No. _____

In the Supreme Court of the United States

BEVERLY HENNAGER,
Petitioner,

v.

MARY E. DEARDON,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF SOUTH CAROLINA

PETITION FOR WRIT OF CERTIORARI

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FEBRUARY MMXXVI

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QUESTIONS PRESENTED

1. Whether the Fourteenth Amendment's Due Process Clause requires enforceable constitutional safeguards in state judicial systems where (1) judges both decide cases and oversee discipline for judicial misconduct, and (2) lawyer-legislators who appoint judges and determine their longevity on the bench also regularly appear before those judges, creating the appearance of structural incentives for judges to favor those legislators while avoiding penalties for misconduct in a system with no external oversight.

2. Whether a State violates the Fourteenth Amendment's guarantees of due process, equal protection, and meaningful access to the courts when its appellate courts (1) affirm a judgment that is not supported by any existing order in the record, which is therefore void, and then (2) foreclose any review of due-process and fraud-on-the-court claims by holding that the sole avenue of relief lies in Rule 60(b)(4) motions that lower courts subsequently refuse to accept or adjudicate, thereby creating a procedural dead end for those federal claims.

3. Whether the Fourteenth Amendment's guarantees of due process and meaningful access to the courts are violated when state courts prevent a pro se litigant from obtaining plainly relevant evidence, decide a dispositive issue on an incomplete record, and then change the critical finding of fact on appeal without notice or an opportunity to be heard.

PARTIES TO THE PROCEEDING

Petitioner is Beverly Hennager.

Louis A. Jennings, Jr., now deceased, was a co-petitioner in the proceedings below.

Respondent is Mary E. Dearden, as Personal Representative of the Estate of M.K. Jennings.

RELATED PROCEEDINGS

Kershaw County Probate Court:

In re Estate of M. K. Jennings, No. 2010-ES-28-00169 (Jun. 13, 2013) (Mary Dearden removed as personal representative and Angela Kirby, Esq. appointed as special administrator)

In re Estate of M.K. Jennings, No. 2020-ES-28-00169 (Oct. 27, 2016) (Mary Dearden reinstated as personal representative, requiring reimbursement of estate funds for funds taken, Decedent found competent regarding pay-on-death certificates of deposit, and amended accounting directed)

In re Estate of M.K. Jennings, No. 2010-ES-28-00169 (Sep. 3, 2021) (promissory note of Michael Jennings found satisfied before Decedent's death and personal representative's Amended Final Account approved)

Kershaw County Circuit Court:

In re Estate of M.K. Jennings, No. 2013-CP-29-0525 (Mar. 16, 2015) (remanded to probate court for more specific findings of fact and conclusions of law)

In re Estate of M.K. Jennings, No. 2016-CP-28-00979 (Jul. 10, 2020) (Oct. 27, 2016 probate court order affirmed)

In re Estate of M.K. Jennings, No. 2021-CP-28-00795 (Jun. 19, 2024) (Sep. 3, 2021 probate court order approving Amended Final Account affirmed, and held that petitioner's allegations regarding unpaid promissory note were raised for the first time on appeal, wherefore precluded by law)

South Carolina Court of Appeals:

In re Estate of M.K. Jennings, No. 2025-UP-196 (Jun. 19, 2024 Circuit Court order, declined to address merits of petitioner's promissory-note claims on the ground that such issues should have been raised in Rule 60(b) motions in lower courts or on appeal from the 2016 probate order)

In re Estate of M.K. Jennings, No. 2025-UP-196 (Dec. 16, 2025) (refusing further action to be taken on Petitioner's December 10, 2025 petition for writ of mandamus to direct lower courts to accept and rule upon Petitioner's Rule 60(b) motions)

Supreme Court of South Carolina:

In re Estate of M.K. Jennings, No. 2025-001793 (Nov. 19, 2025) (appeal dismissed)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions, Statutes, and Rules

Other Authorities

OPINIONS BELOW

The decisions of the Supreme Court of South Carolina dismissing Petitioner's appeal is reproduced in the Appendix at App.1-3. The decisions of the South Carolina Court of Appeals are reproduced in the Appendix at App.4-14. The decisions of the South Carolina Kershaw County Probate Court are reproduced in the Appendix at App.15-37.

JURISDICTION

The Supreme Court of South Carolina's decision was entered on November 19, 2025. The Supreme Court of South Carolina denied rehearing on November 24, 2025. This Court has jurisdiction under 28 U.S.C. §1257(a)

STATUTORY PROVISIONS INVOLVED

This case involves the Fourteenth Amendment of the United States Constitution, in relevant part:

> 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., Amdt. XIV.

Finally, S. C. R. Civ. P. 60(b)(3) and (4) which provide that, on motion and upon such terms as are just, a court may relieve a party from a final judgment, order, or proceeding for "fraud, misrepresentation, or

other misconduct of an adverse party" or because "the judgment is void."

INTRODUCTION

This case asks whether a State's judicial system may, through self-policing and procedural maneuvers, insulate serious due-process and fraud-on-the-court violations from any review by a neutral tribunal. It arises from a combination of discovery obstruction, appellate affirmance of a non-existent order, and a higher court's refusal to hear the case on the merits while directing Petitioner into Rule 60(b)(4) motions. The procedural dead end was completed when the lower courts then refused to rule on those jurisdictionally proper motions—and the appellate court declined to direct them to accept and decide the very Rule 60 motions it had identified as the exclusive avenue of relief—thereby depriving a pro se litigant of any meaningful opportunity to obtain judicial review of federal constitutional claims. At stake is whether the Fourteenth Amendment requires structural safeguards in state judicial systems where (1) the same judges who adjudicate cases also discipline themselves, and (2) the very lawyer-legislators who appear before them are the ones who select and advance them.

