

In the  
Supreme Court of the United States

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ESTATE OF BASAVAPUNNAMMA K. RAO,  
*Deceased.*

PADMA RAO,  
*Petitioner,*

v.

MIDLAND TRUST COMPANY,  
*Respondent.*

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On Petition for a Writ of Certiorari to the  
Illinois Appellate Court, First District

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PETITION FOR A WRIT OF CERTIORARI

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## **QUESTION PRESENTED**

Whether the Petitioner daughter and legatee of the deceased in a probate estate has any standing under the Due Process Clause to protect her property rights by objecting to an improper settlement by the estate administrator of a civil action for both: 1) a wrongful death claim for which the Petitioner is a true party in interest; and 2) a Survival Act claim on behalf of the estate where Petitioner is a fifty-percent legatee under the will.

## **PARTIES TO THE PROCEEDINGS**

Petitioner Dr. Padma Rao, who was the Appellant below, is a legatee of the Estate of her mother, the deceased Basavapunnamma K. Rao. The Respondent is the Midland Trust Company, which was the Appellee below, and which is the Administrator of the Rao Estate.

Other than the Estate of Rao entity itself, which Respondent Midland Trust Company is directing as Administrator, the only other party in the trial court was the other legatee to the Rao Estate, Anita Rao.

## LIST OF PROCEEDINGS BELOW

### DIRECT PROCEEDINGS

Supreme Court of Illinois

No. 125994

In Re the Estate of Basavapunnamma K. Rao,  
*Deceased.*

Padma Rao, *Petitioner-Appellant*, v. Midland Trust  
Company, *Respondent-Appellee*.

Date of Order: September 30, 2020

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Appellate Court of Illinois

No. 1-19-1427

In Re the Estate of Basavapunnamma K. Rao,  
*Deceased.*

Padma Rao, *Petitioner-Appellant*, v. Midland Trust  
Company, *Respondent-Appellee*.

Date of Order: February 20, 2020

Date of Rehearing Denial: April 6, 2020

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Circuit Court of Cook County

Case No. 2013 P 6243

Estate of Basavapunnamma K. Rao, *Deceased.*

Date of Order: July 3, 2019

### RELATED PROCEEDINGS

Circuit Court of Cook County, Illinois, Law Division,  
Case No. 2014 L 12745

Rao v. Northshore University Health Systems, et al.

Date of Settlement Order: August 23, 2018

Date of Distribution Order: September 10, 2018

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## OPINIONS BELOW

The Illinois Supreme Court denied Dr. Rao's Petition for Appeal. (App.1a). The Illinois Appellate Court overturned the trial court's finding that Dr. Rao had standing and granted Respondent Midland Trust Company's Motion to Dismiss the Appeal in a one-page order (App.3a). The Appellate Court then denied Dr. Rao's Petition for Rehearing in an order. (App.13a). Dr. Rao had appealed from a trial court order granting a Petition to Settle Cause of Action for \$2.1 million over Dr. Rao's objection. (App.5a). On that same day in a separate order, the trial court granted Dr. Rao's Motion to allow immediate appeal of its decision. (App.7a). The trial court had previously expressly granted standing to Dr. Rao to object to the Petition in an Order holding that "Dr. Rao having standing as an heir and legatee as to any Petition filed before the Probate Court." (App.9a).



## JURISDICTION

Jurisdiction is present under 28 U.S.C. § 1257(a). On September 30, 2020, the Illinois Supreme Court denied Dr. Rao's petition to appeal, after Dr. Rao asserted in the petition that a decision against her standing to defend the loss of her property rights as both the estate legatee and as the wrongful death claim's party in interest would violate Dr. Rao's guarantee to due process of law under the United States Constitution. This Court's March 19, 2020, order

extended the deadline for all petitions for writs of certiorari due on or after March 19 to 150 days from the date of the lower court judgment or order denying a timely petition for rehearing, and thus this petition for writ of certiorari is due by February 27, 2021.



## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **U.S. Const., amend. XIV § 1**

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

### **Ill. Const. art. VI, § 6**

Appeals from final judgments of a Circuit Court are a matter of right.

### **Illinois Wrongful Death Act—740 ILCS 180/1-2**

Sec. 1. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who or company or corporation which

would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

Sec. 2. (a) Every such action shall be brought by and in the names of the personal representatives of such deceased person, and, except as otherwise hereinafter provided, the amount recovered in every such action shall be for the exclusive benefit of the surviving spouse and next of kin of such deceased person. In every such action the jury may give such damages as they shall deem a fair and just compensation with reference to the pecuniary injuries resulting from such death, including damages for grief, sorrow, and mental suffering, to the surviving spouse and next of kin of such deceased person.

(b) The amount recovered in any such action shall be distributed by the court in which the cause is heard or, in the case of an agreed settlement, by the circuit court, to each of the surviving spouse and next of kin of such deceased person in the proportion, as determined by the court, that the percentage of dependency of each such person upon the deceased person bears to the sum of the percentages of dependency of all such persons upon the deceased person.

**Illinois Probate Act —755 ILCS 5/1-2.11**

‘Interested person’ in relation to any particular action, power or proceeding under this Act means one who has or represents a financial interest, property right or fiduciary status at the time of reference which may be affected by the action, power or proceeding involved, including without limitation an heir, legatee, creditor.

**Illinois Survival Act—755 ILCS 5/27-6**

Actions which survive. In addition to the actions which survive by the common law, the following also survive: actions of replevin, actions to recover damages for an injury to the person (except slander and libel), actions to recover damages for an injury to real or personal property.



## STATEMENT OF THE CASE

In this matter, the Illinois Appellate Court reversed the trial court's standing ruling to hold that estate legatee and next of kin Dr. Rao – who is the daughter and fifty-percent legatee of the deceased under the will – had no standing to challenge the trial court's decision to approve a \$2.1 million settlement as requested by the estate administrator for Survival Act and wrongful death claims. The Survival Act (755 ILCS 5/27-6) allows an action for the deceased's pain and suffering that is payable to the estate. The wrongful death claim is made under the Wrongful Death Act (740 ILCS 180/1-2) and compensates each next of kin directly for their respective loss, and thus is an action on the next of kin's behalf exclusively rather than for the benefit of the estate. Under Illinois law, the Survival Act claims and wrongful death claims are both pursued by the estate administrator, and such administrator here settled both claims in an overall settlement. The Appellate Court held that Dr. Rao had no standing to object to this settlement.

The Appellate Court's decision denied Dr. Rao her procedural due process rights to be heard and protect her property interests in the wrongful death and Estate claims. Without such due process rights to protect her property interest, Dr. Rao's interests were entirely left in the hands of an estate administrator whose decisions-whether based on laziness or fraud or corruption or negligence or simple incompetence-could never be challenged by Dr. Rao no matter how outrageous and unjust. Under the Constitution, Dr. Rao-as the person whose property rights are actually

affected, compromised and lost by the administrator's decisions here-must have the procedural due process right to be heard and make her objections.

**A. Overview of the Interaction Between the Probate Division and the Law Division in the Cook County Court System.**

Cook County, Illinois, is a unified court system that has numerous separate court divisions. Probate of an estate is handed in a Probate Division courtroom. Tort cases where the deceased is a plaintiff are handled in a Law Division courtroom, and the deceased is represented by the estate administrator who has appeared and been appointed in the probate case. In such a Law Division case where a settlement is agreed to by the estate administrator and the opposing party, it does not become final unless the judge in the probate case approves the action of the estate administrator, which requires the administrator to petition the probate court for authority to enter into the settlement.

