Original

Case No. 20-337

IN THE

UNITED STATES SUPREME COURT

ROSEMARY ANN LYNN,

Petitioner,

Against,

ANDREW GEORGE BROWN III, ET AL.,

(U.S. Dist. Ct. Case Nos. 19-CV-331-CVE-JFJ and 19-CV-332-CVE-JFJ, Respectively.)

(USCA10 Cir. Nos. 19-2062 and 19-5063 Respectively.)

Appellees'.

On Writ Of Certiorari To The

United States Court Of Appeals

For the Tenth Circuit

Petition For Writ of Certiorari

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Tulsa, Oklahoma 74170

(1+) 405-561-3953

QUESTIONS PRESENTED

Whether Appellees' refusal to serve Petitioner with summons and petition after passage of two years' and seven months divest the district court of personal jurisdiction, venue and subject-matter jurisdiction over petitioner especially, where as here, petitioner never waived jurisdictional defects and never voluntarily appeared, thus rendered district court's orders, adjudications and decrees void *Ab Initio* due to lack of personal and subject-matters jurisdiction.

Whether Fed. Rule 8(a) and civil RICO Statutes required petitioner in her Initial Complaint to allege and prove that Appellees had been convicted of RICO violations before petitioner could move forward with her mail fraud and wire fraud claims.

Did the U.S. District Court violate Fed. R. Civ. Procs., Rule 8(a) when it heightened R. 8(a) standard requiring petitioner to prove each element in her Initial Complaint before she could move forward otherewise authorizing the use of the doctrine of *sua sponte*, although Rule 8(a), plain and simple statement of facts putting the party on notice of claims and what to defend against was clearly setforth in complaints.

Does an appellate court have review jurisdiction under Section 1447 contrary to district court dismissal of supplemental joined claims for redress under Section 1367(a) and (c).

Whether petitioner is entitled to make discovery without court interference to prove her Complaint claims, especially, where as here, petitioner has never been allowed discovery and the proof remains in custody and control of the Appellees'/Respondents'.

Whether an appellate court has a duty to review an inferior court's order for plain error without being requested to do so by pro se appellant.

Whether initial filing of a Fed. Rule Civ. Proc., Rule 65(d)(2) Application for Restraining Order and Injunction is automatic the moment the application is filed and binds not only the party defendants,

(Questions Presented Continued)

but also those identified with them in interest, in "privity" with them, represented by them, or subject to their control for ten (10) days automatically.

Whether the district court abused its discretion requiring a heightened diversity of citizenship standard on petitioner civil RICO complaint when the court dismissed the civil RICO complaint due to a lack of complete diversity and subject matter jurisdiction averring that all the party defendants' *must* be of the same diversity before the court has jurisdiction; Or, is this heightened standard contrary to RICO statutes and is plain or reversable error.

RELATED PROCEEDINGS

Petitioner has never appeared before this Court and there are no relate proceedings.

LIST OF PARTIES

(1) ANDREW GEORGE BROWN III, an individual; (2) MARY JEAN BAGWELL-HENDERSHOTT, an individual; (3) SUSAN BOYD, an individual; (4) MELISSA TAYLOR, an individual; (5) EMILY CRAIN, an individual; (6) THEODORE 'TED' RIESLING, an individual; (7) RANDALL ALLEN GILL, an individual; (8) ROBYN OWENS, an individual; (9) KIMBERLY BIEDLER SCHUTZ, an

individual; (10) REBECCA WOOD-HUNTER, an individual; (11) PHILLIP 'Phil' FEIST, an individual; (12) JON BRIGHTMIER, an individual; (13) MICHAEL LINSCOTT, an individual; (14) NANCY DALE, an individual; (15) RANDY WHITWORTH, an individual; (16) CLARK E. WILLIAMS, an individual; (17) HELEN HOLMES-LATIMER, an individual; (18) TERRY HORWATH BITTING, an individual; (19) FAUST BIANCO Junior, an individual; (20) TERESE HALL, an individual; (21) JAMES CAMPBELL, an individual; (22) AMY REA, an individual; (23) MATTHEW BROWN, an individual;(24) SIOK MCKAY, an individual; (25) Kurt Glassco, an individual; (26) SAINT FRANCIS EMPLOYEE FEDERAL doing business in Oklahoma; (27) EDWARD D. JONES, a National National Investment, Banking, and Financial Association providing Wealth Management, Brokerage, Corporation, authorized to conduct business in Oklahoma; (28) CHARLES SCHWAB, a National Banking Association, providing Banking, Wealth Management, Investments, banking, and a Financial Association, authorized to conduct Financial and Banking Services in Oklahoma; (29) US TRUST BANK OF AMERICA, a Wealth Management, Financial Services Association Operating as US Trust, however, owned by Bank of America, a National Banking Association authorized to conduct and operate in Oklahoma,(30) Purview Life Tulsa, AKA, Select Care Management et al, (31) JOHN DOES 1 through 100, (31) JANE DOES 1-100,and DOE ENTITIES 1-100, inclusive.

Defendants/Appellees.

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OKLAHOMA STATUTES

Petitioner, Rosemary Ann Lynn (Lynn) respectfully petitions for a writ of certiorari to review the judgment of the U. S. Court of Appeals for the Tenth Circuit. OPINIONS BELOW The U.S. District Court's Certified Opinion and Order with Judgment of Dismissal of the Defamation Complaint (Case No. 19-CV-0331-CVE-JFJ) *sua sponte* **Petitioner's Appendix (Pet. App.) App.** 1a-4a. The U.S. District Court's Certified Opinion and Order with Judgment of Dismissal of the Civil RICO Complaint (Case No. 19-CV-0332-CVE-JFJ) *sua sponte* **App.** 5b-8b. Tenth Circuit Court of Appeals Order dated 02-07-2020, **App.** 9c-23c. Pet. Defamation Complaint **App.** 24d-35d. Pet. Civil RICO Complaint **App.** 36e-54e. Pet. Application For Temporary Restraining Order With Equitable Relief and Order To Show Cause Why Preliminary Injunction Should Not Issue With Certified Order (Case No. 19-CV-332-CVE-JFJ) **App.** 55f-60f. Pet. Audrey's Death Certificate-**App.** 61g-63g.

Appendix contains Court Records/Exhibits supporting claims.

JURISDICTION

The jurisdiction of the court of appeals was entered on July 3, 2019, and an order entered on February 07, 2020. In March, 2020, this Court expanded the deadlines for filing instruments in this Court by 60 days which in effect allowed 150 days as opposed to the 90-day Rule. Under the extraordinary ruling of this Court, Petition is required to perfect her appeal on or before July 07, 2020.

On June 29, 2020, petitioner timely placed her petition for writ of certiorari in the U. S. Mail Service with proper postage pre-paid and proper addresses thereon and mailed the same by Priority Mail to be delivered within three (3) business days with arrival time of July 5, 2020 due to July holiday.

On July 10, 2020, Petitioner was directed to redact social security numbers and bank accounts numbers in documents and provide this court with certified orders of the court within 60 days of July 10, 2020. Timely submission would be on or before August 29, 2020.

This Court's jurisdiction is invoked under 28 U. S. C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The U.S. Constitutional Amendments: First, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Fourteenth. Federal Civil RICO Statutes, 28 U.S.C. § 1367, 28 U.S.C. §§ 1961, 1962, 1964 and 1968.

