

20-1421

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Supreme Court of the United States

Penelope McHatten and Kenneth and Susan Hafford  
(Plaintiffs/Appelles/Respondents)

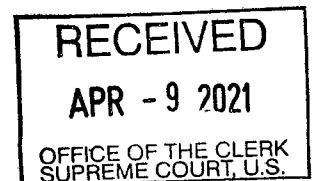
v.

Paul and Goldie Ballerstein  
(Defendants/Appellants/Petitioners)

On Petition for Writ of Certiorari to the Supreme Court of Maine

Petition for Writ of Certiorari

Paul and Goldie Ballerstein  
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## QUESTIONS PRESENTED

In this civil case, Maine courts deprived the defendants of their property, after concluding that the facts “foreclose” doing so. The trial court found that actually meeting the statutory requirements was a “factual impossibility”, but then it invoked that selfsame statute against them anyway. Can a civil court arbitrarily override clearly written statutory requirements?

The court purposefully ruled contrary to the facts on record, in violation of statutory requirements, in order to penalize one party in favor of the other. Does demonstrated judicial bias/prejudice prove insufficient Due Process, and thereby render its entire judgment invalid?

LIST OF PARTIES

The caption of this petition contains all parties to the proceedings.

RULE 29.6 STATEMENT

There are no parent corporations or publicly held companies in this case.

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## **PETITION FOR A WRIT OF CERTIORARI**

**Paul and Goldie Ballerstein respectfully petition for a writ of certiorari to review the judgment of the Supreme Court of Maine**

## **OPINIONS AND ORDERS BELOW**

**The decision below of Maine's Supreme Court is unpublished and its disposition is reported at Aroostook County Superior Court in Caribou, Maine. The opinion is reproduced in the Appendix at A-1**

**The first half of the bifurcated decision (Decision Re: Declaratory Judgments and Questions of Liability) of Maine's Superior Court of Aroostook County is unreported and is reproduced in the Appendix at B(1)-1**

**The second half of the bifurcated decision (Final Judgment) of Maine's Superior Court of Aroostook County is unreported and is reproduced in the Appendix at B(2)-1**

**The order of Maine's Supreme Court denying a Petition for Review was issued on December 3, 2020 and is reproduced in the appendix at C-1**

## **BASIS FOR JURISDICTION**

**The date of the decision sought to be reviewed is November 3, 2020. Further review was denied on December 3, 2020. This Court has ordered that, for now, the time for filing petitions for writ of certiorari be extended to 150 days from this later date.**

**The jurisdiction of this Court is conferred under 28 U.S.C. §1257**

## CONSTITUTIONAL PROVISIONS AND STATUTE AT ISSUE

The Fifth Amendment of the US Constitution provides: “No person shall be...deprived of life, liberty, or property without due process of law”.

The Fourteenth Amendment of the US Constitution provides: “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”.

Maine Statute 14 M.R.S. §7552(5) states that “the owner may also recover from the person who violates subsection 2 the reasonable costs of professional services necessary for determining damages and proving the claim as long as the person first has written notice or actual knowledge that a claim is being asserted.

## STATEMENT OF THE CASE

### THE FACTUAL AND REGULATORY BACKGROUND

The trial court explained that Maine Statute “14 M.R.S. §7552(5) requires that a trespasser must have received written notice or have actual knowledge of his trespass before the reasonable costs of professional services become implicated.” (Decision, App. B(1), pg 24)

The same court found that “There is no evidence that the Haffords ever provided written notice to the Ballersteins before any of their offending actions.” (Decision, App. B(1), pg 24)

The selfsame court concluded that “This fact would foreclose an award for professional services under this statute”. (Decision, App. B(1), pg 24)

The court amended its finding (despite there being no new evidence whatsoever) and found that the defendants “did have sufficient prior written notice or actual knowledge”. (Final Judgment, App. B(2), pg 3)

Simultaneously with amending its finding, the court acknowledged that meeting the statutory requirement remained a “factual impossibility”. (Final Judgment, App. B(2), pg 3)

The offending branch pruning actions at issue were completed, in good faith, within the year 2017; absolutely no notice was given at that time. (Decision, App. B(1), pg 23, 24)

And the court acknowledged that “The date on which the Ballersteins had this notice and/or knowledge was September 18, 2018. (Final Judgment, App. B(2), pg 7)

The court invoked the selfsame statute anyway, and found the defendants liable for “professional services pursuant to 14 MRS §7552(5)”. (Final Judgment, App. B(2), pg 3)

The court explained that the statute in question was intended for timber trespass of large scale commercial logging operations. (Final Judgment, App. B(2), pg 3, footnote 5)

This case only involves residential lots in an urban neighborhood (Decision, App. B(1), pg 2)



The court created its own “most reliable solution” against the defendants “notwithstanding the precision or exactness of the language used”. (Decision, App. B(1), pg 9)

## **RAISING OF THE FEDERAL QUESTIONS**

### **Federal Questions and the trial court**

The federal questions originated when the trial court completely reversed itself, regarding costs of services, from its original decision to an altered final judgment. These issues were both created and finalized simultaneously.

