

Case No. 23-1306

In The
Supreme Court of the United States

LINDA SMITH and KIRK SIDDELL,
Petitioners,

v.

**DAVID R. HEILMAN, TRUSTEE OF
THE RALPH A. SIDDELL LIVING
TRUST AND THE WILLIAM H.
JOHNSON JR. LIVING TRUST,**

Respondent.

**On Petition for Writ of Certiorari
to the Michigan Court of Appeals**

**SUPPLEMENTAL BRIEF PURSUANT TO RULE
15, ¶8 OF THE RULES OF THE U.S. SUPREME
COURT IN SUPPORT OF THE PETITION FOR
WRIT OF CERTIORARI**

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Petitioners Linda Smith and Kirk Siddell, hereby submit a Supplemental Brief pursuant to Rules of the U.S. Supreme Court, Rule 15, ¶8, in support of their petition for writ of certiorari, to call attention to a recent decision of this Court that is applicable to Petitioners' arguments now that Respondent has filed a waiver to file a brief in opposition.¹

¹¹ Unless this Court requests a response from Respondent, pursuant to Rules of the U.S. Supreme Court, Rule 15, ¶2, Petitioners presume Respondent's waiver of a brief in opposition has waived any objection to the questions presented or following facts and law:

- (i) On 3/8/2017 and 4/19/2017, Ralph Siddell received personal care and supervision as defined under §750.145m(m) and was a vulnerable adult under §750.145m(u)(i) and (iii) and §750.174a(15)(c) and Respondent was prohibited from obtaining an interest in Ralph's money or property in violation of §750.174a(1) and §750.174a(7).
- (ii) After 8/30/2019, Respondent failed to comply with his duty to disclose all material facts under §700.7814(1), §700.7814(2);
- (iii) Respondent failed to comply with §700.1102 requiring the application of statutory definitions §700.1107(k)—“Terms of the trust”; §700.1107(n)—“Trust,” App.B8-B9), and §700.7103(n)—“Trust Instrument,” (App.B15), to §700.7604(1)(b), or
- (iv) The notice to Petitioners under §700.7604(1)(b) failed to include all information they were statutorily and constitutionally entitled to receive under Ralph's Trust, or failed to “adequately disclosed the existence of a potential claim for breach of trust” (§700.7905(1)(a)—App.B23), and
- (v) that Respondent's circumvention of duties and fraudulent concealment tolls the statute under §700.1205(3).

**I. *Harrow v. Department of Defense,*
601 U. S. ____ (2024).**

On 5/16/2024, while this petition and appendix were being printed and assembled, this Court decided *Harrow v. Department of Justice*, 601 U.S. ____ (2024), involving an appeal to the Court of Appeals for the Federal Circuit, filed by Stuart Harrow more than 120-days after the Merit System Protection Board's final order issued denying relief for the recovery of approximately \$3,000.00. Mr. Harrow's appeal requested equitable tolling, but the Federal Circuit denied the tolling request, holding 5 U.S.C. 7703(b)(1) was jurisdictional and tolling prohibited.

Mr. Harrow's position, supported by five amicus curiae briefs, including one from eleven legal scholars experienced in civil procedure, federal jurisdiction, and related subjects, argued the 60-day deadline under §7703(b)(1) did not contain a "clear statement" that Congress intended the rule to be jurisdictional, that it is merely a non-jurisdictional "claims-processing" rule, subject to equitable tolling for good cause.

"Section 7703(b)(1) states that an appeal 'shall be filed within 60 days after the Board issues notice of the final order.' Although the deadline is stated in mandatory terms, this fact is 'of no consequence' to the jurisdictional issue. *Id.*, at 411. 'What matters instead' is whether the time bar speaks to the court's jurisdiction. *Ibid.* And §7703(b)(1) does not." *Harrow Syllabus, Supra*, p. 2.

