

Docket No. 20-

**The United States Court of Appeals
for the Third Circuit**

In re
Motion to Confirm Arbitration Award in the Matter of
Democratic National Committee
v.
Republican National Committee
MUR 2018-1, 2018 WL 7568871 (June 6, 2018)
by Hon. Peter J. Wirs, Trustee, Lincoln Charitable Trust

Emergency Petition for Writ of Mandamus
to the United States District Court
for the Eastern District of Pennsylvania in
Case Number 2:19-cv-004072 - NIQA
The Honorable Nitza I. Quiñones Alejandro, Presiding
With Appendix in Support

Dated: October 18, 2020

Attorney Assistance
The Trustee is assisted by
18 attorneys providing various
degrees of assistance from case
law to procedural analysis
in full compliance with
PBA/Phila. Bar Assoc.
Joint Formal Op. 2011-10,
Pa.R.P.C Rules 1.2(c) and 6.1

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Corporate Disclosure Statement

Pursuant to Rule 26.1 and Third Circuit LAR 26.1, the Trustee possesses no ownership of any publicly registered corporate stock or bond and there is no publicly held corporation which is not a party to the proceeding before this Court but which has as a financial interest in the outcome of the proceeding.

October 18, 2020

Respectfully, etc.
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I. Relief Sought is Mandatory Compliance with 9 U.S.C. § 9.

1. Petitioner, Trustee of the Lincoln Charitable Trust, (the “Trustee”) seeks the District Court’s non-discretionary compliance with the mandatory summary confirmation of the Trust’s Arbitration Award *Democratic National Committee v. Republican National Committee*, MUR 2008-1, 2018 WL 7568871 (“Award MUR 2018-1”) under the Federal Arbitration Act, 9 U.S.C. § 9. Award MUR 2018-1 was issued by the Trustee pursuant to the Trust’s dispute resolution procedures (Appdx. at 314-315) being binding under 20 Pa.C.S. § 7710.1(a).
2. The Trustee cast no aspersions on Judge Quiñones Alejandro, whose distinguished and exemplary record speaks for itself. Instead, as shown below, the fault lies with the law clerks for her and presumably for Judge Greenberg of the Merits Panel, who acquiesce to or were victimized by Opposing Counsel’s corruption.

II. The Sole Issue is Whether the Court will Perform its Non-Discretionary, Ministerial Duties as Mandated under 9 U.S.C. § 9.

3. Notwithstanding the Fraud on the Court by the arbitration’s non-prevailing party Republican National Committee; shall the Writ issue to compel the District Court to perform its non-discretionary, ministerial duty to confirm Award MUR 2018-1 as mandated by 9 U.S.C. § 9; *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 587, 128 S.Ct. 1396, 1405, 170 L.Ed.2d 254 (2008); *Teamsters Local 177 v. UPS*, 966 F.3d 245, 254 (3rd Cir. 2020), the Trustee’s right to such relief being clear and indisputable with no other remedy at law.

III. The Facts.

4. With the caveat brevity minimizes details, the facts are:

A-1. Dr. John Templeton Establishes a Charitable Trust to Enforce Voters' First Amendment Rights within the RNC

5. Dr. John Templeton, Jr., funds a Phila. GOP ward committee to establish a charitable trust to provide political technology to local party committees at no cost because the “Republican Curia” will not.¹ (Appdx. at 132-139).
6. The trust is embraced by RNC Chairman Michael Steele who appoints a RNC member to succeed retired Judge Arlen M. Adams as co-trustee while RNC Counsel Reince Priebus pledges \$20 million to relieve Dr. Templeton of soliciting other mega-donors. (Appdx. at 140-141).
7. However, the Republican Curia, refusing to abide by either Steele or Priebus, proceeds to destroy the Trust for its self-serving pecuniary interests. (Appdx. at 140-141, 260-265).
8. The GOP ward committee, as Settlor of Record, exercises its statutory authority to enforce a charitable trust, 20 Pa.C.S. § 7735(c) by filing a grievance, joined by the PA Attorney General seeking reformation under 20 Pa.C.S. § 7740.5 to provide the Trust Property to all political parties. (Appdx. at 30-31, 151).

¹ “Republican Curia” is, as intended, nefarious shorthand for the phenomena of self-serving “cadre party” of attorneys, consultants, and vendors preempting elected party officers and members universally condemned by law and political science professors. (Appdx. at 48-50, 260-262).

9. The three co-trustees attempt to mediate under the Trust Agreement's dispute resolution procedures, (Appdx. at 283-284) at but converts the grievance to arbitration and issues Award MUR 2009-1 by summary disposition. (Appdx. at 148-150).
10. The Republican Curia obstructs the settlor's state court confirmation petition of Award MUR 2009-1 by Fraud on the Court, without even filing a response or preliminary objections. (Appdx. at 150-154).
11. The Trustee intervenes in the controversy by filing an appeal as of right granted to fiduciaries. Pa.R.A.P. 501. The PA courts admit the now singular Trustee is not a party before the state trial court. *In re Roosevelt-Bentman Trust*, 2016 WL 783628 *1 (Feb. 29, 2016).
12. The PA Superior Court properly narrows the holding that denial of confirming Award MUR 2009-1 regarding the RNC was solely due to alleged irregularities (summary disposition) and not on the merits, and lets stand Award MUR 2009-1's reformation under 20 Pa.C.S. § 7740.5. *Id.*

A-2. DNC Files New Grievance Against RNC for Violating 1980 Federal Court Consent Decree for RNC to Stop Voter Suppression.

13. The Democratic National Committee, by its local counsel, Genova Burns LLC, files a new grievance against the RNC arising out the RNC's ongoing violation of a Nov. 2, 1980 Consent Decree entered in the U.S. District Court (D.N.J.).² (Appdx. at 29-30).

² *Democratic National Committee v. Republican National Committee*, 671 F.Supp.2d 575, 579 (D.N.J. 2009), *affirmed*, 673 F.3d 192 (3d Cir.

