ORIGINAL

No. 20-1672

In the Supreme Court of the United States

JOAN CAROL LIPIN,

Petitioner,

v.

WISEHART SPRINGS INN, INC., ARTHUR D. WISEHART, IN HIS INDIVIDUAL CAPACITY, AND IN HIS CAPACITY AS PRESIDENT AND "ALTER-EGO" OF WISEHART SPRINGS INN, INC., MARK APELMAN, DEBBIE GRIFFITH, IN HER OFFICIAL CAPACITY AS DELTA COUNTY ASSESSOR, REBECCA W. GEYER, ELLEN E. WISEHART, RICHARD HUNTER KREYCIK, AND ERIN M. JAMESON,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. If the sanctity of the express and unambiguous written intent, terms, and conditions of an Act of Congress are inviolate, like the express and unambiguous written intent, terms, and conditions of a wholly integrated revocable living (*inter vivos*) Trust Agreement that is inextricably intertwined with the Settlor's First Amendment thereto, the Confirmation thereof, and the Second Amendment thereto, and that became *irrevocable when the Settlor died* on November 28, 1993, did the court below exercise judicial or quasi-judicial authority that is unauthorized by law under *AMG Capital Mgmt, LLC v. FTC*, ___ U.S. ___, 141 S. Ct. 1341 (Apr. 22, 2021); *McGirt v. Oklahoma*, ___ U.S. ___, 140 S. Ct. 2452 (Jul, 2020); and *Jennings v. Rodriguez*, ___ U.S. ___, 138 S. Ct. 830 (2018), by affirming the district court's interpretation thereof and amendment thereto?

II. If the court below incorrectly applied a summary judgment standard of review to affirm the summary judgment cross-motion and the respondent attorneys made fabricated evidence, attorney spoliation of admissible evidence, and attorney potential witness tampering during the proceedings, was the affirmance of the judgment procured by fraud-on-the-court required to be set aside or vacated?

III. If the court affirmed the inapplicable collateral estoppel dismissal of the subsequent case ("*Lipin II*") that was commenced pursuant to Federal Rules of Civil Procedure 60(d)(1)(3) to set aside or vacate the judgment filed in the prior case ("*Lipin I*"), is the judgment in the subsequent case ("*Lipin II*") also void and required to be set aside or vacated?

LIST OF PARTIES

Petitioner

- Joan Carol Lipin

Respondents

- Wisehart Springs Inn, Inc.
- Arthur D. Wisehart, in his individual capacity, and in his capacity as President and "Alter-Ego" of Wisehart Springs Inn, Inc.
- Debbie Griffith, in her official capacity as Delta County Assessor
- Ellen E. Wisehart
- Richard Hunter Kreycik
- Erin M. Jameson

Respondent Attorneys

- Mark Apelman
- Rebecca W. Geyer

LIST OF PROCEEDINGS

***JOAN CAROL LIPIN V. WISEHART SPRINGS INN, INC., ET AL.*, USCA10 No. 20-1007 ("*LIPIN II*")**

United States Court of Appeals for the Tenth Circuit

No. 20-1007

Joan Carol Lipin, *Plaintiff-Appellant v.* Wisehart Springs Inn, Inc.; Arthur D. Wisehart, in his individual capacity and in his capacity as President and "Alter-Ego" of Wisehart Springs Inn, Inc.; Mark Apelman; Debbie Griffith, in her official capacity as Delta County Assessor; Rebecca W. Geyer; Ellene. Wisehart; Richard Hunter Kreycik; Erin M. Jameson, *Defendants-Appellees*

Date of Final Opinion: January 15, 2021

Date of Rehearing Denial: February 16, 2021

Date of Mandate: February 24, 2021

United States District Court for the District of Colorado (Denver)

No. D.C. No. 19-CV-00935-RBJ

Joan Carol Lipin, *Plaintiff/Counter Appellant v.* Wisehart Springs Inn, Inc.; Arthur D. Wisehart, in his individual capacity and in his capacity as President and "Alter-Ego" of Wisehart Springs Inn, Inc.; Mark Apelman; Debbie Griffith, in her official capacity as Delta County Assessor; Rebecca W.