This Court vacated and remanded, holding that “[a]lthough the procedural rules that govern the litigation process are often phrased in mandatory terms, they are generally subject to exceptions like waiver, forfeiture, and equitable tolling.” *Harrow*, Syllabus at p. 1. “[T]his Court will ‘treat a procedural requirement as jurisdictional only if Congress ‘clearly states’ that it is.’ *Boechler*, 596 U. S., at 203 (quoting *Arbaugh v. Y & H Corp.*, 546 U. S. 500, 515 (2006)),” *Harrow*, 601 U.S. ___, at 3, and that §7703(b)(1) is a non-jurisdictional, run-of-the-mill “claims processing” limitations period, not from one court to another, but from an agency, subject to equitable tolling, to be settled by the Federal Circuit on remand.

Section 700.7604(1)(b) (Petition, pp. 28-34; App.B16-B17) is far less “mandatory” or “emphatic” than §7703(b)(1) in *Harrow*, lacks a “clear statement” the Legislature intended the statute to be jurisdictional, the notice was not from one court to another, but from Respondent, Petitioners’ fiduciary, and the statute is subject to statutory tolling under §700.1205(3) due to:

- (1) Respondent’s circumvention legal duties to disclose under §700.7814(1), and §700.7814(2),
- (2) the affirmative misrepresentations and silent fraud/fraudulent concealment by Respondent, and his lawyers in violation of §700.1205(3), and *MD, Inc. v. McConkey*, 231 Mich. App. 22 (1998) (Petition, p. 25; App.E74). “Supreme Court precedent clearly indicates that, in order to prove a claim of silent fraud, a plaintiff must show that some type of

representation that was false or misleading was made and that there was a legal or equitable duty of disclosure.” *Id.*, p 31,

(3) the odious mendacity, mail and wire fraud (App.E45, fn.5), perjury in court proceedings (App.E29, ¶(12), false pretenses, and false uttering and publishing by Respondent, and his lawyers, and

(4) Attorney Robert Brower's concealment of Petitioners' interests under the 2012 Amendment to Ralph's Trust until 12/17/2020, that revealed Respondent's self-dealing in violation of §700.1214 and §750.174a(1) on 3/8/2017, when Ralph was a vulnerable adult “as defined in section 145m [App.B29], whether or not the individual has been determined by the court to be incapacitated.” (Brackets added.) §750.174a(15)(c) (App.B33)

“[E]ven when the time limit is important (most are) and even when it is framed in mandatory terms (again, most are),” *Kwai Fun Wong*, 575 U.S. 402, 410-411 (2015), the time limit under §700.7604(1)(b) was “just [a] time limit[], nothing more.” *Id.*, at 412.” *Harrow*, at 4. The statutory text of §700.7604(1)(b) “is mundane statute-of-limitations language, saying only what every time bar, by definition, must: that after a certain time a claim is barred.” *Kwai Fun Wong*, 575 U.S. at 410 “The provision, we reasoned, ‘does not define a federal court’s jurisdiction over tort claims generally, address its authority to hear untimely suits, or in any way cabin its usual equitable powers.’ *Id.*, at 411.

In Michigan, “*Rowland, Trentadue, and McCahan* each demanded ***strict*** compliance with statutory limitations and ***notice requirements*** in the context of legislatively granted rights rather than rights granted under the Constitution.” (Emphasis added.) *Mays v. Governor*, 506 Mich. 157, 204 (2020) The Michigan Appeals Court’s indifference to the strict “***notice requirements*** in the context of legislatively granted rights,” and failure to grant statutory tolling for Respondent’s fraud and fraudulent concealment, essentially treated §700.7604(1)(b) as jurisdictional by holding that “[i]ncluding irrelevant terms from superseded documents in the notice required by § 7604 arguably would muddy the law governing trusts and unsettle settlors with the possibility that a beneficiary unhappy with the settlor’s instructions would commence trust-depleting litigation to obtain the distribution reflected in a superseded document.” (App.A14, fn. 2) Stated differently, the Appeal’s Court’s holding left in its wake that ***no one could ever legitimately contest the last amendment of a trust for self-dealing, fraud or undue influence***, which is an absurd result, that conflicts with fundamental trust laws in Michigan, and across this Nation.