14. After the consent decree expires, the Trustee, again pursuant to 20 Pa.C.S. §§ 7771, 7780.5, 7780.6(a)(3), presides as arbitrator and after two hearings, issues Award MUR 2018-1 holding the RNC violates the Civil Rights Act of 1957, 52 U.S.C. § 10101(b), by systematic voter suppression. (Appdx. at 283-284).
15. Despite being in Federal Court on confirmation of the re-issued Award 2009-1, Opposing Counsel fails to challenge arbitrability under 9 U.S.C. § 4 of MUR 2018-1 proceedings.
16. Opposing Counsel is even provided MUR 2018-1's proposed findings of fact and conclusions of law for opportunity to object. (Appdx. at 21).
17. The Trustee exercises his authority *Ex Aequo et Bono* to arrest RNC's voter suppression, by *inter alia*, reinstating the expired Consent Decree and requiring multiple reforms for accountability and transparency so to revert party control from the Republican Curia back to voters' elected party members. (Appdx. at 315-330).
18. If the RNC did not satisfy the Award MUR 201801 order by Sept. 28, 2018, a Receiver is appointed. (Appdx. at 330-331). *Stone v. Theatrical Investment Corp.*, 64 F.Supp.3d 527, 540-542 (S.D.N.Y 2014).
19. RNC fails to timely file a vacatur motion under 9 U.S.C. § 10(a) waiving judicial review of all claims or defenses. *Teamsters Local 177*, 966 F.3d at 255; *Service Emp. Intern. Union v. Office Center Services, Inc.*, 670 F.2d 404, 409 (3rd Cir. 1982).

2012), *cert. denied*, 568 U.S. 1138, 133 S.Ct. 931, 184 L.Ed.2d 751 (2013), *on remand* 2016 WL 6584915 *affirmed* 2019 WL 117555.

20. Pursuant to his statutory authority under 20 Pa.C.S. § 7710.1(e), the Trustee files the *uncontested* 9 U.S.C. § 9 confirmation motion under E.D.Pa.L.Civ.R 7.1 as “[A]ctions to confirm arbitration awards ... are straightforward proceedings in which no other claims are to be adjudicated.” *Teamsters Local 177*, 966 F.3d at 252.
21. Opposing Counsel (to date paid \$455,685 according to RNC campaign finance records) again perpetrates a Fraud on the Court with Trumpism “alternate realities” to deny the Trustee his indisputable right to prevail under 9 U.S.C. §§ 2, 9 by provoking “misjudging,” Chris Guthrie, *Misjudging*, 7 NEV. L.J. 420, 428-438 (2007), the systematic error of “snap judgments.” Chris Guthrie; Jeffrey J. Rachlinski; Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93 Cornell L. Rev. 1, 29-33 (2007) by first corrupting the law clerks to believe the Trustee’s arguments were frivolous.
22. Opposing Counsel deceives the Court with ten different sham defenses exploiting 15 different fallacies in violation of Pa.R.P.C. 1.2, 3.1, 3.3, 3.4, and 8.4 including such prima facie deliberate extraordinary misstatements of law that “tests the credulity of the credulous.” *Maryland v. King*, 569 U.S. 435, 466, 133 S.Ct. 1958, 1980, 186 L.Ed.2d 1 (2013) (Scalia, J., dissenting).
23. Opposing Counsel’s Fraud on the Court continues through appeal, corrupting the law clerks serving the Merits Panel (Greenberg, Restrepo and Shwartz, JJ.) with the identical scheme.

A-3. What the Court is Required by Law to Do.

24. The Court is mandated to treat a confirmation motion of an unvacated arbitration award under the Federal Arbitration Act, 9 U.S.C. § 9 as a non-discretionary summary proceeding, without opposition. *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. at 587, 128 S.Ct. at 1405; *Teamsters Local 177*, 966 F.3d at 254.

A-4. What the Court, Corrupted by Fraud on the Court, Did.

25. Corrupted by Opposing Counsel's Fraud on the Court, the Court violates the Law of the Forum, 9 U.S.C. §§ 2-12, treating a ministerial procedure as adversarial, allowing the Interloper RNC to illegally appear to assert claims and defenses statutorily waived under 9 U.S.C. §§ 4, 10(a), 12; *Hall Street*, 552 U.S. at 587, 128 S.Ct. at 1405; *Teamsters Local 177*, 966 F.3d at 255; *Office Center*, 670 F.2d at 409; then enter judgment for which the Court lacks jurisdiction under 9 U.S.C. § 9. *Marshall v. Board of Ed., Bergenfield, N.J.*, 575 F.2d 417, 422 (3rd Cir. 1978).

A-5. How Opposing Counsel's Fraud on the Court Succeeds in Corrupting and Defiling the Court.

