No. _____

IN THE
Supreme Court of the United States

LAURIE ANN MCRAY; INFINITY CAPITAL, LLC;
MCRAY MONEY MANAGEMENT, LLC,
Petitioners,

versus

DOW GOLUB REMELS & GILBREATH PLLC,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

When a law firm sues its own clients, demanding an award for both alleged past-due attorney's fees and then attorney's fees for prosecuting the lawsuit against its clients, are the clients' Due Process rights violated when the sued clients:

> (1) were denied the ability to retain substitute counsel, as well as adequate time for newly-retained counsel to prepare for the upcoming trial;
>
> (2) were denied the ability to present evidence, including expert testimony, defending against the law firm's accusations and in support of the clients' counterclaims; and
>
> (3) were ultimately ordered to compensate the law firm for "prosecutorial attorney's fees" that were never paid by the law firm but were instead complimentarily provided by the law firm's legal malpractice carrier, resulting in a windfall to the suing law firm?

LIST OF PARTIES

The parties below are listed in the caption.

CORPORATE DISCLOSURE STATEMENT

Pursuant to SUP. CT. R. 14(b) and 29.6, counsel for Petitioners discloses the following: There is no parent or publicly held company owning 10% or more of Petitioner's stock.

STATEMENT OF RELATED PROCEEDINGS

There are no proceedings that are directly related to this case.

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TABLE OF AUTHORITIES

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The Opinion of the Court of Appeals for the First District of Texas (Houston, Texas) is attached to this Petition as Appendix F and is unpublished, but reported at No. 01-21-00032-CV, 2022 WL 17981671 (December 29, 2022).

The Order by the Supreme Court of Texas (Austin, Texas) denying review of this Opinion was issued on August 4, 2023 (No. 23-0214) and is attached to this Petition as Appendix I. The Order by the Supreme Court of Texas denying the rehearing of the denial of the review of the Opinion was issued on October 27, 2023 and is attached to this Petition as Appendix J.

The Final Judgment of the 333rd District Court of Harris County, Texas was signed and entered on October 16, 2020 and is attached to this Petition as Appendix D.

A prior Opinion issued in this matter from the Court of Appeals for the First District of Texas (Houston, Texas) is published and reported at 554 S.W.3d 702 (Tex. 2018) and attached to this Petition as Appendix A. The Mandate issued by the Court of Appeals remanding the case back to the trial court for final disposition is attached to this Petition as Appendix B.

STATEMENT OF THE JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a), which affords this Court jurisdiction over final judgments rendered by the highest court of a State in which a decision could be had. The First District Court of Appeals in Houston, Texas issued its Opinion in this case on December 29, 2022, and the Supreme Court of Texas denied review of the Opinion on August 4, 2023. Then the Supreme Court of Texas denied the request for rehearing of the denial of review on October 27, 2023, making the time for filing a petition for writ of certiorari with this Court due on January 27, 2024. *See* SUP. CT. R. 13.1. 13.3 (providing that a petition is timely when it is filed within ninety days after the date of denial of rehearing). This Petition was filed within the 90-day deadline and, this, this Court has jurisdiction over this Petition.

STATUTORY PROVISIONS INVOLVED

This case involves the Due Process rights of Petitioners, who are former clients of a law firm, later sued by that law firm ("Law Firm"). Ultimately, Law Firm was awarded past-due attorney's fees, as well as fees and expenses for suing its clients. Law Firm was awarded the prosecutorial attorney's fees despite the fact that those very fees were never paid nor incurred by Law Firm. The award of compensatory damages and attorney's fees was entered after the lawsuit was forced to completion prematurely, without affording Petitioners the right to present expert evidence, retain counsel, or develop defenses to the claims brought by Law Firm.

Statutory law governing trial procedural rules in Texas are controlled by the Government Code:

> The supreme court has the full rulemaking power in the practice and procedure in civil actions, except that its rules may not abridge, enlarge, or modify the substantive rights of a litigant.

TEX. GOVT. CODE § 22.004(a) (vesting Supreme Court of Texas with authority to adopt Rules of Civil Procedure and Rules of Evidence governing trial proceedings in Texas). The Rules of Civil Procedure adopted by the Supreme Court of Texas were interpreted by the Texas state courts in a manner that violated Petitioners' Due Process rights.

Moreover, statutory law creating an exception to the American Rule controlling the parties' ability to collect attorney's fees from others to prosecute causes of action is found in the Texas Civil Practice and Remedies Code:

> A person may recover reasonable attorney's fees from an individual or organization other than a quasi-governmental entity authorized to perform a function by state law, a religious organization, or a charitable trust, in addition to the amount of a valid claim and costs, if the claim is for: (8) an oral or written contract.

TEX. CIV. PRAC. & REM. CODE § 38.001(b)(8). This provision allows a successful litigant in a breach of

contract action to seek recovery of prosecutorial attorney's fees that are paid and incurred to pursue a breach of contract action.

The procedural and substantive proceedings involved in the underlying lawsuit brought by Law Firm against Petitioners must satisfy the federal due process clause, which provides:

> 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.

U.S. CONST. amend XIV, sec. 1.

STATEMENT OF THE CASE

A. Introduction: Rush to Trial with Denial of Due Process

When law firms sues clients, special rules apply. This Petition is spurred by a law firm-initiated lawsuit against Petitioners, former clients of the law firm. The end result was that Petitioners now owe the former law firm six-figures in fees (never paid by the law firm), despite Petitioners being denied the time to retain defense counsel (after their retained counsel fell ill), to develop defensive evidence, or adequate preparation time for the impending trial. While one part of the erroneous award is for past-due fees, significantly, the offensive part purportedly "reimbursed" the law firm for prosecutorial fees that the law firm *never* paid, incurred, or is liable for (the legal services was provided a legal malpractice insurer). In short, while the malpractice carrier funded the law firm's lawsuit against Petitioners (to collect the claimed past-due fees), the state court ordered Petitioners to double-pay these prosecutorial fees as a windfall to the law firm suing its clients.

The underlying record reveals that before and during the appeals (*McRay I* and *McRay II*), the due process guarantees were questioned. And, each new defense counsel sought the right to remedy the denial of due process, with the law firm always opposing. (SCR391). After being forced to trial without adequate preparation time, Petitioners suffered a negative final judgment, now left owing the law firm originally

claimed past-due fees PLUS additional ("prosecutorial") fees *never* paid. (CR44).

B. Factual Background

Petitioners were sued by their former law firm ("Law Firm"), who Petitioners fired after discovering several legal mistakes impacting their decision-making. In response to the termination of the attorney-client relationship, Law Firm sued its clients, Petitioners, resulting in the underlying judgment now appealed to this Court. (CR4).