STATEMENT OF THE CASE

Petitioner seeks a petition for writ of certiorari to review and correct the lower courts disregard for the fundamental and basic tenents of procedural due process that is necessary to invoke jurisdiction and venue on courts, i.e., service of summons and petition on defendant after filing a complaint; unless waived or voluntary appearance. Petitioner did'nt waive procedural defects and did'nt appear.

Rosemary Ann Lynn was elected and appointed over estate plans executed by Audrey Louise Brown (herein, "Audrey") on September 9, 2017 and October 18, 2017, respectively. Audrey had been examined by attorney Timothy 'Luke" Barteaux (Luke) of Fry & Elder Law Firm for mental competency and he found Audrey mentally competent to handle her affairs.

Audrey's disinherited her brother Andrew George Brown III, (Andrew) and his two children.

On November 3, 2017 Andrew filed a frivolous emergency petition for temporary guardianship and conservatorship over Audrey and her estate. Andrew challenged Audrey's mentally competency to manage her affairs. Andrew refused to serve Audrey or Lynn with summons and petition as required by Oklahoma statutes. 12, O.S. Sec. 2015(A), 30, Sec.'s 3-110, 115(c), 115(f), and Rule 4.

Unbeknownst to Andrew, Dr. James had conducted a Mental Health Clinical Diagnostic Evaluation (herein, "MHCDE") of Audrey on October 5-10, 2017 and issued her report on October 15, 2017. Dr. James clinical diagnostic evaluations determined Audrey to be entirely mentally competent.

Unsatisfied with Dr. James report, Andrew then alleged Audrey had a massive stroke and suffered dementia and altzheimer's disease while in Lynn's care during Dr. James evaluation of her.

Andrew revoked Lynn's estate plans without any medical evidence and caused her confinement.

Lynn filed a Defamation Complaint and civil RICO Complaint in U.S. District Court on June

21, 2019 at 4:15 p.m.. Judge Claire V. Eagan (Judge Eagan) dismissed the complaints under a heightened Rule 8 standard of proof in the initial filing. The court committed plain error, reversible error, abused its discretion, and outright subscribed to the racketeering activities against petitioner involving her property.

Rule 8, only requires a plain and simple statement putting the party on notice of the claims. *Erickson v. Pardus*, 551 U.S. 89 (2007) and Rule 8. There, the Court dismissed the case under the same erroneous heightened standared. On Writ of Certiorari, this court held the court had jurisdiction. Lynn complied with Rule 8 (28 U.S.C.§ 2072 Rules of Procedures and Evidence, Power to Subscribe). Lynn's "defamation complaints was dismissed sans prejudice albeit, the statutes of limitations was running and would have ran before Lynn could amend barring refiling."

Judge Eagan's dismissals included dismissal of all defendant's and all of the supplemental state claims (without any adjudication on their merits), alleging lack of diversity under 28 U.S.C. § 1367. In *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 86 S. Ct. 1130, 16 L. Ed.2d 218, 1966, this court held in cases where a plaintiff has both federal and state claims against the defendant, although there may be *no diversity jurisdiction*, the federal court has discretion to exercise pendent jurisdiction over the state claim based upon state law if the state-created claim and the federal claim derived from a common nucleus of operative fact, and are such that a plaintiff would ordinarily be expected to try them all in one judicial proceeding. Lynn's complaints asserted a common nucleus of operational facts.

The tenth circuit agreed with the district court and did not review the diversity issue for plain error, believing it was barred review under § 1447(d). In *Carlsbad Technology, Inc., v. HIF BIO, Inc.*, 556 US 635, the same issue was raised in the federal circuit opinion that it lacked jurisdiction because plaintiff and defendant were not of diversity. This Court reversed and opined: "[T]he Court did have supplemental jurisdiction over the state claims in the matter under § 1367(a) and (c)", and that "subject-matter jurisdiction only defines the court's authority to hear a given type of case." "*United*

States v. Morton, 467 U.S. 822, 828 (1984).

The District Court's Dismissals stated that the Complaints were also dismissed due to lack of subject-matter jurisdiction; the court failed to specify what counts were dismissed.

Regrettably, petitioner was forced to seek an appeal due to the statutes of limitations running.

The tenth circuit assumed jurisdiction on July 3, 2019 and assumed the role of the original district court and failed to follow tenth circuit rules creating a split among the circuits, and affirmed the district court Rules 12 (b)(1) and 12 (b)(6) summary judgment Rule 56 dismissals. Controversy existed.

On June 21, 2019, Lynn alleged that specific individuals and their attorneys' engaged in racketeering activities and injured her and her property; that attorneys hired two black persons to falsely impersonator's City Police and a DHS Investigator to commit fraud on Audrey, Lynn and the estate; tortuously interference with and damaged the trust contract and contractual gift to petitioner to unjustly enrich themselves and their enterprises. Appellees' committed mail and wire fraud in violations of State and Federal RICO Criminal Statutes, their activities constituted a pattern of racketeering activities that spanned over two years and seven months. Lynn alleged that she was directly injured because the conduct was aimed at preventing her from obtaining her financial gift from the trust estate.

That Audrey held Lynn out for years as her family; her grand daughter, whom she loved dearly.

On September 3, 2017 Audrey caused attorney Timothy 'Luke' Barteaux (Luke) to create for her a General Durable Power of Attorney (POA), **App.** 64h-72h; Advance Medical Directive Power of Attorney (Proxy) Living Will-**App.** 73i-77i.

On September 6, 2017, Luke delivered the estate plans to Audrey.

On September 9, 2017 Audrey executed these estate plans and elected Lynn as her agent and guardian under the POA, and medical proxy.

On September 12, 2017 Audrey met with Luke again, and after a lengthy private consultation

with Audrey, Luke advised Audrey that in his mind she was totally mentally competent. Luke instructed Audrey to get a mental health competency evaluation immediately to prove her competency before Andrew made false allegations regarding her competency. On October 05, 2017 Doctor Kelly A. James (Dr. James) PhD, Clinical Psychologist, and Trauma Specialist begin evaluating Audrey for mental health issues, including whether or not Audrey suffered from a stroke, dementia or alzheimer.

On October 15, 2017, Dr. James issued her Mental Health Clinical Diagnosis Evaluation Report ("MHCDE Rpt."). Dr. James report stated that Audrey is entirely mentally competent to make decisions regarding (1) her independence; (2) her place of residence; (3) her health care; and (4) her finances. **App.** 78j-85j.

Dr. James mental health report disclosed that Audrey had discussed with her Andrew's attempts to put her in a nursing home and take her money from her and that she had taken steps to prevent him from doing it with estate plans. Audrey told Dr. James she had a power of attorney, advanced medical directive and was creating trust documents; that she elected Rose Lynn as her power of attorney, guardian and trustee over her estate.

On October 18, 2017 after being found entirely mentally competent by Dr. James, Audrey requested Ms. Joanne Gilmore a state licensed notary public to come to her so she could execute her Irrevocable Spendthrift Trust Agreement (Trust) **App.** 86k-99k**,** Memorandum of Trust-**App.** 100L-102L, and Declaration of Trust Agreement with Schedules A & B (instructions to transfer property to the trust when found to be incompetent, disabled, or incapacitated)-**App.** 103m-113m.

