


No. 25-994

**In the
Supreme Court of the United States**



BEVERLY HENNAGER,

Petitioner,

v.

MARY E. DEARDEN,

Respondent.

**On Petition for a Writ of Certiorari to the
Supreme Court of South Carolina**

PETITION FOR REHEARING

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GROUNDS FOR REHEARING

Petitioner respectfully seeks rehearing pursuant to Rule 44.2 on substantial grounds not previously presented, and invokes this Court’s jurisdiction under 28 U.S.C. § 1257. This petition for rehearing does not re-argue the questions presented in the petition for a writ of certiorari. Instead, it sets out, for the first time as a separate ground, the State courts’ sixteen-year failure to adjudicate non-waivable probate subject-matter jurisdiction under S.C. Code § 62-3-201, coupled with their later invocation of “preservation” based on a record distorted by their own refusal to adjudicate Petitioner’s jurisdictional and Rule 60 motions. Those intertwined jurisdictional and preservation defects—showing both that the Kershaw County Probate Court never acquired authority to act and that the State manufactured a procedural bar by blocking jurisdictional and due-process filings—constitute an independent federal ground that was not presented in Petitioner’s certiorari petition. The State courts’ sustained silence reasonably led Petitioner to infer that jurisdiction had been decided off the record and that her unadjudicated Rule 60 motions needed to be filed again.

A. Jurisdiction

From the outset, Petitioner repeatedly raised the jurisdictional defect—first to the personal representative in April 2010 (Rehear.App.1a), then directly to the probate judge in May 2010 (Rehear.App.2a–3a). Although earlier filings have been removed from the record, the docket still reflects Petitioner’s March 23,

2021, *Renewed Petition for Removal of Personal Representative* (Rehear.App.6a–9a), which challenged venue and jurisdiction, and her June 10, 2021, *Reopening Discovery Requests – Production of Documents* (Rehear.App.10a), seeking evidence of the decedent’s domicile and identification of any assets within the State of South Carolina. Both filings were ignored.

In the circuit court—the first level of appeal from probate—Petitioner further pressed the jurisdictional defect in her August 11, 2023, *Motion to Vacate Judgment/Order pursuant to Rule 60(b)(3), (b)(4)* (Rehear.App.12a–13a) and in her June 25, 2024, *Objections to Proposed Order* (Rehear.App.26a–28a). These unrebutted, non-waivable objections to probate jurisdiction—raised in both probate and circuit courts but never adjudicated—were nevertheless dismissed by the court of appeals as “not preserved” (App-6). That misstatement of the record, coupled with the failure to resolve a non-waivable jurisdictional defect, constitutes “other substantial grounds not previously presented” under Rule 44.2 and warrants rehearing and a grant-vacate-remand order.

Under S.C. Code § 62-3-201, a South Carolina probate court may act only if the decedent was domiciled in the State at death or if probate property was located there at the time of death. Here, the undisputed record establishes that the decedent was domiciled in Virginia for the last two and a half years of her life: her death certificate lists Virginia as her residence (App-109), she moved her medical care and banking there, lived with family there, and was memorialized and buried there. Opposing counsel’s assertion of an “intent to return” to South Carolina (Rehear.App.2a) is incompatible with the personal representative’s con-

cession that, by August 2009, the decedent was severely demented, with an MMSE score of 7 out of 30 and “end stage dementia” as the cause of death (App-109).

During the 2012 hearing, the personal representative testified that she had disbursed all South Carolina assets without appraisals, an inventory, or any court order (Rehear.App.31–32a). She was removed in part for that failure, but when reinstated, requests for a supplemental inventory were ignored, leaving no established South Carolina probate assets. On these facts, neither statutory prerequisite—South Carolina domicile nor South Carolina probate property—was satisfied, but the court never responded to these concerns. In the face of the courts’ continued silence, Petitioner was left to infer that probate jurisdiction had somehow been established off the record and therefore continued litigating while still seeking clarification and documentation.