1. *Petitioners retain and then fire Law Firm.*

In 2012, Petitioners hired Law Firm to defend it in two lawsuits (*Allport* and *Munoz),* consistently paying attorney's fees as they came due. (3RR8; CR16; SCR38 [over $242,000 in fees paid]). Law Firm eventually persuaded Petitioners to mediate and settle the claims, the terms of which required Petitioners to wind down the business of Infinity Capital, LLC and sell all assets. (CR16). But, in 2015, Petitioners learned this recommendation to settle was founded on incorrect legal guidance and breaches of fiduciary duty. (3RR82-83; PE16; PE19).

Specifically, Petitioners learned that the settlement agreement suggested and then constructed by Law Firm was illegal[1] and that Law Firm had

[1](3RR140; PE16; SCR94). The now known-to-be illegal agreement required, *inter alia,* Petitioners (and other entities) to sell and distribute the proceeds in a manner disproportionate to

failed to raise defenses that could have saved Petitioners considerable resources to dramatically alter the terms of the settlement agreement, if any. (SCR295). Learning of these omissions caused Petitioners to lose faith in Law Firm,[2] whose drafted agreement forced Petitioners to sell over $2,000,000 of real estate. (SCR295). Based on the believed breaches of fiduciary duty, Petitioners terminated Law Firm, triggering Law Firm to sue Petitioners. (CR4).

2. *Law Firm sues Petitioners.*

Law Firm sued Petitioners, requiring Petitioners to develop defensive evidence and potential counterclaims regarding Law Firm's failures and breaches of fiduciary duty tied to the illegal and ill-advised settlement agreement. Petitioners desired to investigate counterclaims for professional negligence, breaches of fiduciary duty, and credit/offset defenses. (SCR38). Petitioners believed Sanford L. Dow, of Law Firm, negligently advised and pressured them to settle the case (and future cases) against their best interests. (CR18). After other experts reviewed the case, Petitioners learned Dow's

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the ownership interests of the relevant LLC's six members. (SCR294; PE16). Without a member vote approving the entry of the settlement, Petitioners' representative (Laurie McRay) lacked authority to sign the binding settlement document; however, Law Firm not only failed to advise Petitioners of this requirement, but directly encouraged McRay (even improperly pressuring McRay) into signing the agreement on behalf of Petitioners. (SCR295).

[2]*PPG Indus. Inc. v. JMB/Houston Ctrs. Partners,* 146 S.W.3d 79, 87-92 (Tex. 2004).

conduct led to an unnecessary $1,725,000 award against Petitioners, necessitating the forced sale of most, if not all, assets. (CR18-19). Petitioners sought equitable forfeiture of all Law Firm fees (those already paid and still owed). (CR19, 23).

3. *The fee dispute devolves into acrimony.*

Law Firm's litigation tactics quickly grew contentious.[3] This acrimony, however, caused Law Firm to encourage the Texas trial courts to deny Petitioners their due process rights to defend themselves and to prepare related counterclaims. Upon Law Firm's request, the trial court refused to allow Petitioners to offer expert testimony on fiduciary duties owed based on Law Firm's contention that "discovery had already closed." (SCR88). While the trial court granted Petitioners' right to take certain depositions, Law Firm's successful demand for premature conclusion of the case ultimately denied Petitioners the right to conduct the depositions of Sanford Dow and other pivotal individuals with knowledge of the dispute. (SCR253, 259).

The trial court adopted Law Firm's fast and furious pace for disposition of the case despite the fact that Petitioners' trial counsel suffered severe health problems impacting his abilities to develop evidence, conduct discovery, and adequately respond to Law

[3](SCR262-79) (disagreement over cancelled depositions due to changeout of Petitioners' counsel; denial of access to conference room; canceled depositions); (SCR253) (Law Firm's request for sanctions against Petitioners).

Firm's barrage of legal attacks. (SCR39). Because Petitioners counsel's health problems resulted in, *inter alia,* a failure to depose Law Firm's corporate representative, expiration of the expert designation on fiduciary duty, and other detriments to Petitioners,[4] the trial court granted summary judgment to Law Firm, (CR40), leaving Petitioners without a trial on the merits affording their "day in court." (SCR111).

4. *Summary judgment appealed.*

On appeal, the First District Court of Appeals (Houston) reversed the erroneous summary judgment: "[w]hen interpreting and enforcing attorney-client fee agreements, it is not enough to simply say that a contract is a contract. There are ethical considerations overlaying the contractual relationship." *App.*12*;* (SCR22); *McRay v. Dow Golub Remels & Beverly, LLP,* 554 S.W.3d 702, 705-06 (Tex. App. – Houston [1st Dist.] 2018, no pet.); (SCR42: appellate briefs). The state court acknowledged, but did not reach, Petitioners' due process complaints, reversing the case on other grounds. *Id*.

5. *Post-remand, Law Firm insisted on an immediate trial.*

Despite the appellate court's recommendation to tread carefully and ensure a more thorough process

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[4](SCR39) (detailing Petitioners' trial counsel's health issues and their impact on Petitioners' ability to present their defenses, with Law Firm's continued opposition to continuances); (SCR56-59; SCR42 [appellate brief challenging closed discovery despite health ailments]).

for a law firm suit against clients, Law Firm, undeterred, sought yet another quick disposition of its claim against Petitioners. The same day the state court regained jurisdiction over the reversed case, Law Firm demanded an immediate trial date, opposing Petitioners' requests for more time for their new lawyers to develop defenses. (SCR40). Petitioners' newly-retained trial counsel explained how Petitioners' original counsel's heath issues prevented the conduction of adequate discovery and designation of expert witnesses ready to opine to Law Firm's failures, *i.e.,* due process. (SCR38, 290, 310, 217). Petitioners emphasized to the trial court the appellate court's recognition of the remaining due process complaints, *App.*17*,* but Law Firm bulldozed over that appellate language, insisting an immediate trial without additional time for discovery or expert designations. (SCR40, 290, 309-15).

It is important to point out that Texas's judicial system installs jurists based less on relevant experience and more based on partisan elections, meaning every two or four years (depending on the type of bench [county or district]), voters decide between a Republican judicial candidate or a Democrat judicial candidate, with no requirement based on the candidates' experience in practicing the type of case to be presided upon.[5] The State of Texas

[5]Texas, one of seven states still selecting judges through partisan elections, continues to ignore calls for reformation of the troubled system. Hecht, Chief Justice Nathan, *Change in the Legal Profession and in the Texas Judiciary, The Third Branch,* 50 TEX. TECH L. REV. 717 (2017); *see also* Jerry D. Bullard, et al., *Legislation that Failed,* 2019 Tex. B. J. 18-III (2019) (recounting

has not updated its judicial system for nearly 80 years, allowing individuals licensed to practice any type of law in the state for either four or five years or more (regardless of the type of law practice experience possessed) to run for and being elected to the bench as a Republican or Democrat candidate to then preside over criminal cases, civil cases, or both. One type of industry has successfully lobbied Texas lawmakers to ensure jurists adjudicating their fate to possess at least a modicum of experience in a particular area of law – business law.