Geyer; Ellene. Wisehart; Richard Hunter Kreycik; Erin M. Jameson, *Defendants*

Date of Final Opinion: January 3, 2020

***JOAN C. LIPIN V. ARTHUR DODSON WISEHART, ET AL.,* USCA10 No. 18-1060 & 18-1176 ("*LIPIN I*"):**

United States Court of Appeals for the Tenth Circuit

No. 18-1060 & 18-1176

Joan C. Lipin, *Plaintiff-Appellant v.* Arthur Dodson Wisehart; Erin Jameson; Ellen E. Wisehart; Richard [Rhjakob] Kreycik, *Defendants-Appellees*

Date of Final Opinion: January 17, 2019

Date of Rehearing Denial: February 11, 2021

Date of Mandate: May 15, 2019

United States District Court for the District of Colorado (Denver)

No. 16-cv-00661-RBJ-STV

Joan C. Lipin, *Plaintiff-Appellant v.* Arthur Dodson Wisehart; Erin Jameson; Ellen E. Wisehart; Richard [Rhjakob] Kreycik, *Defendants-Appellees*

Date of Corrected Opinion: February 6, 2020

Date of Opinion: June 6, 2019

Date of Order: April 18, 2019

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Joan Carol Lipin respectfully petitions for a writ of certiorari to review the Order and Judgment (unpublished) of the United States Court of Appeals for the Tenth Circuit filed on the 15th day of January, 2021, and the Order denying the petition for rehearing *en banc* filed on the 16th day of February, 2021. (App.41a).

OPINIONS BELOW

JOAN CAROL LIPIN V. WISEHART SPRINGS INN, INC., ET AL., USCA10 No. 20-1007 ("*LIPIN II*")

The United States Court of Appeals for the Tenth Circuit, Mandate was filed on February 24, 2021. (App.1a).

United States Court of Appeals for the Tenth Circuit Order denying petition for rehearing *en banc* was filed on February 16, 2021. (App.41a).

United States Court of Appeals for the Tenth Circuit denying Motion to Stay the Mandate Pending an Application to the Supreme Court for a Writ of Certiorari was filed on February 8, 2021. (App.3a).

United States Court of Appeals for the Tenth Circuit, Order and Judgment filed (unpublished) dated January 15, 2021. (App.5a).

Appellant's Certificate of Good Faith to Disqualify Circuit Judge Eid for Egregious Bias and

Partiality too High to be Constitutionally Tolerated, and Partiality, Pursuant to U.S.C. § 144 and 28 U.S.C. § 455(a) was filed on February 26, 2021. (App.43a).

Affidavit of Appellant in Support of her Motion to Disqualify Circuit Judge Eid for Egregious Bias too High to be Constitutionally Tolerated, and Partiality, pursuant to U.S.C. § 455(a) and 28 U.S.C. § 144 was filed on February 26, 2021. (App.55a).

United States District Court for the District of Colorado (Denver), Final Judgment was filed on January 3, 2020. (App.18a).

United States District Court for the District of Colorado (Denver), Order on Motions to Dismiss filed on January 3, 2020. (App.21a).

JOAN C. LIPIN V. ARTHUR DODSON WISEHART, ET AL., USCA10 No. 18-1060 & 18-1176 ("*Lipin I*")

Corrected Satisfaction of Amended Judgment was filed by petition on February 6, 2020. (App.83a).

United States Court of Appeals for the Tenth Circuit, Mandate was filed on May 15, 2019. (App.85a).

United States Court of Appeals for the Tenth Circuit, Order Enforcing Mandate and Imposing Filing Restrictions was filed on May 15, 2019. (App.87a).

United States Court of Appeals for the Tenth Circuit, Order to Show Cause was filed on April 29, 2019. (App.92a).

United States Court of Appeals for the Tenth Circuit, Mandate filed on February 19, 2019. (App.109a).

United States Court of Appeals for the Tenth Circuit, Order denying petition for rehearing and rehearing *en banc* was filed on February 11, 2019. (App.141a).

United States Court of Appeals for the Tenth Circuit, Per Curium Order and Judgment (unpublished) was filed on January 17, 2019. (App.110a).

United States District Court for the District of Colorado (Denver), Amended Final Judgment was filed on June 6, 2019: (App.95a).

United States District Court for the District of Colorado (Denver), Amended Order re Cost Bond was filed on April 19, 2019. (App.97a).