Because probate subject-matter jurisdiction is non-waivable, the State’s courts could not cure that defect by silence; the Kershaw County Probate Court lacked authority to proceed and its orders are void *ab initio* under S.C. Code § 62-3-201. Petitioner respectfully asks this Court to grant-vacate-remand for clarification as to which State possesses proper probate jurisdiction. In the event the South Carolina courts are determined to hold probate jurisdiction, that finding does not diminish Petitioner’s preserved due-process and fraud-on-the-court challenges, which continue to present federal questions that must be addressed on remand.

B. Preservation of Issues Below

In the probate court, Petitioner repeatedly moved to compel critical discovery regarding the promissory

note, but the court intercepted and returned those motions and then ruled on an incomplete record (App. 32). The 30-day notice-of-appeal deadline precluded Petitioner from fully briefing her due-process and fraud-on-the-court objections. In light of the court's continued interception and return of her motions to compel while proceeding without that discovery, any further attempt to file yet another motion was reasonably viewed as futile rather than corrective.

Petitioner's August 11, 2023, *Motion to Vacate Judgment/Order Pursuant to Rule 60(b)(3)*, squarely raised due-process and fraud-on-the-court arguments under Rules 60(b)(3), 60(b)(4), and 60(d)(3) (Rehear.App. 14a–21a). She expressly relied on *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), which holds that the State violates due process when it deprives a person of a protected claim by denying a meaningful opportunity to present evidence and be heard. She also cited *Chewing v. Ford Motor Co.*, 346 S.C. 28, 550 S.E.2d 584 (Ct. App. 2001), which recognizes that concealment or withholding of evidence may constitute fraud on the court, and asked the court to declare the probate judgment void on that basis. When the circuit court remained unresponsive, Petitioner filed her May 13, 2024, *Agreement to Consolidate Rule 60 with Appellate Hearing* (Rehear.App.22a–23a), thereby reasserting and preserving her due-process and fraud-on-the-court objections, but the court still remained silent.

Petitioner reiterated the same federal arguments at the May 29, 2024, oral argument, citing *Logan* and *Chewing* and detailing discovery obstruction and denial of a meaningful opportunity to present evidence. Because opposing counsel's oral argument was inaudible, Petitioner was unaware he changed the finding of

fact under review from “the promissory note of Michael Jennings was satisfied . . .” to “Petitioner attempted on this appeal to raise allegation and speculations that should have been investigated during discovery . . . An example is her allegation of unpaid promissory note”.

Upon receiving the June 19, 2024 order affirming the falsified finding, Petitioner immediately responded. When the clerk returned her *Motion for Reconsideration* unfiled and refused to docket her “*Objections to Proposed Order Pursuant to Rule 46*,” Petitioner emailed those objections directly to the judge’s clerk; they were acknowledged but never included in the docket or adjudicated (App-106–107). In her Objections, Petitioner articulated due-process and fraud-on-the-court theories grounded in *Logan v. Zimmerman Brush Co.*, *Chewing v. Ford Motor Company*, and other related authorities (Rehear.App.24a–25a, 29a–30a).

Petitioner explained fraud on the court may refer to a situation in which a material misrepresentation has been made to the court by an attorney; when the judge is involved, the non -offending party may be prevented from correcting the record or presenting evidence proving their claim. She continued to document violations of due process such as the returned motions to compel production of evidence and late/mishandled hearing notices. She wrote, “Courts may relieve a party from final order when the judgment is void pursuant to Rule 60(b)(4)“. These Rule 46 Objections, together with her 2023 Rule 60(b)(3)–(4), (d)(3) motion, squarely presented and preserved Petitioner’s fraud-on-the-court claims in both the probate and the circuit courts, leaving the State’s later assertion of non-preservation resting entirely on its own refusal to docket and decide those filings.

Given that Petitioner had already been forced to bypass the clerk's refusal to file her Objections and the court never ruled on her 2023 Rule 60 motion, any further attempt to file yet another Rule 60 motion was reasonably viewed as an exercise in futility. The State cannot manufacture that futility through its own obstruction and then rely on it as a basis to claim Petitioner's federal claims were not preserved. Under *Harris v. Reed*, 489 U.S. 255 (1989), a state procedural ground can bar federal review only if it is both "adequate" and "independent" of the federal question. State actors may not manufacture default by blocking filings, suppressing motions, and ignoring duly presented federal arguments, then invoke that manufactured default to evade meaningful federal review.