Ms. Gilmore appeared and inquired whether or not Audrey had read and understood the trust agreement. Audrey replied yes she had read and understood the trust documents and that she wanted to execute them. The notary inquired if Audrey was executing the trust documents on her own free will without undue influence, coercion, or threats. Audrey said she had not been forced to execute the trust

documents. Ms. Gilmore ask Audrey who she wanted to be her Trustee and Beneficiary, Audrey replied, I appoint Rosemary Lynn to be my Trustee and Beneficiary of my estate. Lynn was outside in her car and was unaware of Audrey's executions. Audrey executed her signature on the trust documents. Ms. Gilmore dated, seal, and put signature on it. Ms. Gilmore's affidavit states that she and Audrey read the trust document together and Audrey understood it and wanted to execute it; that Audrey told her that Andrew was trying to put her in a nursing home to get her money-**App.** 114n-115n.

On November 3, 2017, Audrey was adjudged incompetent without a hearing *involuntarily* and *"forcibly taken"* from her home and placed in Brookdale Assisted Living (Brookdale) 24-hour lock-down restricted nursing home. Audrey was not allowed to have visitation from Lynn or phone calls from Lynn in violation of Audrey's first amendment rights to speech and association.

Immediately, after forcibly removing Audrey from her home, Brookdale Assisted Living Nursing Home ("Brookdale") begin to force feed Audrey 25mg of Donepezil generic Aricept which was banned by the FDA to sedate her.

Mr. Reginald Cathey's Affidavit states that he is a Tulsa County Sheriff's Deputy and a former Special Education Teacher, and is educated in mental health disorders. Mr. Cathey helped Audrey with moving furniture in her home and witnessed Audrey's mental soundness. Tulsa County Sheriff's Department and CLEET's trained Mr. Cathey to recognize mental health disorders as part of his training. In October 2017, Mr. Cathey held long conversations with Audrey discussing his work, cooking and advancing his education. Audrey discussed her education with him and gave him advice on improving his education and job advancement-**App.** 116-o;

Mrs. Maggie Arrondondo (Maggie) is a Certified Nurse Practioner ("CNP") licensed in the State of Oklahoma to provided home health care. In September thru November 2, 2017, Maggie provided attendance to Audrey when Lynn was away during the day although Lynn checked on Audrey

throughout the day. Maggie's affidavits states that part of her training is to detect strokes, dementia, and altzheimer dieseases in person's she cared for, and she's is required by Oklahoma law to report patients with symptoms of stroke, dementia, and altzheimer's diseases to the state mental health department; and that none of those symptoms were present in Audrey from September through November 2, 2017- **App.** 117p-122p.

On July 22, 2019, Audrey chocked to death while in the nursing home; Cause of Death, *Aspiration Pneumonitis.* Audrey's death was preventable- Death Certificate at App. (61g-62g).

REASON FOR GRANTING PETITION FOR WRIT OF CERTIORARI

A. INSUFFICIENT SERVICE OF SUMMONS AND PETITION

Andrew filed a secret petition to take control of Audrey's estate documents. He refused to serve summons and petition on Audrey or Lynn as required by Oklahoma Statutes. Title 12 O.S. Supp. 2014, § 2004 (I), 12 O.S. § 2015(A), and Rule 4 Service. Without notice to Audrey, without medical evidence to support his claim that Audrey was unable to manage her affairs, the court ordered Audrey be placed in Brookdale nursing home. Without service of process the court was in want of jurisdiction. Andrew's failure to serve process was fatal to the court's jurisdiction and barred the court's authority to act.

Title 12 O.S. Supp. 2014, § 2004 (I) Summons: Time Limit For Service.

Title 12 O. S. § 2004 (I) "requires that a petition not served in compliance with that statute be deemed dismissed 181 days after it was filed." See, *Thibault v. Garcia,* 2017 OK Civ App. 36 at § 9. In *Moore v. Sneed*, 1992 Ok Civ App 107, 839 P.2d 682, Oklahoma Supreme Court clearly stated an action without service is deemed dismissed, as a matter of law, from the 181st day." Id., ¶¶ 11-15. Controlling authority under the law of this case is *Mott v. Carlson,*786 P.2d 1247, 1250 (Okl. 1990).

Rule 4, SERVICE: Oklahoma Rules of Civil Procedures states in relevant part, that: "A person commencing a civil action must first file the complaint or petition, then having a summons issued by the clerk of the court. Once the clerk has signed and affixed the court seal to the summons, the action is

ready for service.

The purpose of the summons is to summon the defendant/respondent to court to answer the action being filed. It is important to note, because lack of proper service is a defense to any civil action, the failure to serve summons defeats the jurisdiction of the court over the parties and subject matter unless summons is waived; whatever action is filed, *"it cannot begin until the respondent/defendant is legally served."* Once the papers have been properly served, the process server files an affidavit "return of service" with the court. In the present case, there was no attempt to serve Audrey or Lynn at all. The court clerk never issued a summons as required by law.

Andrew's attorney's contacted a clerk known to them and ask the clerk not to issue a summons.

Lynn mailed the court a copy of Dr. James October 15, 2017 mental health report evidencing Audrey was entirely mentally competent.

Noteably, Audrey executed her trust documents 10/18/2017, after being medically determined she was entirely mentally competent to make decision regarding her estate. Lynn also provided the court with her power of attorney, and advanced medical power of attorney created an attorney.

Under **Federal Rules of Civil Procedures, Rule 4, Summons,** states: A summons must: (A) name the court and the parties; (B) be directed to the defendant, (C) State the name and address of the plaintiff's attorney or-if unrepresented--of the plaintiff; (D) state the time within which the defendant must appear and defend; (E) notify the defendant that a failure to appear and defend will result in a default judgment againstthe defendant for the relief demanded in the complaint; (F) be signed by the clerk; and (G) bear the court's seal. The same is true under State law, but Appellees failed to serve.

When failure to serve summons, the Court on motion or on its own after *notice to the plaintiff*- must dismiss the action without prejudice. Appellees failed to comply with any Rules for service of petition and summons and did not show cause for their refusal to serve Lynn; Judge Eagan failed to

give notice to Lynn of her intentions to dismiss the complaints; nor did the court allow Lynn to amend by right under Fed. Rule 15(a) before dismissal.

Routinely, complaints are presented to a magistrate judge for recommendation under § 636, petitioner's complaints were not. Lynn filed an Application For Restraining Order, Injunction and Show Cause which was triggered the moment it was file for at least 14 days under Fed. Rule 26(d) and Fed. Rule 65(b), Lynn's application complied with Fed. R. 26(d) and 65(d)(1) contents for injunction and restraining order, and Fed. Rule 65(d)(2)(a) or (b). Judge Eagan dismissed it as moot.

Lynn's civil RICO complaint sought relief from defendant's criminal racketeering activities that promoted their criminal activities. Lynn requested a jury trial under the Seventh Amendment. (7th Amnd't.). Judge Eagan denied Lynn's jury trial right requests, although Lynn's RICO complaint was not defective, it properly invoked the jurisdiction of the court and setforth elements and prior litigations to show that the Appellees' conduct constituted racketeering activities. *Living Designs, Inc. v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353 (Dec. 5, 2005) held: "The RICO statute, itself, provides that conduct relating to prior litigation may constitute racketeering activity. 18 U.S.C. § 1961(1)(B).

In *Galpin v. Page*, 85 US 350, (1873) and current precedents holds, where a suits is brought in a state court and no service had been perfected, the supreme court of the state, decided that there had been no sufficient service, consequently the lower court had no authority to appoint a guardian ad litem and therefore reversed the decree... and that such adjudication is the law of the case, and is binding upon the circuit court of the United States in action brought by a grantee of the heirs of the deceased.

