No. 19-5850

IN THE

SUPREME COURT OF THE UNITED STATES

YURIE YAMANO,
Petitioner,

v.

STATE OF HAWAI'I,
DR. KATIE HUANG,
DR. KEIICHI KOBAYASHI
Respondents.

On Petition for Writ of Certiorari to the Ninth Circuit en banc Court of Appeals
No. 18-16359,
U.S. District Civ. No. 18-00078 SOM-RLP

PETITION FOR WRIT OF CERTIORARI

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A. QUESTIONS PRESENTED FOR REVIEW

1. Whether the Court should resolve the following questions for which the five judges on the State of Hawaii Supreme Court bench are exhibiting and committed and acts of treason and anarchism by not following their own rules of the court public laws and Article III Section 2 and Article VI cl.2: of the United States Constitution and of in violation of both state and federal constitutional guarantees to due process and public law. This implication also extends to include the (Ninth Circuit Court appeals en banc court), who declined to rule on the merits of the claims that the three-judge panel affirmed in the lower District of Hawai'i Courts decision.

2. Whether judges are allowed to ignore rules of the courts, the doctrine of stare decisis and case precedence violates Art. VI cl 2 of the U.S. Constitution supreme law of the land?

3. Whether a court can arbitrarily and capriciously not address the question of law on the mandatory language of court rules and case precedence of the Supreme law of the land issued by this court?

4. Whether a State of Hawai'i law can survive a constitutional challenge to which the State of Hawaii law is more restrictive and greater in its fees than the filing fees in both the State and Federal constitutions?

5. The U.S. District Court did not afford or recommend to Petitioner Yurie Yamano (herein after **"Yurie"**) a pro bono counsel under rule 3(D) of the rules of civil pro bono panel for the district of Hawai'i, even after Yurie asked the U.S.

District Court to appoint counsel, or to issue an order under FRCP Rule 17 (c)(2) **Minor or Incompetent Person.** Next friend doctrine. The court must appoint.... or issue **another appropriate order—to protect a.... incompetent person who is unrepresented in an action,** see FRCP Rule 17(c)(2).

6. Whether a U.S. District Court judge, sua sponte answer and apply the Rooker-Feldman doctrine for the defendants, as a defense not brought up by the defendants on a complaint constitute ambush by the government. And whether the Rooker-Feldman doctrine violates the First Amendment of the United States Constitution, and Art. III, § 2, Art. VI cl. 2

8. Whether the Ninth Circuit Court of appeals Court arbitrarily and capriciously afforded 11th Amendment immunity to the State of Hawaii Supreme Court justices who violated the procedural and substantive due process laws, court rules, procedures and constitutional laws?

These questions were presented to all courts state and federal levels and was never addressed.

B. PARTIES TO THE PROCEEDINGS

9. Petitioner Yurie Yamano (herein after **"Yurie"**) is Plaintiffs and Appellant below.

10. Respondent-Defendant State of Hawaii's, (herein after **"State"**) five Supreme Court justices currently serving on the Judiciary bench of Hawai'i State Supreme Court.

11. Respondent-Defendant Doctor Keiichi Kobayashi, (herein after **"Kobayashi")** misdiagnosed Petitioner.

12. Respondent-Defendant Doctor Katie Huang, (herein after **"Huang"**) performed an operation without an informed consent.

1. RELATED CASES

None

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1. PETITION FOR A WRIT OF CERTIORARI

Yurie Yamano petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case, and the State of Hawaii's violations of Public law, constitutional laws and court rules and procedures that is also deemed as law, and its reluctance to answer or remedy Yurie's case in their forum. On Petition for Writ of Certiorari to the Ninth Circuit en banc Court of Appeals No. 18-16359, U.S. District Civ. No. 18-00078 SOM-RLP.

2. OPINIONS BELOW

The Ninth Circuit Court of Appeals opinion is reported on *Yamano v. State of Hawai'i et al*, No. 18-16359, *Yamano v. State of Hawai'i et al*, U.S. District Civ. No. 18-00078 SOM-RLP.

3. JURISDICTION

The court of appeals entered its judgment on March 20, 2019, and denied Yurie's petition for rehearing and rehearing en banc on May 29, 2019. App. 45a47a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

4. STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case does involve interpretation of statutory and constitutional provisions interpretation of laws and the misusage of laws. First Amendment of the United States Constitution, Art. III, § 2, of United States Constitution FRCP Rule 17(c)(2);

Art. VI cl. 2 of United States Constitution; Hawai'i Revised Statutes (HRS) § 671-11 (d); HRS § 657-7.3; The Hawai'i Rules of Appellate Procedure (HRAP) Rule 40.1(a)(1); (HRAP) Rule 40.1.(h),(i):