**B. The Law Division Wrongful Death Action and Settlement Order.**

The Law Division tort action at issue is titled *Rao v. Northshore University Health Systems, et al.*, Circuit Court of Cook County, Illinois, Law Division, Case No. 2014 L 12745. (C626). The action included both Survival Act and wrongful death causes of action. (C 626). The deceased was widowed and her only two heirs were her daughters Petitioner Dr. Rao and her sister Anita Rao, who were each 50% legatees under the will and the only next of kin. (C 628).

The Law Division court entered a Settlement Order for a total settlement of \$2,100,000 (C 626) for both the Survival Act and wrongful death causes of action, and a distribution Order for those settlement funds pending further action by the probate court. (C 626-628). After deduction for fees, the court's Distribution Order from the settlement directs \$221,430 directly to Dr. Rao for the wrongful death cause of action (C 628), and further directs a Survival Act settlement amount of \$1,012,223 to the Estate of Rao for distribution in probate. (C 628).

**C. The Probate Division Holds Dr. Rao Has Standing to Oppose the Petition to Settle, But Still Grants the Petition to Settle Over Dr. Rao's Objection.**

Before the Petition to Settle was tendered to the Probate Division court, on January 14, 2019, Dr. Rao filed a Petition to Clarify in the Probate Division court which requested an Order stating:

“Padma Rao has standing to address this Court regarding its supervision of Midland Trust, including the Court's direction and approval of distributions, as well as, objecting and presenting evidence as to any petition brought before this Court to approve any purported settlement in the Law Division action.”

(C 644, 647 ¶ C). The court granted Dr. Rao's Petition to Clarify request in an Order stating: “Paragraph C is granted as to Padma Rao having standing as an heir and legatee as to any Petition filed before the Probate Court.” (App.31a).



On April 2, 2019, estate administrator Midland filed with the probate court a motion seeking authority from the probate court to approve the \$2.1 million settlement in the Law Court and that Law Court's Distribution Order, with Midland asserting that the settlement had been financially fair. (C 662-4). The Probate Court allowed Dr. Rao to file a response opposing Midland's request. (C 667). Dr. Rao's Response provided affidavit evidence that the settlement was against decedent's beliefs because she believed strongly in open, public proceedings, as opposed to backroom, closed-door meetings which she felt are more prone to unfairness and improprieties. (C 694, 693-763). The Response also provided affidavit evidence that the settlement was against decedent's beliefs because she believed in jury trials as a means to best arrive at justice in a proceeding open to the public. (C 694, 693-763). Dr. Rao's Response argued that the settlement was not in the best interests of the Estate because it conflicted with the decedent's belief to have no private settlement with her wrongdoers lacking a public acknowledgement and showing of misconduct through a jury trial. (C 699), and thus it should not be approved and must be vacated. (C 696-700). The probate court issued an order agreeing with Midland that the settlement was financially fair. (767).

Midland then filed a Petition to Settle with the probate court based on this finding of financial fairness. (C 771). Dr. Rao filed a Motion to Reconsider, with briefs asserting that the probate court incorrectly failed to take into account the wishes and beliefs of decedent in finding that the proposed settlement was proper. (C 768-770, 1136-1140). Dr. Rao again demanded that a jury trial take place on the claims to accord

with the decedent's beliefs and wishes to have a public jury verdict against her wrongdoers. (C 1140)

The probate court denied Dr. Rao's Motion to Reconsider (C 1218) and granted Midland's Petition to Settle, approving the Settlement Order and Distribution Order of the law court. (App.7a). The probate court also issued an Order, as requested by oral Motion by Dr. Rao, holding that there was no just reason to delay immediate appeal of its Order approving the Petition to Settle. (App.5a).

**D. The Illinois Appellate Court Overrules the Trial Court and Grants Dismissal of the Appeal for Lack of Standing of Dr. Rao to Contest the Settlement, Despite Dr. Rao's Arguments That She Has Standing to Protect Her Rights as Heir to the Estate and as Next of Kin for the Wrongful Death Claim.**

Dr. Rao appealed, arguing that the probate court had erred under the law in failing to adhere to the decedent's wishes and beliefs in approving the Petition to Settle. (C 1222-23; 1228-29). Under the Illinois Constitution Article VI: "Appeals from final judgments of a Circuit Court are a matter of right." Illinois Constitution at Article VI, Section 6.