Accordingly, for certain business cases filed after September 2024, Texas law created the "Business Court system," eliminating the partisan election process for those jurists. This was an attempt to "streamline" lawsuits brought against businesses in Texas (and insulate those businesses from partisan judicial selection). *Id.* Business court judges, unlike other Texas trial judges, must hold at least ten years' relevant practice experience (complex business litigation) and are vetted by the Governor and Senate,

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failed bills proposing merit-based judicial selection system). Applicants for Texas's newly-created Business Court must possess more robust experience (at least ten years of experience practicing complex civil business litigation or serving as a judge) and are appointed by the Governor upon consent of the Texas Senate. 2023 Tex. H.B. 19, Tex. 88th Legis. (2023, *codified,* Tex. Gov't Code Ann. § 25A.003). This new Texas system, reserved only for business cases, mirrors that in 25 other states, while leaving the fate of Texas litigants falling outside business court jurisdiction to the rare, partisan-selection system allowing all inexperienced attorneys, sometimes without any litigation experience, to accede to the bench by merely placing an "R" or "D" in front of their name on the particular state county ballot. *Id.*

similar to federal judges appointed by the President and approved by the Senate. *Id.* But, litigants outside the "business court" are left to the usual partisan selection process that most states have since eliminated.

In the business contract case filed by Law Firm against Petitioners, the litigation was presided over by three separate jurists, all elected through Texas's partisan selection system. Upon the remand from the state appellate court, a new jurist sat on the bench and presided over the case, recently elected in the partisan selection system, and this jurist sided with Law Firm, denying Petitioners pleas for due process in this lawsuit filed against them by their former lawyers:

> I'm going to reset it for trial. . . . **I'm going to reiterate that I will not entertain a motion to modify the docket control order or the motion for continuance**.

(2RR6-7) (emphasis added).

Petitioners eventually had three separate jurists, installed through the partisan selection process, presiding over their cries for trial court due process, leaving their complaints easier to overlook when a law firm, fortified by funded malpractice carrier's defense counsel, whereas Petitioners were forced to locate, secure, and pay out of pocket for all defense counsel. This consistent alternating of jurists, who often seek election-re-election based on the endorsement and campaign contributions from local law firms, could question the jurists' ability to fully

appreciate previously-raised due process concerns caused by their predecessor jurist and to treat non-law firm litigants, who rarely appear before them, equally to law firms, consistently appearing in court and usually heavily involved in partisan state judicial selection processes (whether by endorsing, contributing financially, or opposing particular judicial candidates). While Texas politics left Petitioners' presiding judge in flux, Petitioners' case suffered from its original counsel's significant illness and based on Law Firm's consistent push for premature adjudication, was never allowed to veer back on course.

6. *Forced to trial immediately, Petitioners struggle to retain counsel, limiting their defenses and presentation of evidence.*

Post-remand, Petitioners' request to reopen discovery and present defensive expert evidence was denied. (CR370; 2RR4). With the unreasonable order of an immediate trial setting, despite the complaints for due process, and after being denied further time to develop the discovery period lost due to their trial lawyer's recently-revealed illness, Petitioners were eventually able to secure counsel, who filed a sworn continuance motion based on a preexisting medical appointment. (SCR319). As usual, Law Firm opposed. As a result, Petitioners' currently-retained counsel (who came on board assuming due process guarantees would be honored) sought withdrawal as counsel based on inadequate preparation time. (SCR324, 376). Law Firm, after learning Petitioners' current counsel

may be required to withdraw, pushed harder: "[t]here is no reason to accommodate Mr. Tausk's personal schedule if he will not be counsel in the case with it is tried." *Id.*

Law Firm stringently downplayed the overall causative effect of granting withdrawal while simultaneously denying a postponement of the discovery period termination and upcoming trial date, making it nearly impossible for Petitioners to secure any reasonable counsel who would put himself/herself in a position of preparing for a complex commercial litigation case on a moment's notice. This type of manipulation of the Texas procedural discovery rules resulted in trial processes being strict in theory and fatal in fact. Adam Winkler, *Fatal in Theory & Strict in Fact: An Empirical Analysis of Strict Scrutiny in the Federal Courts,* 59 VANDERBILT LAW J. 793 (2006). This meant that, on paper, it appeared Petitioners were represented by counsel, but in fact, Petitioners spent the bulk of time that could have been used working up the discovery and evidentiary points seeking a trial counsel who would submit to appearing and defending a trial on a moment's notice because Law Firm repeatedly demanded an immediate trial, which was capitulated to by each newly-elected (through the partisan process) jurist, who was not required to hold experience in complex commercial cases based on Texas's judicial selection system.

Law Firm recklessly sought quick disposition despite the fact that some of the entities sued could

not represent themselves *pro se.*[6] This left Petitioners in a Hobson's Choice. In light of Law Firm's forced premature disposition (consistently granted by partisan-elected jurists), Petitioners could not represent themselves *pro se*, but the same procedural rules allowed partisan-elected jurists to submit to law firm's demand for immediate disposition, denying Petitioners time to secure able and willing substitute counsel (after original counsel fell ill and missed several deadlines and failed to conduct adequate discovery to defend Petitioners against the many claims brought by Law Firm). Petitioners, making its arguments to the second of three jurists presiding over this singular trial proceeding, found their complaints falling on deaf ears, thus denying Petitioners any meaningful measure of their federal constitutional guarantee of due process. In short, the Texas trial court denied the requested limited discovery and expert designations, (SCR377), setting a trial date in the near future, obeying Law Firm's demands. (SCR378; 2RR7).

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[6](SCR327). Texas requires corporate defendants be represented by lawyers, while non-corporate defendants may appear pro se. *Unauthorized Practice of Law Comm. v. Am. Home Assurance Co., Inc.,* 261 S.W.3d 24, 33 (Tex. 2008) (citing Texas Business Corporation Act Section 2.01(B)(2) forbidding corporate defendants from practicing law). The Texas Supreme Court explained it has the right to "regulate the practice of law in Texas for the benefit and protection of the judicial system and the people as a whole," and deciding private individuals can appear *pro se* but corporate parties must retain and fund lawyers when they are sued. *In re Nolo Press/Folk Law, Inc.,* 991 S.W.2d 768, 777-89 (Tex. 1999).