5. INTRODUCTION AND STATEMENT OF THE CASE

The issue presented in this case involves a genuine and current conflict of laws, court rules, and procedures ignored by the State (Five Hawai'i Supreme Court Justices) the United States District Court for the District of Hawai'i, the Ninth Circuit Court of Appeals three judge panel and the 11-judge court of en banc. The Petitioner Yurie's issues are that significant and substantially important because it will determine the standard of review courts use when reviewing the dismissal of an entire cause of action through laws that is more restrictive than both constitutions provide, and ignoring State Statutory laws and constitutional laws, that permits and allows Yurie's standing to sue. This case also raises issues of exceptional importance under the abuse of discretion doctrine for not following the settled law of the land regarding mandatory language cited in laws the U.S. Supreme Court held, court rules and statutory construction of statutes. The operative mandatory words is ***Shall, Will*** and ***Must.*** See *Board of Pardons v. Allen*, 482 U.S. 369 (1987).

It further hinged upon a U.S. District Court Judge interjecting her own erroneous misinterpretation of the doctrine Rooker-Feldman defense in support of the defendant's motion for dismissal, which was never argued or cited by any of the defendants.

I

6. INTRODUCTION OF THE CASE

Petitioner Yurie Yamano (Yurie) a Japanese national who is Permanent resident in the U.S. who also can't speak English, or understand the U.S. judicial system. Yurie was suffering with stomach pains for three years and the pain became worse until Yurie started vomiting, and started suffering excruciating abdominal pains. Yurie was under the care of Defendant Dr. Kobayashi, who misdiagnosed Yurie as having gastroenteritis. The pains got so bad that Yurie went to the Emergency Room "E.R. at Straub Medical Hospital, on the island of Oahu, Hawaii. Defendant Dr. Huang, also diagnosed Yurie as passing and having gall stones. Defendant Huang, did the surgery on Yurie. At no time did defendant Dr. Huang informed Yurie of the procedure that Defendant Dr. Huang will conduct. Defendant Dr. Huang, did not seek an informed consent or explain to Yurie, as to what procedures are going to be done to her. A day had passed, and Appellant received a notice in the mail indicating that the procedure they performed was the removal of the Appellant's gallbladder organ. This was all done without Appellant's consent.

Another doctor told Yurie, that Dr. Huang, preformed a **Cholecystectomy.** Yurie, did not know what that meant, thinking only gallbladder stones were removed. Then the other Dr. mentioned "you need not worry the doctor took out your whole gallbladder". Yurie did not consent to this, and the doctor did not ask Yurie that she will be taking out Yurie's whole gallbladder. The Defendant Dr. Huang did not have any informed consent authorized by Yurie.

The case was filed in the Hawaii State Circuit Court. See App. **"A"**. It was dismissed for failing to go first through the Hawaii Medical Inquiry and Conciliation Panels (MICP) HRS § 671-11. Yurie Appealed to the Hawaii Intermediate Court of Appeals (ICA). The argument Yurie presented in the ICA was "she was not given any due process informing her that she first must go through a MICP panel, Yurie, was given no notice of any kind.", Yurie, also argued that the Hawaii law under Hawai'i Revised Statute (HRS) **§ 671-11,** to **FIRST** go through MICP before filing a law suit in State Court is unconstitutional on its face.

HRS) **§ 671-11 (d) The party initiating an inquiry shall pay a filing fee of $450 to the department upon the filing of the inquiry, and the failure to do so shall result in the inquiry being rejected for filing.**

Yurie reasoned, that this is unconstitutional because it requires a filing fee far greater than the State and Federal constitutional provision allows. The lower courts did not address the constitutionality of the Hawaii law that requires you to pay a $450.00 filing fee to MICP before you file any medical malpractice claim in court and carry a one-year statute of limitation with no guarantee to proceed or relief and with more restrictions, as opposed to the Hawaii State constitution which cost $315.00 to file a law suit, with a two-year statute of limitation. The state statute offers more protection.

Further, the lower court did not address the constitutionality of the Hawaii statute that requires you to pay a $450.00 filing fee to the MICP before you file any medical malpractice claim, which also carries a one-year statute of limitation with no guarantee to proceed, and with more restrictions, as opposed to the Hawaii State

constitution which cost $315.00 to file a law suit, with a two-year statute of limitation, or a six year statute of limitation. See App. **"A"** The Hawai'i law of medical torts offers more protection. See Hawai'i Revised Statute:

HRS § 657-7.3 Medical torts; limitation of actions; time. [(a)] No action for injury or death against a chiropractor, clinical laboratory technologist or technician, dentist, naturopathic physician, nurse, nursing home administrator, dispensing optician, optometrist, osteopath, physician or surgeon, physical therapist, podiatrist, psychologist, or veterinarian duly licensed or registered under the laws of the State, or a licensed hospital as the employer of any such person, based upon such person's alleged professional negligence, or for rendering professional services without consent, or for error or omission in such person's practice, shall be brought more than two years after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, but in any event not more than six years after the date of the alleged act or omission causing the injury or death. This **six-year time limitation shall be tolled for any period during which the person has failed to disclose any act, error, or omission upon which the action is based and which is known to the person.**

All the lower courts did not address this issue.