On December 30, 2019, Midland filed a Motion to Dismiss the appeal for lack of standing of Dr. Rao. (App.15a). The Motion asserted that Dr. Rao lacked any real interest in the outcome of the wrongful death and survival actions being prosecuted by the Estate, and thus the appeal must be dismissed. (App.3a).

The Motion primarily relied on the case of *Will v. Northwestern University*, 378 Ill.App.3d 280 (1st Dist.

2007), a case which did not involve a probate court. In *Will*, where minors were involved as both estate heirs and wrongful death beneficiaries, the trial court held that it had a duty to prevent the rejection of settlement offers which should be accepted in the minors' best interests. *Id.* at 285. Because of the involvement of minors, *Will* also explained that the law court had the inherent power to approve the settlement and thus no proceedings in probate court were necessary. *Id.* at 285-86. *Will* then held that the estate beneficiaries lacked standing on appeal of this law division case, where they had no participation or standing in the law division trial court in their individual capacities, and thus they could not be parties to that same appeal. *Id.* at 290.

The Motion to Dismiss argued that because Dr. Rao had no standing under *Will* to object to the settlement in the law division court proceedings there, estate beneficiaries should also have no standing even in probate court to dispute any of the estate administrator's actions-including the estate administrator's petition for and approval of the settlement in the probate court. (App.7a). The Motion did not address that a legatee has property rights at issue in probate court and in the estate Survival Act claim, and also did not address that Dr. Rao was a true party in interest for the wrongful death claim being compromised. Nevertheless, the Motion asserted that an estate beneficiary and wrongful death party in interest has no standing in probate court to dispute an administrator's actions compromising her property rights, or any recourse whatsoever to protect her rights from being lost and compromised in improper estate administration. (App.7a).

On February 13, 2020, Dr. Rao filed her Response to the Motion, asserting:

An Estate beneficiary has standing in Estate administration in a Probate case from her real interest in the outcome of the Estate administration as undertaken by the Administrator . . . . the relationship between an Estate Administrator and a beneficiary is fiduciary in character. [Cite] If a transaction at issue overseen by the Administrator has any connection to the Estate, the Administrator's fiduciary duties to the Estate beneficiaries are in force. [Cite].

Not only does the beneficiary such as Appellant have standing in Probate from her real interest in the outcome, but the beneficiary must also have standing to contest actions of the Administrator in Probate in order to protect her rights and uphold the fiduciary duties the Administrator owes to the beneficiary. Under Appellee's logic, there is no party whatsoever that could challenge an Administrator for harming beneficiaries by not acting in the best interest of an Estate in its administration, an absurd result \*\*\*. [Cites].

(Rao. Response to Motion to Dismiss at 4-5). On February 20, 2020, the First District granted the Motion to Dismiss in a one-sentence dismissal order, merely stating that the Motion was granted. (App.3a).

On March 12, 2020, Dr. Rao filed a Petition for Rehearing, requesting both that the decision be vacated and that the Appellate court issue a decision in

compliance with Illinois Supreme Court Rule 23 and specify its rationale for overturning the trial court's order holding that Dr. Rao had standing. (Rao Petition for Rehearing 1-6). The petition included the following argument:

While it is impossible for Appellant to know or describe precisely what this Court misapprehended due to this Court's failure to comply with Rule 23 requirements, it is clear that this Court must have overlooked how Appellant as heir has standing under probate law to review the Probate Court's decision on Estate administration. A beneficiary must have standing to contest actions of the Administrator in Probate in order to protect her rights and uphold the fiduciary duties the Administrator owes to the beneficiary.

(Rao Petition for Rehearing at 6). The Illinois Appellate Court denied the Petition for Rehearing in a one-sentence order. (App.13a).