In this tangled web of misstatements, omissions, and shifting narratives, the court failed to realize that the promissory note and related accounting issues were not adjudicated until the probate court's 2021 order and incorrectly treated the 2016 order—which did not resolve those issues—as "the law of the case." Respondent's assertion that Petitioner never objected to the amended accounting likewise ignores Petitioner's September 29, 2020, *Demand for Hearing Regarding Personal Representative's Failure to Provide Accurate, Complete Accounting* (Rehear.App.4a–5a), underscoring how the record was distorted to preserve an outcome rather than the law.

The federal rules and this Court's precedents require that cases be resolved on the merits wherever possible, rather than on technical or procedural grounds, a principle that is especially vital where the litigant proceeds pro se. Given the jumbled misstatements and omissions that confused even the court of appeals,

the courts' deliberate obstruction of Petitioner's efforts to file and obtain rulings on motions to compel, and the purported "affirmation" of a non-existent order, Petitioner cannot fairly be faulted for any perceived missteps in navigating the procedural maze the courts themselves created. Petitioner was understandably confounded by the court of appeals' order and reasonably believed she was required to file yet another Rule 60 motion, because her prior Rule 60 filings remained adjudicated. Believing that her timing must be amiss, Petitioner sought relief under Rule 60 at multiple stages of the litigation, yet those motions went unaddressed.



VOID AB INITIO

This case is void from its inception for lack of probate jurisdiction; even if jurisdiction were assumed, the resulting judgments would still be void for independent due-process violations and fraud on the court. Treating such a judgment as operative is not mere error; it fails to enforce what is a nullity and signals that unlawful exercises of power will be tolerated. When state courts repeatedly refuse to confront jurisdictional defects, due-process violations, and fraud-on-the-court allegations—and then invoke “preservation” to close the door—they effectively nullify federal rights, undermining due-process guarantees and this Court's role in ensuring the supremacy of federal law.



**SUMMARY:
SILENCE OF THE COURTS
AS A TOOL OF OBSTRUCTION**

This pattern of deliberate silence—declining to hear challenges and later invoking “preservation” to bar review—creates a system in which void judgments are shielded rather than corrected. Where a single due-process violation, a single instance of fraud on the court, or a single jurisdictional defect would ordinarily warrant reversal, the multiple overlapping violations here make the Court of Appeals’ dismissal appear less like neutral error-correction and more like an effort to leave an unlawful judgment in place. That result turns mechanisms designed to protect federal rights into tools for entrenching multiple void judgments. A case that is void for lack of jurisdiction but allowed to languish for sixteen years before being recognized as void ab initio surpasses the mark of a grave injustice and underscores the need for this Court’s intervention.



PRAYER FOR RELIEF

Petitioner respectfully asks the Court to grant rehearing, grant the petition for a writ of certiorari, vacate the judgment of the South Carolina Court of Appeals, and remand with instructions to determine whether South Carolina courts ever had probate jurisdiction consistent with S.C. Code § 62-3-201; if jurisdiction is found, to hear and adjudicate Petitioner’s

federal due-process and fraud-on-the-court claims; and if jurisdiction is not found, to treat the resulting orders as void and proceed in a court of proper probate jurisdiction.

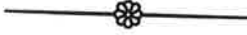
Petitioner further asks the Court to clarify that, where an estate's claims have not been adjudicated on the merits in a court of competent probate jurisdiction, a personal representative's failure to ensure adjudication in such a court may constitute a breach of fiduciary duty remediable in the proper probate forum, and that limitations, laches, or other timeliness defenses premised on delays caused by constitutionally infirm proceedings cannot bar consideration of those claims on remand. And for such other and further relief as may be just and proper.

Respectfully submitted,



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April 23, 2026



RULE 44.2 CERTIFICATE

I, BEVERLY HENNAGER, petitioner pro se, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:

1. This petition for rehearing is presented in good faith and not for delay.
2. The grounds of this petition are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

A handwritten signature in cursive script, appearing to read "B. Hennager".

Beverly Hennager
Petitioner

Executed on April 23, 2026