The Hawaii ICA affirmed the lower court's decision. See App. **"B"**. Yurie filed an application for a writ of certiorari to the Hawaii Supreme Court. The Hawaii Supreme Court did not follow their Hawai'i Rules of the Appellate Procedure and the individual constitutional rights of due process and statutory rights, that the Hawaii Supreme Court have sworn to protect. In Hawaii, the appellate court rules are deemed as law. Yurie, applied for her first writ of certiorari from the Intermediate Court of Appeals (ICA) on June 13, 2017. See App. **"B"**. In the first order issued by the State of Hawai'i Supreme Court dismissing Yurie's writ of certiorari without prejudice, contingent upon refiling the application of Yurie's writ of certiorari within 30 days. As the rule states hereinbelow:

The HRAP Rule 40.1. APPLICATION FOR WRIT OF CERTIORARI IN THE SUPREME COURT.

(a)

(1) Application; time to file. A party may seek review of the intermediate court of appeals' decision by filing an application for a writ of certiorari in the supreme court. The application ***shall be filed within 30 days after the filing of the intermediate court of appeals' judgment on appeal or dismissal order***, unless the time for filing the application is extended in accordance with this Rule.

Yurie did exactly as the Hawaii Supreme Court required in accordance with the above rule, and resubmitted her application for writ of certiorari.

The Hawaii Supreme Court **GRANTED** Yurie's **WRIT** on filed July 31, 2017.See App. "B". Thirty-nine (39) days after, on September 8, 2017, of the Hawai'i Supreme Court's order accepting Yurie's application for a writ of certiorari. 105 days later, from July 31, 2017 to Nov, 13, 2017, the State dismissed Yurie's writ as improvidently granted. See App. **"B"**. The State did not comply with the mandatory language the word **"Shall"** after the acceptance of the application for a writ of certiorari within 10 days. See *Board of Pardons v. Allen*, 482 U.S. 369 (1987)

The State did not answer Yurie's substantive Due process, and Procedural due process questions, as required by the United States Constitution.

Neither did the State address loss of property issue. In which Yurie's body part was illegally excised from her body, which would constitute personal property, and the right to life. Under *Roe v. Wade*, 410 U.S. 113, (1973) here, it is: A woman has a basic moral right over her own body. All sexual or medical decisions pertaining to her body are hers to make.

On February 28, 2018, Yurie, filed a section 1983, in the U.S. District Court for the District of Hawai'i for the failure of the state to abide and comply with their own rules of the court not recognizing and affording the guarantees of the United States

Constitution for violation of property, life and due process of law. Yurie motioned the court asking for her next friend to speak on her behalf under

FRCP Rule 17 (c)(2) *Without a Representative.* A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court **MUST** appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.

The above rule is couched in mandatory language **Must** and substantive predicates **"or issue another appropriate order"** (Sic) to protect the incompetent person who is unrepresented in an action.

As of now, Yurie have no protection or recourse to be compensated for the illegal acts perpetrated upon her body.

The United States District Court Judge, sided with the Defendants lawyers, and interjected her own defense of the Rooker-Feldman doctrine. See App. **"C"**.

Yurie Appealed.

The Ninth Circuit Court of Appeals three-judge court affirmed Hawaii District Court arguments and did not answer or explain why the State can be allowed to violate their own rules and get away with it, and by giving the 11th Amendment sovereign immunity protection to bolster the State's defense. See App. **"D"**.

Further, both the Ninth Circuit Court of Appeals and en banc court did not offer any explanation whether or not if it is proper or normal procedure to violate the court rules, U.S. Supreme Court Precedence, and court procedures that govern their actions. See App. **"E"**.

7. REASONS FOR GRANTING THE PETITION

The State of Hawai'i did not protect Yurie rights. Yurie went through all the judicial process with no protection of her rights, as though there was no law in place. The State did not even follow their own rules and procedures of the court, rules that govern their actions. Yurie's argument in state court was that the law (HRS) § 671-11 (d) is unconstitutional. Which states in relevant part:

(HRS) § 671-11 (d) The party initiating an inquiry shall pay a filing fee of $450 to the department upon the filing of the inquiry, and the failure to do so shall result in the inquiry being rejected for filing.

State court filing fees is $315.00.