**E. Dr. Rao Petitions for Appeal to the Illinois Supreme Court Asserting That the Appellate Court's New Standing Decision Violates Her 14th Amendment Right to Procedural Due Process, and Her Petition for Appeal Is Denied.**

Dr. Rao then filed her Petition for Appeal to the Illinois Supreme Court. (App.31a). Dr. Rao asserted that the Appellate Court's new standing dismissal violated her 14th Amendment constitutional rights to procedural due process to protect both her rights as the party in interest in the wrongful death action, as well as to protect her property rights as legatee to

the Estate. The Petition first described Dr. Rao's due process rights under the Constitution and Supreme Court case law:

A conflict exists between this decision and decisions of the United States Supreme Court and this Court which hold that Dr. Rao is entitled to procedural due process in this case, so that she is not deprived of her property as Estate heir and wrongful death beneficiary without first having standing to be heard. The due process clause of the fourteenth amendment prohibits state action that deprives any person of life, liberty, or property without due process of law. U.S. Const., amend. XIV, § 1. \*\*\* The due process clause requires that the opportunity to be heard occur "at a meaningful time and in a meaningful manner." *Lyon v. Department of Children & Family Services*, 209 Ill.2d 264, 277 (2004), quoting *Mathews v. Eldridge* 424 U.S. 319, 333 (1976). The Constitution requires some kind of a hearing before the State deprives a person of liberty or property. *Zinerman v. Burch*, 494 U.S. 113, 127 (1990).

(App.31a). The Petition then demanded standing to protect Dr. Rao's property rights as a wrongful death beneficiary in need of due process protection under Supreme Court precedents:

Dr. Rao has a direct property interest in the wrongful death action, and thus procedural due process requires Dr. Rao to have standing and be heard regarding the Probate Court's oversight of such action and approval of a settlement compromising Dr. Rao's property

rights in the action. \*\*\* [Cites]. Accordingly, because Dr. Rao has a direct property interest in the wrongful death action, she must have standing and the opportunity to be heard regarding the oversight and compromise of the action to satisfy her procedural due process rights under *Cardona*, *Lyon*, *Mathews*, and *Zinerman*.

(App.31a). The Petition also demanded standing to protect Dr. Rao's property rights as an heir and Estate beneficiary in need of due process protection under Supreme Court case law:

Dr. Rao also has a property interest as an heir and beneficiary of the Estate that entitles her to procedural due process rights to be heard and protect this interest. The cases above of *Cappetta*, *Wallen*, *Thomson*, and *Venturelli* all hold that Estate beneficiaries and creditors such as Dr. Rao have a property interest in the Estate. Thus once again, Dr. Rao as heir and legatee must have standing and the opportunity to be heard to protect her interest in the Estate in order to satisfy her procedural due process rights under *Cardona*, *Lyon*, *Mathews*, and *Zinerman*.

(App.1a). The Illinois Supreme Court denied Dr. Rao's Petition for Appeal. (App.1a).



## **REASONS FOR GRANTING THE PETITION**

Petitioner was denied the constitutionally mandated procedural due process to protect her property rights regarding both the Survival Act claim and the wrongful death claim, and the writ should be granted on the basis of either claim or both as discussed below.

### **I. THE ILLINOIS APPELLATE COURT'S DECISION THAT DR. RAO HAS NO STANDING AS AN HEIR IN PROBATE COURT TO PROTECT THE PROPERTY RIGHTS IN HER INHERITANCE VIOLATES THIS COURT'S DECISIONS REQUIRING PROCEDURAL DUE PROCESS FOR HER.**

An important conflict exists between the Illinois Appellate Court's decision and decisions of this Court which hold that Dr. Rao is entitled to procedural due process as a legatee to protect her property rights in her inheritance. Accordingly, the Illinois Appellate Court's decision that Dr. Rao lacked standing as a legatee to challenge the Estate's litigation settlement in Probate Court should be reversed, for the benefit of Illinois courts and other courts considering this question of a legatee's due process constitutional rights to protect their property rights in inheritance.