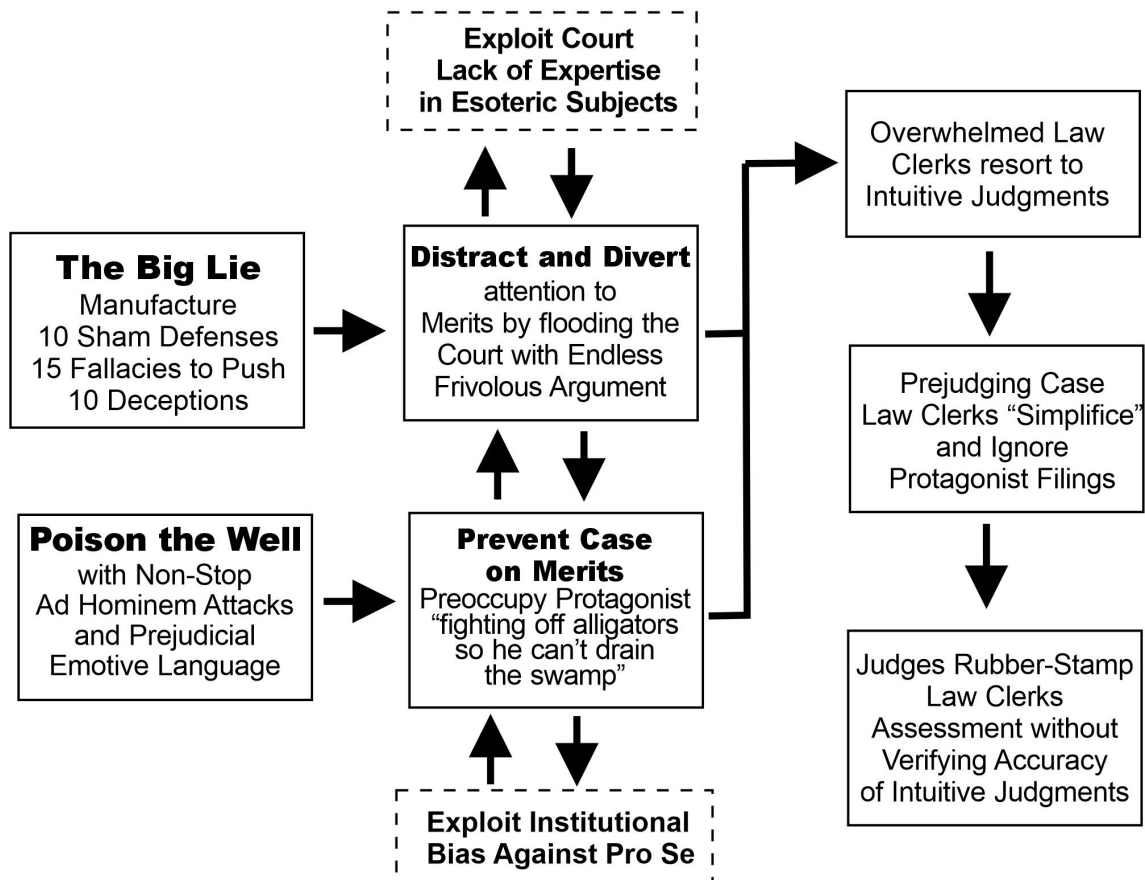
26. First, the Fraud on the Court exploits the law clerks' peer bias against pro se litigants, Rory K. Schneider, *Illiberal Construction of Pro Se Pleadings*, 159 U.PA.L.REV. 585, 622-623 (2011) by:

- A. Poison the Well with unrelenting barrage of *ad hominem* attacks on the Trustee using egregiously impenitent and scandalous emotive language (i.e. bogus, fraud, scam) to stigmatize the

- Trustee in the eyes of the Court. Paul Bosanac, *Litigation Logic*, 39-51 (ABA 2009); Ruggero J. Aldisert, *Logic for Lawyers* 182-183 (3d ed. 1997); and
- B. Exploiting the Trustee proceeding pro se due to the “Professor Scott rule,” 20 Pa.C.S. §§ 7774- 7777, not to delegate (at increased expense) what the Trustee “reasonably be required personally to perform,” Austin W. Scott, William F. Fratcher & Mark L. Ascher, *Scott and Ascher on Trusts* §17.3. (6th Ed.), to infer the Trustee’s arguments so lack merit he cannot obtain counsel.
27. Second, the Fraud on the Court exploits the Court’s inherent lack of expertise and experience in specialized subject matter to:
- A. Question the plausibility of political charitable trusts notwithstanding their historical success. Note, *Charitable Trusts for Political Purposes*, 37 Vir.L.Rev. 988, 988-989 (1951).
 - B. The fields of arbitration and charitable trust law. Jennifer Sheppard, *Once upon a Time, Happily Ever After, and in a Galaxy Far, Far Away: Using Narrative to Fill the Cognitive Gap Left By Overreliance on Pure Logic in Appellate Briefs and Motion Memoranda*, 46 WILLAMETTE L. REV. 255, 263-264(2009) (rule-based analysis not sufficient when underlying issues not understood within the realm of common judicial experience).
28. The Fraud on the Court’s exploitation of these factors results in:
- A. Corrupting the law clerks into making intuitive judgments. Guthrie, 7 NEV.L.J. at 428-429; Chris Guthrie, Jeffrey J.

- Rachlinski & Andrew J. Wistrich, *Judging by Heuristic Cognitive Illusions in Judicial Decision Making*, 86 JUDICATURE 44 (2002);
- B. Which causes the law clerks to “satisfice” – to skim or ignore the Trustee’s arguments believing such is a waste of time. Mary Beth Beazely, *Writing (and Reading) Appellate Briefs in the Digital Age*, 15 J.APP.PRAC. & PROCESS 47, 55 (2014).
- C. Which the law clerks then induce the Court to “Misjudge” foregoing the routine deliberative decision-making evaluation to verify the intuitiveness’ accuracy. Guthrie, 7 NEV.L.J. at 428-438, Gurthrie at al, 93 CORNELL.L.RV. at 23-33.

Anatomy of the Fraud on the Court



29. As illustrated by the above chart, Opposing Counsel's scheme to deceive is to distract and divert the Court's attention from facts and controlling law with "Clearly unreasonable" legal arguments. *Matthews v. Freedman*, 128 F.R.D. 194, 200-201 (E.D.Pa. 1984) *affirmed* 919 F.2d 135 citing Edw. Cavanaugh, *Developing Standards under Amended Rule 11 of the Federal Rules of Civil Procedure*, 14 HOFSTRA L.REV. 499 538, 544-545 (1986).

A-6. Opposing Counsel's Intentional Deceptions.

30. Everyone of Opposing Counsel's sham defenses in violation of Pa.R.P.C. 3.1 and 3.3 deliberately conceal that:

A. RNC lost statutory standing by waiving all claims and defenses under 9 U.S.C. § 4, 9, 10 and 12, *Hall Street*, 552 U.S. at 587, 128 S.Ct. at 1405; *Teamsters Local 177*, 966 F.3d at 255; *Office Center*, 670 F.2d at 409.