United States District Court for the District of Colorado (Denver), Order re Cost Bond was filed on April 18, 2019. (App.103a).

United States District Court for the District of Colorado (Denver), Final Judgment was filed on February 12, 2018. (App.131a).

United States District Court for the District of Colorado (Denver), Order on Motions for Summary Judgment was filed on February 12, 2018. (App.133a).

JURISDICTION

The Order signed by the Clerk of the United States Court of Appeals for the Tenth Circuit, denying the petition for rehearing *en banc* filed on February 16, 2021, renders the filing of this petition to be timely. (App.41a).

This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment XIV
U.S. Constitution Fourteenth Amendment
Section 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.

28 U.S. Code § 144
Bias or prejudice of judge

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

28 U.S. Code § 455
Disqualification of Justice, Judge, or Magistrate Judge

(a) Any . . . , judge, . . . of the United States shall disqualify him/herself in any proceeding in which his impartiality might reasonably be questioned.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this

section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

OTHER REGULATIONS AND LAWS

Federal Rules of Civil Procedure 60(d)(1), (3):

OTHER POWERS TO GRANT RELIEF. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

* * *

(3) set aside a judgment for fraud on the court.

STATEMENT OF THE CASE

Petitioner commenced this civil litigation in the United States District Court for the District of Colorado (Denver), by filing a verified and amended verified complaint on March 28, 2019 and April 1, 2019 ("*Lipin II*"), respectively, in accordance with Federal Rules of Civil Procedure 60(d)(1)(3), and as of right, to set aside or vacate the order and judgment in the common law trespass and ejectment action in *Lipin v. Arthur Dodson Wisehart, et al.*, ("*Lipin I*") commenced by filing a verified complaint on March 16, 2016.

The same district judge presided in *Lipin I* and in Lipin *II*.

The same Panel of Circuit Judges affirmed *Lipin I* and *Lipin II*. (App.5a; App.18a; App.21a; App.95a; App.110a; App.131a; App 133a).

In response to the lower court's directive in the (unpublished) Order and Judgment filed on January 15, 2021, (App.5a) that petitioner show cause why she should not be sanctioned for allegedly filing a frivolous and vexatious appeal, on February 26, 2021, petitioner filed "Appellant's opposition to the threaten imposition of sanctions and motion to (A) disqualify Circuit Judge Eid for egregious bias too high to be constitutionally tolerated, pursuant to 28 U.S.C. § 455(a) and 28 U.S.C. § 144, and (B) to recall the mandate."

On February 26, 2021, petitioner also filed her notarized Certificate of Good Faith and personal knowledge Affidavit, each in proper legal form, to disqualify Circuit Judge Eid for egregious bias too high to be constitutionally tolerated, and partiality, pursuant to 28 U.S.C. § 144 and 28 U.S.C. § 455(a). (App.43a; App.55a).

On February 8, 2021, the lower court's Clerk of Court denied petitioner's motion filed on February 1, 2021, to stay the issuance of the mandate pending petitioner's filing of a writ of certiorari to the United States Supreme Court. (App.3a)

The court below has yet to determine petitioner's motion to disqualify the Circuit Judge for egregious bias too high to be constitutionally tolerated, and partiality, pursuant to 28 U.S.C. § 455(a) and 28 U.S.C. § 144, and to recall the mandate filed on February 24, 2021.

ARGUMENT

The wholly integrated, inextricably intertwined revocable living (*inter vivos*) "Trust Agreement" or "Dorothy R. Wisehart Trust" ("Trust"), was not a testamentary trust and it was not a family trust.

The Trust became *irrevocable* when the Settlor died on November 28, 1993.

The Settlor and Arthur M. Wisehart were the only two parties who signed, accepted, and executed the mother's original revocable living (*inter vivos*) Trust Agreement in the State of Indiana on May 22, 1987.

The Settlor twice amended the Trust, concerning which latent ambiguity or fraud did not exist.

In accordance with the express and unambiguous written intent, terms, and conditions of the Trust, Dorothy M. Wisehart, Settlor and Co-Trustee, and Arthur M. Wisehart Co-Trustee, signed, accepted, and executed the First Amendment thereto, the Confirmation of the First Amendment thereof, and the Second Amendment thereto on April 13, 1992; November 26, 1993; and November 26, 1993, respectively.

