No. 19-____

In the Supreme Court of the United States

RICHARD J. FIELDS,

Petitioner,

v.

DIANA PALMERI, OLGA PALMERI, VICTOR PALMERI, CYNTHIA PALMERI and ANA GARZON YEPEZ,

Respondents.

On Petition for an Extraordinary Writ of Mandamus to the New York Court of Appeals

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

I. THIS COURT HAS STATUTORY JURISDICTION TO HEAR PETITIONS FOR WRIT OF MANDAMUS.

The Respondents devote the majority of their argument on this Court's jurisdiction over probate, rooted in *Markham v. Allen*, 326 U.S. 490 (1946). Respondent argument is relevant to the primary purpose of a writ of mandamus, "the issuance of a Writ of Mandamus to the New York Court of Appeals with directions that a final judgment is in place and the appeal of the Petitioner is ripe for review." (Pet.3). Contrary to the Respondent's assertion that there is no Jurisdiction for this Court based on a so called "probate exception", federal statutes, the Rules of this Court, and widespread skepticism over the existence of an "exception" weight against it.

To start, the Petition for Extraordinary Writ of Mandamus is filed pursuant to Sup. Ct. R. 20.4, and invokes this Court's mandamus powers under 28 U.S.C. § 1651. Modern federal court jurisdiction is defined by Article III of the United States Constitution, 27 and 28 U.S.C. §§ 1331 and 1332.2.

This Court has recognized the shaky foundation of the alleged "probate exception," In *Marshall v. Marshall*, 547 U.S. 293 (2006), this Court stated that there is no "probate exception" compelled by the text of the Constitution or statute, stating that this exception seemed to have arisen from "misty understandings of English legal history."

II. AS THE MONIES ARE PENDING DISBURSEMENT FROM THE WILL, IT IS LUDICROUS FOR THE NEW YORK COURT OF APPEALS TO STATE THE ISSUE IS NOT RIPE FOR APPEAL.

The Respondents do not properly address the core of the mandamus petition—that "Nothing can have more finality than such a judgment and the transfer of assets away from his son and rightful heir, the Petitioner, is imminent without the intervention of this Court." (Pet.3) The New York Court of Appeals and Appellate Division decided not to act upon the mountain of evidence of fraud conducted by Respondents to steal the funds of the decedent. Instead, the New York courts refused to rule at all stating "Such [appellate] order does not finally determine the proceeding within the meaning of the Constitution." (App.2a).

III. THE DOCUMENTED DECEPTION OF 96 YEAR OLD BLIND MAN BY RESPONDENTS IS UNCONSCIONABLE.

NY Surrogate Court Judge Rita Mella in ignored the testator's audiotaped statement that the 96 years old man Sydney Fields could not read typed words even with a magnifying glass. She considered the execution was duly and ignored that the will was never read aloud in front of witnesses for a blind man. She believed all the affirmations made by the Will drafter and requested no reference from him. She did not care that a forge initial falsifies a will and said "it does not need initial to make a will valid".

In their Oct. 28 motion, they did not discuss Sydney's vision problem at all. "Sydney could read"

was a perjury committed by Curtin and they dare not repeat it. Since Sydney declared that he could not read (App.56a) and Curtin admitted that he never read the will aloud in front of the witnesses (App.85a-86a, App.80a, line 18-line 25) the 2014 Will execution was imposable duly and they announced the Will is valid. This is a clear violation of Due Process under the 14th Amendment.

Due to my mental disability, all these years I have been receiving treatments under court order (App. 168a-169a) because without taking medicine I am angry and might do things that I am not supposed to do. I did sent letters and harassing pictures to my father and half-brother but never actually hurt them. To prevent me from doing stupid things, my father did have me arrested in 1996 (App.192a-195a). However he did not really blame on me because he knew I was sick. You can read this in his 1997 Will in which he still left me some money (App.131a, line 16) but gave nothing to Kenneth who demanded my father end the relationship with me. I did not have contact with them since 1997, it made no sense that my father forgave me right after the harassment happened, but decided to later punish me seven years later in the 2004 Will. He did it because there was unduly influence and duress. In the last twenty years I was in and out of mental hospitals and lost shelters a few times. Still I stayed away from my father because I did not want to bother him even though I loved him very much. Diana Palmeri used such a sad situation to deprive my right of inheritance from my father. They kept using my father's words in 2006 to attack me, poising him by saying that I hired a lawyer to get my father's money. The fact is that my mother's lawyer

approached me himself. He kept all the money my father saved for me since I was a child and gave me nothing. I had no chance to complain that to my father. Palmeri and her lawyers are doing the same thing to me today. They said my father still hated his sons and wanted to make sure we received nothing in the 2014 Will. Curtin admitted in his deposition that the words he used (App.89a) to attack me and Kenneth were copied from 2006 Will and he insisted that my father told him to do so.