B. The *Res Judicata* plea:

(1) Is not grounds for vacatur under 9 U.S.C. § 10(a), *Ario v. Underwriting Members of Syndicate 53 at Lloyds*, 618 F.3d 277, 295 (3d Cir.2010);

(2) Only the arbitrator, not the Court decides if *res judicata* is applicable, *John Hancock Mut. Life Ins. Co. v. Olick*, 151 F.3d 132, 140 (3d Cir. 1988); Jarrod Wong, *Court or Arbitrator--who Decides Whether Res Judicata Bars Subsequent Arbitration under the Federal Arbitration Act?* 46 SANTA CLARA L. REV. 49, 66-78 (2005).

(3) Award MUR 2018-1 found that *res judicata* not applicable under the incontrovertible physical fact rule that:

(a) Award MUR 2018-1 discusses multiple dispositive facts that Award MUR 2009-1 could not discuss as such events (i.e. the 2016 Presidential election) did not occur. *Morgan v. Covington Twp.*, 648 F.3d 172, 178 (3rd Cir. 2011). (Appdx. at 249-251).

(b) *A fortiori*, Award MUR 2018-1 is not the same as Award MUR 2009-1, *Vale v. Indiana County Theaters Co.*, 120 F.2d 495, 497 (3d Cir. 1941).

31. Opposing Counsel’s subsidiary falsehoods to bootstrap its primary deceptions are so numerous that for judicial economy, only a few are discussed, the balance demonstrated by the Trustee’s Table of Stark Contrasts (Appdx. at 321-391) for a side-by-side comparison of Opposing Counsel’s “precise falsehood alleged and the factual basis of its falsity.” *United States v. Reilly*, 811 F.Supp. 177, 179 (D.Del. 1993) citing *United States. v. Tonelli*, 577 F.2d 194, 195 (3d Cir.1978).

A-7. Fraud on the Court Succeeds in Corrupting the Court as Court Considers Only Opposing Counsel’s Arguments and Ignores the Trustee’s Arguments.

32. Fraud on the Court is proven by clear and convincing evidence of: (1) an intentional fraud; (2) by an officer of the court; (3) directed at the court itself; and (4) succeeds deceiving the court. *Herring v. United States*, 424 F.3d 384, 386 (3rd Cir. 2005).

33. This Court can draw the reasonable inference from the facts that the Fraud on the Court succeeds because any other version is implausible and improbable as all evidence points only in one direction, and is of such a character that reasonable men, in the impartial exercise of their judgment would be unable to reach any other conclusion.

A-8. First Prima Facie Proof the Court Considers Only Opposing Counsel's Arguments and Ignores the Trustee's Arguments.

34. Opposing Counsel falsely claims the Trustee "represents" the DNC which induces the Court to order the Trustee to "obtain counsel for the DNC."

35. This is an egregious prime facie violation of Pa.R.P.C. 3.1 and 3.3 and to anyone familiar with trust law knows to be patently false as only the PA Attorney General represents charitable trust beneficiaries, *In re Pruner's Estate*, 390 Pa. 529, 532-533, 136 A.2d 107, 109 (1957); 71 P.S. § 732-204(c), which the Trustee repeatedly tells the Court.

36. Opposing Counsel reinforces its Fraud on the Court by repeatedly refusing to serve the PA Attorney General as required by law.

37. Moreover, the Record clearly establishes DNC has counsel.

A-9. Second Prima Facie Proof the Court Considers Only Opposing Counsel's Arguments and Ignores the Trustee's Arguments.

38. Opposing Counsel's *Rooker-Feldman* and *Res Judicata* sham defenses causes the Court to usurp Award MUR 2018-1 findings of fact and conclusions of law, which are not questionable on judicial review. *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 36, 108

S.Ct. 364, 370, 98 L.Ed.2d 286 (1987); to conceal Award MUR 2018-1 holds *res judicata* inapplicable. (Appdx. at 259-252).

A-10. Third Prima Facie Proof the Court Considers Only Opposing Counsel’s Arguments and Ignores the Trustee’s Arguments.

39. Opposing Counsel’s Fraud on the Court forces the Court to deny Full Faith and Credit to PA law, 20 Pa.C.S. § 7710.1 (UTC 111) that Award MUR 2018-1 is already binding. *Testamentary Trust of Conti*, 41 Pa. D. & C. 5th 134, 143, 2014 WL 12862647 *3 (Phila. O.C. Sept. 17, 2014) (HERRON, J.). See ULC Comment to Uniform Trust Code § 816: “Arbitration is a form of nonjudicial settlement agreement authorized by Section 111.”

A-11. Fourth Prima Facie Proof the Court Considers Only Opposing Counsel’s Arguments and Ignores the Trustee’s Arguments.

40. Opposing Counsel repeatedly asserts the falsehood that the DNC “disclaims” its interest in the Trust with the purported “*Anonymous* May 21, 2019 Perkins Coie Letter.”

41. Again, this is plainly a prime facie violation of Pa.R.P.C. 3.1 and 3.3 as an anonymous law firm letter violates 20 Pa.C.S. §§ 6201(3); 6204(b) and Pa. R.P.C. 1.2.

42. The falsehood also violates *Misco* as Award MUR 2018-1 reiterates that the DNC accepted its Trust interests by requiring amendment to the Trust Agreement to assure the RNC’s Award MUR 2009-1 liabilities do not burden the DNC. (Appdx. at 186).

A-12. Fifth Prima Facie Proof the Court Considers Only Opposing Counsel's Arguments and Ignores the Trustee's Arguments.