#### **1. Requirements of Constitutional Procedural Due Process.**

The Due Process Clause of the Fourteenth Amendment prohibits state action that deprives any person of life, liberty, or property without due process of law. U.S. Const., amend. XIV, § 1. The root requirement of the Due Process Clause is that an individual be



given an opportunity for a hearing before he is deprived of any significant protected interest. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985). The Due Process Clause requires that the opportunity to be heard occur “at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge* 424 U.S. 319, 333 (1976).

## **2. Dr. Rao Has a Property Right in Her Inheritance Such That It Cannot Be Deprived Without Procedural Due Process.**

Dr. Rao also has a property interest as a legatee and beneficiary of the Estate that entitles her to procedural due process rights to be heard and protect this interest. Claimants and legatees of the Estate have a direct and substantial interest in the Estate’s property and distribution, and it is for their benefit that the entire purpose of establishing the Estate legal entity is undertaken in the first instance. Accordingly, Dr. Rao is entitled to standing and due process guarantees to protect her property interest in the Estate. The estate beneficiary needs due process rights to protect her property from administrators who are negligent, corrupt, compromised, or otherwise do not properly perform their duties regarding the Estate property. This matter is of great general importance, as Estate legatees deserve to have their rights as to the Estate heard and protected as they proceed through the judicial system. The idea that an Estate legatee has no recourse to protect herself from improper Estate Administration and resulting loss of her legatee property rights is anathema to our ideals of fairness and due process under the Constitution.

This Court's precedents emphasize the importance of this issue. The central meaning of procedural due process is: "Parties whose rights are to be affected are entitled to be heard." *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). The constitutional right to be heard 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. *Id.* "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." *Id.* at 81. "It has long been recognized that 'fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights. . . . [And n]o better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it.'" *Id.*, quoting *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 170-172 (1951) (Frankfurter, J., concurring). Likewise here, arriving at the truth of whether the Estate administrator has acted properly cannot be obtained by a one-sided determination without opportunity to speak by Dr. Rao, an Estate legatee for whom the Estate was established. *See also Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 18 (1978) (hearing required before cutting off utility service); *Wolff v. McDonnell*, 418 U.S. 539, 557-558 (1974) (hearing required before forfeiture of prisoner's good-time credits); *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970) (hearing required before termination of welfare benefits).

While the administration of an estate is a state court issue, the 14th Amendment mandates that the

state must apply satisfactory constitutional due process even to their own state court procedures—"nor shall any state deprive any person of life, liberty, or property, without due process of law." U.S. Const., Amendment XIV, § 1. Accordingly, this Court has repeatedly applied the due process guarantee to state court procedures on questions of state law, and this Court reversed such state court judgments where the due process guarantee was violated. *Speiser v. Randall*, 357 U.S. 513 (1958) (reversing judgment of California Supreme Court, due process violated in state court hearing procedure as to state tax exemption); *Western & A. R. Co. v. Henderson*, 279 U.S. 639, 644 (1929) (reversing judgment of Georgia Supreme Court, due process violated in state court proceeding where state statute unfairly shifted burden of proof in state court civil action); *see also Wolff*, 418 U.S. at 555-56 (due process guarantee applies to Nebraska penal institution hearing applying Nebraska statutes). Moreover, due process includes the right to minimum procedures appropriate to protect the right (*Wolff*, 418 U.S. at 557), such as appellate review to correct an erroneous determination. In addition, where Illinois itself has created a right to appellate review under its constitution, such right cannot be arbitrarily abrogated without violating due process. *See Wolff*, 418 U.S. at 557.