STATEMENT OF THE CASE

I. The Estate of Minnie Katherine Jennings

Minnie Katherine Jennings died on March 31, 2010, as a resident of Warrenton, Virginia App.109-117. The following month, Mary Dearden was appointed as personal representative (PR) of the estate in Camden, South Carolina. Throughout the proceedings, Dearden was represented by a law firm headed by

former Speaker of the South Carolina House of Representatives Robert J. Sheheen, who previously exercised substantial influence over South Carolina's legislatively controlled judicial selection system.

Throughout the probate proceedings, Petitioner repeatedly and formally requested production of tax returns and payment records necessary to determine whether a promissory note owed to the Decedent by Michael Jennings (App.101-103) had been satisfied in full. The note required payment of both principal and interest, provided for default without notice, and any unpaid balance would thereafter accrue interest at eight percent (8%) per annum, while holding Michael Jennings liable for all collection costs. Although Mr. Jennings made payments toward principal, he never paid any of the required interest, and the resulting balance became substantial.

Petitioner is informed and believes that Mr. Jennings later sold the business for more than forty-five million dollars ($45,000,000), underscoring both the extraordinary value of the asset Decedent gifted/sold and Mr. Jennings' unquestionable ability to satisfy this long-outstanding obligation to her estate. These critical facts, central to determining whether the note remained an estate asset, escaped timely adjudication because the Personal Representative and her counsel refused to provide the requested documentation. App.15, 40-41, 44-46.

II. Probate Court's June 13, 2013 Order

During the November 29, 2012 hearing, Louis Jennings testified that the PR had not responded to discovery requests, prompting Petitioner's request for a hearing. App.74-78. In a June 13, 2013 order, the

Probate Court removed Dearden as PR (App.15), in substantial part for ignoring discovery requests, failing to obey a court order, and failing to properly record estate assets. Dearden appealed, and while that appeal was pending a successor probate judge was appointed.

III. Probate Court's October 27, 2016 Order (App. 18-29)

In 2006, Katherine Dauphin emailed Petitioner and Louis Jennings stating that she had reviewed Decedent's financial records and discovered the promissory note had not been fully paid. App.104-105. Dauphin's email was the principal reason Petitioner continued to seek payment information for many years, including serving supplemental discovery in January 2016. App.40-43. At the July 2016 hearing, both parties stipulated to the authenticity of that email. Petitioner testified that the PR was unresponsive to discovery requests seeking payment information, and Petitioner's counsel advised the court that this information was essential to determine whether the note had been fully paid. App.79-85. The PR admitted she had sworn untruthful oaths regarding the completeness and accuracy of her 2011 filings and testified that she intended to submit corrections. App.86-88.

Given the discovery failures, the 2016 order did not address the promissory note; instead, the probate court directed the Personal Representative to file amended documents, giving her another opportunity to record the note (App.18-19) and correct other omissions. Both parties appealed the October 27, 2016 order. When the Probate Court's 2016 order was affirmed in 2020, the PR was again directed to amend

the accounting, yet her amended submission was essentially identical to her 2011 documents, which had led to her removal in 2013. Noting that the amended filings again omitted the promissory note, Petitioner requested a hearing, which was held in March and June 2021.

IV. Probate Court's September 3, 2021 Order (App.32)

On April 7, 2021, Respondent's counsel, Moultrie Burns, Esq., stated in his post-hearing memorandum: "At the Zoom hearing on March 16, 2021, the Court decided to consider rescheduling for evidence as to whether a debt to the decedent from Michael Jennings was satisfied prior to his mother's death." App.38, ¶1. Burns submitted partial tax documents that showed payment of principal only. App.39. Petitioner's response explained that these documents actually demonstrated non-payment of the interest required by the note's terms.

When the PR ignored renewed discovery requests seeking complete documentation (App.40-43), Petitioner filed two motions to compel. App.44-46. The judge intercepted and returned both motions with letters stating they could not be accepted because there was "no pending litigation" App.30-31. Five weeks later, however, the judge issued the September 3, 2021 order: "Finding of Fact: The promissory note of Michael Jennings was satisfied before the decedent's death and the Inventory is correct in not listing such debt as an asset." App.32-34. Petitioner appealed.

V. Circuit Court's June 19, 2024 Order (App.35)

During the May 29, 2024 remote hearing for oral argument, the audio from Respondent's counsel was so low that Petitioner could not hear counsel's presentation (App.93-94). While the argument was inaudible, counsel proceeded to modify the order under appeal by substituting a previously unadjudicated finding of fact, and because Petitioner could neither hear nor object, these changes went unopposed. Petitioner contemporaneously noted her inability to respond to the inaudible presentation, thereby preserving the issue for appellate review. App.95.

The 2024 circuit order did not actually review the 2021 probate court's new merits finding that the note was "satisfied," but instead reframed the appeal as a purely "mathematical" law-of-the-case issue, thereby affirming the 2021 order while leaving its core merits determination effectively unreviewed.