43. Opposing Counsel repeatedly asserts the falsehood that a Trust is a juristic entity and that the Trustee cannot represent himself.
44. Again, this is plainly a prime facie violation of Pa.R.P.C. 3.1 and 3.3 as it is Black Letter law a trust is not a legal entity, and only the Trustee can sue and be sued. *North Carolina Dept. of Revenue v. The Kimberley Rice Kaestner 1992 Family Trust*, __ U.S. __ , 139 S.Ct. 2213, 2217, 204 L.Ed.2d 621(2019); *U.S. v. One (1) Palmetto State Armory PA-15 Machinegun*, 822 F.3d 136, 140 (3rd Cir. 2016).
45. Opposing Counsel's falsehood is to conceal the law that the Trustee is required to proceed pro se, 20 Pa.C.S. §§ 7774- 7777(a) per the "Professor Scott Rule" *Scott and Ascher on Trusts* at §17.3 to falsely infer the Trustee's arguments so lack merit he cannot obtain counsel.
46. That the Court does not read the Trustee's arguments is self-evident by the fact the Court cites Third Circuit published and unpublished cases not on point and the District Court even demands the Trustee obtains counsel.
47. The Trustee repeatedly cites controlling law and even informs the District Court that if it wants an attorney in lieu of the Trustee, the Court can exercise its visitorial powers by appointing an attorney as a temporary Trustee. 20 Pa.C.S. § 7764(e) ("the court may appoint an additional trustee or special fiduciary if the court considers the appointment desirable for the administration of the trust").

A-13. Sixth Prima Facie Proof the Court Considers Only Opposing Counsel's Arguments and Ignores the Trustee's Arguments.

48. The most glaring example of that the Court does not read the Trustee's filings is that the Court unexplainedly ignores the expert testimony of Robert A. Creo, Esq. of Duquesne University Law School, one of the Nation's leading international arbitrators and renown PA commentator on alternate dispute resolution that the Trustee is correct on all points of law and is indisputably required to prevail. (Appdx. at 316- 320).
49. The Court also ignores Professor Creo's testimony that Award MUR 2018-1 is not the same as the prior Award MUR 2009-1 as he instructed the Trustee to hold hearings on both merits and procedure to avoid the errors complained of in the Award MUR 2009-1 state court proceedings. (Appdx. at 317).
50. It is implausible but for the Fraud on the Court, the Court chooses Opposing Counsel's clearly unreasonable arguments over one of the Nation's top arbitration authorities. *Matthews*, 128 F.R.D. at 200-201.

A-14. More Prima Facie Proof the Court Considers Only Opposing Counsel's Arguments and Ignores the Trustee's Arguments.

51. The Court never acknowledges *Hall Street* or *Office Center* as controlling authority despite the Trustee repeatedly asserting both no less than twelve times. (*Teamsters Local 177* is intervening authority).
52. The Panel refuses to acknowledge *Teamsters Local 177* in the Trustee's Rehearing Petition (Doc. 55).

53. The Court refuses to acknowledge the RNC waived all claims and defenses under 9 U.S.C. §§ 4, 10; *Hall Street*, 552 U.S. at 587, 128 S.Ct. at 1405; *Teamsters Local 177*, 966 F.3d at 255; *Office Center*, 670 F.2d at 409, despite this being the rule uniformly held by all courts in the Third Circuit, until now.³
54. The Court never explains why, but merely presumes the Law of the Forum, giving RNC standing; when under 9 U.S.C. §§ 2, 4, 9-12 the RNC, an interloper, lacks the perquisite legal standing to challenge Award MUR 2018-1, *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343 (1975); by waiving all claims and defenses under 9 U.S.C. §§ 4, 10.; *Hall Street*, 552 U.S. at 587, 128 S.Ct. at 1405; *Teamsters Local 177*, 966 F.3d at 255; *Office Center Services*, 670 F.2d at 409.⁴

³ “A party [] who fails to comply with the statutory precondition of timely service of notice forfeits the right to judicial review of the award.” *Silicon Power Corp. v. General Elec. Zenith Controls, Inc.*, 2009 WL 1971390 *2 (E.D.Pa. July 7, 2009) (PADOAVA, J.); see also *Western Kraft East, Inc. v. United Paperworkers Intern. Union, Local 375*, 531 F.Supp. 666, 671 (E.D.Pa. 1982) (Giles, J.); *SEIU Healthcare Pennsylvania v. Regional Hosp. of Scranton*, 2015 WL 150069 *7 (M.D.Pa. Jan. 12, 2015) (MARIANI, J.); and *Jeereddi A. Prasad, M.D., Inc., Retirement Plan Trust Profit Sharing Plan v. Investors Associates, Inc.*, 82 F.Supp.2d 365, 367-368 (D.N.J. 2000). (Greenaway, J.) (The FAA does not permit challenges to an award in opposition to a motion to confirm award after three-month limitations period has expired).

⁴ Maintaining an action for one who does not possess a legal claim for that right of action, is itself, a Fraud on the Court. *Brittain v. Hope Enterprises Foundation Inc.*, 163 A.3d 1029, 1038 (Pa.Super. 2017).

55. The Court denies Full Faith and Credit to the PA Uniform Trust Act, particularly 20 Pa.C.S. §§ 7710.1 (UTC 111).
56. The Court ignores the rule courts can “vacate an arbitration award on the four narrow grounds” under 9 U.S.C. § 10,” *Ario v. Underwriting Members of Syndicate 53 at Lloyds*, 618 F.3d 277, 295 (3d Cir.2010), *Res judicata* is not being such ground.
57. The Court refuses to follow “*res judicata* based on a prior arbitration proceeding is an issue to be arbitrated and not decided by the courts.” *John Hancock Mut. Life Ins. Co. v. Olick*, 151 F.3d at 140; Jarrod Wong, 46 SANTA CLARA L. REV. at 66-78.
58. The Court usurps the Trustee’s holding *res judicata* does not apply (Appdx. at 260-263), a disposition not subject to judicial review. *Misco*, 484 U.S. at 36, 108 S.Ct. at 370.
59. The Court refuses to admit the PA courts find the Trustee was not a party in the prior Award MUR 2009-1 state trial court proceeding, rendering *res judicata* inapplicable, *arguendo*, if a valid defense.⁵

⁵ Opposing Counsel expands upon its Fraud on the Court before this Court. The Trustee discovers during the appeal, that Opposing Counsel conceals the PA Superior Court holding in the prior Award MUR 2009-1 case that confirmation was denied for procedural irregularities, not on merits, the latter beyond the court’s jurisdiction. *In re Roosevelt-Bentman Trust*, 2016 WL 783628 *1 (Feb. 29, 2016); to conceal the Law of the Case that appellate express holdings render balance of a trial court decision *obiter dicta* not applicable for *res judicata*. *Speyer, Inc. v. Goodyear Tire*, 222 Pa.Super. 261, 265-268, 295 A.2d 143, 146-147 (1972).