Akin to *Galpin*, Lynn asked Oklahoma Supreme Court to review the record on Appellee's allegations that they served her with summons and petition. Oklahoma Supreme Court ordered a spread of records and determined that Andrew's attorney's had not made sufficient service of summons and petition on Lynn as required by statutes, there was no returns of receipts, no affidavits in support, and

Andrew's attorney's had not sought a summons being issued by the court clerk's office.

Appellees admitted to Oklahoma Supreme Court they knew Lynn's whereabouts and that they refused to *"circulate"* Lynn with summons and petition because they did not have too.

After numerous notice to the court begging for service, the Court stated on record: *"I'm leaving it up to the attorneys decision whether or not to serve Lynn with notice of summons and petition."* Lynn argues that until such notice, no guardian ad litem could be appointed to Audrey; and the court had no authority to place Audrey in a nursing home and the court lacked authority to enter any adverse orders.

Audrey did not need a guardian, and if she did, Lynn was the nominated guardian by Audrey.

Jurisdiction over Lynn estate plans was never acquired, and the trial court's ruling are void for want of jurisdiction and venue. Oklahoma Pleading Code, Tit. 12, § 2015(A) states: (a) That the court has no jurisdiction over the person of the defending party when service of summons and petition are lacking; (b) That the court has no jurisdiction over the subject matter; (c) That venue is improperly laid; (d) That the plaintiff has no legal capacity to sue.

The Irrevocable Trust has an *In Terrorem Clause* that barred Andrew and his children standing to challenge Audrey's competency, the Trust language, and Lynn's appointment as Trustee over the Trust estate and the property that was transferred into it through the memorandum of trust, and declaration of trust schedules. The Irrevocable Trust removed Andrew's ability and his children's ability to file the emergency petition for conservatorship and guardianship over Audrey and her estate.

The moment Andrew filed an action against Audrey challenging her mental health, competency, the trust language or Lynn's appointment, the Trust by [O]peration of Law automatically removed Andrew and his children standing to maintain the action in court, leaves only one proper remedy To Wit: review on writ of certiorari. Failure to review opens a floodgate for district courts and federal courts to subvert the laws, treaties, and constitutional bedrocks in which our jurisprudence was founded.

Above errors are compelling. Without review, continuing RICO crimes will spread throughout Oklahoma courts and will go unnoticed while attorneys' reap havoc using RICO tactics. The split among the circuits will become a much bigger problem; civil RICO actions thwarted under the doctrine of sua sponte without justification leaving petitioner and aging Oklahoman's without adequate relief.

B. THE APPELLATE COURT CREATED A SPLIT AMONG THE CIRCUITS ORDER SHOULD BE VACATED

On February 7, 2019, the Tenth Circuit Court of Appeals entered a single judge order dismissing Lynn's appeal. A close review of the combined order (Defamation and Civil RICO action) they are certainly confusing, misleading, misinterpretation of Congressional intent regarding civil Rico actions, and weighs heavily against this Court's precedents and appellate decisions around the circuits.

The split and confusion is a result of the tenth circuit misdirection and misinterpreting the Civil RICO statutes and Congressional intent. The issues raised on appeal were not addressed, rather, a plethora of misdirection away from the appeal itself and failure to review for plain errors.

Petitioner did not raise plain errors in her appeal. Petitioner believes that the appellate court had a duty to review for plain errors committed by the district court. Even a cursory reading of Lynn's complaints, it is clear, Lynn stated causes of action that barred dismissal; invoked federal question jurisdiction and venue; complied with Rule 8; diversity was adequate invoked on the court (RICO does not require diversity); subject-matters jurisdiction was invoked on the court; and supplemental jurisdiction were proper.

The tenth circuit affirmed the Rule 12(b)(1) and 12(b)(6) dismissals; created a dissimilar standard for pleading under Rule 8, than other circuits in this republic. In *Tracy L. Johnson, et al v. City of Shelby, Mississippi*, 135 S. Ct. 346 (2014), the district court dismissed the complaint based on heightened pleading standards under Rule 8. Rule 8, of the Federal pleading rules call for a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. Proc. 8(a)(2);

they do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted.

In *Johnson, Id.* the petitioners worked as a police officers for the City of Shelby, Mississippi. They alleged that they were fired by the city's board of aldermen, not for deficient performance, but because they brought to light criminal activities of one of the aldermen. Charging violations of their Fourteenth Amendment due process rights, they sought compensatory relief from the city. Summary judgment was entered against them in the district court, and affirmed on appeal, for failure to invoke 42 U.S.C. § 1983 in their complaint.

On certiorari this Court reversed holding that petitioners' complaint was not deficient. Petitioners stated simply, concisely, and directly events that, they alleged, entitled them to damages from the city. Having informed the city of the factual basis for their complaint, they were required to do no more to stave off threshold dismissal for want of an adequate statement of their claim.

Petitioner is a pro se litigant and should have been (but was not) afforded a liberal standard as required under *Haines v. Kerner; Conley v. Gibson and Erickson v. Pardus*, wherein this court has repeatedly held what is required to survive dismissal and why its important that liberal reading of pro se pleadings should apply including the current case of *Johnson Id.*

C. CIRCUITS ARE SPLIT ON DISMISSAL FOR LACK OF SUBJECT MATTER JURISDICTION UNDER 28 U.S.C. SEC. 1367 ANCILLARY

In a rush to affirm dismissal for lack of subject-matter jurisdiction, the tenth circuit supported dismissal of all counts in the complaints, dismissal of all the defendant's and dismissal of all of the state court supplemental claims without a review on the claims. Dismissal for lack of diversity jurisdiction doesn't exist but operates as reaching the merits of the claims and creates doctrines of collateral estoppel, judicial estoppel, issue preclusion, and res judicata. None of petitioner's research has found any circuit that has acted in this manner.

The U.S. District Court had *"ancillary jurisdiction"* over Lynn's state law claims. Section 1367 of the Judicial Improvement Act of 1990 ("Act") codified the common law doctrines of pendent and ancillary jurisdiction under One concept of "supplemental jurisdiction."

The doctrine of ancillary jurisdiction permits the Joinder of claims and parties over which a federal would lack subject matter jurisdiction. *John B. Oakley, Recent Statutory Changes in the Law of Federal Jurisdiction and Venue: The Judicial Improvements Acts of 1988 and 1990, 24 U.S. Davis L. Rev. 735, 735-37* (1991).

The rational underlying this doctrine is that when a federal court has either diversity or federal Question jurisdiction over an existing claim and one set of parties, other closely related claims and parties may be Joined to the lawsuit. *Charles A. Wright, Law of Federal Courts* (4th ed. 1983).

PENDENT JURISDICTION WAS AVAILABLE TO THE U. S. DISTRICT COURT

Pendent Jurisdiction was available in the US District Court, the doctrine of pendent jurisdiction allows a plaintiff who has a judicially sufficient federal question or federal law claim to Join related state law claims.

The test for whether pendent jurisdiction exists over a state law claim was established by the Supreme Court in *United Mine Worker's v. Gibbs,*383 U.S. 715 (1966). As asserted in Lynn's appeal to the tenth circuit, the district court was acting as an advocate for the defendant's and refused to adjudicate the merits.

Judge Eagan erroneously alleged that Lynn's RICO Complaints failed on diversity. The tenth circuit avoided the lack of adjudication issue on appeal. Any other circuit would have addressed this error.

The tenth circuit in *Van Shiver v. United States*, 952 F.2d 1241 held that:"[T]he rules allow a litigant subject to an adverse judgment to file a motion to *amend* after notice or vacate the judgment.