Compare with the above state law: The Hawai'i law of medical torts offers more protection. See Hawai'i Revised Statute:

HRS § 657-7.3 Medical torts; limitation of actions; time. [(a)] No action for injury or death against a chiropractor, clinical laboratory technologist or technician, dentist, naturopathic physician, nurse, nursing home administrator, dispensing optician, optometrist, osteopath, physician or surgeon, physical therapist, podiatrist, psychologist, or veterinarian duly licensed or registered under the laws of the State, or a licensed hospital as the employer of any such person, based upon such person's alleged professional negligence, or for rendering professional services without consent, or for error or omission in such person's practice, shall be brought more than two years after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, but in any event not more than six years after the date of the alleged act or omission causing the injury or death. This **six-year time limitation shall be tolled for any period during which the person has failed to disclose any act, error, or omission upon which the action is based and which is known to the person.**

Further, the State of Hawai'i law conflicts with both the State and federal. See *Broad v. Sealaska Corp.*, 85 F.3d 422(9th Cir. 1996); *Ace Auto Body & Towing Ltd v. City of New York*, 171 F.3d 765(2nd Cir. 1999); *Boomer v. AT&T Corp.*, 309 F.3d

404(7th Cir. 2002) "Under the Supremacy Clause, federal law preempts state law either by express provision, by implication, or by conflict between federal and state law." See also *Altria Group, Inc., et. al. v. Good et. al.*, 555 U.S. 70 129 S. Ct. 538 (2008), ("Article VI, cl. 2, of the Constitution provides that the laws of the United States "shall be the supreme Law of the Land; . . . anything in the Constitution or Laws of any state to the Contrary notwithstanding." Consistent with that command, we have long recognized that state laws that conflict with federal law are "without effect.") *Maryland v. Louisiana*, 451 U. S. 725, 746 (1981). As here, the Hawaii law that requires you to pay and filing fees with the MICP first before filing with any court is unconstitutional. The Ninth Circuit failed to do so, dismissing Petitioner's cause of action without proper grounds or procedure.

This issue was never addressed.

The Hawai'i ICA affirmed the lower court's decision. The Hawai'i Supreme Court **GRANTED** Yurie's **WRIT** on filed July 31, 2017. See App. **"B"**. Thirty-nine (39) days after it was filed. On September 8, 2017, of the Hawai'i Supreme Court's order accepting Yurie's application for a writ of certiorari. 105 days later, from July 31, 2017 to Nov, 13, 2017.See App. **"B"**. The State then dismissed Yurie's writ saying that is was improvidently granted. See App. **"B"**. The HRAP is quite clear with time frames. See below:

Yurie's **WRIT WAS GRANTED** and it was plain error for the Hawai'i Supreme Court to use the improvidently granted clause HRAP Rule 40.1.(h) because the time stated in the Hawai'i Supreme Court rule of **ten days** had already run out elapsed

66 days under HRAP Rule 40.1. **(i).** The rule of the HRAP 40.1.**(i)** below contradicts and supersedes rule (h) by using mandatory language the word **"Shall"**. The HRAP is quite clear with time frames. See below:

Rule 40.1.(i) APPLICATION FOR WRIT OF CERTIORARI IN THE SUPREME COURT.

(i) Review by supreme court after acceptance of application for a writ for certiorari.

If the supreme court accepts the application for a writ of certiorari, the case **SHALL** be decided on the record and the briefs previously filed. The supreme court may limit the question on review, may request supplemental briefs, and may set the case for oral argument. **Within 10 days after the acceptance of the application for a writ of certiorari**, a party may move in the supreme court for permission to file a supplemental brief. The court may impose restrictions as to length and filing of such brief and any response thereto.

The (HRAP)**Hawai'i Rules of Appellate Procedure)** **HRAP** Rule 40.1.**(i)** is couched in mandatory language. The more prudent action would to have heard the case as according to the above appellate procedure, which is to be decided on the merits based on the record and briefs previously filed. Instead, they dismissed the action using HRAP Rule 40.1.(h) going backwards from Rule 40.1.(i) which in Rule 40.1.(i) it has time constraints and mandatory language the word **"Shall"**. Whereas HRAP Rule 40.1.(h) does not any time constraint or mandatory language. HRAP Rule 40.1.(i) the granting of the application which is mandatory with a time frame and substantive predicates. The starting point in construing a statute is the language of the statute itself.

The U.S. Supreme Court often recites the **"plain meaning rule," that, if the language of the statute is plain and unambiguous, it must be applied**

according to its terms." *Sebelius v. Cloer*, 569 U.S. ___, No. 12-236, slip op. (May 20, 2013). **A core tenet of statutory construction is that "identical words used in different parts of the same act are intended to have the same meaning."** *Dep't of Revenue v. ACF Indus.*, 510 U.S. 332, 342, 114 S. Ct. 843, 127 L. Ed. 2d 165 (1994) **"The mandatory 'shall' ... normally creates an obligation impervious to judicial discretion."** *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998). See also, e.g., *EPA v. EME Homer City Generation*, 572 U.S. ___, Nos. 12-1182 and 12-1183, slip op. (April 29, 2014) see and compare with the Hawaii Rules of Appellate Procedure cited below.