Petitioners eventually retained substitute counsel, albeit shortly before the trial date. (SCR379). New counsel filed an "emergency" continuance request, asking for time (45 days) to represent his clients at trial and advising the parties were engaging in good faith settlement talks. [7] Again, Law Firm opposed. *Id.* The cycle repeated, the same as what led to the first remand on appeal, with an end result of more litigation than should ever be needed for a law firm's lawsuit against its own clients. (SCR391). Law Firm was driven by its desire to prevent Petitioners from conducting full discovery, availing themselves of expert witnesses at the trial on the merits, and allowing Petitioners' the ability to retain counsel, as is required by state law, and permitting the newly-retained counsel adequate time to review the case mid-stream and defend Petitioners' against Law Firm's claims.

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[7](SCR386). Law Firm fought any further delay, arguing Petitioners' newly-retained substitute counsel was a great attorney: "[Petitioners'] new counsel, Mitchell Katine, is a well-regarded and seasoned Houston attorney. When he chose to appear as Defendants' attorney-in-charge, he obligated himself to be bound by the Court's schedule, including the upcoming trial." (SCR386). Unsurprisingly, Law Firm changed course when the tables were turned, arguing the previously "respected" defense lawyer filed "responses in bad faith by Lawyers and were wholly inadequate." (CR507). Ultimately, Law Firm demanded no further delays and threatened sanctions: "until such time as Post-Judgment Discovery is answered in full, all documents produced, and all sanctions are paid, as outlined in the proposed Order." (SCR507, 613, 617).

C. Trial court proceedings after the appellate court remand.

Over the objections of Petitioners, who asked for more time to secure substitute trial counsel and more time to conduct the discovery omitted by its previous, ill trial counsel, the bench trial occurred in late 2019, with Law Firm's original counsel (retained 2012) and Petitioners' newly-retained counsel (after several had been forced to abandon service based on Law Firm's forced premature disposition (adopted by the Texas trial court), focused on Law Firm's claim for past-due *Munoz* and *Allport* fees, in addition to Law Firm's claim it was entitled to exorbitant interest rates on the past-due fees. (3RR8) (seeking $429,328).

1. Law Firm's trial testimony.

Sanford Dow, representative and attorney at Law Firm who Petitioners had been granted the right to depose before *McRay I* but had never been able to accomplish due to Law Firm's pressure to an immediate trial date, confirmed through sworn testimony that he did indeed pressure Petitioners' trial representative, Laurie McRay, to enter an attorney-client agreement that allowed him to charge a 12% interest penalty if fees were not paid according to the contract. (3RR11, 37). While Petitioners always paid invoices on time, once they learned of Law Firm's illegal and erroneous advice that led to the improper and unfair resolution of the lawsuit from which Law Firm had been hired to protect Petitioners, Petitioners terminated the attorney-client relationship based on cognizable distrust, ceasing funding the fees requested

by Law Firm for negligent advice and seeking forfeiture of the fees already paid that led to an illegal settlement agreement.[8] On cross-examination, Dow's testimony less than forthcoming, with him, despite being lead counsel for Petitioners on the two preceding matters, "not recalling" most of the factual information. He also "could not remember" if he discussed either the jury trial waiver or the high interest rate imposed in the contract with Petitioners. (3RR68-69).

Dow admitted his charged fees, in the amount of $70,000, seemed exorbitant considering the property in question subjected to the lawsuit was worth only $120,000. (3RR70-71). Dow recounted that an attempt to settle the *Allport* and *Munoz* matters did not go as planned. After a 16-hour mediation, (3RR74-75), Dow agreed that **the client**, not the lawyer, should have decided whether to settle. (3RR76). But, nevertheless, frustrated by Petitioners' repeated questioning of the validity and fairness of the settlement offer, pushed for the opposite just to dispose of the complex case. He could not remember if he raised his voice at the end of the mediation when he purportedly yelled at Petitioners' representative, McRay, to pressure her to authorize the settlement agreement, (3RR78), which was later was revealed to be illegal and in violation of Texas law. (PE16; 3RR78-79).

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[8](3RR39, 54; PE16, 92). After McRay, as representative for Petitioners, signed the settlement urged by Law Firm, an arbitrator determined that the sale of assets urged by Law Firm to its client, Petitioners, was fraudulent. (3RR58; PE21).

Dow confirmed, post-settlement, Petitioners questioned the illegality of the settlement agreement recommended by Law Firm, (3RR79-80; PE101), where he accepted responsibility for failing to investigate if the suggested settlement agreement was illegal on its face. *Id.* But, after only Petitioners raised the concept of potential malpractice did Law Firm first investigate its recommended yet illegal course of action:

> Q. Did you investigate whether or not this settlement agreement was a violation of the Texas Business Organizations Code?
>
> A. It's not in my opinion.
>
> Q. Did you convey your findings to Ms. McRay.
>
> A. No. I conveyed them to my lawyer.

(3RR80-81).

Law Firm failed to prepare for the mediation. Leaving it to pressure Petitioners into a quick, unfair, and unjust settlement that, in all actuality, was also illegal, leading to a second, expensive and time-consuming mediation. (PE16). The appellate record revealed that fact issues, resulting from contradictory testimony, about who failed to attend the mediation and how much time and litigation expense was yet again lost by Petitioners due to Law Firm's breaches of fiduciary duty. *Id.* Indeed, one of the issues prompted by the unnecessary second mediation

(prompted by Law Firm's negligent advice at the first mediation) was whether Law Firm's advice also resulted in waiving Petitioner's right to collect lost attorney's fees for the repetitive mediation processes.[9]

Through testimony, Dow explained his legal malpractice insurer came on board once Petitioners filed a counterclaim. Meaning Law Firm had its prosecutorial counsel funded Law Firm's case for purportedly past-due fees by Petitioners. In short, for whatever reason, Law Firm's insured nearly the full cost of all attorney's fees to prosecute Law Firm's lawsuit for supposed unpaid fees by Petitioners, as well as defending Law Firm against Petitioners' counterclaims. The insurer required only that Law Firm front a $10,000 retainer. This meant Law Firm was provided "appointed counsel" to sue its own client for alleged unpaid fees, incurring only $10,000 for the overall prosecution. (3RR84-85, 97-98). Eventually, despite being out-of-pocket only $10,000, Law Firm asked for at the bench trial (before partisan-elected trial judge number three) and received an award of six-figures ($167,537) for "prosecutorial fees," all ordered to be paid to Law Firm despite the fact that Law Firm never paid or incurred such fees. (3RR95; PE45-46; PE94).