Petitioner did not learn the substance of these changes until she received Respondent's proposed order, which revealed that counsel had silently altered the finding of fact from "the note — was satisfied..." to: "Petitioner attempted on this appeal to raise allegations and speculations that should have been investigated during discovery... An example is her allegation of unpaid promissory note" App.37. This change materially altered the issue under review by recasting an adjudicated finding as an unappealable procedural assertion, affecting the scope of review and obscuring the existing record. Petitioner attempted to file a motion for reconsideration, but the clerk returned it unfiled. The clerk then failed to docket Petitioner's

timely objections under S. C. R. Civ. P. 46 (App.108), which Petitioner sent by express mail on two occasions. Petitioner emailed her objections to the judge's clerk, who acknowledged receipt, but the judge did not respond. App.106-108. Petitioner appealed.

VI. Court of Appeals (App.4)

Respondent offered no substantive objections or contrary evidence to Petitioner's claims, instead repeatedly asserting that "Appellant's statement is so vague it should be disregarded." App.47-50. The Court of Appeals appeared to adopt this position, dismissing Petitioner's arguments without addressing the due-process and fraud-on-the-court claims on the merits, even though those claims were not disputed on the record. It held that Petitioner should have sought Rule 60 relief in the lower courts, notwithstanding that the existing record already contained the evidence supporting those claims. The Court further concluded that the issue of payment of the note should have been raised in an appeal from the 2016 order, even though that issue was not adjudicated until 2021.

On June 11, 2025, the Court of Appeals issued its opinion. App.4. As to Petitioner's contention that the circuit court's 2024 order is void, the court held the issue was not preserved because Petitioner "failed to file a motion pursuant to Rule 60(b) of the SCRCP with the circuit court either asserting the circuit court's 2024 order was void or alleging Dearden's attorney acted in a fraudulent manner." App.5 (internal citations omitted)

As to the probate court's 2016 order, the Court of Appeals treated it as the "law of the case," while simultaneously acknowledging that the order did not

address all issues. It stated: "Furthermore, the probate court did consider the merits of her claim concerning the promissory note and found in its 2021 order the note was satisfied before MK Jennings' death...".

As to Petitioner's due-process claims against the lower courts, the court held that "Hennager failed to appeal the probate court's refusal to consider her 2021 motions to compel production" and "failed to file a motion pursuant to Rule 60(b)(4), SCRCP... Moreover, [South Carolina] has not adopted Rule 60(d) of the Federal Rules of Civil Procedure."

On June 19, 2025—before filing a notice of appeal to the South Carolina Supreme Court —Petitioner filed Rule 60(b)(3) and (4) motions in the lower courts, but the clerks returned them unfiled on June 24. When Petitioner inquired about the legality of this refusal, she was informed that the supervisory judge—who was also the judge whose order was under review—would not permit the motions to be filed.

The Court of Appeals denied rehearing on August 20, 2025, and issued its remittitur of affirmance on August 22, 2025. App.9. Believing that the lower courts may previously have refused to accept her motions because the case was still in appellate review, Petitioner resubmitted her renewed Rule 60 motions on September 3, 2025, and they were filed. App.63-65. On September 4, 2025, however, the lower court entered an order stating: "There is no judgment in this case and no paperwork will be added to this ended appeal" App.11. On September 8, 2025, Petitioner notified the Court of Appeals of the filing and rejection of the Rule 60(b)(4) motions and requested appellate oversight of the ongoing docketing and adjudication

issues. App.58. On Sept. 9, the clerk relayed refusal of the lower courts to hear the motions (App.62). On September 11, Petitioner submitted a writ of mandamus asking the Court to direct the lower courts to rule on the motions. App.59.

VII. South Carolina Supreme Court

On September 8, 2025, Petitioner filed a petition for writ of certiorari in the South Carolina Supreme Court. On September 24, 2025, to address the procedural barriers, she sought a limited remand from the Supreme Court to allow the filing and adjudication of the Rule 60 motions or, alternatively, a determination that the Supreme Court could hear the case on direct appeal. App.69. Without addressing the lower courts' failure to respond or the merits of the appeal, the Supreme Court issued its remittitur on November 19, 2025, denying the petition for certiorari and the motion for limited remand as moot. App.1. On November 24, 2025, Petitioner submitted a motion to vacate void orders for Fourteenth Amendment violations, which the court denied by letter the same day, along with denying the petition for rehearing. App.2-3.

VIII. Post-Judgment Relief Denied

After the Supreme Court of South Carolina's November 19, 2025 disposition, Petitioner again attempted on December 8, 2025 to file new Rule 60(b)(4) motions in the lower courts, but the clerks refused to docket them and ignored subsequent inquiries. On December 10, 2025, Petitioner moved in the Court of Appeals to expedite the pending mandamus petition directing the lower courts to accept and rule on the December 8 motions. On December 16, 2025, Kershaw

County returned the Rule 60 motions to Petitioner, confirming that the court remained entrenched in its refusal to accept and rule on motions challenging its void orders, and the Clerk of the Court of Appeals sent a letter stating that no action would be taken on the mandamus petition. App.13-14. These actions left the fraud and due-process violations unheard, unremedied and insulated from review.

REASONS FOR GRANTING THE PETITION

I. Structural and Procedural Violations Warranting Certiorari

A. Overview of Procedural Misconduct

This Petition does not challenge matters of judicial discretion or ordinary legal error; it challenges a sequence of orders that were rendered void in substance and then shielded from review by procedural barriers. The probate court denied Petitioner a full and fair opportunity to obtain and present evidence by refusing motions to compel plainly relevant discovery and then resolving a dispositive issue on an incomplete record. App.30-31, App.44-46.

