

In the
Supreme Court of the United States

DR. PADMA RAO,

Petitioner,

v.

ANITA RAO ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether it was a violation of due process to retroactively impose a new fee-shifting penalty in contravention of the established American Rule, where Petitioner had no prior notice that she could be forced to pay another party's fees simply "in equity" for the first time in the history of Illinois law for conducting litigation in full compliance with pleading requirements and that was never sanctioned, and where no fraud occurred.

PARTIES TO THE PROCEEDINGS

Petitioner and Petitioner-Appellant, Cross-Appellee Below

- Dr. Padma Rao is a legatee of the Estate of her mother, the deceased Basavapunnamma K. Rao.

Respondent and Appellee, Cross-Appellant Below

- Anita Rao is the only other child of the deceased B.K. Rao and the only other legatee of the Estate.

Respondents and Appellees, Respondents-Appellees Below

- FMS Law Group, LLC
- Midland Trust Company

Additional Trial Court Party Below

- Estate of Rao

LIST OF PROCEEDINGS

In re Estate of Rao, Padma Rao, Petitioner v. Midland Trust Company, *et al.*, Respondents. Illinois Supreme Court case No. 128472. Denied Dr. Rao's Petition for Leave to Appeal on September 28, 2022 at App.32a.

In re Estate of Rao, Padma Rao, Appellant v. Midland Trust Company, Respondent-Appellee, Anita Rao, Appellee and Cross-Appellant. Illinois Appellate Court consolidated Appeals No. 1-21-0316 and No. 1-21-0465, Order issued March 31, 2022, at App.1a.

In re Estate of Rao, Circuit Court of Cook County, Probate Division, No. 2013 P 6243, Order issued on March 18, 2021, at App.33a.

In re Estate of Rao, Padma Rao, Petitioner v. Midland Trust Co., Respondent, United States Supreme Court No. 20-1254, Petition for a writ of certiorari denied May 17, 2021.

In re Estate of Rao, Padma Rao, Petitioner v. Midland Trust Co., Respondent, Illinois Supreme Court No.125994. Petition for leave to appeal denied September 30, 2020.

In re Estate of Rao, Padma Rao, Appellant v. Midland Trust Co., Appellee. Illinois Appellate Court No. 1-19-1427. Appeal dismissed February 20, 2020.

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OPINIONS BELOW

The Illinois Supreme Court, case No. 128472, denied Dr. Rao's Petition for Appeal of the Appellate Court in a one-sentence Order, which is included at App.32a. The Illinois Appellate Court, in an Order with citation 2022 IL App(1st) 210316-U, issued a 25-page Order affirming a fee-shift against Petitioner Dr. Rao of \$532,807 in fees and expenses incurred by the Estate, which is included at App.1a. The trial court, Circuit Court of Cook County No. 2013 P 6243, issued a 20-page opinion, which is included at App.33a, granting Respondent Anita's Petition to Fee-Shift against Petitioner in an amount of \$532,807 in fees and expenses incurred by the Estate.



JURISDICTION

Jurisdiction is present under 28 U.S.C. § 1257(a). On September 28, 2022, the Illinois Supreme Court denied Dr. Rao's petition to appeal at App.32a, after Dr. Rao asserted in the petition that the Illinois Appellate Court decision had violated Dr. Rao's guarantee to due process of law under the United States Constitution by imposing a retroactive duty and change in the law to impose a new fee-shifting penalty for litigation pleadings that were in full compliance with all applicable pleading standards and never sanctioned in any way. App.76a-78a. Dr. Rao asserted the same argument of a violation of due process of law under the United States Constitution

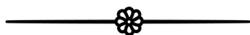
in her appellate brief to the Illinois Appellate Court. Illinois Appellate Brief at 31.



CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amendment XIV, § 1.

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.