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[9](3RR81-82). Upon the mediation default, Petitioners' opponent in the *Allport* and *Munoz* case waived attorney's fees recovery. (3RR107). Although Petitioners requested Law Firm to object to Petitioners' opponents' fees, (3RR108), Law Firm refused to object and $307,000 in fees were awarded against Petitioners. (3RR108).

2. *Testimony of Laurie McRay, Petitioners' Representative*

Over Law Firm's objection, Laurie McRay testified on behalf of Petitioners. (3RR98-100). McRay shared that Dow never discussed the imposed fee agreement, interest rate, or jury waiver with her, (3RR100-01), despite Petitioners' payment of substantial amounts for the *Munoz* and *Allport* defensive fees. (3RR101-02, 116). McRay recounted that Law Firm refused to investigate whether her professional insurance would fund some of the *Allport/Munoz* fees. (3RR102; PE103). This is ironic considering Law Firm, simultaneously, benefited from funded fees from its own malpractice carrier. McRay described the lengthy and heated mediation. (3RR103).

Dow exaggerated that Petitioners' companies could go bankrupt, that McRay would lose her CPA license and advisory license, and that she could go to jail all in an effort to pressure an immediate settlement of the pending lawsuits. (3RR104). McRay experiencing a poor emotional state because of Dow's constant barrage of exaggerated threats. She testified "was sobbing, sobbing. [Dow] kept giving me tissue." (3RR105). McRay, trusting in the counsel she had hired and had handsomely paid for advice, ultimately succumbed to the pressure by Law Firm to settle on behalf of Petitioners.

Before signing the settlement, however, McRay recalled holding firm to one point, asking time and

time again of Law Firm whether the settlement was for "fair market value":

> I just kept saying, none of this is right. And they both kept telling me, There's no justice. I said, No. We need to get to the truth. I have my evidence. Here is the fair market value. And we went over the whole *Allport* case for 16 hours. And it – they kept telling me there is no justice and the truth doesn't matter, and they just – I feel like both of them beat me down mentally.

(3RR105).

McRay continued explaining that her ability to withstand the pressure put upon her by Law Firm finally broke when Dow screamed at her:

Sign the f*cking agreement!

(3RR106). That statement, yelled during a professional legal mediation, was the straw that broke the camel's back.

Finally, McRay submitted, signing the settlement agreement on behalf of Petitioners. (3RR106). But, after visiting with qualified legal counsel experienced in complex commercial litigation, Petitioners learned the urged settlement agreement was actually illegal because the LLC's members had not previously approved McRay's signature binding Petitioners. (3RR109). Petitioners alerted Law Firm of the fallacious advice given (and the advice for which

Law Firm demanded payment of legal fees), but McRay testified Dow "didn't do anything." (3RR110). Petitioners were left to hire yet another law firm, Jackson Walker, to review the legality of the settlement agreement, who confirmed Petitioners' suspicion that the agreement violated Texas law. (3RR113-15).

3. *Trial court ambivalence after the close of evidence.*

Because of the procedural rulings made by the Texas trial court throughout the litigation, Petitioners were prevented from fully developing defenses. The trial court's fast-tracking of the case upon Law Firm's request left Petitioners struggling to locate and retain trial attorney willing to take on this complex litigation manner against a fellow local law firm when the trial judge consistently refused to grant time for newly-retained counsel to prepare for the immediately upcoming trial. Petitioners made the best of what little time they were given while proceeding through trial.

After the trial evidence closed, the Texas trial judge questioned whether Law Firm, itself, could recover prosecutorial fees complimentarily provided by its malpractice insurer, (3RR167-9), but Law Firm insisted it was appropriate (without citation to any law authorizing such a windfall). (SCR408, 410, 469).

4. *After a rush to trial, nearly a year lagged before entry of the Final Judgment (perhaps delayed by the campaign season for partisan judicial elections).*

As recounted, the quick trial setting occurred because of Law Firm insistence. Despite the rush to trial over Petitioners' repeated objections, which in the final analysis denied Petitioners to provide newly-retained counsel time to prepare (or time to designate experts), **over a year passed after the evidence closed without a ruling by the Texas trial judge**. As such, the trial court's violation of Petitioners' right to due process, *i.e.,* precluding Petitioners time to develop evidence to ensure their full day in court based on "judicial efficiency" just to turn around and sit on the completed trial for a year without issuing a final ruling (actually the ruling was issued only after Law Firm reminded the trial court of this case languishing on this docket.) (SCR421).

The one-year delay before a ruling was issued coincided with the "campaign period" imposed on Texas jurists running for partisan election every two or four years. Thus, the system of utilizing partisan elections for jurists to retain their seat on the bench seemed to impact what Law Firm (and the trial court) relied on to deny Petitioners a fair amount of time to prepare and provide expert evidence defensive to Law Firm's claims against its former clients. Thus, despite being forced into trial unprepared and without due process, the trial judge allowed this case, after the close of evidence, to then languish on its docket for

another year, during campaign season, before eventually signing a final judgment just about a month before leaving the bench to allow his newly-elected political opponent to take over. (SCR440, 446).

5. ***After denying Petitioners due process because there was "no more time for delay," the trial court sits on the case for over a year, eventually ruling in favor of Law Firm.***

The trial court's given reason, judicial efficiency, for rejecting Petitioners' repeated pleas for due process to develop their defenses and expert evidence, was sharply contradicted when this same jurist sat on the unfinished case for over a year, eventually ruling for Law Firm only shortly before the trial judge, unsuccessful in the most recent partisan election, left the bench in favor of his newly-elected political opponent. (CR43; CR369; SCR423). While the jurist-factfinder awarded less prosecutorial fees than the exorbitant amount requested by Law Firm, it, nevertheless awarded a sizeable sum, far beyond the $10,000 actually funded by Law Firm. (CR44). In addition to past-due *Allport/Munoz* fees adjudicated as owed, the trial court also adjudged Petitioners liable for well over $100,000 in prosecution-based fees – over ten times the amount paid by Law Firm for the insurance deductible, as well as up to $70,000 in appellate fees (again, which will be paid by Law Firm's insurer as opposed to Law Firm). (CR44).

The trial court entering minimalistic findings of fact, merely mirroring the Final Judgment's

verbiage,[10] leaving Petitioners with little explanation for the reasoning behind the perplexing ruling. The trial court noted of Law Firm's creative billing techniques: "In reaching the actual-damage figures and fee awards, the Court has reviewed all of the billing records, has segregated recoverable from non-recoverable fees, has partially reduced the amounts sought for block billing, and has awarded only amounts that are both reasonable and necessary." (CR48). Despite this, Law Firm's windfall of prosecutorial fees awarded was TEN TIMES the amount actually funded by Law Firm.

