No. _____

In the
Supreme Court of the United States

JOSEPHINE M. TRIPODI AND GERI CARR TRIPODI,

Petitioners,

v.

NORTH COVENTRY TOWNSHIP,

Respondent.

On Petition for a Writ of Certiorari to the Pennsylvania Supreme Court

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Does the Due Process Clause of the Fourteenth Amendment prohibit a state court from compelling a real property owner to pay thousands of dollars for mold inspection and remediation when there are no federal, state, or even municipal laws prescribing an owner's duty to inspect and remediate for mold?

2) Does the Due Process Clause limit a state court's power to impose obligations and liabilities upon an intervening party?

PARTIES TO THE PROCEEDINGS

Petitioners Josephine M. Tripodi and Geri Carr Tripodi were the defendants in the Pennsylvania Court of Common Pleas, the appellants in the Pennsylvania Commonwealth Court, and the petitioners in the Pennsylvania Supreme Court. Respondent North Coventry Township was the plaintiff in the Pennsylvania Court of Common Pleas, the respondent in the Pennsylvania Commonwealth Court, and the respondent in the Pennsylvania Supreme Court.

STATEMENT OF RELATED PROCEEDINGS

There are no proceedings in any court that are directly related to this case except for *North Coventry Township v. Josephine Tripodi and Geri Carr*, currently pending in the Pennsylvania Commonwealth Court under Docket No. 1023 CD 2020.

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PETITION FOR A WRIT OF CERTIORARI

Josephine M. Tripodi and Geri Carr Tripodi petition this Court for a writ of certiorari to review the decisions of the Pennsylvania courts below.

OPINIONS BELOW

The October 1, 2021 Order of the Pennsylvania Supreme Court denying Petition for Allowance of Appeal is unpublished and appears at Appendix A. The March 9, 2021 Decision of the Pennsylvania Commonwealth Court is unpublished and appears at Appendix B. The July 9, 2019 Order and Opinion of the Pennsylvania Court of Common Pleas is unpublished and appears at Appendix C.

JURISDICTION

The Order denying Petition for Allowance of appeal was entered by the Pennsylvania Supreme Court on October 1, 2021. App. A. This Court's jurisdiction is invoked under 28 U.S.C.A. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment provides in part, "nor shall any State deprive any person of life, liberty, or property, without due process of law…"

STATEMENT OF THE CASE

This litigation is part of a long-standing dispute between North Coventry Township and Josephine Tripodi over 27 townhouse units that Josephine owns.

In November 2007, North Coventry filed a complaint against Josephine alleging non-compliance with the Township's property codes. In 2009, a Master was appointed by Pennsylvania's Court of Common Pleas to oversee the property and alleged violations. The court ordered owner Josephine to pay the Master to hire consultants and for future fees and costs (*N. Coventry Twp. v. Tripodi*, No. 851 C.D. 2017, 2018 WL 2470645, at *1–3 (Pa. Commw. Ct. June 4, 2018)).

The matter dragged on for years. By 2017, the state court entered an order authorizing additional fees and expenses for the Master and consultants, and entering judgment for $61,803.75 in fees the Master claimed and an additional $34,093.65 in fees for the Township's attorney – all while Josephine was precluded from use and control of her property (*N. Coventry Twp. v. Tripodi*, *supra*).

The current dispute then arose. While the dispute over claimed non-compliance with municipal codes seemed resolved at last, the Township now claimed that Josephine was delinquent in failing to inspect for and remediate mold allegedly found in 12 of the 27 vacant townhomes that, by this point, the Master (not Josephine) was overseeing. The Master advised the court that the estimate for "damages" was $160,000 – then demanded $350,000.

Defendants objected to these new demands, stressing that, unlike the prior code violations in question, there is no federal, state, or even local municipal law governing mold inspection or remediation required of a property owner or landlord (particularly of unoccupied, vacant properties). The

EPA has only "guidelines" for mold cleanup, and even the guidelines note that there are no special requirements to remediate mold, which can be handled by homeowners, custodians, and building managers alike. Defendants objected to any order compelling Josephine to pay for mold inspection and remediation that no law required a property owner to perform.

