

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

In re Patricia J. Herring (formerly Patricia J. Reynolds),
Susan Brauner, Catherine Brauner, Judith Palya Loether,
William Palya, and Robert Palya, as living heirs of the
deceased Robert Reynolds, William H. Brauner and Phyllis
Brauner, and Albert H. Palya and Elizabeth Palya,
and as the Respondents or heirs of Respondents
in *United States v. Reynolds*, 345 U.S. 1 (1953),

Petitioners.

**MOTION TO FILE
PETITION FOR A WRIT OF ERROR *CORAM NOBIS***

TO THE CLERK AND THE JUSTICES OF THIS HONORABLE COURT:

Petitioners, in support of their filing of the attached Petition for a Writ of Error *Coram Nobis* to Remedy Fraud upon This Court, respectfully represent as follows:

1. Petitioners are the respondents, or heirs of the respondents, in *United States v. Reynolds*, 345 U.S. 1 (1953). On February 26, 2003, they submitted to the Clerk of this Court for filing a Petition for a Writ of Error *Coram Nobis* to Remedy Fraud upon This Court, a true copy of which is attached hereto as Exhibit "A" ("the Petition"). The Petition asks this Court to issue an extraordinary writ of error *coram nobis* to vacate its decision and mandate in *Reynolds*. Alternatively, the Petition asks the Court to exercise its inherent equitable power to set aside its prior ruling. The Petition sets forth the remarkable facts upon which it is founded (Petition at 1, 3-10), the bases upon which the Court has jurisdiction to grant petitioners relief (*id.* at 10-15), and the reasons why the

Court should do so (*id.* at 15-27). It also contains, in its Appendix, the recently declassified materials that evidence that the United States Air Force defrauded this Court in seeking and obtaining the *Reynolds* decision.¹

2. Although the Clerk's Office initially accepted the Petition for filing, on February 28, 2003, the Clerk's Office determined that it should not be docketed but should be returned to petitioners. On March 3, 2003, after it had already mailed back all copies of the Petition, the Clerk's Office notified petitioners' counsel of its determination, advising that because the writ that petitioners were seeking was not a writ of certiorari, habeas corpus, mandamus, or prohibition, petitioners' filing was inappropriate. After petitioners' counsel noted there was support in law for the writ that petitioners requested, the Clerk's Office and petitioners' counsel agreed that petitioners should re-submit their Petition, accompanied by this Motion.

3. Under Rule 1 of this Court, the Clerk "has authority to reject any submitted filing that does not comply with these Rules." Petitioners do not understand the Clerk to have broader authority, for example, to determine whether this Court, in fact, has jurisdiction or to evaluate whether the relief that the petitioners request is appropriate. Rather, the proper question for the Clerk is whether what the petitioners seek to file fits within the Court's rules. If it does, then the Petition should be accepted.

¹ The *Reynolds* case began as two consolidated civil actions brought in the United States District Court for the Eastern District of Pennsylvania in 1949. Judgments of that court in favor of three widows were affirmed by the Third Circuit Court of Appeals, 192 F. 2d 987 (3d Cir. 1951), but reversed by this Court. This Court's ruling, we now know, was premised on a fraud. It cost the widows their judgments. Only this Court can undo what it did: hence, this Petition.

4. The writ of error *coram nobis* is a common law writ that is preserved for the Supreme Court by the All Writs Act, 28 U.S.C. § 1651(a) (“The Supreme Court ... may issue all writs necessary or appropriate in aid of ... [its] jurisdiction and agreeable to the usages and principles of law.”). As the Court observed in *United States v. Morgan*, 345 U.S. 502, 507-08 (1954), in directing a lower federal court to consider issuance of *coram nobis* pursuant to § 1651(a):

The writ of *coram nobis* was available at common law to correct errors of fact. It was allowed without limitation of time for facts that affect the “validity and regularity” of the judgment, and was used in both civil and criminal cases.