A cursory recital of the February 7, 2019 order, the Tenth Circuit erroneously asserts that a civil

RICO plaintiff alleging violations of the mail and wire fraud statutes must show that it relied on the fraud. That's not so, even reliance by a third party sufficed to have standing.

The Court should have reasoned that "where a complaint contains allegations of facts to show that defendant engaged in a pattern of fraudulent conduct that is within the RICO definition of racketeering activity and that was intended to, and did, give defendant an advantage over plaintiff, the complaint adequately pleads proximate cause, and the plaintiff has standing to pursue a civil RICO claim...[t]his is so even where the scheme depended on fraudulent communications directed to and relied on by the plaintiff."

Applying this principle to the present case, the Court was required to rule that a sufficient connection existed between the allegation alleged, the mail and wire fraud, and the claimed injury, Lynn lost her expected inheritance in sum of at least $20 Million Dollars allowing Section 1962 (c) injury claim to move forward. Furthermore, neither Court alleged that Lynn did not state a valid claim under Section 1962(a) because the $20 million dollars was 'taken' from Lynn through racketeering schemes could and are properly viewed as racketeering income for the racketeers which are directly derived from the pattern of mail and wire fraud.

Lynn's complaint properly alleged that the parties used the fraudulently-derived income and profits to fund their lavished life styles, car purchases, home improvements, and operation of their law practices; labor costs; their associates-in-fact costs; and agents assisting them in the racketeering schemes fees.

Section 1964(c) of the Racketeering Influenced and Corrupt Organization Act ("RICO") creates a private right of action for any person "injured in his business or property (property defined by the IRS is Money) "by reason of" a RICO violation such as the alleged money, property, exploitation, mail and wire frauds, conversion of assets, unjust enrichment, extrinsic fraud on Lynn, failure to serve summons, use of false impersonators, forgery, and illegal transfer of trust assets to secret bank accounts were

alleged in this case and should rises to the level of grave concern by this Court.

Lynn established her standing to sue under Section 1964(c), an injured plaintiff must show that he was injured in his business or property "by reason of" a RICO violation. In *Holmes v. Security Investor Protection Corp.,* 503 U.S. 258 (1992), this court interpreted the phrase "by reason of" to require that the RICO violation was both a cause in fact and a proximate cause of the injury to the plaintiff. Holmes, 503 U.S. 258, 265-268 (1992).

The Holmes proximate causation is satisfied here because there is an overwhelming direct relation between the injury to Lynn and her property and the alleged mail and wire fraud schemes that caused the injury which is the "central element" of proximate cause reaching the "by reason of" test. As a direct result of the defendants refusal to serve Lynn with summons and petition, Lynn was restricted to relying on the defendant's alleged schemes because Lynn had no knowledge of their allegations, no ability to learn it, and was not allowed to appear in court to defend against them.

The controversial decision by the tenth circuit (single judge order)) has created a split among the Second, Fourth, Fifth, Sixth, Seventh Circuits, and its own circuit and precedents by this Court, which can only be described as "purposeful judicial overreach and denial of access to court." The following circuits have upheld petitioners' civil RICO claims mail and wire fraud Second, Fourth, Fifth, Sixth, Seventh, and Tenth Circuit and this court.

The Court disregarded petitioners bedrock Article III standing which would have prevented the federal court from exercising *sua sponte* authority arbitrarily and capriciously. Judge Eagan abused her discretion and authority, and substitute herself for the trier of facts.

In light of the fact that petitioner has never been served with summons, and Lynn never waive receipt of the summons, Lynn standing remains in tact. Petitioner seeks to reverse and vacate the orders of the Courts, make discovery against the Appellees' who are in possession of the evidence, and proceed with a jury trial.

As a result of abdicating its responsibility to address appellants complete appeal, the tenth circuit reached a reversible conclusion thats contrary to the law of the case and the precedents set by this court and other federal circuits.

The tenth circuit has created not only a split among the circuits but a diversion within its own circuit and also created an intolerable absurd situation for other circuits. The tenth circuit has now entered a nonfunctional order by all accounts devoid of law and precedents set by this court. The order/opinion by the tenth circuit will affect millions of aging Oklahomans in a similar situation and will certainly repeat itself when not reviewed and corrected by this court. It can be readily envisioned the outcome of other plaintiffs if the behavior is not reviewed by this court.

Curtailing access to court that would've afforded redress under civil RICO statutes, massive uncertainty will exist and persist for years to come if this Court does not grant review now. It is thus imperative that this Court grant certiorari to resolve the vitally important questions presented that affects millions of aging individuals, property and businesses in the United State of America when money laundering, extortion, fraudulent transfers of property, financial fraud, mail and wire fraud RICO claims are presented, but met with restraints by abuse of the sua sponte doctrine and or administrative tools that should be exercised with great caution, not as a weapon to manipulate the docket or the outcome of the case for the benefit of friends of the court or support conflicts of interest.

A. LEGAL ARGUMENT AND AUTHORITIES:

Petitioner, Rosemary Ann Lynn, ("Lynn") filed suit against numerous RICO parties who intentionally conspired, co-conspired and were aided by associates-in-fact through their enterprises and agents to interfere with, terminate, cancel, revoke, hide, remove, and transfer, petitioner's economic expected inheritance ($20 Mil.) by using fraudulent and racketeering schemes aided by false impersonators who tortuously interfered with, circumvented, breached, withheld, forged, and removed Lynn's Trust Contract Agreement that proved Lynn is the elected trustee, beneficiary, legatee, devisee,

personal representative, real party in interest, and rightful heir of the estate.

Appellee's must acknowledged the following: Title 12, § 2015A, and § 2004(I) mandate that all parties including pro se (Lynn) defendants' be served with summons and petition and afforded due process. Oklahoma statutes further states that after the passage of one year and one day, the matter is dismissed with prejudice when service of petition and summons has not been served on the party.

Federal Rules of Civil Procedures, Rule 4(m) as amended (2017), requires service of summons and petition on defendants' within 90 days, or the case must be dismissed.

Oklahoma's Guardianship and Conservatorship Act, 30, §§ 3-110, 3-115(c) and 3-115(f) mandate service on interested parties that will be affected by court action. Appellees must admit their failure to serve Lynn, unless, there's a waiver by Lynn, or she voluntarily appears before the court (none of which occurred here), the court lacked jurisdiction and venue over Lynn and her estate documents that were duly executed by Audrey. Andrew refusal to serve Lynn summons to appear was fatal to jurisdiction and venue of the court.

Lynn tried hiring legal counsel but they were met with the court's refusal to release any files to them, as a result, Lynn was unable to get legal counsel without access to the files. The court also froze all bank accounts including those Lynn was joint tenant in common with the right-of-survivorship.

Appellees fraudulently removed millions of dollars belonging to the trust from Other private financial institutions over to the Trust Company of Oklahoma (herein, "TCO") without authorization from Audrey or Lynn and then purported to borrow $100,000.00 from Andrew to be *repaid* by Audrey's trust assets that were fraudulently transferred to TCO.