"The mandatory "shall" ... normally creates an obligation impervious to judicial discretion." See *Board of Pardons v. Allen*, 482 U.S. 369 (1987) cited in *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998). See also, e.g., *EPA v. EME Homer City Generation*, 572 U.S. ___, Nos. 12-1182 and 12-1183, slip op. (April 29, 2014). **"The use of a permissive verb— 'may review' instead of 'shall review'—suggests a discretionary rather than mandatory review process."** *Rastelli v. Warden, Metro. Correctional Center*, 782 F.2d 17, 23 (2d Cir. 1986). **"Should" sometimes is substituted for "may" as a permissive word."** *Union Elec. Co. v. Consolidation Coal Co.*, 188 F.3d 998, 1001 (8th Cir. 1999). **"Will" and "must" can be additional mandatory words".** See also *Board of Pardons v. Allen*, 482 U.S. 369 (1987); *Bankers Ins. Co. v. Florida Res. Prop. & Cas. Jt. Underwriting Ass'n*, 137 F.3d 1293, 1298 (11th Cir. 1998).See also *Lopez v. Davis*, 531 U.S. 230, 241 (2001) **("Congress' use of the permissive 'may' ... contrasts with the legislators' use of a mandatory 'shall' in the very same**

section."); and *United States ex rel. Siegel v. Thoman*, 156 U.S. 353, 359-60 (1895) **("In the law to be construed here it is evident that the word 'may' is used in special contradistinction to the word 'shall.").**

Further, the State, did not controvert or oppose these issues, that the State violated its own Appellate Court Rules and Procedure and Yurie's rights to due process, they simply ignored it. In essence, the State's failure to address this issue. Rule 40.1.(h) only applies if the Hawai'i supreme court granted Yurie's application for a writ of certiorari and then denied it **within the time frame of ten days,** which is as designated by the court rules established and implemented. See rule below:

(h) No reconsideration of acceptance or rejection of application for a writ of certiorari. Neither acceptance nor rejection of an application for a writ of certiorari shall be subject to a motion for reconsideration in the supreme court. The rejection of an application for certiorari shall be final. However, if an application for certiorari is accepted, the supreme court, at any time prior to final disposition, MAY sua sponte find certiorari was improvidently granted and may dismiss the certiorari proceeding.

Compare to the HRAP Rule below:

HRAP 40.1.(i) Review by supreme court after acceptance of application for a writ for certiorari. If the supreme court accepts the application for a writ of certiorari, the case SHALL be decided on the record and the briefs previously filed. The supreme court may limit the question on review, may request supplemental briefs, and may set the case for oral argument. Within 10 Days After the Acceptance of The Application for A Writ of Certiorari, a party may move in the supreme court for permission to file a supplemental brief. The court may impose restrictions as to length and filing of such brief and any response thereto.

Here, Yurie's writ was granted the substantive predicates are in play, there is no room for mistakes, because more than 10 days had elapse. See time table below: The Hawai'i Supreme Court GRANTED Yurie's WRIT on filed July 31, 2017. thirty-

nine (39) days after it was filed. On September 8, 2017, of the Hawai'i Supreme Court's order accepting Yurie's application for a writ of certiorari. 105 days later, from July 31, 2017 to Nov, 13, 2017. The State then dismissed Yurie's writ saying that is was improvidently granted. The HRAP is quite clear with time frames. HRAP Rule 40.1.(i) the granting of the application which is mandatory with a time frame and substantive predicates.

Further, the State, did not controvert or oppose these issues that the State violated its own Appellate Court Rules and Yurie's rights to due process they simply ignored it. In essence, the State's failed to address this issue. Thereby, not addressing or protecting Yurie's rights to due process, for the illegal removal of her gallbladder without consent.

On February 28, 2018 Yurie filed the instant law suit in the United States District Court for the District of Hawai'i, complaining about how the State Courts failed to protect her property due process rights of removing her gallbladder without notice and her consent and the violation of State laws on getting an informed consent from would be patients. See below: **CIVIL REMEDIES AND DEFENSES AND SPECIAL PROCEEDINGS TITLE 36 HRS § 671-3 Informed consent.**

(a) The Hawaii medical board may establish standards for health care providers to follow in giving information to a patient, or to a patient's guardian or legal surrogate if the patient lacks the capacity to give an informed consent, to ensure that the patient's consent to treatment is an informed consent. The standards shall be consistent with subsection (b) and may include:

(1) The substantive content of the information to be given;

(2) The manner in which the information is to be given by the health care provider; and

(3) The manner in which consent is to be given by the patient or the patient's guardian or legal surrogate.