STATEMENT OF THE CASE

A. The Final Result on Appeal Here.

In this matter, the Illinois Appellate Court affirmed a fee-shift against Petitioner Dr. Rao of \$532,807 in fees and expenses incurred by the Estate that was imposed solely under the trial court's finding of its own inherent equitable authority to shift fees, in contravention of the applicable American Rule where each party pays its own fees, costs and expenses. App.2a. This retroactively imposed new fee-shifting penalty violated Dr. Rao's due process rights against retroactive duties and fair notice of potential deprivation of her property—in the entire prior history of Illinois law, there had never been a case where a party was forced to pay for a separate party's fees or expenses absent a contract, express statutory or Illinois Supreme Court Rule authority (including such rules

for pleading sanctions), or the imposition of punitive damages for fraud, or a finding that such fees had also directly benefited the party such that fees could be properly shared. App.57a. The trial court created an entirely new fee-shifting doctrine against Dr. Rao—specified by the court as when “doing so is equitable”—for the Estate’s fees and expenses incurred in probate court, as well as for legal fees incurred in appeals of probate court decisions. App.39a-41a.

B. The Fees Incurred and the Fee-Shift Motion by Co-Beneficiary Anita.

The main litigation at issue originated from Dr. Rao’s opposition to a wrongful death and Survival Act settlement for \$2.1 million, with the Survival Act proceeds going to the Estate. App.3a-5a. After Estate Administrator Midland Trust filed a Motion for Approval of the Settlement, Dr. Rao filed briefs opposing the Motion and attached as an exhibit her affidavit. App.35a. After the Probate Court approved the settlement, Dr. Rao appealed to the Illinois Appellate Court which dismissed her appeal on standing grounds. App.8a. Dr. Rao then appealed to the Illinois Supreme Court that she had a due process right in the settlement and thus standing to be heard to oppose it, but her appeal to the Illinois Supreme Court was denied, and then her petition for writ of certiorari to the United States Supreme Court was also denied. App.8a. Sup Ct. No. 20-1254, *cert. denied* May 17, 2021.

Anita and Estate counsel first filed Motions for Rule 137 sanctions in the Probate Court against Dr. Rao and her counsel for Dr. Rao’s probate court briefs opposing the settlement (Illinois Appellate Record on Appeal C838-1023, C1108), but these sanction motions were denied after extensive briefing. App.55a. Nor

has Dr. Rao been sanctioned for any of her appellate briefs. App.75a-76a.

Anita then filed a Petition to Allocate Fees asserting that all fees and expenses incurred by Estate Counsel in probate court and on appeal, as well as all direct administration fees billed by the Estate administrator, should be shifted to and paid by Dr. Rao instead of by the Estate in the interests of equity because all these fees, costs and expenses had been caused by Dr. Rao pursuing her own personal interests in her personal court filings. App.17a-18a.

Dr. Rao opposed the motion on the basis that the Court lacked authority under established Illinois law to shift fees in contravention of the American Rule merely on the basis that Dr. Rao had filed unsuccessful pleadings in her personal interest. App.40a. Dr. Rao requested the trial court to follow all prior applicable law. App.40a.

The trial court granted the motion as an exercise of equitable authority, finding that Dr. Rao caused these fees and expenses to be incurred as the losing party by choosing to litigate against the settlement for her own personal interests as to what she believed her mother would have wanted done with the estate. App.45a-48a, App.51a. The trial court held that the American Rule does not apply in probate court litigation because the parties there are purportedly not adversaries (App.40a-41a), and held that the court has inherent equitable authority to shift all fees, expenses and administration costs to a single party, including fees from appeals. App. 38a-41a. The court's Order even admits that Dr. Rao's filings and conduct were not based on bad faith or evil motive, rather quite the opposite: "This court appreciates

Padma's devotion to her mother. Individually, as a daughter, her loyalty is wonderful and admirable." App51a. Nevertheless, and after also previously denying a motion for sanctions against Dr. Rao's pleadings (App.55a), the court shifted all Estate's fees, expenses and costs, including those incurred from appeals, of \$532,807 against Dr. Rao. App.51a.