TCO alleged that it issued Andrew a promissory note for the $100,000.00 at 5%; when in truth, with part of the money, Andrew opened an account at TCO under a fictitious name to conceal the accounts from at least eight financial insitutions; paid money to brokers at Audrey's wealth management firms to closeout and transfer cash, stocks, bonds, mutual funds, municipal bonds,

dividend checks and insurance proceeds over to TCO. TCO charged fees to setup the fraudulent accounts to hid the estate property. The attorneys involved earned at least .5% of the amount transferred. Audrey's trust assets were pledged by Andrew to repay the alleged loan or TCO took the money out of the transferred assets to cover-up TCO's financial fraud and money laundering schemes under the guise of borrowed money ($100,000.00) from Audrey's estate after she was alleged incompetent and tucked away in a 24-hour lockdown nursing home with no access to the outside world.

TCO violated federal and state banking laws under title 31 Federal Rules for banking, including trust companies, also known as the Bank Secrecy Act; TCO failed to report its income of $100,000.00 fraudulently obtained through RICO practices. TCO violated Oklahoma Contract Statutes, title 15 O.S. Sec. 11 states: "An Incompetent Persons Cannot Contract. TCO is laundering money for lawyers. Title 26, Oklahoma Statutes, 4-101, 2009 bars an adjudged incapacitated person even from voting. Audrey lost all of her rights including right to enter into a financial obligation (loans) or be obligated to repay $100,000.00 to TCO or obligated to Andrew, when she was erroneously adjudged incompetent.

No matter how it was disguised or designed as a loan; that loan was a *"Contract with a Promissory Note against Audrey"* issued by a Mega Billion Dollar Trust Company. Title 15, O.S. Sec. 15-24 (2019) Judicial Determination of Incapacity, Contracts, barred Audrey's ability to convey (pay or give to a loan she did not incur prior to being adjudged incapacitated), contract, or designate any power, nor waive any rights. After removing millions of dollars from Lynn's Trust documents, TCO barred Lynn from having access to any funds depriving and preventing Lynn from the ability to hire expert counsel to protect Audrey, Lynn, and the estate resources.

On November 3, 2017, Audrey was *involuntarily* and *"forcibly taken"* from her home and placed in Brookdale Assisted Living (Brookdale) 24-hour lock-down restricted nursing home. Audrey was not allowed to have visitation from Lynn or phone calls from Lynn in violation of Audrey's first amendment rights to speech and association.

On November 20, 2018 (a year after being abducted) Audrey was admitted to St. Francis Hospital (St. Francis) emergency room due to nursing home abuse and neglect while at Brookdale.

Audrey had suffered a deformed left wrist from being restrained in beds and in chairs *all* day and *all* night while at Brookdale. Audrey's left ankle was cut to the *"fatty white meat"* (*in italic*) from restraints according to the medical report obtained by Lynn. The emergency physician urged cleaning the gangrene tissue from Audrey's left ankle and placing Audrey in a hyperbaric chamber to induce healing. Brookdale, the court appointed guardian, Andrew, and the guardian at litem, refused placing Audrey in a hyperbaric chamber; refused Audrey much needed medical care because they did not want Audrey telling anyone what they were doing to her.

The emergency physician noted in her report, udrey was dehydrated, suffered substantial weight loss, had ulcers, and bruises in addition to the severe cut to the *"fatty white meat"* on her left ankle and deformity. Brookdale retaliated against Audrey for disclosing the abuses to the emergency physician caused by its staff. Brookdale forcibly inserted a mechanical feeding tube into Audrey's throat and fed her sedatives to punish her and to shut her up.

By imprisoning Audrey in a nursing home, Andrew and his attorneys believed they could fraudulently gained control over Audrey and her estate.

On June 21, 2019 Lynn filed Defamation and Civil RICO complaints against Appellees.

Between June 24-25, 2019 Judge Eagan gave *"heads up"* to Appellees that a defamation and civil RICO complaints were filed by Lynn. After discussions, she agreed to dismissed the Complaints.

On June 25-26, 2019 Judge Eagan dismissed the Complaints as promised to Appellee's. Lynn had not served Appellee's with summons and petition yet, albeit, they knew it was filed, and cited the court, Judge assigned, and case number the same day Judge Eagan dismissed the civil RICO complaint. Not a Co-incidence.

On June 26, 2019 immediately after Judge Eagan dismissed the civil RICO complaint,

Appellees' filed their pre-prepared Application for eight million ($8,000,000.00) dollars of estate FUNDS that did not benefit Audrey nor the estate, to be used to *"defend themselves" against any litigation (Lynn would seek to regain her inheritance")* in federal court and appeal, knowing that Audrey's life was nearing an end while in their control and custody. Application and Order To Reserve Litigation Funds-**App.** 123q-125q.

On July 2, 2019, Judge Eagan's house cleaning included Lynn's Application For Restraining Order, Injunction and Show Cause Order. An order entered on July 2, 2020 dismissing the application. Referenced at **App.** 55f-60f.

In late July 2019, realizing donor could be called as a witness in a federal jury trial, Appellees decided to *"pull the plug"* on Audrey. The feeding machine was the tool that asphyxiated Audrey while she retched on food that was being over-pumped into her stomach by feeding tube knowing what the outcome would be when left unattended.

On July 22, 2019 Audrey chocked to death in Brookdale Nursing Home. Audrey's death was secreted from Lynn. Oklahoma Supreme Court gave notice to Lynn when Appellee's ask them to seal the records from Lynn. Referenced at **App.** 61g-62g.

On August 01, 2019, nine days after Audrey's death, Appellee-probate Judge Kurt G. Glassco verbally ordered Appellee's to *rewrite* Audrey's irrevocable trust to remove Lynn without notice to Lynn although he had a conflict of interest as a Defendant in her RICO action. Could not rewrite trust after Audrey's death, it was irrevocable before her death, and after her death by law.

The Irrevocable Trust was *rewritten* sometime in late 2019, fraudulently, after Audrey's death in an attempt to remove Lynn's standing and rights as beneficiary and trustee to property gifted to her. Lynn was not provided a notice or copy of the rewritten trust nor the accounting that took place. The irrevocable trust could not be rewritten after Audrey's death and Lynn was entitled to an accounting

Audrey's death was not noticed to Lynn by the defendants; instead, defendants caused Audrey's

remains to be transported across State lines (a federal crime) and disposed remains in Missouri. Audrey had purchased a burial plot at Floral Haven Funeral Home in Tulsa, Oklahoma. Disposal of Audrey's remain without notice to Lynn was to conceal Audrey's death; and relocation of Audrey's remains was to avoid and prevent Lynn from causing an autopsy being performed to disclose cause of death and Other injuries Audrey sustained while in the nursing home.

Defendant's Over billed the estate, double barreled the estate for legal fees, costs, and (paid $30,000.00 in documented hush money)) to Rebecca Hunter (Hunter) who had forged Audrey's name on a contract to represent her-**App.** 126r. Rebecca Hunter knew Audrey was mentally competent when she execute her estate plans. As a matter of fact, Rebecca Hunter tried to get Audrey to hire her on September 28, 2017 but Audrey refused because Hunter wanted to be Audrey's conservator over her money Audrey insisted that Rose Lynn be her conservator. On September 28, 2017 Audrey paid Hunter $350.00 for two hours of home visit consultations for services rendered terminating any further commitment **App.**127s. Unbeknownst to Audrey Andrew had frozen her bank accounts without authority.

On November 1, 2017 Hunter wrote Audrey a letter regarding the $350.00 check. Stating: she consulted with Audrey at Prairie Rose (Audrey's home) on October 2, 2017 (True date 9/28/2017). You decided not to move forward with any estate planning (the only plan was a conservatorship proceeding in court to transfer property to Lynn); you were gracious enough to pay me for my time (2hrs.) in consulting with you; the check was dishonored-**App.** 128t.