Geri Carr objected, separately, to imposition of orders against herself because she did not own the property, had no legal interest in it, and was not legally responsible for it. Geri stressed that she was made a party to the action via permissive intervention years ago (in 2009, near the beginning of the litigation) only because at that time she was planning to buy the property from her mother. The sale never occurred, however; Geri's only responsibility to her mother or her mother's property was a personal one. She has no legal responsibility for it. But the state court judge told Geri that any orders regarding the property applied equally to her, and the Master (appointed by the judge) told Geri this was not "a game" and he was "going to start" with the following: "I want personal financial statements of both of you. I want your Pennsylvania and Federal income tax returns for the last three years." Geri objected, and Josephine herself stressed that her daughter should not have to provide financial information or be responsible for property she did not own. But the state court judge repeated to Geri, "you are equally responsible with your mother, and that's the law in this." "[E]ither you're going to come up with the funds, or I'm going to order the sale of the property and that sale will be a fire sale," the judge stated.

Defendants appealed to Pennsylvania's Commonwealth Court and argued that there is no law compelling a property owner to inspect or remediate for mold (particularly in an unoccupied property), and that it was plainly wrong to "order[] Geri Carr Tripodi to comply with the orders ... when she does not own the [P]roperty and has no interest in it…" But the Commonwealth Court affirmed. "While it may be true, as the Tripodis assert, that no law requires mold remediation, the purpose of the mold remediation is to make it safe enough for the inspectors to enter the premises to determine the extent of the code violations. Thus, without mold remediation, nothing further can occur. Accordingly, we see no error in the trial court's determination that the Tripodis must fund mold remediation as a precursor to meeting the other requirements for which they are responsible under the Orders." Ex. B. The court stated that because Geri Carr had intervened in the lawsuit in 2009, Geri was subject to the court's orders the same as her mother:

> As the Pennsylvania Rules of Civil Procedure make plain: "After the entry of an order allowing intervention, the intervener shall have all the rights and liabilities of a party to the action." Pa.R.C.P. No. 2330 … Further, as our Supreme Court enunciated in *In re Appeal of the Municipality of Penn Hills,* 546 A.2d 50, 52 (Pa. 1988): "Given the absence of limitations to the contrary ... an intervenor participates in the appeal with all the attendant rights of any other party."

> Geri Carr Tripodi chose to intervene in the present matter in 2009. She cannot now assert she is a mere representative or observer or that she can move in and out of the litigation at will. Further, to suggest that Geri Carr Tripodi has no interest in the Property seems disingenuous in light of the fact that, at one time, the parties had agreed Geri Carr Tripodi would purchase the Property from her mother. Ironically, the very financial statements to which the Tripodis object would establish whether, in fact, Geri Carr Tripodi has an interest in the Property. Accordingly, we reject the argument that Geri Carr Tripodi cannot be held accountable in the same way Tripodi may be. Thus, the trial court did not err by determining Geri Carr Tripodi may be subject to the same requirements as her mother in this matter, including the provision of financial statements. [Ex. B]

The Tripodis sought review from Pennsylvania's Supreme Court, again stressing the absence of any laws governing mold remediation required of a property owner and the impropriety of enforcing orders against Geri. But the Supreme Court denied the Petition for Allowance of Appeal on October 1, 2021. Ex. A.

REASONS FOR GRANTING THE PETITION

I. The Court should clarify whether the Due Process Clause of the Fourteenth Amendment prohibits a state court from compelling a real property owner to pay thousands of dollars for mold inspection and remediation when there are no federal, state, or even local laws prescribing a property owner's duty to inspect and remediate for mold.

Vague laws violate due process under the Due Process Clauses of both the Fifth and Fourteenth Amendments. The Court has invoked the Due Process Clause to void a statute if "its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972). The vagueness doctrine "addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way." *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253, 132 S. Ct. 2307, 183 L. Ed. 2d 234 (2012); *Grayned*, 408 U.S. at 108–09 (stating vague laws "offend several important values" including "fair notice" and "explicit standards for those who apply them," which are the "basic principle of due process").

Hence, if a state or federal statute, or municipal ordinance, fails to give "a person of ordinary intelligence fair notice" of what is prohibited or required, then it is void for vagueness. *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162, 167, 92 S. Ct.