On appeal, the circuit court purported to affirm an order that does not exist in the record, leaving uncertain what was properly before it and preventing review of the actual September 3, 2021 probate order. Although the 2024 circuit order states that it affirmed the September 3, 2021 probate order, it did so only by recasting that order as a purely "mathematical" compliance step with the 2016 directions for an amended accounting. It then substituted, for the probate court's actual merits finding that the promissory note was satisfied, a different and never-adjudicated

characterization that petitioner raised the note's payment status as a new issue on appeal. To the extent the circuit court affirmed only this recast, ministerial version of the 2016 order—which does not appear anywhere in the record as a separate written order—its judgment is void because it approves a non-existent order instead of the actual September 3, 2021 probate order. The record instead shows that the PR refused, for more than a decade, to respond to Petitioner's discovery requests and that the PR was removed in 2013 in part for this failure, directly contradicting the circuit court's finding that Petitioner first raised payment status on appeal.

The Court of Appeals then declined to address Petitioner's due process and fraud-on-the-court claims on the merits, holding that they should have been raised through Rule 60 motions in the lower courts, even though the existing record already contained all relevant evidence. When Petitioner attempted to follow that directive, the lower courts refused to accept or rule on the Rule 60 motions, and the appellate court refused to intervene, leaving the constitutional issues unadjudicated and creating a procedural dead end.

South Carolina's judicial system places both adjudication and discipline in the same judiciary, with no independent external oversight, and in this case that structure allowed procedural devices to be used to insulate void judgments from any judicial forum of review. This Petition therefore presents questions of national importance: whether procedural mechanisms in such a self-policing system may be applied to block review of substantial federal due process and equal protection claims and to defeat the constitutional right of access to meaningful judicial review.

B. Respondent's Counsel's Rewriting of Procedural History

During the 2021 probate hearings, the opposing counsel acknowledged the court agreed to reschedule for evidence on whether the promissory note had been satisfied, and in the same filing submitted partial tax materials on that question (App.38-39), confirming that the issue of payment remained open and that the 2016 order was interlocutory. Later, however, the judge intercepted and returned Petitioner's motions to compel the discovery needed to test those submissions, stating in written correspondence that they could not be accepted because there was "no pending litigation" App.30-31.

On appeal, Respondent recast the September 3, 2021 order's finding that the promissory note "was satisfied"—an adjudicated, appealable determination—into a narrative that Petitioner had never sought payment information in discovery and was raising the matter for the first time on appeal, effectively converting a merit finding into an unappealable procedural criticism of Petitioner. In a self-policing system, the absence of independent judicial oversight allows such mischaracterizations of the procedural history and pro se filings to persist without correction.

C. Procedural Blockade to Prevent Adjudication

Faced with an irreparably distorted procedural narrative, the Court of Appeals declined to adjudicate the issues at all. It instead directed that due process violations and fraud on the court should have been raised through Rule 60(b) motions, even though all the evidence was already in the record. Attempting to follow

that directive, Petitioner's efforts to file Rule 60(b) motions were blocked at every level. The circuit court judge, whose affirmance of a void order was under review, instructed the clerks not to accept any further filings from Petitioner. App.10, 62. The Court of Appeals ignored a petition for writ of mandamus filed on September 11, which requested direction to the lower courts. App.59. When Petitioner filed a motion to expedite on December 10, the clerk of court responded on December 16 that no action would be taken because the court lacked jurisdiction after remittitur issued on November 19. App.13.

The Supreme Court of South Carolina dismissed the case without review on November 19, finding Petitioner's request for limited remand moot. App.1. On November 24, Petitioner filed a motion for rehearing and a motion to vacate and remedy void orders, both of which were dismissed in a letter from the clerk that same day. App.2-3.

Granting certiorari would clarify nationwide that, even within self-regulating judicial systems, state courts remain constitutionally obligated to ensure that pro se litigants' federal rights can be heard either on direct appeal or through collateral review, and that clerks and lower courts may not effectively nullify those rights by blocking the only available procedural vehicle.

II. Disregard of Established Laws

A. Due Process Violations and Fraud on the Court

The Probate Court acknowledged that the payment status of the promissory note had not been adjudicated and agreed to hear evidence on that issue.

App.38. It then blocked Petitioner's efforts to obtain discovery to test Respondent's partial tax submissions by ignoring renewed requests and returning motions to compel complete tax returns (App.44-46), with the notation that there was "no pending litigation." On that incomplete record, the court nevertheless found the note "satisfied," (App.32) even though the instrument required interest and the only proof showed payment of principal only, with no interest App.39.

These actions denied Petitioner a meaningful opportunity to obtain and present material evidence on a dispositive claim and fall squarely within core due process and "fraud on the court" principles. *Logan* v. *Zimmerman Brush Co.*, holds that a state may not arbitrarily deny a litigant the procedures needed for a fair hearing and a meaningful opportunity to be heard. 455 U.S. 422 (1982). *Chewning* v. *Ford Motor Company*, is a leading South Carolina case addressing the deliberate withholding of evidence by an attorney. 550 S.E.2d 584 (S.C. 2003). *Cato* v. *Atlanta & C.A.L. Ry.*, 162 S.E. 239 (S.C. 1931), and *Collins* v. *Merrimack Mut. Fire Ins. Co.*, 42 S.E.2d 67 (S.C. 1947), hold that suppression or withholding of evidence gives rise to an inference or presumption that the evidence would have been adverse to the party suppressing it.