The writ of error *coram nobis* has come before this Court infrequently. When it has, however, the Court has uniformly upheld its availability under the All Writs Act to remedy “errors of the most fundamental character.” *Morgan*, 345 U.S. at 512, quoting *United States v. Mayer*, 235 U.S. 55, 68 (1914); *Korematsu v. United States*, 584 F. Supp. 1406, 1419-20 (N.D. Cal. 1984) (employing *coram nobis* set aside convictions of Japanese-American internees that had been based on government falsehoods). *See also Stroude v. The Stafford Justices*, 1 Brock. 162, 23 F. Cas. 236 (C.C.D. Va. 1810) (Marshall, C.J.) (granting *coram nobis* relief).

5. Supreme Court Rule 20 governs procedure on a petition for an extraordinary writ. Rule 20 does not limit acceptable petitions to those seeking common law certiorari, habeas corpus, mandamus or prohibition. It allows for the filing of *any* “extraordinary writ authorized by 28 U.S.C. § 1651(a),” including the ancient common law writ of error *coram nobis*. *See* R. Stern, E. Gressman, S. Shapiro & K. Geller, *Supreme Court Practice* 591 (8th ed. 2002) (hereinafter “Stern & Gressman”) (writs of

certiorari, habeas corpus, mandamus, and prohibition “should not be taken as exclusive or exhaustive” of special writs available under § 1651).

6. Petitioners believe the writ of error *coram nobis* is perfectly suited to the challenges of this case, where recently declassified materials show that this Court’s decision-making was subverted by fraud, and that there is no reason why the Court cannot and should not employ the writ to accord petitioners relief. *See* Petition at 10-13 (discussing historical, jurisdictional and procedural propriety of the writ). *See also* Stern & Gressman, *supra*, at 581-82 (noting that *Marbury v. Madison* preserves right to pursue relief by extraordinary writ in the Supreme Court so long as the Court is called upon to act in an appellate capacity). Moreover, petitioners have complied fully with the requirements of Rule 20 that they show in their Petition jurisdiction (Petition at 10-13), exceptional circumstances (*id.* at 15-20), and the unavailability of adequate relief in any other form from any other court (*id.* at 20-21).

7. Alternatively, as the Petition notes, the Court may treat the Petition as a petition or motion for equitable relief filed with the Court in the *Reynolds* case itself (September Term, 1952, No. 21). *Id.* at 12-13 & n.7. The Court, like other federal courts, has the inherent equitable power “to set aside fraudulently begotten judgments” and restore the parties to the position they would have enjoyed in the absence of the fraud. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 245, 250 (1944). *See also* *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45 (1991); *Universal Oil Products Co v. Root Refining Co.*, 328 U.S. 575, 580 (1946). Indeed, in Article III the framers accorded this Court the powers of a court of equity precisely so that it might answer the challenge of fraud. *See* Petition at 14 & n.8. Again, the Petition details the bases upon

which the Court has jurisdiction to so act, *id.* at 10-11, 13-15, and the reasons it should so act. *Id.* at 22-23. Thus, it comports with Rules 20 and 21 of this Court.

8. A Petition for a Writ of Error *Coram Nobis* is surely a very rare occurrence in the life of the Supreme Court Clerk's Office. Equally unusual, no doubt, is an application for equitable relief with respect to a fifty-year old decision. But, with all due respect, the Petition submitted to the Clerk last week comports with the Court's rules, and the Clerk's Office ought not to have declined to accept it. Petitioners have, moreover, advanced a substantial and good faith basis for invoking this Court's jurisdiction. Thus, even if it were the Clerk's province to make some sort of threshold assessment of jurisdiction (which petitioners do not believe it is), this Petition passes muster. For the Clerk's Office, *at the filing stage*, to deny petitioners an opportunity to come before the Court on the serious issues their Petition presents would be the ultimate injustice in the sad story that is *United States v. Reynolds*.

WHEREFORE, petitioners pray that their Motion to File Petition for a Writ of Error *Coram Nobis* to Remedy Fraud upon This Court should be granted.

Respectfully submitted,

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