839, 31 L. Ed. 2d 110 (1972) (invalidating vagrancy ordinance as "so all-inclusive and generalized" as to enable "men to be caught, … although not chargeable with any particular offense"); *United States v. Harriss*, 347 U.S. 612, 617, 74 S. Ct. 808, 98 L. Ed. 989 (1954) (describing "[t]he constitutional requirement of definiteness" in context of fair notice); *Holder v. Humanitarian L. Project*, 561 U.S. 1, 20–22, 130 S. Ct. 2705, 177 L. Ed. 2d 355 (2010) (analyzing "fair notice" prong of vagueness doctrine in an as-applied challenge to federal statute).

Vagueness invalidity applies also where a rule is "so standardless that it authorizes or encourages seriously discriminatory enforcement" or arbitrary decision-making – as the Tripodis charged in the Pennsylvania courts with regard to the mold issue raised against them, *see Papachristou*, 405 U.S. at 168–170 (invalidating local ordinance as giving officials "unfettered discretion"); *Skilling v. United States*, 561 U.S. 358, 416, 130 S. Ct. 2896, 177 L. Ed. 2d 619 (2010) (analyzing "arbitrariness" prong of vagueness doctrine); *United States v. Williams*, 553 U.S. 285, 304, 128 S. Ct. 1830, 170 L. Ed. 2d 650 (2008) (explaining vagueness doctrine in context of due process); *Sessions v. Dimaya*, 138 S. Ct. 1204, 1216, 200 L. Ed. 2d 549 (2018) (stressing purpose of vagueness doctrine is due process and invalidating statute for "produc[ing] more unpredictability and arbitrariness than the Due Process Clause tolerates").

The Court should clarify this area of law by granting Certiorari in this case, *cf. Connally v. Gen. Const. Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 70 L. Ed.

322 (1926) (explaining that "sufficiently explicit" statutory terms "is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law"); *Jordan v. De George*, 341 U.S. 223, 231–32, 71 S. Ct. 703, 95 L. Ed. 886 (1951) ("Despite the fact that this is not a criminal statute, we shall nevertheless examine the application of the vagueness doctrine to this case."); *Kolender v. Lawson*, 461 U.S. 352, 357–58, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983); *Giaccio v. State of Pa.*, 382 U.S. 399, 402, 86 S. Ct. 518, 15 L. Ed. 2d 447 (1966); *Coates v. City of Cincinnati*, 402 U.S. 611, 613–14, 91 S. Ct. 1686, 29 L. Ed. 2d 214 (1971); *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 497–98, 102 S. Ct. 1186, 71 L. Ed. 2d 362 (1982); *Papachristou*, 405 U.S. at 162, 170–71; *Holder*, 561 U.S. at 20; *Skilling*, 561 U.S. at 412–13; *Ohio v. Clark*, 576 U.S. 237, 253, 135 S. Ct. 2173, 192 L. Ed. 2d 306 (2015); *Williams*, 553 U.S. at 304; *Sessions*, 138 S. Ct. at 1212–1216; *Grayned*, 408 U.S. at 108–109.

The Court should stress that the vagueness doctrine has never exclusively operated on criminal laws and applies equally to the municipal context at issue in the Tripodis' case here, *see A.B. Small Co. v. Am. Sugar Ref. Co.*, 267 U.S. 233, 239, 45 S. Ct. 295, 69 L. Ed. 589 (1925) ("The defendant attempts to distinguish [prior vagueness] cases because they were criminal prosecutions. But that is not an adequate distinction."); *Int'l Harvester Co. of Am. v. Kentucky*, 234 U.S. 216, 221–22, 34 S. Ct. 853, 58 L. Ed. 1284 (1914) (applying vagueness doctrine to a civil fine for a combination in restraint of trade); *United States v. L. Cohen Grocery Co.*, 255 U.S. 81, 92, 41 S. Ct. 298, 65 L. Ed. 516 (1921).

The Court should stress that the vagueness doctrine applies with equal force to a municipal case like this one – where the customary protection of fair notice to those who must follow a law is perhaps even more subject to abuse by local officials, *cf. Connally*, 269 U.S. at 391 (when leaving the "line between what is lawful and unlawful . . . left to conjecture" enforcement officials are enabled to "shap[e]" the law's "contours" as they see fit to any person's particular matter); *Jordan*, 341 U.S. at 242 (Jackson, J., dissenting) (noting vagueness empowers government bureaucrats to "condem[n] all that [they] personally disapprove and for no better reason than that [they] disapprove it").