The trial court passed on the questions before they could be raised, as it had already admonished that its “judgment will be subject to appellate review by either party in all respects if they so choose”. (Decision, App. B(1), pg 34)

Also, the trial court had already warned the defendants about pursuing “endless litigation” (Decision, App. B(1), p34) To the extent, if any, that further raising was even possible after its Final Judgment, it would have been imprudent, if not dangerous, for the defendants to do so.

### **Federal Questions and the appellate court**

The defendants raised the federal questions within their appellate briefs, as part of the standard appeal process. In their principle brief, they asked for a completely new consideration of the entire case, from the beginning, *de novo*. (Brief, App. D, pg14, 15) In their reply brief they stated

that the trial court “acknowledged that the statutory requirements had not been met, but then simply waived the requirements” (Reply Brief, App. E, pg 14) And they explained how unjust and unfair that was, as it was proof of judicial prejudice/bias against them. (Reply Brief, App. E, pg 14-16)

Maine’s appellate court passed on the questions by completely ignoring them. It issued a Memorandum of Decision, which asserted no error at all and summarily affirmed the trial court’s entire altered judgment. (Memorandum of Decision, App. A, pg 1) It went so far as to include the terms “with finality”. (Memorandum of Decision, App. A, pg 2) The defendants submitted a Motion for Reconsideration, but it was simply denied.

#### REASONS FOR ALLOWANCE OF THE WRIT

**Further clarification of Due Process includes easy-to-reach, fundamentally vital questions of Constitutional law that have not been, but should be, settled by this Court.**

The petitioners have worked to reason appropriately with the Supreme Court of the United States, and squarely address the questions of law presented for review; they invite the most careful scrutiny of the record. Perhaps surprisingly, this case is nationally important; it presents a unique opportunity to create just rules of law, which will protect all Americans, in the greatest generality of cases. The questions presented provide a prime vehicle for safeguarding life and liberty, as well as property. And may it please the Court.

The questions could not be easier to reach than they are in this case. The court itself acknowledged every step that the petitioners need to show; statutory requirements were not met, there was literally zero (0) evidence which went to show they were met, and the actual facts of the case made it a “factual impossibility” that they could ever be met. But the court invoked the statute anyway, and ordered that the defendants be deprived of their property, pursuant to that statute, for the plaintiffs’ benefit.

The questions could not be more fundamentally vital than they are in this case. The defendants’ civil rights have been knowingly disregarded and purposefully violated, contrary to the clear and specific terms of statutory law. In this case, due process and the rule of law have entirely broken down.

**Jurisdiction conferred; Property was deprived without Due Process**

Jurisdiction of this case has been distinctly transferred to SCOTUS. The petitioners were deprived of their property without Due Process, contrary to the terms of the US Constitution. And all of the other requirements have also been met. The issues were raised appropriately within Maine courts, but were simply ignored. Maine’s highest appellate court is done with it. Therefore, jurisdiction of this case has been transferred in a most straightforward way.

**The Questions of Law were sufficiently raised, but justice requires full consideration of this petition even regardless**

The defendants have adequately brought the Questions of Law up for appellate review within their Briefs; the trial court’s actual prejudice/bias

was shown and discussed for a solid three pages. And, as a matter of law “Due process guarantees an absence of actual bias on the part of a judge.” Williams v. Pennsylvania, 136 S. Ct. 1899, 1905, 195 L. Ed. 2d 132 (2016). Therefore, the defendants sufficiently notified Maine’s highest court that an insufficient Due Process claim was being asserted.

When justice required it, SCOTUS has made exceptions “to consider petitioners’ claims that were not raised or addressed below.” Yee v. City of Escondido, Cal., 503 U.S. 519, 533, 112 S. Ct. 1522, 1531, 118 L. Ed. 2d 153 (1992). Basic justice fundamentally requires that SCOTUS consider the questions of law presented in this petition. Therefore, the defendants’ level of adequacy of raising the questions becomes a moot point.

#### **Civil courts must be bound by the terms of statutory law**

Civil *rights* are only meaningful if consistently applied by civil *courts*. Written promises on paper are worthless if the actual terms can be arbitrarily ignored and overridden. A court’s purpose is to actually apply statutory law, not violate it on a whim.