The trial court extensively relied on a probate case involving fraud—*In re Estate of Elias*—but *Elias* expressly denied its estate's efforts to shift all general litigation and administration fees as was done in this matter. Illinois Appellate Brief at 13. Instead, the *Elias* court entered a judgment for the return of \$471,000 in cash to the Estate that had been fraudulently transferred, and then held that only those estate attorney fees specifically incurred for recovery of the fraudulently converted \$471,000 could be fee-shifted to McDonnell to punish her fraudulent "wrongful conduct" because she "breached her fiduciary duty and fraudulently transferred all sums and personal property in question." *Id.* at 1038. Illinois Appellate Brief at 13. As to all other estate attorney fees and costs, *Elias* held: "We further instruct that the remaining amount of attorney fees and costs incurred for estate administration not related to McDonnell's wrongful conduct is to be assessed against the estate." *Id.* (emphasis added). Illinois Appellate Brief at 13. Though *Elias* expressly denied general fee-shifting and stated a court's equitable powers to fee-shift could only be used to remedy fraud, the trial court here used *Elias* as its basis for its new unprecedented regime of general fee-shifting. Illinois Appellate Brief at 13.

C. The Appeals to the Illinois Appellate and Supreme Courts.

On appeal to the Illinois Appellate Court, Dr. Rao argued that this new unprecedented punishment of fee-shifting without fraud or a sanctionable pleading was a retroactive penalty that violated her constitutional due process rights:

Dr. Rao further directs this Court to the arbitrary, capricious and unfair nature of the trial court sanctioning Dr. Rao under its completely new doctrine even though Dr. Rao made court filings in full compliance with Rule 137—and in fact this is a violation of her due process rights. A retroactive change in the law that imposes a new duty is prohibited as a violation of the due process clauses of the Illinois and United States Constitution, and the legislature itself is without authority to enact such a law even if that is its express intention. [Citation omitted]. Due process and fairness considerations prevent imposing retroactively a duty that did not previously exist. *Id.* Dr. Rao properly presumed that if she filed litigation meeting the pleading standards under Rule 137 and the history of precedents applying Rule 137, she would not be sanctioned at all, much less over \$360,000 in fees and \$532,807.88 total. The trial court's retroactive imposition of its new filing standard was thus also a violation of due process and must be reversed. *See id.* (retroactive duty cannot be imposed). Illinois Appellate Brief at 28-29.

The brief further detailed how it was an enhanced Constitutional violation to receive an entirely new retroactive punishment merely for exercising the due process right to be heard in the courts:

Dr. Rao also had a constitutional right to be heard under procedural due process in the trial court and on appeal. [Citation omitted]; *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985). Accordingly, as long as her pleadings were compliant with Rules 137 and 375, she should not be punished by the trial court for exercising her constitutional due process rights even if the odds were against her. Illinois Appellate Brief at 26.

Dr. Rao's appellate brief concluded its due process section by stating that "in the entire history of Illinois law, there has never been a case where an adversarial party was forced to pay for the opposing party's fees absent a contract, statutory authority, punitive damages, or a violation of Rule 137." Illinois Appellate Brief at 31.

Dr. Rao's Brief had further noted that this also was not a case of sharing fees from a joint benefit obtained under the "equitable contribution" doctrine where: "As the Supreme Court explained in *Roe v. Estate of Farrell*, the doctrine of equitable contribution means a party pays its fair share of the costs from an obligation arising after such party receives a joint benefit with another—it 'results from the principle [of contribution] among joint debtors, co-sureties, co-contractors, and all others upon whom the same pecuniary obligation arising from contract, express or implied, rests.'" 69 Ill. 2d 525, 532-533 (1978),

quoting J. Pomeroy's *Equity Jurisprudence* (5th ed. 1941) (vol. 2, sec. 411). Illinois Appellate Brief at 14.