(b) The following information shall be supplied to the patient or the patient's guardian or legal surrogate prior to obtaining consent to a proposed medical or surgical treatment or a diagnostic or therapeutic procedure:

(1) The condition to be treated;

(2) A description of the proposed treatment or procedure;

(3) The intended and anticipated results of the proposed treatment or procedure;

(4) The recognized alternative treatments or procedures, including the option of not providing these treatments or procedures;

(5) The recognized material risks of serious complications or mortality associated with:

(A) The proposed treatment or procedure;

(B) The recognized alternative treatments or procedures; and

(C) Not undergoing any treatment or procedure; and

(6) The recognized benefits of the recognized alternative treatments or procedures.

(c) On or before January 1, 1984, the Hawaii medical board shall establish standards for health care providers to follow in giving information to a patient or a patient's guardian, to ensure that the patient's consent to the performance of a mastectomy is an informed consent. The standards shall include the substantive content of the information to be given, the manner in which the information is to be given by the health care provider and the manner in which consent is to be given by the patient or the patient's guardian. The substantive content of the information to be given shall include information on the recognized alternative forms of treatment.

(d) Nothing in this section shall require informed consent from a patient or a patient's guardian or legal surrogate when emergency treatment or an emergency procedure is rendered by a health care provider and the obtaining of consent is not reasonably feasible under the circumstances without adversely affecting the condition of the patient's health.

(e) For purposes of this section, "legal surrogate" means an agent designated in a power of attorney for health care or surrogate designated or selected in accordance with chapter 327E. [L 1976, c 219, pt of §2; am L 1982, c 95, §1; am L 1983, c 223, §2 superseded by c 284, §1; am L 2003, c 114, §2; am L 2008, c 9, §3]

Yurie, received NO notice of any kind about the law and procedure as stated above. The course of action as stated above, Yurie was never informed of that

procedure and after one full day when the surgery was done, she was notified. Yurie sought help from the United States District Court for the District of Hawai'i, only to be ganged up by the federal judge and the three lawyers. Yurie, was not offered pro bono counsel because she hardly spoke English. Yurie's only solution was to have her fiancé bring this action into the United States District Courts, to address the inability of the Hawai'i Courts to afford Yurie her due process rights. Yurie filed a motion under FRCP Rule 17(c)(2), next friend doctrine which was denied and also couched in mandatory language **MUST**, asked to appoint counsel, or pro bono counsel, all denied. The court held that Yurie in not mentally incompetent and the Federal Rule 17(c)(2) does not apply to her, Yurie argued that there are exceptions cited within the federal rule i.e. The court **MUST** appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.

> FRCP Rule 17 (c)(2) *Without a Representative.* A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court **MUST** appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.

The above rule is couched in the mandatory language **Must** and substantive predicates **"or issue another appropriate order"** (Sic) to protect the incompetent person who is unrepresented in an action.

Yurie now asks this court to expand or define the above Federal Rule 17(c)(2) to include persons who cannot speak English who cannot afford an attorney to be able to call a next friend to speak on their behalf.

Yurie cannot speak English and was relying on the federal court to help her get justice for the illegal removal of her gallbladder and relied on the case below: see *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U. S. 26, 426 U. S. 38, 426 U. S. 41. Pp. 495 U. S. 154-156. (1976)

(a) Before a federal court can consider the merits of a legal claim, the person seeking to invoke the court's jurisdiction must establish the requisite standing to sue. To do so, he must prove the existence of an Art. III case or controversy by clearly demonstrating that he has suffered an "injury in fact," which is concrete in both a qualitative and temporal sense. He must show that the injury "fairly can be traced to the challenged action," and "is likely to be redressed by a favorable decision."

Yurie presented an injury in fact case and she cannot be made whole again. By removing Yurie's gallbladder. Why is the gallbladder important? this duct transports bile from the liver through the hepatic ducts, into the gallbladder, and into the duodenum – the first part of your small intestine," it adds. In short, your gallbladder is a storage facility for bile, and without it, it's a bit more difficult for your body to break down fatty or high-fiber foods, notes the source. See Appendix "F" Health Fox.com.

The United States District Court did not protect Yurie's rights, and in fact countered Yurie by helping the defendants with their defense by citing the Rooker-Feldman doctrine to dismiss Yurie case. U.S. District Court used this doctrine and erroneously applied its own legal theory supporting the defendants' motion for dismissal who did not argue the point of the Rooker-Feldman doctrine. This Court should grant review to eliminate discrepancies among the circuits, and clarify a uniform standard under the First Amendment of the United States

Constitution the right to petition the Government for redress of grievances that Rooker-Feldman doctrine conflicts with, the First Amendments right to sue; Art. III, § 2, and Art. VI cl.2 of United States Constitution;

Johnson v. De Grandy, 512 U. S. 997, 1005–1006 (1994) (Rooker-Feldman does not bar actions by a nonparty to the earlier state suit). Indeed, during that period, "this Court has never applied Rooker-Feldman to dismiss an action for want of jurisdiction." *Exxon Mobil*, supra, at 287. In Exxon Mobil, decided last Term, we warned that the lower courts have at times extended Rooker-Feldman "far beyond the contours of the Rooker and Feldman cases, overriding Congress' conferral of federal-court jurisdiction

Per Curiam concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 28 U. S. C. § 1738." 544 U. S., at 283. Rooker-Feldman, we explained, is a narrow doctrine, confined to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." 544 U. S., at 284. Citing *Lance v. Dennis*, 546 U.S. 459 (2006) Per Curiam.