This Court has recognized that treating a litigation requirement as jurisdictional has significant practical consequences (*see, Henderson v. Shinseki*, 562 U.S. 428, 434 (2011)—“This question is not merely semantic but one of considerable practical importance for judges and litigants.”), and can alter

the “normal operation of our adversarial system,” *id.*, for all courts must enforce a jurisdictional prerequisite on their own initiative—whether waived or forfeited (see, e.g., *Sebelius v. Auburn Regional Medical Center*, 568 U.S. 145, 153 (2013)), because a lack of subject-matter jurisdiction may be raised at any time, and may adversely affect the fairness and efficiency of the judicial system, since dismissal may be required after considerable time and financial resources have been expended. *Wilkins v. United States*, 598 U.S. 152, 157-58 (2023) (“When such eleventh-hour jurisdictional objections prevail post-trial or on appeal, ‘many months of work on the part of the attorneys and the court may be wasted.’” (quoting *Henderson*, 562 U.S. at 435)).

As in *Harrow*, the result in this dispute is irreconcilable with this Court’s guidance on “the ‘critical difference[s]’ between true jurisdictional conditions and nonjurisdictional limitations on causes of action,” *Reed Elsevier v. Muchnick*, 559 U.S. 154 (2010), and irreconcilable with due process under the Constitution, and this Court’s holding that “the ‘strict letter of general statutes of limitation’ would not be followed, *id.*, at 347,” *Taylor v. Freeland Kronz*, 503 U.S. 638 (1992), where ignorance of the fraud was due to “affirmative acts of the guilty party in concealing the facts, and where the party injured by the fraud remains in ignorance of it without any fault or want of diligence or care on his part.” *Ibid.* And, “[w]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be

alert to adjust their remedies so as to grant the necessary relief. *Bell v. Hood*, 327 U.S. 678, 684 (1946).” *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975).

“Moreover, courts, including this Court, have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.” *Arbaugh v. YH Corp*, 546 U.S. 500, 501 (2006) “The requirement that jurisdiction be established as a threshold matter . . . is ‘inflexible and without exception,’” (see, *Ruhrgas v. Marathon Oil Co.*, 526 U.S. 574, 577 (1999)), “[b]ecause subject-matter jurisdiction involves a court’s power to hear a case can never be forfeited or waived.” *United States v. Cotton*, 535 U. S. 625, 630 (2002).

The notice under §700.7604(1)(b) was defective and insufficient to invoke the six-months limitation period, or personal or subject-matter jurisdiction to allow the probate court to decide Respondent’s motion for summary disposition based on the expiration of the six-months limitations period under §700.7604(1)(b).

Also, assuming arguendo, the probate court had jurisdiction, “MCL 600.308(1) provides that the Court of Appeals has jurisdiction on appeals from all final judgments and final orders from the circuit court, court of claims, and probate court.” (Emphasis added.) *People v. Washington*, 508 Mich. 107, 122 (2021) When Petitioners appealed the probate court’s final

judgment as a matter of right,² attacking the notice under §700.7604(1)(b), validity of the 2017 Amendment to Ralph’s Trust, and ownership of trust assets, the probate court was divested of “subject-matter jurisdiction over those aspects of the case involved in the appeal.” *Id.* at 126-127. And “[i]t is a longstanding rule that defects in a court’s subject-matter jurisdiction render a judgment void *ab initio*.” *Id.*, at 129-130