For the appeal of the granting of Anita's fee-shifting Motion, Appeal No. 1-21-0465, the Estate of Rao party and estate administrator Midland Trust Company took no position on Anita's fee-shifting motion in the trial court or on appeal. App.21a.

The Illinois Appellate Court affirmed in this matter, holding that the American Rule does not prohibit or even apply to fee-shifting in Probate Court or resulting appeals because the Estate is not an adversary to anyone in Probate Court litigation. App.23a. The Appellate Court held that the trial court in a "proper exercise of its equitable power" could make Dr. Rao, instead of the Estate itself, pay all such Estate fees, expenses and costs. App.24a. The Appellate Court held that the allocation of Midland's administrative fees and costs against Dr. Rao was proper because these additional administrative matters resulted from "meritless filings" of Dr. Rao (App.23a)—though "meritless" here means only unsuccessful as none of Dr. Rao's filings have been sanctioned as improper either in the trial court (App.55a), the Illinois Appellate Court or Supreme Court, or in this Court in her prior petition for writ of certiorari. App.75a-76a.

Dr. Rao then filed her petition for leave to appeal to the Illinois Supreme Court, making the same due process arguments as above in her Argument Section D titled thus: "The decision is contrary to the due process guaranty by severely sanctioning Dr. Rao without prior warning for litigation in full compliance with Rule 137 and Rule 375." App.76a. Dr. Rao again wrote the entire block section above, including: "A retroactive change in the law that imposes a new

duty is prohibited as a violation of the due process clauses of the Illinois and United States Constitution * * *. Due process and fairness considerations prevent imposing retroactively a duty that did not previously exist. [Citation omitted].” App.77a. The petition continued: “Dr. Rao properly presumed that if she filed litigation meeting the pleading standards under Rule 137 and the history of precedents applying Rule 137, she would not be sanctioned at all, much less over \$360,000 in fees and \$532,807.88 total. The trial court’s retroactive imposition of its new filing standard was thus also a violation of due process and must be reversed. *See id.* (retroactive duty cannot be imposed).” App.77a.

Dr. Rao now files her Petition for Writ of Certiorari to this Court, seeking reversal of the Illinois Appellate Court order and vacating the entire shifting of fees and expenses against Dr. Rao totaling \$532,807.88. Such reversal will also prevent the trial court’s order directing future fee-shifting in this matter, including for fees incurred in this very appeal on this fee-shift issue. App.18a.



ARGUMENT FOR ALLOWANCE OF THE WRIT

Petitioner was denied the constitutionally mandated protection of due process to protect her property rights when the Illinois court retroactively imposed a new fee-shifting regime that had never before occurred under Illinois law.

I. REQUIREMENTS OF CONSTITUTIONAL PROCEDURAL DUE PROCESS

The Due Process Clause of the Fourteenth Amendment prohibits state action that deprives any person of life, liberty, or property without due process of law. U.S. Const., amend. XIV, § 1. The Due Process Clause protects the interests in fair notice and repose that may be compromised by retroactive application of new law. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 266 (1994); *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 17 (1976). A justification sufficient to validate prospective application of a law under the Clause “may not suffice” to warrant its retroactive application. *Landgraf*, *id.* This Court in *Landgraf* warned that a new law can “sweep away settled expectations suddenly and without individualized consideration”, and further that “responsivity to political pressures poses a risk that it may be tempted to use retroactive legislation as a means of retribution against unpopular groups or individuals.” *Id.*

While the administration of an estate is a state court issue, the Fourteenth Amendment mandates that the state must apply satisfactory constitutional due process even to their own state court procedures—“nor shall any state deprive any person of life, liberty, or property, without due process of law.” U.S. Const., Amendment XIV, § 1. Accordingly, this Court has repeatedly applied the due process guarantee to state court procedures on questions of state law, and this Court reversed such state court judgments where the due process guarantee was violated. *Speiser v. Randall*, 357 U.S. 513 (1958) (reversing judgment of California Supreme Court, due process violated in state court hearing procedure as to tax exemption); *Western & A.*

R. Co. v. Henderson, 279 U.S. 639, 644 (1929) (reversing judgment of Georgia Supreme Court, due process violated in state court proceeding where state statute unfairly shifted burden of proof in state court civil action).