How the Rooker-Feldman, violates Art. III § 2 of the United States Constitution

1: The judicial Power **shall extend to ALL Cases**, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State; between Citizens of different States, —between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

For the U.S. District Court to literally throw out Yurie's case is remiss, no facts were ascertained as to whether fraud was used to remove Yurie gallbladder. Hospital normal protocol is to obtain a written consent whereas Yurie is supposed to sign a document and with initials to the areas of procedures to be done to her. This never happened, and no Court addressed this issue.

This Court should grant review to prevent abusive uses of the Rooker-Feldman doctrine and correct the Ninth Circuit's erroneous holding. More importantly, even if Yurie demonstrated to the Court that fraud was committed against her, by the Defendants not informing her of the procedure of removing her gallbladder only after full day, defendants purposely committed fraud by not giving Yurie an interpreter to inform her and get her consent of what procedure would be done to her. However, the U.S. District Court adamantly applied this doctrine sua sponte and dismissed Yurie's case, by creating her own defense absent arguments from the defendant's counsel.

The defendants did not use or argue the Rooker-Feldman doctrine defense. It was the U.S. District court sua sponte using the Rooker-Feldman doctrine to support the defendants. The U.S. District Court should've applied the federal statute of

Title 28 U.S.C. **§ 1443 Civil rights cases**

Any of the following **civil actions** or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:
(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law. (June 25, 1948, ch. 646, 62 Stat. 938.)

Moreover, the U.S. District Court erred, because there **ARE** exceptions to the Rooker–Feldman doctrine. In *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004), the Ninth Circuit held that Rooker–Feldman doctrine did not apply where plaintiff sought relief from a state court judgment based on extrinsic fraud by her adversaries in those proceedings. The court reasoned that "[e]xtrinisic fraud on a court is, by definition, not an error by [the state] court." *Id.* at 1141. Similarly, in *Noel v. Hall*, 341 F.3d 1148, 1155 (9th Cir. 2003), the Court held that the Rooker–Feldman doctrine did not bar the plaintiff's claims alleging that his adversaries in the state court proceedings illegally wire-tapped him because the "plaintiff assert[ed] as a legal wrong an allegedly illegal act or omission by an adverse party." *Id.* at 1164.

The exceptions to the Rooker-Feldman doctrine in Yurie case the defendants committed extrinsic fraud 1) by not giving the Yurie an interpreter to understand the procedure, there is no record indicating that any interpreter had been dispatched, 2) no notice of the procedure that was done to Yurie. 3) It was mailed the next full day after the procedure was performed. There was no notice of any kind, statute, or mandate to inform Yurie what must be done, or who to contact. The Medical Inquiry and Conciliation Panel is an agency of the State that demands a fee before filing a law suit in State court. In short, no notices of any kind, no due process right to notification. The doctors extrinsically hid evidence, and committed fraud by not informing Yurie of the procedure. The State and the Defendant Dr.'s took advantage of her lack of understanding and English speaking, failed to appoint an interpreter to informed her of the procedure that's going to be done to her. More importantly, the Rooker-Feldman doctrine violates the First Amendment because it

prevents federal law suits in federal courts under the First Amendment of the U.S. Constitution to petition the Government for a redress of grievances. It also flies in the face of Art. III § 2 of the United States Constitution states in relevant part:

"The judicial Power **shall extend to ALL Cases**, in Law and Equity, arising under this Constitution, the Laws of the United States...."

The constitution meant all cases in law and equity, and Article VI cl. 2 "Laws of the United States which shall be made.... **shall be the supreme Law of the Land**; and the **JUDGES in every State shall be BOUND thereby....**"

This appeal ensued. On July 19, 2018, the notice of appeal was filed.

The Ninth Circuit's decision ran afoul when it affirmed the lower court's decision on appellate review, the Ninth Circuit Court of Appeal, never answered the main point on appeal instead gave the State of Hawai'i sua sponte 11th Amendment immunity.

Further, the three-judge court of the Ninth Circuit expanded the State's 11th Amendment immunity with no explanation as to why.

