

No. 23-815

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,
Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF TEXAS, FIRST DISTRICT**

**PETITION FOR REHEARING OF DENIAL OF
PETITION FOR WRIT OF CERTIORARI**

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REASONS FOR GRANTING REHEARING

The original certiorari petition asks this Court to resolve whether private individuals are treated equal to law firms? Many high profile and political cases have sought intervention from this Court recently, seeking this Court's interjection into matters that should be resolved by the actual branch of government relevant to the dispute: the Executive Branch and the Legislative Branch. But, this Court's direct lane is to establish the scope of constitutional rights owed to private citizens, whether private individual or company. In this case, the only distinction between the parties is the fiduciary duty owed by the law firm to its client, of which it sued.

Here, a law firm was hired to represent a private person and her business entities, but what resulted was the law firm bullying the woman professional into a settlement. Since that occurred, this litigation has ensued. The state courts, guided by the statutory law of Texas, 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), failed to afford the law firm's clients due process. U.S. CONST. amend XIV, sec. 1. The transcript of the behavior by the law firm speaks volumes.

Petition for certiorari was declined by this Honorable Court on April 1, 2024. A petition for rehearing must present intervening circumstances of a substantial or controlling effect or to other

substantial grounds not previously presented. Here, the facts after the decline of review are telling:

Federal courts are being used to resolve political matters, but the private citizens living and paying taxes to fund these courts are falling through the cracks. Here, Petitioner simply asks for her day in court to show that she was recommended legal steps that were not only illegal but also placed those cared for by her fiduciary duty in jeopardy. The issue of “judge shopping” has come up repeatedly in recent years, and in Texas state courts, where the judges are changed out every two years based on partisan elections (Texas is one of only seven remaining states elected judges through partisan elections) the question of what constitutes “due process” changes every two years.¹ Texas’s new judicial system in place for businesses, however, affords a separate class of state citizens a more robust judiciary, where those sitting on the bench are required to possess specific experience in business cases and more overall experience than other state jurists presiding over family law cases, personal injury cases, contract cases, and criminal cases.²

¹Texas remains one of only seven remaining states selecting judges through partisan elections. 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 failed bills proposing merit-based judicial selection system).

²Applicants 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)

Petitioner's lawsuit fell within a unique period in Texas law where state judges were being traded out (through partisan elections) within this jurisdiction. As such, Petitioner's lawsuit was heard by at least three separate judges.³ Indeed, since this Court took jurisdiction over this case, the trial judge overseeing this case has lost her primary election, leaving yet another set of candidates as the potential judge overseeing the case. Federal district courts are in the news now based on forum shopping, but Petitioners' lawsuit seeks only to secure a day in court, which has consistently been denied based on Petitioners not being a major law firm that is well known or a financial contributor to judicial elections.

Petitioners trusted retained lawyers to represent the companies' best interests, but began questioning the quality of the legal advice after learning Law Firm had recommended illegal settlement terms. In response, Law Firm sued Petitioners, claiming past due fees – Law Firm never denied giving faulty advice. After several years of

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.*

³Anthony Champagne & Kyle Cheek, *The Cycle of Judicial Elections: Texas as a Case Study*, 29 FORDHAM URBAN L. J. 907 (2002).

litigation with its legal malpractice insurance carrier funding almost all of Law Firm's lawsuit against Petitioners, the trial court awarded Law Firm a windfall of fees that had neither been paid or incurred by Law Firm. In fact, Law Firm *NEVER* funded the fees requested and awarded by the partisan-elected trial court judge in Texas.

"Business-friendly" Texas should not allow law firms to sue their own clients, have their fees funded by legal malpractice carriers, and then have law firms awarded un-incurred fees as a windfall. Such windfalls occurs in only one instance – a specific statutory cause of action enacted to protect medical malpractice insurers. Here, the appellate court wrongfully extended the medical malpractice exception to commercial litigation disputes. This Court should grant review to curb this precedent that causes corporations to question their legal services if controlled by Texas courts.

Substantively, it is even more disturbing that Law Firm urges the collateral source rule to help protect its windfall – a six-figure award that was unearned and unwarranted -- despite constitutional case law available and applicable from the rules of evidence and procedure. Evidence of a collateral source is admissible for purposes other than the mitigation of damages. See *Mundy v. Shippers, Inc.*, 783 S.W.2d 743, 745 (Tex. App.—Houston [14th Dist.] 1990, writ denied); *Russell v. Dunn Equipment, Inc.*, 712 S.W.2d 542, 547 (Tex. App.—Houston [14th Dist.] 1986, writ ref'd n.r.e.). At the bench trial, Law Firm

never raised the collateral source rule as an objection or defense.

Petitioner asks this Court to step in and correct this miscarriage of justice: awarding a law firm a windfall of fees never paid or incurred by law firm based simply upon a lack of consistent judicial procedures and guaranteed due process rights. Constitutional due process is nevermore present in American society than today when our political news is smothered by questions of whether federal courts are partisan or objective. Here, the state court adjudicating the case below glossed over the many mistakes that denied Petitioners their right to a fair and full day in court. This case, with a private individual attempting to represent herself against nationally-renowned law firms, pits the “little guy” against the “powerful.” But, Petitioners desire to have their case heard. The record before this Court shows that the errors made denying Petitioners the right to raise claims and defenses to a jury (or a bench trial) were denied, and that Texas’s use of partisan judicial elections contributes to this problem, even though Texas has decided to remove such limitations when lawsuits are brought by a special class of citizens: businesses.

CONCLUSION

Petitioners never voluntarily entered 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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RULE 44(2) CERTIFICATE

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.

Respectfully submitted,

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