6. *Petitioners new trial request is denied.*

Between the time the Final Judgment was issued and Petitioners' new trial was filed, the trial jurist bench was again replaced (due to the partisan judicial election process in Texas), leaving Petitioners' new trial motion to be heard by a third judge. There, Petitioners continued to raise due process complaints,

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[10](CR48). The trial court found Petitioners liable for *Munoz*-case fees in the amount of $22,904 and *Allport*-case fees in the amount of $81,412. *Id.* In addition to that six-figure award for past-due *Allport-Munoz* fees, the trial court also ordered Petitioners to pay Law Firm over $100,000 for fees purportedly incurred to bring this lawsuit against its former clients, *i.e.,* to "prosecute" this breach of contract claim. *Id.* As to the counterclaims and defenses that Petitioners were denied time and evidence to present, the trial court found: (A) "[Petitioners] provided neither legally nor factually sufficient evidence of any breach of fiduciary duty."; (B) "Fee forfeiture is not warranted, factually or legally."; and (B) [Petitioners] provided neither legally nor factually sufficient evidence to support its claim of offset." (CR49).

submitting newly-discovered evidence and arguing its consideration would change the outcome of the case. (CR50, 56, 65-267) (attaching affidavits and 200 pages of transcribed recorded conversations between Petitioners' representative [McRay], Law Firm attorneys, and attendees of the mediation and arbitration). On December 1, 2020, the trial court rejected McRay's extensive evidence and denied the new trial request. (4RR6; CR296).

D. Proceedings in the Texas Appellate Courts

Petitioners case was once again reviewed by the First District Court of Appeals in Houston. After full briefing on the merits was received, the Texas appellate court issued an Opinion on December 29, 2022. *App.F.* In the Opinion, the appellate court recounted the *Munoz-Allport* representation by Law Firm, leaving Petitioners liable for approximately $1.4 million.[11] The appellate court rejected Petitioners' due process complaints, rejecting the error caused by the preclusion of adequate discovery time, designation of expert witnesses, and adequate trial preparation time for Petitioners' substitute trial counsel. *Id.* Surprisingly, despite the undisputed evidence presented at the trial showing Law Firm had "incurred" no prosecutorial fees other than the $10,000 retainer (paid to its malpractice carrier), the appellate court stated that "$197,412.65 in legal fees

[11]The appellate court below noted that the amount adjudged owed by Petitioners ($1,443,164) was to be paid to yet another law firm, who had received "equitable interest in and a lien on the properties." *App.*F at 4.

were ***incurred*** to collect [Petitioners'] unpaid debt." *Id.* (emphasis added).

The appellate court's analysis hinged on the procedural rules adopted by the Supreme Court of Texas under the Texas Government Code. *App.*37-44. The appellate court also approved the trial court's grant to Law Firm of a windfall, affirming the awarded past-due *Munoz-Allport* fees as well as the award of over $100,000 of prosecutorial fees, notwithstanding the undisputed evidence that Law Firm paid no more than a $10,000 retainer for prosecuting this breach of contract action. *App.*44-50. Petitioners' motion for rehearing to the Texas appellate court was denied on February 28, 2023. *App.*H. Petitioners' next appeal, a timely-filed Petition for Review to the Supreme Court of Texas, was denied on August 4, 2023. *App.*I. Petitioners' motion for reconsideration was denied by the Supreme Court of Texas on October 27, 2023. *App.*J. Petitioners now seek review from this Court.

REASONS FOR GRANTING THE WRIT

I. Introduction to the question presented.

As explained by Justice Stephens in *Walters v. Nat'l Ass'n of Radiation Survivors,* William Shakespeare's oft-misunderstood quote, "The first thing we do, let's kill all the lawyers," communicated that lawyers are uniquely positioned to serve as the last safeguard to prevent "a totalitarian form of government."[12] But, lawyers, as the protectors of freedom, can fulfill this role only so long as the public retains faith in them and the legal system. This case reveals why such faith is lacking. At a time when public trust in the legal system has eroded to an all-time low, a case like this presents this Court with the opportunity to hold law firms and their clients accountable while also demanding satisfaction of due process guarantees in lawyer-client disputes.

The Texas case underlying this Petition presents an error of epic proportions and exemplifies the scouring of the last remaining bits of confidence in the legal system, especially when lawyers serve not only as warriors in court to defend their clients against unfair criticisms, but also when lawyers, themselves, aim the judicial process, as a weapon, against their own clients. Here, Petitioners hired Law Firm to defend them in multiple lawsuits, but after timely paying for the legal services over a lengthy period of

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[12]*Walters v. Nat'l Ass'n of Radiation Survivors,* 473 U.S. 305, n.24, 105 S.Ct. 3180, 87 L.Ed.2d 220 (1985) (Stephens, J., dissenting) (quoting W. Shakespeare, KING HENRY VI, pt. II, Act IV, scene 2, line 72).

time, while blindly trusting the advice given, Petitioners were left facing approximately $1.4 million in liability and, even more disturbingly, pressured into signing an illegal and improper settlement agreement to fully and finally resolve the complex litigation handled by Law Firm for Petitioners.

Something did not sit right with Petitioners after the immense pressure heaved on them to quickly settle the *Munoz-Allport* claims. Petitioners investigated the advice given (upon which they based their consent to settle the cases). After hiring additional counsel for a "second opinion," Petitioners learned Law Firm had provided heavily flawed legal advice. In fact, only after Law Firm badgered Petitioners to the *Munoz-Allport* settlement (and bulldozed Petitioners' representative, McRay, to sign off on the agreement on behalf of Petitioners) did Petitioners uncover the pressured agreement was illegal and in violation of Texas's legal corporate statutory governance. After discovering the cascade of errors upon which Petitioners' settlement agreement was based, Petitioners lost trust in Law Firm. Considering the repetitious legal mistakes imposing considerable liability on Petitioners, Petitioners terminated the attorney-client relationship -- only to be sued by their former law firm.

But, the Texas court system, hinging on partisan judicial elections oftentimes primarily funded by political contributions from law firms, bent unfairly in favor of Law Firm. Ruling after ruling after ruling that sought merely to ensure Petitioners' right to due process, *i.e.,* time to develop discovery, time to

retain substitute legal counsel (required for corporate defendants), time to develop expert evidence, and then, finally, time for newly-retained substitute counsel to prepare for the immediately set trial, showed the Texas judicial system unreasonably favored Law Firm's demand for immediate disposition, as opposed to Petitioners' mere request for a full and complete "day in court." In the end, after a rushed trial without allowing Petitioners' newly-retained substitute counsel time to prepare for the trial, Law Firm was delivered a "win" resembling the lotto drawing of the lucky six numbers in a MegaBall contest. Adding insult to injury, the ruling furnished Law Firm a windfall awarding it ten times the amount the undisputed evidence showed Law Firm actually incurred.