"Article VII" of the original *irrevocable* Trust document stated "[I]t is her intention that in no event shall any liability be enforced against Arthur M. Wisehart . . . and [w]hile Dorothy R. Wisehart and Arthur M. Wisehart are Co-Trustees, each shall separately have the power to do all acts that the Trustee may perform."

In addition, the express and unambiguous intent, terms, and conditions of the *irrevocable* "Trust Agreement," as stated in the inextricably intertwined First Amendment thereto "I hereby add a new term A under article V and Items A through Q in original Dorothy R. Wisehart Trust dated May 22, 1987, shall be relettered as Items B through R, and new Item A to read as follows:

> "1. During his life time Arthur M. Wisehart shall have general power of appointment as to both income and principal of this Trust. He may appoint both income and principal to anyone including himself even to the exhaustion thereof.
>
> "2. Such undistributed income and principal left at the death of the Trustee, Arthur M. Wisehart, may be appointed pursuant to the terms as set forth in the Will of said Arthur M. Wisehart."

Legal agency authority as Sole Successor Trustee was conferred on Arthur M. Wisehart on November 28, 1993, in accordance with the wholly integrated inextricably intertwined *irrevocable* Trust Agreement on the death of his mother.

Indisputably, the express and unambiguous intent, terms, and conditions of the Trust Agreement are silent concerning the appointment of concurrent co-trustees.

The original Trust Agreement that Dorothy and Arthur signed, accepted, and executed in the State of Indiana on May 22, 1987, included the following language under "Article V," at ¶¶ "O"; "P"; and "Q" for the removal of any trustee and appointment of a

successor trustee "by written request of not less than three-fourths of the current income beneficiaries of the Trust:"

> "O." "Any Trustee may resign . . . ."
>
> * * *
>
> "P." "If the individual Trustee at any time resigns or is unable or refuses to act, a corporation authorized . . . to administer Trusts may be appointed as Trustee by an instrument delivered to the acting Trustee. . . .";
>
> * * *
>
> "Q." "The Trustee may be removed upon written request of three-fourths (3/4) of the current income beneficiaries, provided that three-fourths (3/4) of the current income beneficiaries can agree on a successor Trustee, and the successor Trustee acknowledges written acceptance of its appointment to the existing Trustee, and its willingness to serve."

Indisputably, an "acting Trustee" was not "appointed;" and "three-fourths (3/4) of the current income beneficiaries did not agree on a successor Trustee."

Said conditions precedent were not established or satisfied at any time relevant.

Also, the aforesaid condition precedent "the successor Trustee acknowledges written acceptance of its appointment to the existing Trustee, and its willingness to serve" also was not established or satisfied.

That the condition precedent "[i]f the individual Trustee at any time resigns or is unable or refuses to act, a corporation authorized . . . to administer Trusts may be appointed as Trustee by an instrument delivered to the acting Trustee . . . " was not established or satisfied, also was not disputed.

Indisputably, there was no fraud or latent ambiguity in the wholly integrated *irrevocable* "Trust Agreement" or the "Dorothy R. Wisehart Trust."

Accordingly, legal agency authority as the Sole Successor Trustee of the *irrevocable* wholly integrated "Trust Agreement" or "Dorothy R. Wisehart Trust" was conferred on Arthur M. Wisehart on November 28, 1993, upon the death of his mother, Dorothy, in accordance with the express and unambiguous written intent, terms, and conditions thereof, thereto, and thereunder.

The Sole Successor Trustee did not petition any court to amend the *irrevocable* Trust.

Also, the "income beneficiaries" or their agents, if any, did not petition any court to amend the *irrevocable* "Trust Agreement" or the "Dorothy R. Wisehart Trust," that under its own express and unambiguous intent, terms, and conditions expired on April 15, 2015.

A corporate entity or financial institution did not petition any court to amend the *irrevocable* Trust.

Indisputably, the wholly integrated *irrevocable* "Trust Agreement" or "Dorothy R. Wisehart Trust" was not authenticated or certified by any court.

As stated above, the wholly integrated *irrevocable* "Trust Agreement" or the "Dorothy R. Wisehart

Trust" was silent as to the "appointment" of concurrent "co-trustees."