South Carolina and federal law treat refusal to permit plainly relevant evidence as a fundamental due process violation that can render a judgment void. Rule 26(b)(1), SCRCP, broadly authorizes discovery of any non-privileged matter relevant to the claims and defenses, and the Court of Appeals has held that denial of discovery is inherently prejudicial because discovery exists to ensure disputes are resolved on

revealed, not concealed, facts. See *Samples* v. *Mitchell*, 495 S.E.2d 213, 217 (S.C. Ct. App. 1997).

Rule 60(b)(4), SCRCP, authorizes relief from a void judgment where due process has been denied, and because the September 3, 2021 order rests on an evidentiary record the court itself prevented Petitioner from completing—and then used the absence of that evidence to find in Respondent's favor—it lacks the essential attributes of an adversarial, fair hearing and cannot stand as a valid final judgment under Rule 60(b)(4). This is fully consistent with federal due process precedent holding that states may not employ procedures that arbitrarily deny a meaningful opportunity to be heard on substantive rights. See, *e.g.*, *Logan*, 455 U.S. 422; *Boddie* v. *Connecticut*, 401 U.S. 371 (1971); *M.L.B.* v. *S.L.J.*, 519 U.S. 102 (1996). In *Scott* v. *McNeal*, this Court held that probate proceedings are void if conducted without due process, as this deprives a person of property without due process of law, in violation of the Fourteenth Amendment. 154 U.S. 34 (1894)

The sole evidence in the record shows that interest on the note was never paid. App.39. Yet the court found the note "satisfied." Courts must ensure findings of fact are supported by the record; appellate courts must intervene when no supporting evidence exists. *Golini* v. *Bolton* 482 S.E.2d 785 (S.C. Ct. App. 1997). A judgment resting on findings contrary to undisputed evidence—or wholly unsupported by the record—is erroneous and reversible. *Thames (Verdery)* v. *Daniels*, 506 S.E.2d 110 (S.C. Ct. App. 1998).

B. The 2016 Order is Interlocutory

The probate court's assertion that there was "no pending litigation" is irreconcilable with Respondent's counsel's admission that "[t]he Court decided to consider rescheduling for evidence" on the promissory note and with the September 3, 2021 order, which for the first time made new findings and conclusions on that very issue. The Court of Appeals itself acknowledged that "the probate court did consider the merits of her claim concerning the promissory note and found in its 2021 order the note was satisfied," (App.7, ¶ 3) underscoring that the payment issue remained live and was adjudicated only in 2021. Affirming an interlocutory order does not convert it into a final judgment *Link* v. *Sch. Dist. of Pickens Cnty.*, 394 S.E.2d (S.C. 1990), and under Rule 54(b), SCRCP, any order resolving fewer than all claims remains interlocutory and subject to revision until a true final judgment is entered.

Granting certiorari is necessary not simply to correct these errors in a single probate dispute, but to clarify nationally that state courts may not disregard settled due process, discovery, and void-judgment principles in ways that block meaningful review of federal claims. South Carolina's judicial self-policing mechanisms must safeguard constitutional rights at every level, lest this Court be compelled to intervene as referee in cases where state courts fail to do so.

III. Affirmance of a Non-Existent Order

A. The June 2024 Order is Void

The Circuit Court's June 19, 2024 "affirmation" does not review the September 3, 2021 probate order

that was properly on appeal; instead, it purports to affirm an order that does not exist. Under both South Carolina and federal law, an appellate ruling resting on a non-existent or unauthorized order is void and without legal effect. Although South Carolina has not adopted Federal Rule of Civil Procedure 60(d)(3), Rule 60(b)(4), SCRCP, require courts to grant relief from any judgment that is void, because such a judgment is a legal nullity and cannot be left to judicial discretion. This Court has long held that an order entered without authority is not merely voidable but void, carrying no legal force and incapable of serving as a basis for subsequent proceedings. See *Scott*, 154 U.S. 34. Accordingly, the Court of Appeals' August 11, 2025 affirmance of such a void order is itself without legal effect and cannot confer legitimacy on that order, the proceedings it purported to review, or the proceedings that followed.

B. Appellate Review is Limited to the Record

The record reflects a long-standing pattern of the PR's noncompliance and Petitioner's repeated, unsuccessful discovery requests for payment information on the note from 2012 through 2021, as detailed in the Statement of the Case. The 2013 order's findings regarding discovery noncompliance and omitted assets were never overturned by the 2016 order or by any subsequent appellate affirmance.

Consistent with *Chewning*, opposing counsel's repeated refusal over many years to provide complete payment and interest records on the note, coupled with seeking a dispositive "satisfied" finding in their absence, is the kind of discovery-related misconduct

that undermines the court's truth-seeking function and qualifies as fraud upon the court. 579 S.E.2d 605. This pattern matches the type of attorney-driven concealment of material evidence that *Chewning* identifies as warranting extraordinary relief because it corrupts the judicial process itself, and it is consistent with federal due process and fraud-on-the-court principles recognizing that judgments obtained through deliberate suppression or manipulation of critical evidence are incompatible with a meaningful opportunity to be heard. See, *e.g.*, *Mooney* v. *Holohan*, 294 U.S. 103 (1935); *Napue* v. *Illinois*, 360 U.S. 264 (1959); *Brady* v. *Maryland*, 373 U.S. 83 (1963).