The Final Judgment now challenged to this Court took what is a narrow exception to the American Rule, which requires all litigants to pay their own attorney's fees and applicable only in successful and fully-developed breach of contract cases, and transmographied it into an exception that swallows the rule. Said differently, the statutory exception entitling successful contract litigants to prosecutorial attorney's fees, upon proof that the fees were incurred, as well as reasonable and necessary, was taken by the trial and appellate courts in Texas and allowed to metastasize into an unjust and inequitable penalty imposed only on lay persons who relied on lawyers and purely benefiting those same relied-upon lawyers.

It would be one thing if this unfair, unjust, and unconstitutionally mandated penalty was imposed

after a thorough legal process, *i.e.,* after due process guarantees were fulfilled. But, the record before this Court reveals the unfair penalty was imposed after Petitioners received but a shadow of their due process rights. The evidence undisputedly demonstrated Petitioners' original trial counsel suffered extreme illness, causing several missed deadlines in the pretrial period to Petitioners' detriment, which could have easily been remedied by allowing Petitioners the time to retain qualified and able substitute counsel, the opportunity for substituted counsel to prepare and present Petitioners' defensive evidence (including expert testimony), and time prepare for the impending trial. However, Law Firm fervently opposed allowing Petitioners their full and complete day in court, pressuring the trial court to immediately dispose of the case based on incomplete discovery and evidence. The partisan-elected trial judge, afforded wide discretion in docket control measures under Texas statutory law, obliged.

After a short shrift "trial," Petitioners are required to pay their former law firm an exorbitant amount of money calculated based on fee invoices never submitted or paid by Law Firm. Indeed, the undisputed evidence uncovered the lawyers prosecuting Law Firm's claim against Petitioners were provided complimentarily by Law Firm's malpractice insurance carrier. Thus, Petitioners were not only denied their substantive day in court, but also

are now forced to fund Law Firm's undeserved and excessive windfall.

The important question presented by this Petition is whether the confluence of errors in denying law firm clients their constitutional due process rights and then forcing law firm clients to pay for attorney's fees never incurred, necessary, or reasonable is a travesty of justice warranting review. At a time when the judicial system is scrutinized by the public, a case with this procedural background cries out for relief. Petitioners come to this Court, its last avenue for the relief requested, asking merely for their full and complete day in Court.

II. Why the instant case is the right set of facts to address this issue affecting all who enter attorney-client relationships.

A. *With Due Process as the bulwark of America's justice system, this Court, in light of Americans' waning trust in the judicial process, should ensure Due Process is afforded to all, not just the elites & powerful.*

Since the Fourteenth Amendment was adopted in 1868, every state is required to afford due process before depriving any person "life, liberty or property." U.S. CONST. amend. XIV (guaranteeing that states shall not deprive "life, liberty, or property, without due process of law."). The Due Process Clause, however, does not specify what process is "due" to a person in any given circumstance. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Thus, "the precise nature of the

government function involved as well as of the private interest that has been affected by governmental action" controls. *Cafeteria & Rest. Workers Union, Local 473 v. McElroy*, 367 U.S. 886, 895 (1961).

This Court has guided that when the government functions as adjudicator of dueling private interests, as here, three competing factors are balanced to determine what process is due: (1) "the private interest that will be affected by the official action," *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the interest of the [opposing] party ... with ... due regard for any ancillary interest the government may have in providing the procedure or forgoing the added burden of providing greater protections," *Connecticut v. Doehr*, 501 U.S. 1, 11 (1991).

Precedent from this Court teaches that limited liability companies ("LLCs") may sue and be sued in their own name and like corporations are treated as "persons" for purposes of the Fourteenth Amendment Due Process Clause. *Grosjean v. Am. Press. Co.*, 297 U.S. 233, 244 (1936). Here, Petitioners include both individual persons and LLCs, all of which are entitled to Due Process rights in the lawsuit filed against them by Law Firm.[13] Accordingly, Petitioners claim they

[13]Petitioners have argued since the trial phase of this case that both their federal and state due process rights have been set aside to accommodate Law Firm's demand for an overly-expedient trial process. For purposes of the state due process

have been denied the process constitutionally due when a law firm sues a client and demands payment for attorney's fees never incurred or funded by same law firm.

This Court instructs that a series of procedural failures in the manner in which a trial is processed can result in a denial of federal due process rights. *Chambers v. Mississippi,* 410 U.S. 284 (1973) (addressing the state trial procedural rules that resulted in denial of defendant's due process rights, including defendant's ability to challenge inadmissible evidence related to hearsay and hearsay exceptions, as well as preventing him from presenting his own contradictory evidence). Here, Petitioners' right to due process is broad and regards three different protections. *Zinermon v. Burch*, 494 U.S. 113, 125

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guarantees, it is important to note that more than a sesquicentenary ago, Texas's Declaration of Independence described Texans' freedom from unfair processes as a "palladium of civil liberty, and the only safe guarantee for the life, liberty, and property of the citizen." DECLARATION OF INDEPENDENCE (Repub. Tex. 1836), at 5, *reprinted in* H.P.N. Gammel, *The Laws of Texas 1822-1897,* at 1065. To honor the freedom upon which this State was built, Texans went further when refining the state constitution, including Article I, Section 19 (closely mirroring that verbiage, although using the term "due course of law" as opposed to "due process") and also Article I, Section 13, demanding: "All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." TEX. CONST. art. I, §13, 19; *Matter of Troy S. Poe Tr.,* 646 S.W.3d 771 (Tex. 2022) (Busby, J., discussing Articles 10 and 15 regarding the inviolate and fundamental right to trial).

(1990). First, it incorporates protections defined in the Bill of Rights. *Id.* Second, the substantive component bars arbitrary, wrongful government actions "regardless of the fairness of the procedures used to implement them." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). Third, the procedural aspect guarantees a fair procedure. *Id*.

Unfortunately, Petitioners' right to due process and fairness was repeatedly violated throughout this litigation. The trial court's closing of the door on Petitioners' right to fully and completely defend itself was prompted by Law Firm's cries for "no further delay." Yet, the record shows that such concern for delay quickly dissipated after the close of evidence, where the trial court sat on the case and only issued a ruling a year after the evidence closed, shortly before the second partisan-elected trial jurist left the bench after being defeated by his newly-elected political opponent. The harm and impairment to Petitioners' ability to defend themselves (and to raise counterclaims regarding the erroneous legal advice pushed upon them) left Petitioners without a full and fair trial on the merits of Law Firm's lawsuit against Petitioners.