II. THE ILLINOIS APPELLATE COURT'S DECISION CONFLICTS WITH THIS COURT'S DUE PROCESS DECISIONS PROHIBITING THE IMPOSITION OF RETROACTIVE DUTIES AND RESULTING PENALTIES.

An important conflict exists between the Illinois Court's decision and decisions of this Court which hold that Dr. Rao was entitled to fair notice under due process of the new fee-shifting legal doctrine imposed here before suffering a fee shift of \$532,807 on grounds that had never previously occurred in Illinois law. Such fair notice may have changed Dr. Rao's pursuit and continuation of litigation in the trial court and on appeals, and it is fundamentally unfair and violative of her due process rights to receive such retroactive punishment after complying with all pleading requirements and without any prior notice.

This Court found a due process violation under similar circumstances that occurred in *Usery*, which found a law imposing retroactive liability on coal companies for certain coal miners' costs unconstitutional where "their conduct may have been taken in reliance upon the current state of the law, which imposed no liability on them." *Usery*, 428 U.S. at 17. Likewise here, Dr. Rao conducted her litigation in reliance on the current state of the law that there would be no fee-shifting if she litigated in compliance with pleading requirements established by the Illinois Supreme Court Rules and the sanction precedents interpreting

those rules. *See also Martin v. Hadix*, 527 U.S. 343, 360 (1999) (“To impose the new standards now, for work performed before the PLRA became effective, would upset the reasonable expectations of the parties”); *Landgraf*, 511 U.S. at 277-78 (retroactive application of fee-shifting law does not comply with due process if it imposes additional or unforeseeable obligations upon a party).

Nor is it consistent with due process to call such fee-shifting merely an “equitable contribution” where Dr. Rao did not receive any benefit from the Estate litigation she is now paying for—“taking the property or money of one and transferring it to another without compensation” is a due process violation. *Railroad Retirement Bd. v. Alton R.R.*, 295 U.S. 330, 360 (1935); *see also* J. Pomeroy’s *EQUITY JURISPRUDENCE* (5th ed. 1941) (vol. 2, sec. 411) (equitable contribution requires initial joint obligation under contract or otherwise).

Attempting to lawfully thwart a substantial proposed medical malpractice settlement (as against her deceased mother’s wishes for a public jury determination of wrongdoing) did not make Petitioner a popular litigant—Dr. Rao was going up against the financial interests of contingent fee attorneys involved as well the desire of the judge to clear litigation from his calendar. But as this Court emphasized in *Landgraf*, securing due process is especially important in cases such as here to prevent retroactive laws “as a means of retribution against unpopular groups or individuals.” *Id.* There will always be numerous cases across the country where litigants are unpopular with attorneys and judges for various reasons, and this case presents an important opportunity for this Court to ensure all such parties receive the due process protections that all

Americans are entitled to receive under our Constitution.

III. THE ILLINOIS COURT'S DECISION ALSO CONFLICTS WITH THE DECISIONS OF THE HIGHEST COURTS OF OTHER STATES THAT DENIED REQUESTS TO BEGIN NEW FEESHIFTING ON AN EQUITY BASIS IN CONTRAVENTION OF THE AMERICAN RULE.

Poorer litigants across the country are relying on the American Rule every day when they choose to participate in litigation. Thus, it is of great importance that this Court ensure that all such litigants do not feel the chill that their due process rights could be violated with an unexpected departure from the applicable American Rule even for litigation in full compliance with state pleading requirements.