It is particularly ironic that Respondent accuses Petitioner of raising a new issue on appeal when Respondent himself injected a new issue into the order. Issues not raised or preserved in the trial court cannot be considered on appeal. *Doe* v. *S.B.M.*, 488 S.E.2d 878 (S.C. Ct. App. 1997). Under S.C. Code Ann. § 62-3-611, factual findings must be based on evidence adduced at the hearing, and all parties must receive notice and an opportunity to respond; the hearing record therefore forms the sole foundation for any final order.

C. The Fundamental Right to be Heard

Due process requires a meaningful opportunity both to be heard and to understand and address the issues that determine a party's rights. A judgment entered without such an opportunity is constitutionally defective. *Logan*, 455 U.S. 422. When technical failures or procedural irregularities by the state effectively deprive a party of that opportunity, any resulting judgment is void for lack of due process and must be reversed. This Court in *Mathews* v. *Eldridge*, held that

any deprivation of liberty or property by a government agency must be preceded by notice and an opportunity to be heard "at a meaningful time and in a meaningful manner." 424 U.S. 319 (1976) Courts apply this standard to assess whether remote hearings provide adequate procedural safeguards. The Ninth Circuit in *Vilchez* v. *Holder*, recognized that denial of meaningful participation—such as through technical problems—can be grounds for reversal. 682 F.3d 1195, 1199 (CA9 2012)

As outlined in the Statement of the Case, during the May 29, 2024 remote (Zoom) hearing Respondent's counsel's argument was inaudible. Petitioner advised the Court she could not hear, after which the Court directed opposing counsel to draft the order, and that order incorporated a material change to the critical finding. As a result, Petitioner never had a meaningful opportunity to hear and challenge the altered finding. Petitioner's objections were never filed or addressed. This procedure is inconsistent with federal due process precedent requiring that parties receive notice and a meaningful opportunity to be heard before dispositive findings are entered. See *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950); *Goldberg* v. *Kelly*, 397 U.S. 254 (1970); *Logan*, 455 U.S. 422.

Rule 15, SCRCP, requires that amended pleadings or findings be made only after notice and an opportunity for all parties to address the new issues. Altering findings without notice violates due process. As explained in *Parker* v. *Spartanburg Sanitary Sewer Dist.*, prejudice arises when a party is denied notice that a new issue will be tried and the opportunity to refute it. 607 S.E.2d 711, 716–17 (S.C. Ct. App. 2005)

In *Armstrong* v. *Manzo*, this Court stated that when the right to be heard is denied, "the slate must be wiped clean." 380 U.S. 545, 552 (1965)

D. Ethical Duties of Candor and Integrity

Rule 3.3 of the Rules of Professional Conduct, as adopted in South Carolina and in federal courts that incorporate similar standards, requires attorneys to maintain candor toward the tribunal. They may not knowingly make false statements of fact or law, submit altered findings, or fail to correct material misrepresentations. The integrity of judicial determinations depends on strict adherence to these ethical obligations.

In *Chewning*, the Supreme Court of South Carolina held that intentionally concealing documents during discovery may constitute fraud upon the court. 579 S.E.2d 605. Here, as in *Chewning*, opposing counsel repeatedly refused to provide the key documents—complete payment records and interest information on the Virginia note— despite years of discovery requests, and then invited the Probate Court to find the note "satisfied" without that evidence ever being produced or tested. This pattern of deliberate discovery noncompliance and concealment of critical financial records falls squarely within the type of litigation misconduct that *Chewning* recognizes as fraud upon the court and supports relief under Rule 60(b)(4).

At the May 29, 2024 hearing, opposing counsel represented to the circuit court that the PR had disbursed final distributions to all beneficiaries except Petitioner, who supposedly refused payment (App.97), even though Petitioner merely declined to sign a broad release and waiver. App.99. This

mischaracterization was corrected in subsequent filings without any remedial action by the court. As reflected in the PR's own final accounting and waiver, Petitioner is owed $16,734.40, yet Respondent has neither paid this amount nor corrected the prior misrepresentations to the tribunal, in direct contravention of her attorney's ethical duty of candor toward the court.

IV. Procedural Dead End

A. Due Process and the Right to be Heard

Appellate doctrines that refuse to address due-process violations and fraud on the court— on the ground that the litigant "should have filed Rule 60 motions"— are legally unsound where the record is complete and the claims are fully presented on appeal. Such doctrines improperly elevate procedure over substance, conflict with federal due-process principles, and disregard South Carolina authority permitting direct appellate review of these issues. By using these procedural mechanisms to insulate a void judgment—an affirmance of an order that does not exist in the record—from any merits review, the State created the kind of procedural dead end that the Fourteenth Amendment prohibits.

Due process requires a meaningful opportunity to be heard at a meaningful time and in a meaningful manner, and a state cannot extinguish a cause of action through procedural missteps —especially those attributable to the state itself—without affording such a hearing. *Logan*, 455 U.S. 422. The Court's due process jurisprudence, as summarized in the Constitution Annotated, likewise emphasizes that it violates the Fourteenth Amendment for a state to enforce a

judgment or terminate a claim without providing an opportunity for a meaningful hearing before final deprivation of the protected interest.

When an appellate court refuses to reach fully briefed due process and fraud-on-the-court issues—despite a complete record—solely because the litigant did not first pursue a post-judgment motion, it allows procedure to destroy substance in a manner inconsistent with the requirements of due process. And when a litigant attempts to seek post-judgment relief both before and after remittitur, only to be told in each instance that relief is unavailable for that very reason, it creates a constitutional Catch-22 in which there is no time that is the right time and no way that is the right way to obtain review.