In this case, the Pennsylvania courts ordered defendants to post thousands of dollars for mold inspection and remediation but cited no legal standard for issuing their orders. There are no laws governing mold inspection or remediation. There is no federal law covering a property owner's or landlord's responsibilities for mold. There is no Pennsylvania state law. There is no local, municipal regulation. There are only EPA "guidelines" for mold cleanup. This is not a law and does not impose legal obligations. Even the guidelines note there are no special requirements to remediate mold; remediation can be handled by homeowners, custodians, and building managers alike, *see, e.g.,* https://www.epa.gov/mold/are-there-federal-regulations-or-standards-regarding-mold ("Currently, there are no EPA regulations or standards for airborne mold contaminants.") The state court rulings fail to apply the vagueness principles under the Fourteenth Amendment's Due Process Clause and this Court's governing precedent discussed above.

The Court should clarify how the Due Process Clause operates in such matters. A state can choose to delegate its power and specify the extent of the delegation. The legality of those decisions is a "question for the state itself, " *Highland Farms Dairy v. Agnew*, 300 U.S. 608, 612, 57 S. Ct. 549, 81 L. Ed. 835 (1937). But the Due Process Clause ensures that whatever laws or regulations a state legislative body enacts and the state executive purports to enforce are sufficiently clear to preclude arbitrary enforcement at the whim of government officials – as the Tripodis' charged was occurring against them. Here, there are *no* legal standards governing mold or mold related issues, or a property owner's duty to inspect for and remediate mold – let alone "sufficient standards to guide" enforcement as required under the Due Process Clause. The Fourteenth Amendment subjects state actions to the Due Process Clause, regardless of whether they are permissible exercises of state power under state law, *Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44, 59, 116 S. Ct. 1114, 134 L. Ed. 2d 252 (1996). This case involves discretionary activity of municipal governing bodies which the Due Process Clause subjects to judicial scrutiny to prevent arbitrary and unreasonable action. This case involves a question of state power premised on such absent standards that they violate the Due Process Clause, the Court should stress, *Sessions*, 138 S. Ct. at 1223 (Gorsuch, J., concurring).

The Court should harmonize circuit court decisions reaching varying conclusions in this area of law, *see*, *e.g.*, *Mayes v. City of Dallas*, 747 F.2d 323 (5th Cir. 1984) (ordinance requiring new buildings to "harmonize" with "overall character" of district or with

"surrounding structures," did not fail to set forth "objective, articulated standards sufficient to prevent the arbitrary exercise of government power"); *Henry v. Jefferson Cty. Plan. Comm'n*, 215 F.3d 1318 (4th Cir. 2000) (ordinance requiring projects to be "compatible" with and to "preserve the rural character of the . . . agricultural community" not unconstitutionally vague); *Holmes v. New York City Hous. Auth.*, 398 F.2d 262, 265 (2d Cir. 1968) (in context of vagueness challenge to eligibility requirements for public housing tenants, "due process requires that selections among applicants be made in accordance with 'ascertainable standards,'" and "[i]t hardly need be said that the existence of an absolute and uncontrolled discretion in an agency of government vested with the administration of a vast program, such as public housing, would be an intolerable invitation to abuse").

The Court should hold that the absence of laws governing mold and inspection and remediation for mold violates Petitioner's rights under the Due Process Clause in this case because, by failing to specify what is required, no boundaries are placed on the Township's power to act against the Tripodis or any other person so situated. The Township is vested with impermissible unfettered discretion. *Coates*, 402 U.S. at 614; *Williams*, 553 U.S. at 306. Due process requires the executive to premise its decisions on an ascertainable standard of law so that owners like Josephine Tripodi have fair notice of the standard and what is required of them under the standard. *Connally*, 269 U.S. at 391. As Justice Gorsuch wrote in *Sessions*, 138 S. Ct. 1204, "The implacable fact is that this isn't your everyday ambiguous statute. It leaves the people to guess about

what the law demands—and leaves [the Township] to make it up. You cannot discern answers to any of the questions this law begets by resorting to the traditional canons of statutory interpretation. No amount of staring at the statute's text, structure, or history will yield a clue. Nor does the statute call for the application of some preexisting body of law familiar to the judicial power. The statute doesn't even ask for application of common experience. Choice, pure and raw, is required. Will, not judgment, dictates the result." *See also L. Cohen Grocery Co.*, 255 U.S. at 89 (noting law in question "forbids no specific or definite act. It confines the subject-matter of the [consent] which it authorizes to no element essentially inhering in the transaction as to which it provides. It leaves open, therefore, the widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against. In fact, . . . to attempt to enforce the section would be the exact equivalent of an effort to carry out a statute which in terms merely penalized and punished all acts . . . when unjust and unreasonable in the estimation of the [Township].")