After the Court of Appeals rendered its judgment on 5/11/2023, jurisdiction remained with the Appeals Court until the Michigan Supreme Court’s disposition of Petitioners’ application for leave to appeal the Court of Appeals’ judgment on March 1, 2024. Thus, during that time, the probate court lacked subject-matter jurisdiction to commence a trial on 3/22/2022, or enter subsequent orders concerning ownership or disposition of trust assets, since the trial involved “aspects of the case involved in the appeal.” *Id.* at 126-127. But due to Attorneys Brower and Caulley’s unethical and egregious usurpation of the representation of *multiple competing interests* to protect Respondent’s personal interests as a beneficiary under the 2017 Amendment, they forged ahead in the probate court to quickly dispose of all personal property, including family heirlooms, to cruelly punish Petitioner Linda Smith.

Estate and trust matters across this Nation, more frequently than not, involve *pro se* parties, claimants

² MCR 7.240(A)

and litigants. Plausibly, a Michigan Probate Court has heretofore improperly construed §700.7604(1)(b), or other courts across this nation have improperly construed similar statutory text and limitations periods, damaging both represented and *pro se* parties.

The Michigan Appeals Court has addressed §700.7604(1) eleven times, and only one opinion is published where the Petitioner conceded “the notice contained all the information required by MCL 700.7604(1)(b).” *In re Trust*, 309 Mich. App. 125, 136 (2015) And, had the Appeals Court published “*Dice v Zimmerman*, unpublished per curiam opinion of the Court of Appeals, issued July 30, 2019 (Docket No. 342608), 2019 WL 3432599, at *2 (Notably, enclosed with the letter were copies of Esther’s will and the Irrevocable Trust established in 2012, but not a copy of the original trust or any of its amendments.’),” (Petition p. 17; App.C17), Petitioners would have been armed with precedent to resolve this dispute in Petitioners’ favor. Petitioners subsequently raised with the Michigan Supreme Court its order of 5/24/2013 stating:

“The application for leave to appeal the February 22, 2013 order of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REVERSE the May 17, 2012 order of the Grand Traverse Probate Court determining petitioner lacked standing, and we REMAND this case to the probate

court for consideration of the issues regarding the ripeness of petitioner's claim in light of MCL 700.7604. The probate court shall also address the alleged conflict of interest by respondent attorney Terry C. Rogers. We DIRECT the probate court to decide all outstanding issues in this case on an expedited basis."

But the Michigan Supreme Court chose to leave unsettled the conflicts of Respondent, and his lawyers, and sufficiency of the notice under §700.7604(1)(b), that clearly involves federal issues and consequences, and permits Michigan Courts to decide who wins or loses not based on sound principles of law, fairness and the Constitution, but upon an improper or illegal motive.

CONCLUSION

The lower courts' opinions did not rest upon solid procedural or legal state grounds, but upon defective jurisdictional defects, as in *Harrow*, incorrect factual assumptions, flawed reasoning, abandoned legal doctrines, and failure to enforce several laws the Michigan Legislature enacted to protect Petitioners, that resulted in an outcome that was harsh, unfair, unjust, *not harmless* and "repugnant to the Constitution," 28 U.S.C. §1257a, that left a gaping chasm that could plausibly damage other inexperienced and elderly *pro se* citizens across this Nation involved in Michigan estate and trust

disputes, now calling for this Court's exercise of its supervisory power to maintain stability in the law, to not only protect Petitioners' statutory and constitutional privileges, but to also aid the U.S. Department of Justice and the Eastern District Department of Justice, who painstakingly strive to combat the type of crimes committed by predators like Edward Jones employees, George Stoutin, and Stoutin's husband, Respondent, David Heilman, when they conspired with their lawyer, Jeffrey Helder, of Cunningham & Dalman, to use their professional training, reputation, and caregiver and fiduciary positions to financially exploit and abuse Ralph Siddell, an elderly and vulnerable adult,³ by fraud, deception, and undue influence to embezzle assets from Petitioners who were also elderly beneficiaries.⁴

**SUPPLEMENTAL REASONS FOR GRANTING
THE PETITION FOR WRIT OF CERTIORARI**

I. The petition before this Court warrants certiorari review since it satisfies not only one of the three well-established categories under Rules of the U.S. Supreme Court, Rule 10 (a) through (c) of the, but satisfies all three.