There are three main exceptions to the sovereign immunity of a state. First, the 11th Amendment does not stop a federal court from issuing an injunction against a state official who is violating federal law. Although the state official may be abiding by state law, he is not permitted to violate federal law, and a federal court can order him to stop the action with an injunction.[*Ex Parte Young*, 209 U.S. 123 (1908)] Money damages are possible against the state officer, as long as the damages are attributable to the officer himself, and are not paid from the state treasury. *Scheuer v. Rhodes*, 416 U.S. 232 (1974). None of the cases from this

court were ever adhered to. That the Hawaii Supreme Court violated their own rules that is not consistent with supporting defending, and upholding the Constitution of the United States in which they took a sworn oath. Appellant also cited *Stump v. Sparkman*, 435 U.S. 349 (1978); and *Mireles v. Waco*, 502 U.S. 9 (1991) That their actions amounted to treason, for violating public policy and warrants no immunity because the act was not done in a judicial fashion and absent of all jurisdiction. The United States Supreme Court answered this question in *Rankin v. Howard*, (1980) 633 F.2d 844, cert den. *Zeller v. Rankin*, 101 S.Ct. 2020, 451 U.S. 939, 68 L. Ed 2d 326. **"When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost"**. The Defendant State may have been sitting at the bench but their decision was not a judicial one, which violated Yurie's fundamental and substantive due process rights and it's guarantees the right to be given a reasonable opportunity heard. See *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950) **("Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.")**; Yurie never had that opportunity. Citing *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965) (to same effect); *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) **"(noting that the "central meaning of procedural due process" is the "right to notice and an opportunity to be heard ... at a meaningful**

time and in a meaningful manner"). See also Martin H. Redish & Lawrence C. Marshall, Adjudicatory Independence and the Values of Procedural Due Process, 95 YALE L.J. 455, 475 (1986) **("The Supreme Court has often Defendant Stated that the core rights of due process are notice and hearing.").** Moreover, the Defendant State's violated their own Appellate Court rules which are construed and deemed as law. Which voids their decision. These actions by the State not only violates public policy but undermines the Hawai'i judicial system, and is tantamount to treason, **"if a judge does not fully comply with the Constitution, then his orders are void,** *in re Sawyer*, 124 U.S. 200 (1888), **he/she is without jurisdiction, and he/she has engaged in an act or acts of treason."**

"When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost." *Rankin v. Howard*, (1980) 633 F.2d 844, cert den. *Zeller v. Rankin*, 101 S.Ct. 2020, 451 U.S. 939, 68 L. Ed 2d 326.

The Defendant State acted in absence of all jurisdiction, their oath of office sworn to defend and uphold the Constitutions of United States and State of Hawai'i, failed to afford Yurie the due process guarantees of First, Fifth and Fourteenth Amendment, **"if a judge does not fully comply with the Constitution, then his orders are void,"** *In re Sawyer*, 124 U.S. 200 (1888) The United States Supreme Court reasoned that **"Rather, our cases make clear that the immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, *i. e.,* actions not taken**

in the judge's judicial capacity". Cf *Forrester v. White*, 484 U. S., at 227-229; *Stump v. Sparkman*, 435 U. S., at 360. **"Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction".** *Id.*, at 356-357; see also *Mireles v. Waco*, 502 U.S. 9(1991); *Bradley v. Fisher*, 13 Wall., at 351. **"When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost".** *Rankin v. Howard*, (1980) 633 F.2d 844, cert den. *Zeller v. Rankin*, 101 S.Ct. 2020, 451 U.S. 939, 68 L. Ed 2d 326. **"Under the Supreme Law of the Land, whenever a judge acts when the judge does not have subject-matter jurisdiction, the judge is engaged in an act of treason".**; *Cohens v. Virginia*, 19 U.S. 6 Wheat. 264 264 (1821) cited in *United States v. Will*, 449 U.S. 200 (1980).

In the case at bar, the defendant State did not follow the law, Due process commands that you have a right to be heard. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950) **("Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.")**; see also *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965) (to same effect); *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) **"(noting that the "central meaning of procedural due process" is the "right to notice and an opportunity to be heard ... at a meaningful time and in a meaningful manner").**

8. CONCLUSION

For the foregoing reasons, this Court should grant Yurie's writ of certiorari, for the grave injustice created by the American judicial system which had been committed by those in power. Yurie's Gallbladder was removed without consent, without due process, without any kind of relief to compensate her for being a victim of the medical and judicial short comings. Yurie is now suffering from the side effects of not having a gallbladder, not being able to live a normal life which was arbitrarily and capriciously stripped from her without any protection whatsoever. This is Yurie's last hope to make her whole, is to compensate her for all the relief demanded in the complaint.

Dated: Honolulu, Hawai'i, August 24, 2019.

Respectfully submitted,

Yurie Yamano

Yurie Yamano Plaintiff/Petitioner pro se