merits of his 2017 Appeal had unquestionably never actually been determined at any time, and the appellate court's designation of its dismissal "with prejudice" cannot change this fact.

Under Indiana law, even though Newman's 2017 Appeal may have been filed too late to perfect an interlocutory Appeal, Newman still retained the right to file an Appeal at the conclusion of the case; thus, the Court of Appeals' dismissal of the time-barred interlocutory Appeal was not only in error, it served

to deny Newman his due process rights, and it was used to piggyback denial of Newman's 2018 Appeal.

In *Kindred v. Townsend*, 4 N.E.3d 793 (Ind.Ct.App. 2014), the factual situation mirrored that of Newman's prior Appeal. In *Kindred*, the appellant filed a late interlocutory appeal, and the Court of Appeals dismissed the appeal on the basis that it was untimely, ruling in pertinent part as follows (emphasis added):

Because the Kindreds did not perfect an interlocutory appeal within thirty days of the trial court's order entering the preliminary injunction, their right to appeal this order has been forfeited [Footnote 3]: Our holding should not be taken to mean that the Kindreds have forever waived any issue with regard to the trial court's interlocutory order(s). To the contrary, our supreme court has held that “[a] claimed error in an interlocutory order is not waived for failure to take an interlocutory appeal but may be raised on appeal from the final judgment.” *Bojrab v. Bojrab*, 810 N.E.2d 1008,1014 (Ind. 2004) (citing *Georgos v. Jackson*, 790 N.E.2d 448,452 (Ind. 2003)). Thus, the Kindreds may attack the trial court's interlocutory orders on appeal from the final judgment. See *id.* But we hold that they have forfeited their right to an *interlocutory* appeal by failing to timely

appeal the trial court's entry of the preliminary injunction.

Thus, denial of an interlocutory Appeal for untimeliness does not establish *res judicata* upon which to piggyback denial of a subsequent Appeal.

Unlike the court in *Kindred*, which dismissed the untimely interlocutory appeal but properly recognized the due process right of the appellant to nonetheless litigate the appeal of the interlocutory order at a later point in time via an appeal of the final judgment, the Court of Appeals in Newman's case dismissed Newman's untimely interlocutory prior Appeal, wrongfully dismissing it "with prejudice," thus unconstitutionally depriving Newman of his right to appeal the interlocutory order in an Appeal of the final judgment and piggybacking the wrongful dismissal with prejudice to deny Newman's subsequent Appeal.

The Court of Appeals' unconstitutional deprivations of Newman's due process rights through its dismissal "with prejudice" of his 2017 Appeal was exacerbated by its failure to state any purported legal grounds for said dismissal "with prejudice." "[F]airness can rarely be obtained by secret, one-sided determination of facts decisive of rights. *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123,170 (1951)."

By denying Newman his instant Appeal because his interlocutory 2017 Appeal had been dismissed with prejudice, when the merits of the 2017 Appeal had never been considered, the Court of

Appeals and the Indiana Supreme Court acted to deny Newman the due process owed to him by both the Indiana Constitution and the U.S. Constitution.

The Indiana Constitution guarantees Newman the "absolute right to one appeal." Ind. Const. art. VII, §6.

By dismissing Newman's prior time-barred interlocutory Appeal "with prejudice" and then subsequently piggybacking said dismissal "with prejudice" as the predicate for denying Newman an Appeal on the merits in his subsequent Appeal, the Court of Appeals violated Newman's Constitutional "absolute right to one appeal" under the Indiana Constitution and Newman's due process rights under the Indiana and federal Constitutions.

In this respect, the Court of Appeals failed to follow Indiana law with respect to the doctrine of *res judicata*; since there could not be the possibility of "repetitive litigation of the same dispute" because there has never been any litigation with respect to the approval of his estate administrative expense reimbursement/payment claims, pursuant to *MicroVote General Corp. v. Ind. Election Comm'n*, 924 N.E.2d 184,191 (Ind.Ct.App.2010):

The doctrine of *res judicata* bars litigation of a claim after a final judgment has been rendered in a prior action involving the same claim between the same parties or their privies. The principle behind this doctrine, as well as the doctrine of collateral estoppel, is the

prevention of repetitive litigation of the same dispute.

In its order in *Warren v. Indiana Telephone Co.*, 217 Ind. 93, 26 N.E.2d 399 (Ind. 1940), the Indiana Supreme Court recognized the fundamental Constitutional dimensions of due process and the need for uniformity in the applications of law as "the keystone of our system of jurisprudence."