The revocable living (*inter vivos*) Trust or the *irrevocable* Dorothy R. Wisehart Trust at all relevant times was not a party to any legal action.

Petitioner did not seek relief from the *irrevocable* Trust in *Lipin I* or in *Lipin II*.

In addition, petitioner did not commence a legal action against respondent Arthur D. Wisehart or Arthur Dodson Wisehart, as an alleged or fabricated concurrent "co-trustee."

In *Lipin I*, respondent attorneys Apelman and Geyer in support of the defendants' cross-motion for summary judgment relied on the uncertified and unauthenticated "draft" or "proposed" fabricated work-product "Dorothy R. Wisehart Trust Appointment Co-Trustee" document previously conjured-up by a random New York attorney on or about November 5, 2009, without a court order or directive, to commit fraud-on-the court, and to harm the integrity of the judicial process.

The respondents in *Lipin I* did not file any affidavits in support of the fabricated cross-motion for summary judgment prepared, signed, and filed by respondent attorney Apelman, who relied on the fabricated affidavit of respondent attorney Geyer, who relied on the fabricated attorney work-product document concocted by New York attorney Mertens.

Respondent attorney Geyer, like New York attorney Mertens, however, did not know Dorothy R. Wisehart who died on November 28, 1993.

Indisputably, respondent attorney Geyer also did not know the Sole Successor Trustee, Arthur M. Wisehart, of the *irrevocable* Dorothy R. Wisehart Trust.

At all times relevant the fabricated attorney's work-product "Dorothy R. Wisehart Trust Appointment Co-Trustee" document was without legal force or binding effect and unable in law to support the purpose for which it was intended, namely, to amend the *irrevocable* "Trust Agreement" or the "Dorothy R. Wisehart Trust," by attempting to amend the Trust by adding fabricated concurrent co-trustees language on or about November 5, 2009, to the Trust that became *irrevocable* on November 28, 1993, without petitioning any court; contrary to the express and unambiguous intent, terms, or conditions of the Trust; and concerning which the wholly integrated *irrevocable* Trust was silent.

Respondent Arthur D. Wisehart made the following dispositive *prima facie* evidence admissions against the interests of all *Lipin I* and *Lipin II* respondents in the notarized personal knowledge "Affidavit of Arthur Dodson Wisehart" in proper legal form, that that defendant party in *Lipin I* freely signed on September 29, 2017.

Indisputably, the dispositive "Affidavit of Arthur Dodson Wisehart" was not filed in support of respondents' cross-motion for summary judgment prepared, signed, and filed by respondent attorney Apelman in *Lipin I* on October 2, 2017, who attached respondent attorney Geyer's fabricated affidavit thereto.

At all times relevant, the following dispositive prima facie admissions of Arthur Dodson Wisehart and prima facie evidence against all respondents in

Lipin I and in *Lipin II* were concealed, materially, by respondents from the district court:

> 4. * * * From the time Dorothy died on November 28, 1993. . . . , my father [Arthur M. Wisehart] was the sole trustee of the DRW Trust.
>
> * * *
>
> 5. * * * [A]n attorney (Richard Mertens) who practiced in Binghamton, . . . draft[ed] the appropriate document ("Appointment") the "Dorothy R. Wisehart Trust Appointment of Co-Trustee. . . . [T]he Appointment prepared by Mr. Mertens . . . .
>
> * * *
>
> 9. I am aware of no amendments to the Trust other than the First and Second Amendments. . . .
>
> * * *
>
> 11. * * * [T]he assessor's office currently shows Ms. Lipin as the sole owner of the property.

Respondent attorney Apelman, who is licensed to practice law in the State of Colorado, and respondent attorney Geyer, who is licensed to practice law in the State of Indiana, colluded to manufacture other fabricated attorney evidence to harm the integrity of the judicial process in order to procure the respondents' cross-motion summary judgment by fraud-on-the-court in *Lipin I*, as shown by the reliance of the court on the fabricated affidavit of respondent attorney Geyer who purported to be a "testifying-witness."

As stated in that attorney's fabricated notarized affidavit, signed under penalty of perjury, respondent attorney Geyer, like New York attorney Mertens, "opined" and interpreted the alleged "intent" of Dorothy, nearly a quarter of a century or more than a decade after the death of the Settlor, respectively, by fabricating intent to appoint concurrent co-trustees.