They said in the Opposition Brief, p.27, line 4: "Petitioner's lack of testamentary capacity under influence, duress, mistake or fraud, and that it was not duly executed." They simply ignore our arguments by making empty announcement. I therefore have to repeat my points again:

1. Regarding their mistakes: I made it very clear that the 2014 Will should be dismissed just for the two mistakes it has. Their witnesses signed and said that they saw the Testator was a woman not a man. " . . . declared the same to be her last will . . . at her request and in her presence . . . " (App.123a) The affidavit that the witnesses signed typed the signing date was July, 2006 and Curtin changed it with a pen marking to October 6, 2014. (App.155a) Ignoring what the document said itself they said that there were no mistakes and said I lacked testamentary capacity.

2. Regarding the fraud: My handwriting expert Mr. Baggett confirmed that the initial on the page with the distribution % was a forgery. (App.109a-113a) They made the judge believe that only when all the initials and signature are forgery in the Will then the forgery in that distribution page count. They also

said, "Our law does not require an initial to make Will valid". Judge Mella there for ignored that a forged initial could change the distribution of the 2014 Will. (App.17a-18a).

The only instrument related to the "distribution %" was also forgery. That paper has no date and mentioned nothing about altering a will. It was written identically with strong strokes and in straight lines. (App.122a) It obviously was not written by a 96 year old blind man who could hardly control his pen (App.123a, signature in the will) but was made by cutting and pasting on the computer. As their only back-up document that instrument had to be backed up by Curtin's affirmations. He admitted that he did not see Sydney write it but it was presented by Sydney orally; the number on the note means a distribution of all Sydney's assets; the % in the 2014 will was different from the instrument because Sydney told him to updated it through a phone conversation. Again Curtin had no reference for any of his affirmation.

3. Regarding undue influence and duress: Diana Palmeri's position is not important enough to unduly influence Sydney. She made Teresa do it and caused the Will altering in 2006. Teresa wanted to control 50% of Sydney's assets instead of giving that back to the charity and Fields family eventually as the 1997 Will indicated. Getting blind day-by-day Sydney was in a situation of duress and fell exclusively under Teresa's influence. For keeping the charity he put his own family members away and listed down some executions. However he noticed that someone behind Teresa wanted his money. He ordered that the 50% Teresa had must only forward to Victor Palmeri and nobody

could revoke it. He printed it clearly with his handwriting in a note for the 2006 Will. The long paragraph at the end reflected that he was protesting and fighting with someone. (App.144a-155a). As an English speaker Curtin was impossibly mixing "his" and "her". It was a woman who actually contacted him at that time and that woman was Teresa.

4. Curtin committed perjury about the relationship between Sydney and the Palmeris. In his affirmation of April 19, 2016 Curtin testified that "Sydney had left the bulk of his estate to his wife in the 2006 Will" and that is why "he provided for his residuary estate to be distributed amongst members of his deceased wife's family, whom he had come to embrace as his own family." They said the 2006 and 2014 will "are in the same manner". Compared with what Sydney said in the 2006 Will, Curtin's affirmations are obvious perjury. Basing on that Curtin distributed all Sydney's 100% asset, nine million dollars, to all five Palmeris. However, neither Diana Palmeri nor the 7 affirmations from her witnesses could explain how come Sydney gave his lovely wife Teresa only 50% but gave the Palmeris 100% of his asset. They also could not prove that why Sydney reduced the charity amount from $4.5 million dollars to $1,500 and why he eliminated Lewis who had the same share as Victor in the 2006 Will but the 2014 Will gave Victor eventually $3.6 million and left Lewis nothing.

5. I agree that Sydney tried to alter his will immediately after Teresa died. From his action of transferring funds before signing the Will I believed he wanted to release his obligation to Teresa but not to give all his assets to Palmeris. How he intended to

handle his assets after Teresa died is a big question. It is not fair to release a $9 million dollar Will just because Curtin said so. Curtin's perjured saying that it was an aide but not any beneficiary who took Sydney to the office that day. However, none of his witnesses could tell her age, gender, race, or ethnic group and could not provide the contact information for the aide. Curtin's apartment has only one bedroom, one office, and one living room. Judge Mella did not question the situation and immediately concluded that the beneficiaries did not involve the will altering "the aide just sitting separate in the waiting area and no one remembers her is acceptable." If Sydney meant to give Palmeris all his estate why didn't he happily bring them with him that day and at least got some appreciation from them?