Lynn appeared at Hunter's office and paid the $350.00 in person on November 6, 2017 discussed that Andrew had kidnapped Audrey and forced her into a nursing home but she did not know which one, and had no papers telling her what was going on in court. Hunter agreed to represent Lynn (not Audrey, Hunter knew Audrey had an ad litem attorney appointed to her) and her durable power of attorney in the court. Phillip Frist (Feist) appeared and discovered the amount of money in the trust,

then he tried to get Lynn to disavow the estate plans so that he could get his law firm appointed as conservator, but Lynn refused. Feist said he would find a way to represent Audrey that way the trust would pay his firm; And that's when Hunter and Feist conspired to forge Audrey's signature on a legal paper alleging she hired them. Referenced at 126r.

Lynn challenged the signature as being a fraud and a forgery on the court, Audrey, Lynn and the estate; at that point, Hunter and Feist abandoned their claims that Audrey signed the alleged contract.

Lynn filed a civil action for defamation after discovering it on July 6, 2018. On June 21, 2019 within the one year statute of limitations Lynn filed a timely Defamation action and a Civil RICO action. Lynn invoked federal jurisdiction under 28 U.S.C. §§ 1331, 1332, 1333; jurisdictional amount exceeded one million dollars excluding, costs, fees, and damages per *"Individual Capacity"* Defendant.

Lynn filed her Civil Rico action pursuant to, 18 U. S. C. §§ 1961, 1962, 1964, 1968.

The filings were timely, fees paid, and invoked the *"Exception"* jurisdiction of the federal court. Lynn's Civil RICO Complaint made clear in its heading and language that Lynn would be seeking Limited Controlled Discovery, especially, where as here, Lynn had never made discovery against her accusers; Lynn is entitled to discovery to prove her claims. The evidence is in possession and control of her accusers.

Judge Eagan contacted with the attorneys named in the civil RICO suit around June 24-25, 2019 that contact violated federal rules. Lynn discovered Judge Eagan had severe conflicts of interest due to being employed by one law firm named in the Civil RICO case. Judge Eagan made repeated statements on the internet that she worked for the law firm over twenty year involved in the complaint, and spoke of her "Loyalty" to the law firm on the internet.

Judge Eagan has a conflict of interest in case; Judge Eagan remained silent and dismissed Lynn's actions solely to protect her secret interest; and caused the dismissals to protect the interest of the attorneys that held financial positions in the trust company.

TENTH CIRCUIT HEIGHTENED STANDARD REQUIRED PETITIONER TO RELY ON FRAUDULENT MAILING TO SUPPORT HER CIVIL RICO CLAIMS

The tenth circuit order incorrectly believed that petitioner was required to rely on fraudulent mailings to support her Civil RICO claims. In *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639 (2008) this Court held that a plaintiff bringing a civil claim under Racketeering Influence and Corrupt Organizations Act (RICO) premised on mail fraud need not allege its own reliance on any mailing, either as an element of its claim or as a prerequisite for proximate cause. Petitioner alleged that the RICO violations led directly to her claimed injuries.

This Court has explained that although reliance is an element of common law fraud, the RICO statute does not track the common law. Rather, what is required under RICO is that the person be injured "by reason of" the alleged predicate acts.

Therefore, with respect to mail fraud, it does not require the person defrauded to have received or relied on the allegedly fraudulent mailing. RICO's "by reason of" language incorporates a proximate cause standard. For that reason, when a plaintiff suffers an injury proximately caused by a misrepresentation, it not required to allege reliance to plead a RICO claim.

In 1987, this Supreme Court noted that "the last substantive amendment to the RICO statute ... was the codification of the holding of *Durland v. United States*, 161 U.S. 306 (1896) ... in 1909." Congress did amend it thereafter to confirm that the mail fraud statute and the wire fraud statute reached schemes to defraud another of the right to honest services (18 U.S.C. 1346) and to encompass the use of commercial postal carriers P.L, 103-322, § 250006, 108 Stat. 2087 (1994).

The wire fraud statute is of more recent vintage. Having been Enacted as part of the Communications Act Amendments of 1952 (Act of July 16, 1952, ch.879, § 18(a), 66 Stat. 722 (1952)) which was intended to mirror the provisions of the mail fraud statute. H.R. Rep. No. 82-388, at 1 (1951)("The general object of the bill is to amend the Criminal Code... making it a Federal criminal

offense to use wire or radio communications as instrumentalities for perpetrating frauds upon the public.

In principal it is not dissimilar to the post fraud statute (18 U.S.C. 1341)"); S. Rep. No. 82-44, at 14 (1951)("This section ... is intended merely to establish for radio a parallel provision now in the law for fraud by mail, so that fraud conducted or intended to be conducted shall be amendable to the same penalties now provided for fraud by means of the mails"); H.R. Rep. No. 82-1750, at 22 (1952).

There was no need to amend the wire fraud statute, when commercial carriers were included in the mail fraud statute or when references to the ***Postal Service*** were substituted to references to the ***Post Office***, P.L. 103-322, § 250006(1), 108 Stat. 2087 (1994); P.L. 91-375, § 6(j)(11), 84 Stat. 778 (1970).

TENTH CIRCUIT MISAPPLIED THE MAIL AND WIRE FRAUD ELEMENTS CONTRADICTING THIS COURTS PRECEDENTS

The mail and wire fraud statutes are essentially the same, except for the medium associated with the offense-the mail in the case of mail fraud and wire communication in the case of wire fraud. The interpretation of one is ordinarily considered to apply to the other. In construction of the terms within the two. In *Pasquantino v. United States,* 544 U.S. 349, 355 n. 2 (2005) this Court construed identical language in the wire and mail fraud statutes in pari materia")(citing *Neder v. United States*, 527 U.S. 1, 20 (1999) and *Carpenter v. United State*s, 484 U.S. 19, 25 and n.6 (1987)) and 18 U.S.C. 1343.

Based on the aforementioned statutes and precedents, petitioner correctly alleged that the use of either mail or wire communications in the foreseeable furtherance of a scheme and intent to defraud her of her property or honest services involving a material deception, use of Mail or Wire Communications the wire fraud statutes applies to anyone who "transmits or causes to be transmitted by wire, radio, or television communication in interstate or foreign commerce any writings... for the

purpose of executing [a]...scheme or artifice."

Similarly, the wire fraud statute similarity in wording as applied here refers to anyone who"...for the purpose of executing [a]...scheme or artifice...placing it in any post office...or causes to be delivered by mail...any...matter violates RICO statutes." 18 U.S.C. § 1341. While the statutes require that a mailing or wire communication be in furtherance of a scheme to defraud, the mailing or communication need not be an essential element of the scheme, as long as it "is incident to an essential element of the scheme." In *United States v. Weaver*, 860 F.3d 90, 94 (2d Cir. 2017) this Court held:

"The essential elements of mail and wire fraud are (1) a scheme to defraud, (2) money or property as the object of the scheme, and (3) use of the mails or the wires to further the scheme."Petitioner satisfied her burden by demonstrating the elements were satisfied by defendants mailings or communications "designed to lull her into a false sense of security, postpone inquiries made by Lynn, refused to tender their summons and complaint to Lynn and caused Lynn to be barred from courts proceedings, thus, make their transactions less suspect." *United States v. Lane,* 474 U.S. 438, 451-52 (quoting *United States v. Maze,* 414 U.S. 395, 403)); *United States v. Stochel,* 901 F.3d 833, 889 (7th Cir. 2018); *Tavares,* 844 F.3d at 58; *Unites States v. McGinn,* 787 F.3d 116, 124 (2d Cir. 2015).