All respondents relied on the fabricated "intent" conjured-up by respondent attorneys Geyer and Apelman, and also by New York attorney Mertens that was derived from the fabricated and inadmissible parol evidence uncertified and unauthenticated work-product of attorney Mertens with the deceptive and misleading title "Dorothy R. Wisehart Appointment of Co-Trustee" to commit fraud on all targeted courts in order to procure the void judgments in *Lipin I* and in *Lipin II*.

Indisputably, each respondent concealed from petitioner the dispositive companion letter of attorney Mertens that was sent to Arthur M. Wisehart, Sole Successor Trustee of the Dorothy R. Wisehart Trust, together with the uncertified and unauthenticated "draft" or "proposed" attorney's fabricated work-product "Dorothy R. Wisehart Trust Appointment Co-Trustee" document on November 5, 2009, which has not been certified or authenticated by any court.

In reliance on the aforesaid fabricated evidence manufactured by attorney Mertens and respondent attorneys Geyer and Apelman, and respondent Griffith, the district court and the court below exercised judicial or quasi-judicial authority that is unauthorized by law by interpreting and amending the express and unambiguous intent, terms, and

conditions of the wholly integrated inextricably intertwined *irrevocable* Trust, to declare and affirm respondent Arthur Dodson Wisehart in *Lipin I* to be a concurrent "co-trustee" of his paternal long-deceased grandmother's *irrevocable* Dorothy R. Wisehart Trust.

The court below also affirmed the district court's interpretation that the Trust allegedly was the owner of the Paonia, Colorado, real property, contrary to the lawfully recorded certified Deeds of conveyance in 2015 from Arthur McKee Wisehart, Grantor, to Joan Carol Lipin (Grantee), in 2015, that were recorded by the County Clerk and Recorder for said Delta County, in the State of Colorado, as shown by the Property Record Cards that were maintained by the Delta County Assessor, respondent Griffith, in the Office of the Delta County Assessor's Office, prior to the deliberate spoliation thereof by respondent attorney Apelman and respondent Griffith, upon which respondent attorney Geyer relied in her fabricated affidavit in support of respondents' cross-motion for summary judgment filed in *Lipin I*.

Petitioner commenced *Lipin II*, pursuant to Federal Rules of Civil Procedure 60(d)(1)(3), to set aside or vacate the judgment the respondent attorneys and their co-respondents procured by fraud in *Lipin I*, as stated with specificity the in the allegations of the amended verified complaint, which are deemed true under Rule 8 of the Federal Rules of Civil Procedure, *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

The court below affirmed the summary judgment cross-motion judgment the respondents procured by fraud on the court in *Lipin I*, and, on that basis,

affirmed the district court's dismissal of *Lipin II* under the inapplicable collateral estoppel doctrine.

This petition for a writ of certiorari therefore relies, in part, on expanded law under the recent opinions cited in "I." of the Questions Presented.

The sanctity of Congressional intent is concomitant with judicial restraint concerning the interpretation of the intent, terms, and conditions set forth in an Act promulgated by Congress.

If a court fails or refuses to engage in judicial constraint concerning Congressional statutory intent, and applies its own interpretation of the express and unambiguous intent, terms, and conditions of an *irrevocable* Trust, such as the instant "Trust Agreement" or the "Dorothy R. Wisehart Trust," in reliance on attorney fabricated evidence and inadmissible parole evidence, such as in *Lipin I* and in *Lipin II*, a court knowingly exercised judicial or quasi-judicial authority or abuse of discretion that is unauthorized by law under recent decisions of this Court in *AMG Capital Mgmt., LLC v. FTC*, ___ U.S. ___, 141 S. Ct. 1341 (Apr. 22, 2021) (reversing the Ninth Circuit's judgment, and remanding the case for further proceedings); *McGirt v. Oklahoma*, ___ U.S. ___, 140 S. Ct. 2452 (July 9, 2020) (judgment reversed), and in *Jennings v. Rodriguez*, ___ U.S. ___, 138 S. Ct. 830 (2018) (reversed and remanded).