The Constitution of Indiana provides that: ... "All courts shall be open; and every man, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay" (Article 1, § 12); These provisions of the Constitution are a part of the fundamental law of the state, declared by the people themselves acting in their sovereign capacity.... As such they are entitled to strict construction.... It has been said that the language of each provision of the Constitution is to be considered as though every word had been hammered into place.

Uniformity in the interpretation and application of the law is the keystone of our system of jurisprudence.... *Id.*, 217 Ind. 93 at 107-112, 26 N.E.2d 399 (Ind. 1940).

By failing to follow established law, as determined in *Bojrab v. Bojrab*, 810 N.E.2d 1008,1014 (Ind. 2004), *Georgos v. Jackson*, 790 N.E.2d 448,452 (Ind. 2003), and *Kindred v. Townsend*, 4 N.E.3d 793 (Ind.Ct.App. 2014), and thereby denying Newman his opportunity to be heard at the appellate level, both the Indiana Court of Appeals and Supreme Court violated Newman's Constitutional due process rights both to an Appeal and to a hearing on his administrative expense motions.

Dismissal with prejudice is amongst the most extreme consequences a court can impose. In the instant matter, Newman, simply seeking his due process rights to be heard, equal treatment under the law, and equal access to the courts for redress of grievances, reaped the extreme consequence of dismissal of his case with prejudice, without legal justification.

In truth, the extreme consequence imposed by the Indiana Court of Appeals is a result of Lawrence Newman's long-time public and vociferous whistleblowing about child abuse linked to the Indianapolis Jewish Community Center ("JCC"), where a number of convicted child molesters have frequented for years and where the Indiana Court of Appeals has repeatedly chosen, above thousands of other venues in Indianapolis, to hold actual highly-publicized oral arguments during the time period when Newman's first Appeal was before the Court of Appeals and also during the time period when Newman's second Appeal was before the Indiana Supreme Court, which denied transfer from the Court

of Appeals less than one week after an appellate oral argument was held on-site at the Indianapolis JCC.

Amongst the convicted child molesters frequenting the Indianapolis JCC is Jared Fogle, the prolific global predator who was spokesman for Subway, as well as a violent predator who mutilated the genital areas of a young victim's dolls and then set them on fire. The trial court judge in a civil case involving said predator fined Newman's wife \$60,000.00 for attempting to take the deposition of the predator's mother relative to other victims of her son whom she had refused to report to authorities. Said trial court judge, Steve David, was thereafter appointed as an Indiana Supreme Court Justice, where he currently serves and has twice ruled against Newman in his Petitions To Transfer his Appeals in the Al Katz Estate proceeding. Likewise, in keeping with the Indiana Court of Appeals imposition of extreme consequences, the Indiana Supreme Court ruled, without any of the required stated legal and factual grounds, to assess Newman **additional appellate attorney fees in favor of its hearing officer, Robert York**, who had fired Newman when Newman refused York's ultimatum to be silent about child abuse at the Indianapolis JCC or be fired. For years, York has served as a hearing officer for the Indiana Supreme Court on lawyer disciplinary cases and has been paid scores of thousands of dollars of taxpayer funds in said position.

In this respect, in *Marshall v. Jerrico*, 446 U.S. 238 (1980), this Court held that a **disinterested tribunal** is a requisite of due process of law:

The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decisionmaking process. See *Carey v. Piphus*, 435 U.S. 247, 259-262, 266-267 (1978). The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. See *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976). At the same time, it preserves both the appearance and reality of fairness, "generating the feeling, so important to a popular government, that justice has been done," *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172, (1951) (Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him

In sum, Indiana's appellate courts do not appear to the "average person on the street" as "disinterested tribunals" with their strong links to the

Indianapolis JCC and to Robert York, vocal opponents against Newman for decades, thus raising issues regarding the neutrality of Indiana's appellate tribunals toward Newman, particularly given the nature of their repeated unconstitutional decisions against him in the instant Appeal.

CONCLUSION

Lawrence Newman has been denied his basic rights to due process in this case at all three levels of the Indiana courts - trial court, Court of Appeals, and Supreme Court. Due process of law has been a bedrock Constitutional right of citizens since the Bill of Rights was enacted well over 200 years ago, and justice requires that this Court reverse the Indiana courts, giving Newman his day in court in Indiana.

The Petition for Writ of Certiorari should be granted to correct the grave deprivations of due process of law Lawrence Newman has suffered at all levels of the Indiana courts and their consequent inhibitions of public trust in America's judiciary.

Respectfully submitted,

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