60. The Court, without proof, strips both the Trustee and the PA Attorney General of the following evidentiary presumptions:
- A. The Trustee acts lawfully, will not breach his fiduciary duties and performs those duties as required by all law governing him, *Marold v. United States*, 322 F.Supp. 664, 669 (D.N.J. 1970) and properly performs his duties as arbitrator. *Foley Bros., Inc. v. Commonwealth*, 400 Pa. 584, 592, 163 A.2d 80, 85 (1960).
 - B. The PA Attorney General acts lawfully, in the public interest and reaches decisions legally after proper investigation. *Wilson v. City of New Castle*, 301 Pa. 358, 365, 152 A. 102, 104 (1930).
 - C. Award MUR 2018-1 enforceable, 9 U.S.C. §§ 2, 9 unless vacated, 9 U.S.C. § 10; *Moses H. Cone Mem. Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 24–25, 103 S.Ct. 927, 941, 74 L.Ed.2d 765 (1983).
61. The Court adamantly refuses to provide deference due to the Trustee as the arbitrator, *Akers Nat. Roll Co. v. United Steel, Paper and Forestry, Rubber, Mfg., Energy, Allied Indus. and Service Workers Intern. Union*, 712 F.3d 155, 164-165 (3d Cir. 2013), or acknowledge the Trustee is also an officer of the court, *In re Thompson's Estate*, 426 Pa. 270, 276, 232 A.2d 625, 628 (1967)
62. The Court contemptuously treats the Trustee with dire warnings filing frivolous papers and derisively refuse to refer to the Trustee by his office, but without showing how the Trustee's arguments are not "based on plain meaning of statutes [and] case law from within [the] circuit." *Matthews*, 128 F.R.D. at 200-201.

63. The Court does nothing to prevent Opposing Counsel’s abuse of the Trustee. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43–46, 111 S.Ct. 2123, 2132–34, 115 L.Ed.2d 27 (1991). The Court i.e, does not provide the Trustee the opportunity to neutralize Opposing Counsel’s Poison the Well attacks. *Bosanac, supra*, at 81-82.

A-15. The Fraud on the Court Induces the Panel to Egregiously Violate Third Cir. I.O.P. 9.1 by Ignoring *Teamsters Local 177*.

64. The Panel’s Aug. 6, 2020 decision, while narrowing the District Court’s ruling regarding *Rooker-Feldman*, affirms on *res judicata*.

65. However, despite parallel factual scenarios, the Panel violates Third Cir. I.O.P. 9.1 to justify denying mandatory confirmation of an arbitration award on *res judicata* by erroneously asserting

“As with the state court action, the thing sued upon and the cause of action in the Federal case center on the *validity* of the arbitration award and whether that award can be confirmed,” 2020 WL 4497191 *1, (emphasis added)

completely contravening this Court’s admonition in *Teamsters Local 177 v. UPS*, 966 F.3d 245, 254 (3rd Cir. 2020) that

“Confirming an arbitration award under [9 U.S.C.] § 9 *is not to be confused* with litigating a dispute over the *validity* or accuracy of that award under [9 U.S.C.]§ 10.” (Emphasis added).

66. The Panel doesn’t even attempt to explain why it conflates “cause of action” with a summary “remedy” to justify *res judicata*.⁶

⁶ *Teamsters Local 177* is published after the Panel’s original ruling, but s raised by the Trustee on Petition for Panel Rehearing. The Trustee

A-16. *Teamsters Local 177* Reiterates *Hall Street* and Clarifies Confirmation Law for the Third Circuit.

67. As author of *Teamsters Local 177*, Judge Ambro reiterates *Hall Street* and adopts the Second Circuit’s reasoning in clarifying 9 U.S.C. § 9 practice for this Circuit.
68. *Teamsters Local 177* makes clear there is no “cause of action” under 9 U.S.C. § 9 because confirmation is procedural, not substantive, *id.*, 966 F.3d at 254, and is a non-discretionary procedural application, making final an arbitration award as the judgment of the Court. *Id.*, 966 F.3d at 252-253.
69. It “is not a separate judicial process [but] a continuation of the arbitration procedure.” Martin Domke, Gabriel Wilner and Larry E. Edmonson, 2 *Domke on Commercial Arbitration* § 41:1 (citations omitted). “Confirmation is a purely procedural mechanism” for converting an award into a judgment “for enforcement purposes.” *Id.*
70. The arbitration, not its’ confirmation, is the “lawsuit” *sub judice*. Confirming the award is no different than i.e. entering a consent decree, *Teamsters Local 177*, 966 F.3d at 254; and under PA law is a binding Non-Judicial Settlement Agreement, 20 Pa.C.S. § 7710.1.
71. Again, the only reasonable inference is that the Panel simply dismissed the appeal because the Trustee proceeds pro se.

notes that Judge Shwartz who sits on this Panel also sat on the *Teamsters Local 177* panel. Judge Greenberg, however, rejects the Rehearing Petition with no comment on *Teamsters Local 177*.

A-17. Prima Facie Evidence of Fraud on Court is Conclusive.