The Texas trial and appellate courts denied Petitioners the rights guaranteed them by the Due Process Clause. This occurred over a period of time with Petitioners' objecting each step of the way. Petitioners' objections at the trial court level, the intermediate appellate court level, and the state high court level fell on deaf ears. As thanks for merely demanding their full day in court, Petitioners received

an order to pay their negligent, terminated Law Firm a windfall – ten times the amount of money actually expended on the Law Firm's prosecution of the claim against Petitioners. This case presents this Court with the proper set of facts to establish guidelines for the minimum standards necessary for due process guarantees in lawsuits brought by law firms against their clients.

B. *Exceptions to the American Rule, if applicable, must comport with Due Process guarantees, yet money is awarded to law firms suing their own clients when those law firms NEVER paid for the fees.*

In the first state court Opinion, *App.C,* the appellate court noted the unique ethical implications involved in a lawsuit brought by a law firm against a client (as well as the ethics imposed on attorney-client contracts). This Court acknowledges the "American Rule" as the bedrock principle during the award of attorney's fees in general, regardless of whether the litigation involves two individuals, businesses, or, like here, a law firm suing its clients. The American rule requires that each litigant pays his own attorney's fees, win or lose. *Arcambel v. Wiseman*, 3 Dall. 306, 1 L.Ed. 613 (1796). The Rule has roots in our common law reaching back to at least the 18th century, and "[s]tatutes which invade the common law are to be read with a presumption favoring the retention of long-established and familiar [legal] principles," *Fogerty v. Fantasy*, Inc., 510 U.S. 517, 534, 114 S.Ct.

1023, 127 L.Ed.2d 455 (1994) (internal quotation marks and ellipsis omitted).

This Court has consistently advised that it will not deviate from the American Rule "'absent explicit statutory authority.'" *Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health and Human Resources*, 532 U.S. 598, 602, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001) (quoting *Key Tronic Corp. v. United States*, 511 U.S. 809, 814, 114 S.Ct. 1960, 128 L.Ed.2d 797 (1994)). Departures from the American Rule can occur only in "specific and explicit provisions for the allowance of attorneys' fees under selected statutes." *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 260, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975). Although these "[s]tatutory changes to [the American Rule] take various forms," *Hardt*, supra, at 253, 130 S.Ct. 2149, they tend to authorize the award of "a reasonable attorney's fee," "fees," or "litigation costs," and usually refer to a "prevailing party" in the context of an adversarial "action." *See generally Hardt*, supra, at 253, and n. 3–7, 130 S.Ct. 2149 (collecting examples).

There is NO EVIDENCE showing the party awarded the six-figures of prosecutorial attorney's fees either paid or incurred such fees. Yet, the trial court ordered Petitioners to "reimburse" Law Firm an amount consisting of ten times the dollars actually paid by Law Firm for the legal malpractice insurance deductible. This – a client of a law firm, sued by its former law firm, then punished for defending itself by being held liable for attorney's fees neither paid nor incurred by the law firm—is the epitome of injustice

and represents why many Americans do not trust the justice system in this country. This Court has the ability to accept review of this case and allow the parties to fully brief the issues presented and hear oral argument as to why the multiple partisan-elected trial jurists' failure to afford Petitioners their due process rights does not require reversal of the case below.

The appellate court Opinion challenged focused on semantics to avoid striking down an award of money when the law firm had paid NONE of the fees except for the insurance deductible. *App.F.* While the original appellate court demanded justice and noted the mis-use of semantical legal terms, *App.C,* the Texas court remanded the action ignored that warning. *App.F* (citing *Aviles v. Aguirre,* 292 S.W.3d 697, 699 (Tex. App. – Corpus Christi 2008), *rev'd,* 292 S.W.3d 648 (2009)). The precedent relied upon by the appellate court affirming the mistreatment of Petitioners was eventually reversed by Texas's high court, who looked to the term "incurred" in the statutory provision and then applied the definition of the term as found in Black's Law Dictionary. *Id.*

That definition is:

> To have liabilities cast upon one by act or operation of law, as distinguished from contract, where the party acts affirmatively. To become liable or subject to, to bring down upon oneself, as to incur debt, danger, displeasure and penalty,

> and to become through one's own action liable or subject to.[14]

But, at the end of the day, the Texas appellate and high court reverted back to protecting the law firm, the insurance companies, and those with the power to lobby and contribute to the partisan judicial elections in Texas. *Id.*

In short, the challenged ruling below fractures the already tenuous relationship between the public, encouraged to trust and employ law firms to represent them, as compared to law firms who may feel compelled to put their best interests before the clients and appease partisan-elected judicial officials who are on and then off the bench every two or four years in the state judicial system one of the few still relying on partisan judicial elections. In today's political lobbying world where judges are elected in partisan campaigns, can Lady Justice remain blind?

The federal due process right requires consistency and complete acknowledgment of each litigant receiving their full and complete day in court. Here, Law Firm pressed the varying partisan-elected judicial officials to quickly and prematurely dispose of their predatory lawsuit and to award it substantial unearned sums, despite the denial of Petitioners' full and complete day in court, allowing for time to overcome an ill trial lawyer's failure, time to present

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[14] *Id.* (citing BLACK'S LAW DICTIONARY 768 (6th ed. 1990)). A more modern edition of the Dictionary uses this definition: "To suffer or bring on oneself (a liability or expense)." *Id.* n.2. (citing BLACK'S LAW DICTIONARY 768 (8th ed. 2004)).

expert evidence, and then time to allow recently-retained substitute counsel to prepare for a trial on the merits. When this Court considers the dearth of guidance regarding due process rights when law firms sue clients, especially when those clients are forced, judicially, to eventually fund a "winning" lottery ticket – an award of fees that were neither paid nor incurred – this case presents a premier opportunity to guide trial courts across the country regarding litigation between law firms and clients when due process guarantees are called into question.

CONCLUSION

Petitioners did not voluntarily enter the judicial system – their former lawyers hauled them into court. When that happens, citizens of the United States are protected by the Due Process Clause of the Fourteenth Amendment, even when the proceedings occur in state court. Petitioners' rights were denied despite repeated pleas and thorough explanations of the harm caused. The record makes clear that the state court rulings denied Petitioners their due process rights and a fair trial, which requires a remand for a new trial, including the determination of prosecution-based fees. For the reasons given above, Petitioners respectfully request this Honorable Court grant their Petition for Writ of Certiorari and reverse the Opinion and Judgment of the state appellate court.

Respectfully submitted,

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