II. The Court should clarify whether the Due Process Clause limits a state court's power to impose obligations and liabilities upon an intervening party?

Geri Carr was not originally a party to this action that North Coventry Township filed against Josephine Tripodi. Josephine owns the property. Geri Carr, Josephine's daughter, does not own it, and has no legal responsibility for it. Geri was made an intervening

party to this action shortly after it began (in 2009) at the state court's direction only because she was the prospective buyer for her mother's property at that time. The sale never occurred, however; Geri Carr never acquired an interest in the property or assumed any legal responsibility for it. Despite that, the state courts imposed the same obligations and liabilities on Geri Carr as against the actual property owner, Josephine, – ordering Geri to pay $500,000 for mold inspection and remediation and other costs and fees claimed by the Township over the property, and to provide personal financial information to the Master as well.

The Court should grant Certiorari to address this area of law. Caselaw has routinely addressed the *right* of a party to intervene in an action (*e.g.*, Fed. R. Civ. P. 24, delineating third party's right to intervene), but courts have not addressed the intervening party's obligations and liabilities once intervention is granted. Even the Pennsylvania Commonwealth Court below cited caselaw (*Appeal of Municipality of Penn Hills*, 519 Pa. 164, 546 A.2d 50, 52 (1988)) as only noting, "an intervenor participates in the appeal with all the attendant *rights* of any other party" (emphasis added) – never addressing the question of liability and obligation.

The Court should address whether the Due Process Clause of the Fourteenth Amendment limits a state court's ability to impose obligations and liabilities on an intervening party like Geri Carr, clarifying that intervening in an action does not mean that the intervening party assumes the same legal duties and

liabilities that the original party has. Intervention does not burden the intervenor with such liabilities, the Court should stress, clarifying that a state court ruling purporting to impose such obligations and liabilities on an intervenor – as the Pennsylvania courts imposed upon Geri Carr – violates the protections afforded by the Due Process Clause. Geri Carr does not own the property and has no legal responsibility for it. Only her mother, Josephine, owns the property. The state courts had the power to enforce obligations against Josephine, not non-owner Geri, the Due Process Clause prescribes.

This area of law is unclear. In *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991), the Court addressed a federal district court's inherent power to impose financial sanctions for abuses of the judicial process against a non-party who was the sole shareholder and director of a company named as the defendant in the action. But there the district court said that the non-party had engaged in tactics to prevent consummation of the sale and acted in bad faith conduct. The Court should clarify that *Chambers* deals with a non party who was the *de facto* owner of the single shareholder corporate party and whose actions intentionally helped the artificial company he owned commit bad faith, sanctionable conduct. That ruling does not extend to a situation like Geri Carr's in this case, the Court should clarify, *cf. Alderwoods Grp., Inc. v. Garcia*, 682 F.3d 958, 971 (11th Cir. 2012) ("[C]ourts that have considered the issue generally agree that this sanction power extends to a person outside the territorial limits of the court that issued the injunctive order, provided that the person had actual notice of the order and acted in concert with the party

explicitly enjoined"); *Waffenschmidt v. MacKay*, 763 F.2d 711, 717–721 (5th Cir. 1985); *ClearOne Commc'ns*, Inc. v. Bowers, 651 F.3d 1200, 1215–16 (10th Cir. 2011); *S.E.C. v. Homa*, 514 F.3d 661, 673 (7th Cir. 2008); § 2956 Persons Bound by an Injunction or Restraining Order, 11A Fed. Prac. & Proc. Civ. § 2956 (3d ed.) (noting court ordinarily lacks power to issue order against nonparty absent "*in personam* jurisdiction" and "only significant exception to this rule involves nonparties who have actual notice of an injunction and are guilty of aiding or abetting or acting in concert with a named defendant").

CONCLUSION

The Court should grant this Petition for a Writ of Certiorari.

Respectfully submitted,

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