72. Fraud on the Court is Admission by conduct, evidence Opposing Counsel concedes “his case is weak and not to be won by fair means.” *McQueeney v. Wilmington Trust Co.*, 779 F.2d 916, 921–22 (3d Cir.1985) (citations omitted).
73. Admission by Conduct is proven by Opposing Counsel’s prima facie, irrefutable on-the-Record contradictions of statutory law and repeated refusal to acknowledge controlling precedent. *Matthews*, 128 F.R.D. at 200 (deliberate misrepresentations of governing law “suggest an intention to mislead the court”).
74. The Trustee also proves by clear and convincing evidence Opposing Counsel’s falsehoods by multiple Tables of Stark Contrasts (Appdx. at 321-391) to prove Opposing Counsel’s falsehoods. *United States. v. Reilly*, 811 F.Supp. at 179.
75. Opposing Counsel is “not be allowed to dispute the effectiveness of the fraud after the fact.” *Dixon v. C.I.R.*, 316 F.3d 1041, 1046 (9th Cir. 2003). See also *Fraige v. American-National Watermattress Corp.*, 996 F.2d 295, 299 (Fed.Cir. 1993). It is presumed “the defrauding party would commit the fraud only when confident of its effectiveness.” *Fraige*.

IV. Why the Petition for Mandamus Should Issue.

B-1. Hazel-Atlas Mandates Relief from the Fraud on the Court, Overriding Any Discretion the Court Otherwise Possess under Rules or Case Law.

76. While the general rule is the Court retains discretion to issue the Writ, notwithstanding petitioner's indisputable right to prevail, *In re McGraw-Hill Global Education Holdings LLC*, 909 F.3d 48 (3d Cir. 2018); *Hazel-Atlas* controls because the Court is prohibited from acquiescing or sanctioning Fraud on the Court. *Hazel-Atlas v. Hartford Empire Co.*, 322 U.S. 238, 250-251, 64 S. Ct. 997, 1001, 88 L.Ed. 1250 (1944); *Root Refining Co. v. Universal Oil Products Co.*, 169 F.2d 514, 534-535 (3d Cir. 1948) *affirmed* 328 U.S. 575, 66 S. Ct. 1176, 90 L. Ed. 1447 (1946) ("The records of the courts *must* be purged and the judgments in [perpetrator's] favor both in this court and in the District Court *must* be vacated and the suits by [the perpetrator] *must* be finally dismissed") (emphasis added). Court rules are required to yield to the Court's inherent powers to correct a Fraud on the Court. *Chambers v. NASCO, Inc.*, 501 U.S. at 48, 111 S.Ct. at 2134.
77. Public right's to an impartial judiciary is imperative and cannot be delayed. *Hazel-Atlas*, 322 U.S. at 246, 64 S.Ct. at 1001. *Derzack v. County of Allegheny, Pa.*, 173 F.R.D. 400, 411 (W.D.Pa. 1996) ("the courts must act decisively").
78. While law clerks may imitate the judicial altitude "I would do away with pro se representation altogether." Jona Goldschmidt, *How Are Courts Handling Pro Se Litigants?*, 82 JUDICATURE 13, 20 (1998), it still does not justify failing or refusing to consider the Trustee's filings, simply because he is required to proceed pro se. *Sagaydak v. Gonzales*, 405 F.3d 1035, 1040 (9th Cir. 2005) (re immigration judge).

79. Giving the Trustee the Short Shift is plainly prohibited by *Code of Conduct for U.S. Judges*, Canon 3B(4) (“A judge should accord to every person [] the full right to be heard according to law”).

B-2. Response to First Anticipated Objection: There is No Binding Law of the Case Because There is No Judgment, due to Fraud on the Court and Judgment Issues Without Jurisdiction.

80. There is no Law of the Case, as the Dec. 6, 2019 District Court and the Panel’s Aug. 5, 2020 judgments are void *ab initio* because

- A. The District Court was without jurisdiction to issue an order not authorized by Congress. *Marshall v. Board of Ed., Bergenfield, N.J.*, 575 F.2d 417, 422 (3rd Cir. 1978), and equally important:
- B. “[A] decision produced by fraud on the court is not in essence a decision at all, and never becomes final.” *Kenner v. C.I.R.*, 387 F.2d 689, 691 (7th Cir. 1968).

B-3. Response to Second Anticipated Objection: RNC Not a Respondent, as It is Not a Party, Having Waived all Claims and Defenses by Failing to Challenge Arbitrability or File for Vacatur.

81. RNC’s statutory standing expired Sept. 28, 2018 waiving all claims and defenses under 9 U.S.C. §§ 4, 10; *Hall Street*, 552 U.S. at 587, 128 S.Ct. at 1405; *Teamsters Local 177*, 966 F.3d at 255; *Office Center*, 670 F.2d at 409. This was the rule all courts in the Third Circuit uniformly held, until now and is likewise the rule in all other circuits.

82. Given Judge Shwartz also sat on *Teamsters Local 177* and joined Judge Ambro; and Judge Restropo writes that “[I.O.P. 9.1] maintains

uniformity of law within the Circuit, and promotes predictability for litigants. *United States v. Stimler*, 864 F.3d 253, 275 (3d Cir. 2017), the Panel’s violation of Third Cir. I.O.P. 9.1 would not have occurred but for the law clerks’ omissions. Hon. J. Daniel Mahoney, *Law Clerks: for Better or for Worse?* 54 Brook. L. Rev. 321, 338 (1988).

B-3. Trustee Has No Other Remedy Available at Law and Suffers Immediate and Irreparable Injury.

83. The Court should refuse to exalt form over substance so that right and justice finally prevails. *Nashville, C. & St. L. Ry. v. Wallace*, 288 U.S. 249, 259, 53 S.Ct. 345, 346, 77 L.Ed. 730 (1933) (“In determining [appellate jurisdiction] we are concerned, not with form, but with substance”), as any petition for writ of certiorari on the Panel’s decision is an exercise in futility.
84. Fraud on the Court requires judgment is vacated, records are purged, and Opposing Counsel denied all relief. *Hazel-Atlas*, 322 U.S. at 250–251, 64 S. Ct. at 1003–1004; *Root Refining Co. v. Universal Oil Products Co.*, 169 F.2d at 534–535.
85. The Trustee suffers immediate and irreparable injury in that he cannot perform his fiduciary duties to all American voters now being denied the Trust Properties to protect their First Amendment rights of political association. *Bentman v. Seventh Democratic Ward Exec. Committee*, 421 Pa. 188, 198-199, 218 A.2d 261 267 (1966); *Campbell v. Bysiewicz*, 242 F.Supp.2d 164, 175 (D.Conn. 2003).