B. Direct Appellate Review of Due Process and Fraud

South Carolina precedent recognizes that serious due process violations and fraud on the court, when established by the existing record, are proper subjects for direct appellate review and need not be funneled exclusively through Rule 60 practice. In *Chewning*, the Supreme Court of South Carolina held that where the record contains irrefutable evidence of fraud on the court, appellate intervention is required to preserve the integrity of the judicial process. 579 S.E.2d 605. Likewise, in *Thames*, the South Carolina Court of Appeals made clear that due process violations and unreliable fact-finding may be resolved on direct appeal where the record is complete, without forcing parties into separate collateral proceedings. 506 S.E.2d 110. These decisions undermine any appellate doctrine that categorically refuses to consider due process

or fraud-on-the-court arguments on appeal simply because they were not packaged as Rule 60 motions in the lower court.

C. Rule 60 is Extraordinary, Not a Substitute for Appeal

Federal courts have repeatedly held that Rule 60(b) relief is "extraordinary" and not a substitute for a direct appeal; routine legal or factual errors must be raised on appeal, as Petitioner attempted to do so here. Only after the Court of Appeals itself insisted that her due-process and fraud-on-the-court claims "belonged" in Rule 60(b) motions did she file those motions, which the lower courts then refused to accept or adjudicate. See, *e.g.*, *Gonzalez* v. *Crosby*, 545 U.S. 524, 535–36 (2005) (explaining that Rule 60(b) cannot be used to circumvent normal appellate review), *Ackermann* v. *United States*, 340 U.S. 193, 198–202 (1950) (stressing that Rule 60(b) relief is available only in "extraordinary" circumstances and not to relieve a party from choices that could have been addressed by appeal), and *Liljeberg* v. *Health Servs. Acquisition Corp.*, 486 U.S. 847, 863–64 (1988) (describing Rule 60(b) relief as an "extraordinary" remedy justified only to prevent a grave miscarriage of justice).

Leading commentary is in accord, emphasizing that Rule 60(b) is not designed to displace or duplicate appellate review, but to address defects that cannot be remedied through the normal appellate process. See 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2851 (explaining that Rule 60(b) "does not provide a substitute for appeal" and is confined to extraordinary circumstances). Against this background, a state appellate

rule that refuses to address record-based due process violations and fraud on the court—insisting instead that such issues belong exclusively in Rule 60-type motions—directly inverts the federal framework. It converts an exceptional, collateral remedy into a mandatory gateway and, in doing so, blocks ordinary appellate correction of constitutional and integrity-threatening errors that federal law expects to be resolved on direct review.

D. Procedural "Dead Ends" and Pro Se Litigants

When an appellate court (1) affirms judgments resting on due-process violations or fraud apparent from the record, (2) refuses to consider challenges to those defects because the litigant did not file Rule 60 motions, and (3) then denies relief without directing lower courts that have refused to accept or rule on those motions, it creates a procedural "dead end" incompatible with federal constitutional guarantees. Pro se litigants, in particular, are entitled to procedures that do not turn technical choices about vehicle (appeal versus Rule 60 motion) into absolute barriers to adjudication of federal claims already preserved in the record.

Pro se litigants cannot be held to procedural standards that make meaningful review unattainable, because once a State provides an appellate process it must administer that process in a way that affords a realistic opportunity to present and obtain consideration of federal constitutional claims, regardless of whether the litigant has legal counsel. This is especially true where the litigant has already followed the courts' instructions as to the proper vehicle for relief,

only to be met at each stage with new, mutually inconsistent procedural barriers that no reasonable layperson could navigate.

Under due-process and equal-protection principles, courts may not design or apply procedural rules in ways that effectively deny meaningful access to a forum for vindicating constitutional rights, particularly where the litigant has already presented the relevant facts and legal arguments to the appellate court. Allowing a judgment that is void for fraud-tainted, distorted procedures to stand undermines the integrity of the judicial process, erodes public confidence in the rule of law, and is inconsistent with judicial ethics because it makes the court appear complicit in the fraud.

E. Failure to Understand the Procedural History

Through opposing counsel's misrepresentations, the Court of Appeals misunderstood the procedural history and erroneously invoked the law-of-the-case doctrine to treat the 2016 order as controlling the promissory note issue. This fundamentally misapplies settled law: the doctrine applies only to issues that were actually raised and decided in a prior appeal, and it does not extend to questions that were never adjudicated. See *Sloan Construction Co., Inc.* v. *Southco Grassing, Inc.*, 717 S.E.2d 603 (S.C. 2011); *Judy* v. *Martin*, 674 S.E.2d 151 (S.C. 2009).

V. Protecting the Fourteenth Amendment Rights Against Judicial Self-Policing

A. Need for National Guidance

The questions presented recur wherever pro se litigants face discovery obstruction, interlocutory orders

treated as final, and procedural doctrines used to shield void judgments. Only this Court can provide uniform guidance that such practices are incompatible with the Fourteenth Amendment. The petition does not ask this Court to manage or restructure how states police their own judges. Instead, it asks the Court to enforce constitutional limits on how those state structures and doctrines may operate in an individual case.