If specific exceptions do not exist, which is applicable to the *irrevocable* "Trust Agreement" or the "Dorothy R. Wisehart Trust," the lower court and the district court exercised judicial or quasi-judicial authority or abuse of discretion that is unauthorized

by law by interpreting the wholly integrated, inextricably intertwined *irrevocable* "Trust Agreement" or the "Dorothy R. Wisehart Trust" that was entered into by and between the only two parties thereto, Dorothy R. Wisehart and Arthur McKee Wisehart, who is the nearly 93-years-of-age husband of petitioner, who is nearly 74-years-of-age.

Indisputably, the express and unambiguous written intent, terms, and conditions of the *irrevocable* Trust are inviolate and speak for themselves.

By looking outside that *irrevocable* Trust document in reliance on fabricated attorney evidence and inadmissible parol evidence to grant the respondents' cross-motion for summary judgment, the judgment in *Lipin I* was procured by fraud-on-the-court, and the dismissal and affirmance of *Lipin II* under the inapplicable collateral estoppel document also constituted a judgment that also should be set aside or vacated pursuant to Federal Rules of Civil Procedure 60(d)(1)(3), reversed, and remanded.

As previously discussed, there was no latent ambiguity or fraud in the wholly integrated *irrevocable* Trust, and, as shown therein, the Settlor, Dorothy R. Wisehart, intended that her trust come into existence and that her only child, Arthur M. Wisehart, become the Sole Successor Trustee thereof in accordance with the express and unambiguous intent, terms, and conditions thereof, therein and thereunder.

The *irrevocable* Trust therefore also is analogous to a wholly integrated contractual agreement by and between two parties, under *Northern Assurance Co. v. Grand View Bldg. Asso.*, 183 U.S. 308, 318 (1902) (reversing on the grounds) that:

"It is a fundamental rule, in courts both of law and equity, that *parol* contemporaneous evidence is inadmissible to contradict or vary the terms of a valid written instrument. This rule is thus expressed in *Greenleaf on Evidence*, vol. 1, sec. 275, 12th ed.: When parties have deliberately put their engagements into writing, in such terms as import a legal obligation, without any uncertainty as to the object or extent of such engagement, it is conclusively presumed that the whole engagement of the parties, and the extent and manner of their undertaking was reduced to writing; and all oral testimony of a previous colloquium between the parties, or of conversation or declarations at the time when it was completed, or afterwards, as it would tend in many instances to substitute a new and different contract for the one which was really agreed upon, to the prejudice, possibly, of one of the parties, is rejected. The rule is thus expressed by *Starkie*, 587, 9th Am. ed.:

> It is likewise a general and most inflexible rule, that where ever written instruments are appointed, either by the requirement of law, or by the compact of the parties, to be the repositories and memorials of truth, any other evidence is excluded from being used, either as a substitute for such instruments or to contradict or alter them. This is a matter both of principle and policy; of principle, because such instruments are in their nature and origin

> entitled to a much higher degree of credit than *parol* evidence; of policy, because it would be attended with great mischief if those instruments upon which men's [women's] rights depended were liable to be impeached by loose collateral evidence."

Written documents speak for themselves, and only specific exceptions to the general rule allow a court to look outside a document when interpreting it. No such specific exceptions apply herein.

In *Robinson v. Audi Aktiengesellschaft*, 56 F. 3d 1259, 1266 (10th Cir. 1995), the lower court stated "[f]raud on the court is fraud which is directed to the judicial machinery itself." *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir. 1978).

In addition, *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir. 1978), also stated fraud on the court may exist where party, with counsel's collusion, fabricates evidence, to harm the integrity of the judicial process.

Fabrication of evidence by attorneys or a party constitutes fraud on the court.

In *Cleveland Demolition Co. v. Azcon Scrap Corp., Div. of Gold Fields American Industries, Inc.*, 827 F.2d 984 (4th Cir. 1987), the court stated fraud on court may exist where witness and attorney conspire to present perjured testimony.

It is paramount that Courts defend their integrity against unscrupulous marauders, such as respondent attorneys Apelman and Geyer, and also New York attorney Mertens, acting in concert, because the lack of defense thereof would place at risk the very

fundament of the judicial system, as Justice Black wrote in a case involving a not-dissimilar fraud.

"Tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society . . . . The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944).

Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944), therefore also is directly applicable because the appropriate use of a court's inherent power to protect the sanctity of the judicial process -- to combat those who would dare to practice unmitigated fraud upon the court itself is inherent in its power and to deny the existence of such power would foster the very impotency against which the *Hazel-Atlas* Court specifically warned.

Like in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 245 (1944), "Every element of the fraud here disclosed demands the exercise of the historic power of equity to set aside fraudulently begotten judgments. This is not simply a case of a judgment obtained with the aid of a witness who, on the basis of after-discovered evidence is believed possibly to have been guilty of perjury. Here . . . we find a deliberately planned and carefully executed scheme to defraud not only the Patent Office but the Circuit Court of Appeals."

Fraud on the court encompasses conduct that prevents the court from fulfilling its duty of impartially deciding cases.

Rather than being limited to injury to an individual litigant, fraud on the court embraces "that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases presented for adjudication." *Kupferman v. Consol. Research and Mfg. Corp.*, 459 F.2d 1072, 1078 (2d Cir. 1972).

The maxim in *Precision Instrument Mfg. Co. v. Auto. Maintenance Mach. Co.*, 324 U.S. 806, 814-815 (1945), also is applicable:

> The guiding doctrine in this case is the equitable maxim that "he who comes into equity must come with clean hands." This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. That doctrine is rooted in the historical concept of court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be "the abettor of iniquity." *Bein v. Heath*, 6 *How.* 228, 247. Thus while "equity does not demand that its suitors shall have led blameless lives," *Loughran v. Loughran*, 292 U.S. 216, 229, as to other matters, it does require that they shall have acted fairly

> and without fraud or deceit as to the controversy in issue. *Keystone Driller Co. v. General Excavater Co.*, 290. [Emphasis added.]

In addition, *Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362 (SDNY 2014), *affd* 833 F3d 74 (2d Cir 2016), *cert denied* ___U.S. ___, 137 S Ct 2268, 198 L.Ed. 2d 700 (2017), and *Matter of Donziger*, 163 A.D.3d 123 (N.Y. App. Div. 1st Dept, July 10, 2018), also are directly on point concerning the global Ponzi scheme of respondent attorney Mark Apelman who embarked, and launched, said reprehensible scheme to defraud all targeted courts when he entered an appearance, on June 13, 2017, more than a year after the commencement of *Lipin I* on March 22, 2016, on behalf of those defendants.

June 13, 2017, which is the same day respondent attorney Apelman admittedly colluded with the Delta County Assessor, respondent Debbie Griffith, to spoliate the lawfully recorded Deeds of the Paonia real estate property located in Delta County, Colorado, in the name of Joan Carol Lipin, and also the duly recorded property record cards that are maintained by the Assessor's Office of Delta County, in order to supplant said legally authenticated and certified recorded documents with forged documents in the fabricated name of the "Dorothy R. Wisehart Trust," and/or Arthur Dodson Wisehart or Arthur D. Wisehart, co-trustee, as alleged with specificity in the verified amended complaint filed in *Lipin II*.

Petitioner asserts claims against respondent Griffith under 42 U.S.C. § 1983.

Petitioner's notarized Certificate of Good Faith and Affidavit to disqualify, pursuant to 28 U.S.C. § 455(a)

and 28 U.S.C. § 144 the author of the unpublished order and judgment filed in *Lipin II*, affirming the district court's dismissal under the inapplicable collateral estoppel doctrine, relies on *Rippo v. Baker*, 580 U.S. ___, ___, 137 S. Ct. 905, 197 L.Ed 2d 167 at 168 (2017) (*per curiam*) (quoting *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975), that the operative inquiry is objective: whether, "considering all the circumstances alleged," *Rippo v. Baker*, 580 U.S. ___, ___, 137 S. Ct. 905, 197 L. Ed 2d 167 at 168), "the average judge in [the same] position is likely to be neutral, or whether there is an unconstitutional potential for bias," *Williams v. Pennsylvania*, 579 U.S. ___, ___, 136 S. Ct. 1899, 195 L. Ed. 2d 132 at 134 (2016) (internal quotation marks omitted).

CONCLUSION

Petitioner Joan Carol Lipin respectfully requests her petition for a writ of certiorari to be granted.

Respectfully submitted,

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