B-4. Opposing Counsel’s Fraud on the Court Probably Most Egregious in Third Circuit History.

86. Review of case law clearly suggests Opposing Counsel’s Fraud on the Court surpasses any other similar case in Third Circuit history.
87. The undisputed facts compel the Court to conclude Opposing Counsel’s Fraud on the Court satisfies the Shocking to the Conscience standard as it encompasses “most egregious official conduct,” which regrettably that official conduct is of the Court itself, and under no circumstances can ever be acquiesced or condoned. *See* Hon. Timothy M. Tymkovich, Joshua Dos Santos & Joshua J. Craddoc, *A Workable Substantive Due Process*, 95 NOTRE DAME L. REV. 1961, 1999 (2020) (shock the conscience standard applies to judiciary when courts “render arbitrary decisions impairing the life, liberty, or property of the parties before them”).
88. Opposing Counsel’s Fraud on the Court inducing the Court’s law clerks to ignore the Trustee is arbitrary, founded on prejudice against pro se litigants (and maybe even preference favoring the RNC to curry favor or avoid recrimination) rather than on reason or fact.

B-5. Immediate and Irreparable First Amendment Injury Critical for Emergency Expedited Consideration.

89. There is no question that the loss of First Amendment rights is immediate and irreparable, *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 2690, 49 L.Ed.2d 547 (1976).

90. The Court may take judicial notice under Fed.R.E. 201(b)(1) of the generally known adjudicative facts regarding today's extensive political polarization.
91. The Record unequivocally establishes that *inter alia*:
- A. Opposing Counsel's motive to perpetrate the Fraud on the Court is to continue the Trump/RNC/Fox News unprecedented and exponentially expanding voter suppression efforts which as Award MUR 2018-1, citing scores of nationally renown political scientists and commentators, finds voter suppression is the RNC's principal means to win elections, because it cannot garner sufficient popular support due its factionalism and extremism. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 366-367, 117 S.Ct. 1364, 1374, 137 L.Ed.2d 589 (1997).
 - B. The Receiver in-aid-of-Arbitration is the public's only readily available and efficient means to arrest Trump/RNC/Fox News voter suppression, by enforcing Award MUR 2018-1's mandate that the right to "provisional ballot" under Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. § 15482, notice served by the RNC on Election Day to all voters. (Affidavit at pp. 209-214).
 - C. The Receiver is the Judiciary's only efficient and economical means to stop the Trump/RNC frivolous suit filings in Federal and state court regarding their QAnon voter fraud theories.
92. Accordingly, emergency expedition is required because relief is required before the November 3, 2020 election.

B-5. Trustee Seeks Strict Adherence to Due Process for Opportunity to be Meaningfully Heard.

93. The Trustee requires oral argument or status conference to assure that the Court is a hot bench and that heretofore law clerks' interference has been resolved.
94. The Trustee seeks judicial notice under Fed.R.E. 201(b)(2) of the Trustee's Affidavit in support of Motion to Recall Mandate (Doc. No. 61) in the prior appeal and be incorporated by reference.

I. Conclusion.

95. Paraphrasing the District Court Judge, due to the law clerks, the Court abandoned its "obligation to be prepared, attentive and impartial," and fails its "immense responsibility to get things right." Hon. Nitza I. Quiñones-Alejandro, *A Personal Essay*, WOMEN & LAW, 159, 164-165 (July 2020). This Motion gives the Court the second chance to fulfil its "immense responsibility to get things right." *Id.*

WHEREFORE, the Trustee prays this Court:

1. Issue its Writ of Mandamus to the United States District Court for the Eastern District of Pennsylvania in Case No. 2:19-cv-004072 - NIQA to vacate and strike off the void judgment entered Dec. 6, 2019 (Doc. No. 28) and purge the record in both the District Court and this Court; and enter forthwith Judgment confirming *Democratic National Committee v. Republican National Committee* Arbitration Award MUR 2008-1, 2018 WL 7568871 as mandated by 9 U.S.C. § 9.
2. Such other and additional relief as is just and proper.

Dated: October 18, 2020

Attorney Assistance

The Trustee is assisted by
18 attorneys providing various
degrees of assistance from case
law to procedural analysis
Pursuant to PBA/Phila. Bar
Joint Formal Op. 2011-10
the Trustee represents all
attorneys assisting the Trustee
are in full compliance with
Pa.R.P.C Rules 1.2(c) and 6.1

Hon. Peter J. Wirs, Trustee
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CERTIFICATIONS

Bar Membership.

The undersigned is not an attorney at law and proceeds pursuant to statutory authority under 20 Pa.C.S. § 7710.1(e).

Word Count and Typeface.

1. This petition contains 6,327 words in compliance with Fed.R.App.P. 21(d)(1) 7,800 word limit.
2. This motion complies with the type-volume limitation of Fed.R.App.P. 32.
3. This motion complies with the typeface requirements of Fed.R.App.P. 32(a)(5) and the typestyle requirements of Fed.R.App.P. 32(a)(6), prepared in proportionally spaced typeface using Corel WordPerfect 2020.

Service Upon Counsel

This petition was submitted electronically to the Court on October 18, 2020 and on the same date, served by electronic email upon the Chief Deputy Attorney General of Pennsylvania, Charitable Trusts & Organizations Section, 14th Floor, Strawberry Square, Harrisburg, PA 17120-0001, as required by Pennsylvania law and counsel of record in the underlying arbitration proceeding by email.

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Identical Compliance of Briefs

The text of the electronic version of this petition is identical to the text of the paper copies filed with the Court and served on the Pennsylvania Attorney General.

Virus Check

I certify that MalwareBytes version 4.0.4 was run on the electronic file and that no virus was detected.