The problem is sharpened here because Respondent is represented by a law firm headed by former Speaker of the South Carolina House of Representatives, Robert J. Sheheen, who, as Speaker, wielded substantial influence over judicial selection in a system where the legislature elects and re-elects judges. In a judiciary that both self-disciplines and depends on legislative leaders and their allies for its composition, litigants reasonably fear that judges will be reluctant to cross such powerful actors, and, when combined with the absence of any neutral forum to review due-process and void-judgment claims, this structure poses an intolerable risk to federal constitutional rights.

Long-standing due-process doctrine holds that litigants are entitled to an impartial tribunal, and that recusal is required not only for proven, actual bias but also when there is a constitutionally intolerable probability or appearance of bias. See, *e.g.*, *Caperton* v. A.T. Massey Coal Co., 556 U.S. 868 (2009); *Tumey* v. *Ohio*, 273 U.S. 510 (1927); *Ward* v. *Village of Monroeville*, 409 U.S. 57 (1972). Those principles apply with particular force in a system where judges' careers depend on the very lawyer-legislators who appear before them, yet there is no neutral forum to review due-process

and fraud-on-the-court claims when those same judges refuse to recuse or to correct void judgments.

South Carolina's own top law-enforcement officials have described how the current judicial selection system fosters favoritism toward lawyer-legislators and undermines public trust in the courts. State Attorney General Alan Wilson recounted a civil case in which a lawyer-legislator spoke privately with the presiding judge before a key hearing, after which the opposing company "lost every single motion" and came away viewing South Carolina as a "judicial hellhole." First Circuit Solicitor David Pascoe has testified that the Judicial Merit Selection Commission is "rigged," that it fails to "weed out" bad judges, and that it "berates," "threatens," and "intimidates" good candidates until they drop out; he cited, among other examples, Circuit Judge Daniel Coble – the judge who affirmed the non-existent order in Petitioner's case – ruling for Judicial Merits Selection Commission member Todd Rutherford in a fee dispute just two weeks before Coble's own re-election screening, an arrangement Pascoe said at a minimum "looks horrible." Pascoe related a conversation with state senator and attorney Dick Harpootlian on the subject. "Yes," Harpootlian told him, "Lawyer-legislators get preferential treatment. It's not a secret." These accounts, from the Attorney General and elected solicitors, confirm that Petitioner's experience is not an isolated grievance, but instead is emblematic of the very structural problems now at issue across the state.

B. Limited but Essential Relief

The question is whether, in this case, two features of the state system together violate Petitioner's rights

to due process, equal protection, and meaningful access to the courts: first, appellate doctrines applied in a way that creates a procedural dead end for her federal claims, and second, a self-policing judicial system that provides no independent forum to address judicial bias or fraud. The requested relief is narrow: Petitioner asks the Court to hold that the judgment against her is unconstitutional and must be vacated or reversed, and to clarify that whatever internal system a State uses to supervise judges, it may not apply appellate and procedural rules in a way that shields serious due process violations and fraud on the court from meaningful judicial review.

* * *

This petition asks the Court to decide: (1) whether blocking a pro se litigant from obtaining and presenting critical evidence, and then deciding a dispositive issue on a truncated record, violates the Fourteenth Amendment; (2) whether a court may create a procedural dead end by first directing that the only avenue for relief from an affirmed, non-existent order is through Rule 60 motions, and then refusing to require the lower courts to follow that directive, so that Petitioner's due-process and fraud-on-the-court claims receive no review; and (3) what safeguards the Fourteenth Amendment requires to protect litigants' rights in state judicial systems where judges both adjudicate cases and police themselves, and where the very lawyer-legislators who appear before them also select and advance them, so that this insider-controlled structure does not compromise judicial impartiality or access to the courts.

The Constitution charges this Court with the ultimate responsibility of enforcing federal rights against state infringement; from *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137 (1803), to *Cooper* v. *Aaron*, 358 U.S. 1 (1958), this Court has made clear that state officials, including judges and court personnel, are bound by the Fourteenth Amendment's guarantee that no State shall deprive any person of due process or equal protection of the laws. When state procedures, as administered by those officers, transform due-process and access-to-courts guarantees into empty promises—by foreclosing any meaningful opportunity to be heard—federal judicial intervention is not a matter of grace but a core constitutional duty.

This case shows how that structure can leave a litigant without any meaningful avenue to correct fundamental due-process violations, because the same institutional actors who create the problem also control the only routes for review. Granting certiorari is therefore not only necessary to remedy the constitutional harm in this case, but is also a crucial first step toward setting federal constitutional boundaries that protect litigants from the systemic defects South Carolina's own officials have now openly acknowledged. Petitioner is not asking the Court to intrude on traditional state prerogatives over judicial administration, but only to ensure that federal rights are not sacrificed to internal procedural barriers or self-protective doctrines.

CONCLUSION

This Court should grant certiorari to reverse the judgment below; declare that the affirmance and enforcement of an order that does not exist in the record, coupled with the blocking of critical filings and refusal to adjudicate jurisdictionally proper Rule 60 motions, violates the Due Process and Petition Clauses of the United States Constitution; vacate the challenged state-court judgments as void to the extent they rest on or enforce the non-existent order, and remand for further proceedings consistent with this Court's opinion before different judicial officers to ensure impartial adjudication and the appearance of justice; direct that, on remand, Petitioner be afforded a meaningful opportunity to obtain and present evidence on the payment status of the promissory note and to obtain merits determinations on her due-process and fraud-on-the-court claims; and grant such other and further relief as this Court deems just and proper to protect Petitioner's federal constitutional rights.

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