As most cases have a winner and a loser, not surprisingly the high courts of other states have also heard requests to depart from the American Rule on grounds of equity but have rejected such requests, and the Illinois case here conflicts with these decisions as well. In New York, the Court of Appeals explained its decision upholding the American Rule:

In contrast with other legal systems, such as that in Great Britain, it has now long been the universal rule in this country not to allow a litigant to recover damages for the amounts expended in the successful prosecution or defense of its rights (*see, generally, Alyeska Pipeline Co. v. Wilderness Soc.*, 421 U.S. 240, 247-259; *Fleischmann Corp. v. Maier Brewing Co.*, 386 U.S. 714, 716-717; *Goodhart, Costs*, 38 YALE LJ 849, 873-874). Though not exempt

from criticism (see Ehrenzweig, Reimbursement of Counsel Fees and the Great Society, 54 CAL L REV 792), this practice reflects a fundamental legislative policy decision that, save for particular exceptions (see, e.g., CPLR 8303) or when parties have entered into a special agreement (*Tyng v. American Sur. Co.*, 174 NY 166), it is undesirable to discourage submission of grievances to judicial determination and that, in providing freer and more equal access to the courts, the present system promotes democratic and libertarian principles. (see McCormick, *Counsel Fees and Other Expenses of Litigation as an Element of Damages*, 15 MINN L REV 619, 641).

Mighty Midgets, Inc. v. Centennial Insurance Co., 47 N.Y.2d 12 (1979). The West Virginia Supreme Court likewise held: “The American practice of generally not including attorney’s fees in costs was a deliberate departure from the English practice, stemming initially from the colonies’ distrust of lawyers and continued because of a belief that the English system favored the wealthy and unduly penalized the losing party.” *Sally-Mike Properties v. Yokum*, 179 W. Va. 48, 52, 365 S.E.2d 246, 250 (1986). *Sally-Mike* continued: “While the American rule of nonrecovery of reasonable attorney’s fees as “costs” of an action, absent a contrary agreement of the parties or express allowance under a statute or rule of court, is subject to some criticism, the existing equitable exceptions, such as the ‘bad faith’ exception, alleviate much of the criticism of the general rule. Moreover, the American rule

promotes equal access to the courts for the resolution of bona fide disputes.” *Id.*

This Court should ensure there is a uniform body of state and federal law that litigants have the right to be heard to protect their rights and property without the worry that they could be retroactively subject to a devastating new fee-shifting judgment on general equity grounds that never existed previously and are not codified in any statute or rule. The Illinois Appellate Court decision here may be cited as persuasive authority under Illinois Supreme Court Rule 23, and the case will appear on electronic case databases and term searches throughout the country as authority to retroactively punish unpopular litigants simply on a new purported “equity” doctrine whenever their valid litigation effort is unsuccessful. The trial court found such “equities” present merely because it felt Dr. Rao should “pay for choosing her mother over the estate” (App.53a.), and a vague formless equity standard that allows fee-shifting punishment for the very filial loyalty held dear by civilized society would allow new unforeseeable fee-shifting against any unpopular litigant based on any purported “equity” basis whatsoever. Even the threat of such standardless fee-shifting would substantially impair the equal access to the courts that the American Rule promotes in the first place.



CONCLUSION

Petitioner is entitled to constitutional due process that prohibits retroactive application of a new fee-shifting regime that defeats petitioner's expected rights to conduct litigation without added fee-shifting should she file her pleadings in compliance with all actual requirements. The impact of any fee-shifting law change is a universal issue, as is the ongoing reality of unpopular litigants asserting their rights. Any uncertainty and confusion in the application of required due process on fee-shifting should be corrected to ensure proper constitutional safeguards and consistent application of these principles across this country. For all the reasons above, Petitioner Dr. Padma Rao respectfully requests that this Court grant this Petition for Writ of Certiorari.

Respectfully submitted,

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