The instant petition for writ of certiorari review is warranted based on the plain and reversible errors, abuse of discretion, and on Constitutional grounds that violations guarantees by the U.S. Constitutional Amendments 1, 4, 5, 6, 7, 8, 9, 14 (Amndts). Because large numbers of aging citizens of America will fall victims to these types of RICO violations without instructions from this court. Because the elements of mail and wire fraud was satisfied by mailing or wire communications used to obtain the property which was the object of the fraud against Lynn. In *United States v. Vilar,* 729 F.3d 62, 95 (2d Cir. 2013) the Court held that "A scheme to defraud is not complete until the proceeds have been received and use of the mail or wires to obtain the proceeds satisfies the jurisdictional element, which is to say that the jurisdictional element is fulfilled when the defendant's used the mail or wires to

convert the money to his own use."

The defendants fraudulently took possession of Lynn's control over property valued at over $20 Million Dollars and used large parts of it for their own personal use and purpose and transferred the Millions dollars to Other *"secret"* accounts outside of Oklahoma in which the defendant's controlled.

As the law of the case dictates, "A defendant need not personally have mailed or wired a communication' it is enough that he "caused" a mailing or transmission of a wire communication in the sense that the mailing or transmission was the reasonable foreseeable consequence of his intended scheme". *United States v. Porter,* 745 F.3d 1035, 1051 (10th. Cir. 2014); *United States v. Soto,* 799 F.3d 68, 92 (1st Cir. 2015); *Nguyen,* 829 F. 3d 907, 921 (8th Cir. 2016). The Court in *Pereira,* 347 U.S. At 8-9 held: "Where one does an act with knowledge that the use of the mails will follow in the ordinary course of business, or where such use can reasonably be foreseen, even though not actually intended, then he 'caused' the mails to be used." Petitioner made this argument at the U.S. District Court and the Appellate Court.

APPELLEES' USED MAIL AND WIRES TO COMMIT FRAUD AND TO BREACH THE CONTRACTUAL AGREEMENT-AND DEFRAUDED PETITIONER OUT OF HER EXPECTED INHERITANCE GIFT SOLELY TO ENRICH THEMSELVES

The mail and wire fraud statutes speaks of schemes to defraud or to obtain money or property by means of false or fraudulent pretense. 18 U.S.C. §§ 1341, 1343. This Court has said that the phrase "to defraud" and the phrase "to obtain money or property" does not represent separate crimes, but instead the phrase "obtain money or property" describes what constitutes a scheme to defraud. Appellee's knowingly, intentionally, purposefully, and wantonly interfered with, breached, and failed to specifically perform in accordance with the terms and conditions of the Trust Contract and accompanying estate plans.

Appellee's intended to breach the trust contract, alter the terms and condition of the trust agreement, designed a purpose to defraud, deceive, manipulate, transfer, conceal, and swindle petitioner out of her reliance on the contractual agreement as well as her expected inheritance gift.

This Court has held that "intent to defraud' requires an intent to (1) deceive, and (2) cause some harm to result from the deceit. "A defendant acts with intent to deceive when he knowingly with the specific intent to deceive for the purpose of causing pecuniary loss to another or bringing about some financial gain to himself." The Court in *United States v. Bertram,* 900 F.3d 743, 749 (6th Cir. 2018) held specifically, the omission of a material fact with the intent to get the victim to take an action he wouldn't otherwise have taken establishes intent to defraud under the wire statute."

The Court held in *United States v. Halloran,* 821 F.3d 321, 339 (2d Cir. 2016) that "The 'scheme to defraud' element of wire fraud requires the specific intent to harm or defraud the victims of the scheme." Furthermore, in *United States v. Faruki,* 803 F.3d 847, 853 (7th Cir. 2015) held that "intent to defraud requires a willful act by the defendant with the specific intent to deceive or cheat, usually for the purpose of getting financial gain for one's self or causing financial loss to another."

This court should recall that Randall A. Gill instructed the Court on the November 3, 2017 QUOTE! Seal the records so Rose Lynn will not know what's going on. In short, secret and conceal matters affecting Lynn's right and benefits under the trust contract. Clearly, defendant's intent was to injure Lynn; their refusal to obtain summonses, failure to serve Lynn with summons to appear ; their failure to provide copies to Lynn after two and a half years of demands; the court refused to order Appellees to serve Lynn with summons and petition as required by statutes; refusal to unseal the records so Rose Lynn would not know what was going on, were clearly done for the purpose of defrauding Lynn.

CONCLUSION

Fundamental due process of service was denied this petitioner throughout the history of this case. That's not in dispute, it's a fact, this fact has escapes review by the courts. Petitioner filed her civil RICO complaint under the *exclusionary rule* regarding probate court matters. Petitioner is not challenging the Trust instruments. Rather, petitioner bring suit against racketeering actors, conspirators, co-conspirators', associates-in-fact, enterprises, officers', agents, banks that illegally removed, aided and abetted the laundering of trust funds for the benefit of RICO parties and enterprises, including, but not limited to, attorneys, nursing home, private guardianship agencies, and judges that usurped the law and allowed their courtrooms to be the pulpit for fraud and racketeering activities for financial gains.

Oklahoma statutes mandated process of service on defendants' and interested parties. Title 12 O.S. 2011, Sec. 2004(I) mandate service of summons and petition on interested parties and defendant's.

Federal Rules of Civil Procedures, Amended Rule 4(m) (2017) also mandate service of summons and petition within 90 days of filing the petition. As of the date of filing this petition for writ of certiorari, petitioner have not been served.

In all jurisdictions, service of process triggers jurisdiction and venue on courts, unless waived or voluntary appearance by the party not served. In the present case, Lynn did not waive process nor appeared voluntarily. Lynn repeatedly begged the court to cause service of summons and petition and sought permission to appear as an interested and indispensable party whose rights would be materially aggrieved by any actions taken by the court.

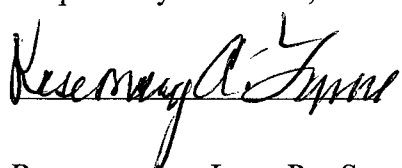
Underpinned by Lynn's position as Trustee and Beneficiary of the trust contract she should have been served with process and allowed to appear, defend and assert her rights under the terms of the estate plans. Lynn had standing to appear, defend and assert her rights; that defendant's admitted that they did not *"circulate"* service on Lynn because Oklahoma Statutes did not required them to serve Lynn

a pro se party. This nonsensical assertion or defense defies logic and is contrary to Oklahoma's Pleading Code and Statutes on Service of Process. Lynn has never had a day in Court; she's been denied process and basic access to court and materially injured and loss of her expected inheritance.

The guardianship court never acquired jurisdiction over donor, or Lynn, or the estate plans. Its orders, adjudications and decrees are Void, *ab initio.* The probate court never acquire jurisdiction and lacked authority to enter any orders affecting the estate plans. The universal law of the land, without service of summons and petition unless waived or voluntary appearance (which did not occur here) the court's orders are Void for want of subject matter jurisdiction, personal jurisdiction over the persons and complaint. Petitioner who failed to serve defendant lacks standing especially after passage of two years and seven months; forever barred.

For the foregoing reasons, writ of certiorari review should be granted.

Respectfully submitted,



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