The same logic argued here, regarding this *civil* case, has already been Opined recently by SCOTUS in regards to both *criminal* and *bankruptcy* courts. A court “lacks the power to exact a penalty that has not been authorized by any valid *criminal* statute.” Welch v United States, 136 S. Ct. 1257, 1268, 194 L. Ed. 2d 387 (2016). Likewise, “a *bankruptcy* court may not contravene specific statutory provisions.” Law v Siegel, 571 U.S. 415, 421,

134 S. Ct. 1188, 1194, 188 L. Ed. 2d 146 (2014). Therefore, it logically follows that *civil* courts should be held to this same reasonable standard.

**An unfair Civil trial cannot provide due process;  
any Civil judgment resulting from an unfair trial is entirely invalid**

Civil suits are fundamentally different from criminal and other types of litigation. In civil litigation, all parties can lay claim to right and rights. A court's mandate in a civil action is to separate the competing claims of right, and determine the actual rights of the parties. It is imperative that the court itself remain absolutely impartial throughout; any favoritism towards one party necessarily obstructs justice for the other. Perhaps more so than in any other type of litigation, a civil court's demonstrated bias against a party invalidates its entire judgment against them, because it shows that their civil rights were never given adequate consideration.

The entire purpose of a court of law is to actually apply the law in whatever case is at hand. For a court to intentionally override the law, contrary to the facts, simply to favor one party over the other, is the pinnacle of bias, prejudice, and "unfair". And "a fair trial in a fair tribunal is a basic requirement of due process." In re Murchison, 349 U.S. 133, 136, 75 S. Ct. 623, 625, 99 L. Ed. 942 (1955). Therefore, the defendants' unfair trial in an unfair tribunal failed to meet the requirements of due process. Therefore, since due process is guaranteed, and the defendants' rights were never given adequate consideration, the entire judgment resulting from such an unfair trial must be entirely invalidated.

Nobody deserves such an unfair and biased civil trial as the defendants have had. Nothing they ever did, or showed, or said ever made any difference. And when they appealed to the higher court, that court failed to consider the trial court's prejudice/bias, which the defendants had explained to them for over three pages of appellate brief. But America's citizens deserve better. For justice to prevail, it will require a brand new look, with a new court that is open and impartial to both sides.

### **SCOTUS; the Protector of all Civil Rights**

The terms of controlling documents, including the US Constitution, must be taken to mean what they say, plain and simple. No court has the prerogative to ignore a state legislature's statutory terms, just as no state has the prerogative to ignore the Constitution. And Due Process must be taken to mean exactly that; nothing more, and nothing less.

Due process does not need to, and cannot, guarantee victory. Nobody expects that it would. But Due Process must guarantee that both sides have a fair chance. And that the written statutory law will be applied. And that the specific words of a controlling document actually matter. And that actual evidence is important. And that time marches forwards, and does not run backwards. And that reason is paramount. And that impartiality is a requirement.

The present case is uniquely positioned to unify SCOTUS in common cause. Jurisdiction has been transferred per the plain and ordinary meaning

of the terms of the US Constitution, and the civil rights of the petitioners have been trampled so thoroughly that the most beneficial rules of law can be justly crafted. The silver lining remains that their case gives SCOTUS a special chance to reassure this great Nation, and also show the world, that the US still delivers on its founding promises.

## CONCLUSION

Civil Rights are the crowning achievement of western civilization. And the United States led the world in establishing a system of government that could provide and protect those rights. The questions presented squarely address whether those civil rights, as clearly expressed by the legislatures of the people, can be overridden and violated by any court that so arbitrarily chooses.

Due Process is the bedrock of American freedom. It is Constitutionally protected for good reason. Therefore, SCOTUS should grant this writ not just for the sake of these petitioners alone, but for all citizens of the United States of America. Aspects of this case uniquely allow it to serve as the vehicle for needed clarification. This case presents a golden opportunity for SCOTUS to assert its legitimate authority and craft rules of law which will secure the Constitutionally guaranteed Right to Due Process, and more firmly establish justice for all.

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Respectfully submitted in good faith conformance with all Rules,

Deceased Executed on: NA

Paul Ballerstein

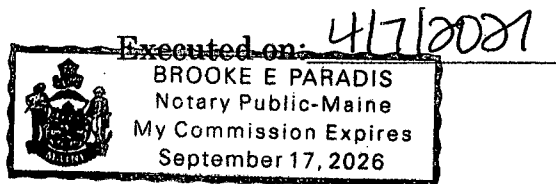
Goldie Ballerstein Executed on: 4/7/21

Goldie Ballerstein

In order for the signature above to be notarized, personally there appeared before me Goldie Ballerstein, and made affirmations that their signature was made as a free act under their own free will.

Brooke Paradis  
Signature

Brooke Paradis  
Printed Name



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