(a) The Michigan Supreme Court's decision essentially sanctioned conduct that has so far

³ §750.145m(u)(i) and (iii); §750.174a(15)(c)

⁴ §750.174(12)(b)

departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

The lower courts:

- (i) accepted the probate register's hearing and ruling on contested matters that violated §600.834(1) (App.B2), and the probate judge's violation of §600.838(2) (App.B4);
- (ii) lacked personal and subject-matter jurisdiction to determine Respondent's motion for summary disposition due to defective notice under §700.7604(1)(b);
- (iii) were indifferent to the profound conflicts of interest of Respondent and his lawyers in violation of §700.7303(d);
- (iv) failed to enforce §700.7814(1) or §700.7814(2)(a) to (c) -- Respondent's duty to disclose all material facts for Petitioners to protect their respective interests under Bill's Trust and/or Ralph's Trust (App.B19);
- (v) failed to enforce §700.1102, §700.1107(k), §700.1107(n), §700.7103(n) (App.B7-B9) to lawfully construe §700.7604(1)(b) (App.B16);
- (vi) failed to enforce §700.1205(3) (tolling and damages for fraud) (App.B10) and insulated Respondent, and his lawyers, "from the kind of conduct (intentional

misrepresentation) that often creates liability even among strangers,” *Varsity Corp. v. Howe*, 516 U.S. 489, 506 (1996); and

- (vii) Facilitated the fleecing of an elderly and vulnerable adult and elderly beneficiaries.

The lower courts’ conduct so far departed from the accepted and usual course of judicial proceedings that calls for an exercise of this Court’s supervisory power.

- (b) A state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort.

The judgments of the lower courts conflict with long-standing laws and precedents in Michigan, and across this nation, that:

- (i) Define who is an elderly and vulnerable adult, and for the prevention and prosecution for elder and vulnerable adult financial exploitation and abuse. Elder Justice Initiative (EJI) | *Elder Abuse and Elder Financial Exploitation Statutes* | U.S. Department of Justice <https://www.justice.gov/elderjustice/prosecutors/statutes>;
- (ii) trustees *cannot ever* place themselves in conflict with trust beneficiaries (Petition p. 23);

- (iii) trustees owe beneficiaries duties of loyalty, impartiality, and full disclosure of all relevant material facts, including information not requested, for beneficiaries to protect their interests under a trust or to prevent or redress a breach of trust (Petition, p. 25);
- (iv) If a trustee has exclusive information not known to the beneficiary to protect their interests, failure to disclose is actionable fraud (Petition p. 25, 27);
- (v) violation of a duty the trustee owes to a trust beneficiary is a breach of trust (Petition p. 24), warranting damages; and
- (vi) guarantee equal protection of law and due process under the Fourteenth Amendment, §1, of the U.S. Constitution. (Petition, pp. iii, 21, 42, 45).

(c) A state court has decided an important question of federal law that has not been, but should be settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

The Fourteenth Amendment, §1, of the U.S. Constitution states:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

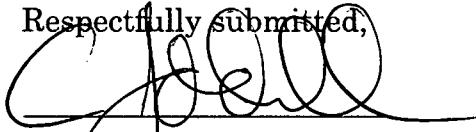
States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The lower courts abridged Petitioners' legislatively granted privileges that conflicts with other state courts of last resort, and has damaged Petitioners without due process of law under the Fourteenth Amendment, §1, of the U.S. Constitution, that warrants this Court to grant, vacate and remand.

Dated July 5, 2024

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Respectfully submitted,

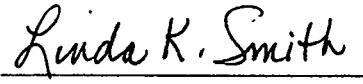


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