6. Another question is: How could Curtin know beneficiary Ana Garzon Yepez's address: Francisco Oliva Oe3-73 y Cap. Edmundo Chiriboga Casa # 46, Quito Ecuador. Without Ana's involvement how could Sydney convey that kind of long address to Curtin? (The instrument that Sydney presented had only names and numbers)

7. They jumped up to dismiss the only phone records in this case which provide by Vanguard because those records show us a totally different picture:

a. Two days before signing the will, Sydney planned to transfer funds and told the broker that he could not read typed words on paper even with a magnifying glass. (App.56a)

b. Sydney refused to let Diana and Curtin involve the fund transfer and made Vanguard's broker travel from Philadelphia to help him

fill out the required forms. (App.59a-60a) Diana knew of those funds transferring eighteen months later after Sydney passed away.

c. Five months before Sydney died, he limited Diana from using a POA to control all his funds. (App.61a-60a) That meant in his mind his fund did not belong to Diana Palmeri like what the 2014 Will allegedly said.

d. Vanguard's USB also shown that Sydney did not trust Curtin at all. When broker Kern asked if Sydney can let Curtin fill out the forms Sydney answered him in this way: "No, no, he knows nothing about the forms. . . . No, no. No, I'm no, no, he has—he doesn't know anything about these forms, so I didn't mention anything to him. He was so panicky that Kern had to say, "Okay, okay, that was just a question that had come up . . . " (App. 59a).

8. Beside dismissing Vanguard's phone records, they dismissed documents that were provided by themselves: Diana and Curtin's answers in their deposition; the eye doctor's records, the New Jersey Court decision and Sydney's handwritten autobiography. They even dismissed Curtin's affirmation in April 2016 which tried to hide Sydney's vision problem (App.159a line 23). They dismissed their letter that mentioned my mental problem. (App.164a) They said those records are "not part of the record" because "the documents were not presented to the trial court by any party on the motion for summary judgment". (App.1a-2a)

Their reasons are ridiculous! As matter of the fact Vanguard's transcripts were quoted in my lawyer

Richard Chan's motion as exhibits and were mentioned in the Surrogate's Court hearing by both sides. The existence of those documents were understood by both parties during the discovery stage. We planned to use and file them in the trial. The problem is Judge Mella dismissed us in 45 minutes and did not give us a trial at all. It made no sense to file those records in the trial court anymore and we used them in the appeal. We spend two years and $100,000 to get those records and they would not allow us to use it. Their desperations proof that they wanted to hide some facts. How could we trust their affirmations when they so dare to dismiss the facts? All the affirmations they made are crucially affected this case and let us review them again:

a. Curtin testified that Sydney could read with a magnifying glass, even though a doctor's note said before signing the will he was blind in one eye, could not count fingers from 3 feet away with another eye. One month later, tests proved both his eyes had already blind.

b. Curtin testified that Sydney considered the Palmeris were his family members and gave all his estate to them. Even though Sydney seriously stopped anybody from challenging his 2006 Will in which he gave the other Palmeris nothing and ordered Teresa forward 50% his estate to only Victor if he predeceased her.

c. Curtin testified that Sydney was the only one who gave him that instrument orally. Those numbers in the instrument mean how to dis-

tribute his estate even though that instrument mentioned nothing about altering a Will.

d. Curtin testified that Sydney indicated to him to switch a 5% distribution from Diana to Victor through a phone conversation.

e. Curtin testified that Sydney told him to keep his accusations in the 2006 Will and make sure his sons and grandchildren got nothing in the 2014 Will.

f. Curtin testified that Sydney told him to eliminate Lewis Fields as a beneficiary. In the 2006 Will Lewis had the same inheritance as Victor, 9 times of what Palmeris's children had. (besides Victor those Palmeris got nothing in the 2006 will) In the 2016 Will, Victor and Diana eventually got 75% of the $9 million dollars estate and Lewis got nothing.

g. Curtin testified that Sydney told him to reduce his charity from $4.5 million dollars to $ 1,500 . . . .

h. Curtin testified that no beneficiary was present during the Will signing. Even though Diana Palmeri once admitted that she knew Curtin in the Will signing. (She later changed back to Will reading and Curtin said there was no Will reading at all).

CONCLUSION

All Curtin's affirmations were without back-up materials. I repeated my arguments because they avoided discussing any of them in their October 28, 2019 Brief in Opposition. They misapplied questionable legal theories such as a "probate execution" to misdirect this Court. They denied facts and commit perjuries by making affirmations

Judge Rita Mella listened to them and committed serious abuses of discretion. No State Supreme Court provided proper oversight, refusing to even acknowledge that a final judgment has been issued and is ripe for their review. Now they warn the U.S Supreme court not to interfere in decisions made by the State courts. Things they did were dirty and immoral. We cannot make sure everybody is clean in this world but we should at least prevent dirty people from messing up our courtrooms. That is one of the reason we are here.

Pia Fields will publish this brief as a book to let people know this story and watch its ending . . . . She believes people, particularly the Chinese would like to know how things are run in the U.S. courthouses when the Americans talk about justice. Hopefully by selling books we can get the $100,000 legal fee back.

Respectfully submitted,

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