As shown above, Dr. Rao as heir and legatee must have standing and the opportunity to be heard to protect her interest in the Estate in order to satisfy her procedural due process rights. The probate process is perhaps the most widespread use of the legal system among Americans, and certainly one of the most important. This Court has previously held it appropriate to examine due process rights for prisoners'

credits in *Wolff* and utility cut-off in *Memphis Light*, and Dr. Rao requests this Court guide the American legal system on this more important matter of the due process rights of estate legatees in probate. This court should ensure there is a uniform body of state and federal law that estate beneficiaries do have the right to be heard and their rights and property protected under the constitutional principles of due process.

**II. THE ILLINOIS APPELLATE COURT’S DECISION ALSO VIOLATES THIS COURT’S DECISIONS REQUIRING PROCEDURAL DUE PROCESS AS TO DR. RAO’S PROPERTY RIGHTS AS THE PARTY IN INTEREST IN THE WRONGFUL DEATH CLAIM.**

Dr. Rao also must have standing to obtain her procedural due process rights and be heard to present any objections in order to protect her property interest in the wrongful death claim before such claim is compromised. In this common and heartbreaking tort, it is of great importance throughout the country that this Court ensure that wrongful death parties in interest, such as Dr. Rao, also have their due process rights for this property interest protected.

First, it is undisputed under Illinois law that Dr. Rao has a direct property interest in the wrongful death action, and thus procedural due process requires Dr. Rao to have standing and be heard regarding the Probate Court’s oversight of such action and approval of a settlement compromising Dr. Rao’s property rights in the action. In *In re Estate of Powell*, the Illinois Supreme Court held that the “decedent’s spouse and next of kin are the true parties in interest in a wrongful death action.” 12 N.E.3d 14, 21 (Ill. 2014).

*Powell* noted how the Illinois Wrongful Death Act statute requires that the amount recovered in the action shall be for the “exclusive benefit of the surviving spouse and next of kin” of the deceased. *Id.* at 20, quoting 740 ILCS 180/2.

Accordingly, Dr. Rao is entitled to standing to be heard and to protect her due process rights in the wrongful death action for her “exclusive benefit.” The Wrongful Death Act adds: “. . . In every such action the jury may give such damages as they shall deem a fair and just compensation with reference to the pecuniary injuries resulting from such death, including damages for grief, sorrow, and mental suffering, to the surviving spouse and next of kin of such deceased person.” 740 ILCS 180/2(a). The idea that Dr. Rao is helpless to have any protection for her rights in the wrongful death claim and the “grief, sorrow and mental suffering” damages she is due by jury is antithetical to constitutional procedural due process rights as well as common sense. The resulting scenario that Dr. Rao is entirely at the mercy of an attorney or administrator who might be negligent, corrupt or incompetent is utterly inimical to the Fourteenth Amendment and its due process guarantee.

In summary, the person to be compensated for “damages for grief, sorrow, and mental suffering” must have standing to be heard on such relief and to assert the inadequacy of purportedly fair compensation, and thus the decision here that Dr. Rao has no standing to be heard and obtain procedural due process to protect her interest in the wrongful death claim is preposterous. As stated above in *Cleveland*, *Mathews*, *Wolff*, *Memphis Light*, and *Goldberg*, the Constitution requires some kind of a hearing before the State

deprives a person of property, with the opportunity to be heard in a meaningful manner and present any objections. This court should ensure there is a uniform body of state and federal law that wrongful death claimants have the right to be heard with their rights and property protected under due process, with just as much constitutional protection as the rights of prisoners and utility purchasers.



## CONCLUSION

Petitioner is entitled to constitutional due process to protect her property rights regarding both the Survival Act claim and the wrongful death claim. The Illinois courts have not given Petitioner the opportunity to be heard that Petitioner is guaranteed under the 14th Amendment, and the Illinois decision conflicts with all the due process holdings of this Court cited above. The impact of probate law and procedures on heirs and legatees is a universal issue, and any confusion in the application of required due process in probate should be corrected to ensure proper constitutional safeguards and adherence across this country. For all the reasons above, Petitioner Dr. Padma Rao respectfully requests that this Court grant this Petition for Writ of Certiorari.

Respectfully submitted,

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