No. 19-32

In The
Supreme Court of the United States

GORDON SCOTT STROH,

Petitioner,

v.

SATURNA CAPITAL CORPORATION,
NICHOLAS KAISER AND JANE CARTEN,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

BRIEF AMICUS CURIAE ON BEHALF OF PROJECT ON GOVERNMENT OVERSIGHT, INC. IN SUPPORT OF PETITIONER

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RULE 29.6 STATEMENT

The Project on Government Oversight, Inc. ("POGO") is a non-profit organization and incorporated under the laws of the District of Columbia. No corporation or publicly held company owns 10 percent or more of POGO's stock.

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INTEREST OF AMICUS CURIAE[1]

The Project on Government Oversight, Inc. ("POGO") is a nonpartisan independent watchdog whose goal is to investigate and expose waste, corruption, abuse of power, and instances of government failure to serve the public or attempts to silence those who report wrongdoing. POGO is an investigative organization that specializes in working with sources inside the government, as well as whistleblowers in its attempt to document and reveal instances of corruption, fraud, waste, or abuse.

A vital function of POGO is to represent the interests of those who work to end fraud within the government and beyond—including whistleblowers. To that end, POGO has filed multiple *amicus curiae* briefs with courts nationwide as cases have arisen that are tantamount to the mission of whistleblowers working to expose corruption and fraud. POGO, its collaborators and clients, have a strong interest in this case, which presents a concerning effort by many litigants to effectively dismiss an entire cause of action through an improper wielding of an *in limine* motion. This practice has a direct impact on POGO and its team members, and improperly constricts the intent of Congress to

[1] No counsel for a party authored this brief. No one other than amicus curiae, its members, or amicus's counsel made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for all parties received notice at least ten days prior to the due date of amicus's intention to file this brief. The parties have consented to the filing of this brief.

broadly protect whistleblowers under the Sarbanes-Oxley Act.

SUMMARY OF ARGUMENT

This case presents the important issue of enforcement of the anti-retaliation, whistleblower protections of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A ("SOX"), in relation to the exclusion of evidence by a motion *in limine* that affected the substantial rights of Petitioner Stroh by limiting evidence related to his protected activity that tended to also demonstrate a factor that contributed to his termination. Accordingly, the petition for a writ of certiorari should be granted.

In the present case, the lower court's ruling on the *in limine* motion, acting essentially as a motion to dismiss or motion for partial summary judgment, effectively dismissed an entire cause of action, i.e., that Petitioner Stroh's protected disclosure concerning the FBI computer issue was a contributing factor in his termination under SOX. The Ninth Circuit panel concluded the lower court had indeed abused its discretion by granting a motion *in limine* that prevented the jury from receiving a relevant substantial evidence that would have helped establish protected activity and that the protected disclosure was a "contributing factor" element of retaliation as required under SOX. This improperly constricts the intent of Congress to broadly protect SOX whistleblowers.

The Ninth Circuit's decision also creates a split among federal courts of appeal concerning the appropriate standard of review for motions *in limine* that function as *de facto* summary judgment motions. This issue warrants review of the case by the Court.

Furthermore, the Ninth Circuit's decision creates several policy implications that, if not addressed by this Court, could be detrimental to a wide range of civil cases. First, the ability to use a motion *in limine* to dismiss a whistleblower claim sets a dangerous precedent. The issue at hand that resulted in Stroh's loss is not unique, and as demonstrated by his situation, offers a dangerous procedural tool to attorneys that can have significant adverse effects on countless civil cases. From wrongful death claims to violations of the Equal Pay Act and unlawful arrest disputes, the ability of a litigator to wield a motion *in limine* as a tool to effectively render the result of a motion for summary judgment or motion to dismiss has an effect on all cases. Other circuits have rejected the standard applied by the Ninth Circuit, and the result is that at least three different standards exist for reviewing an improperly granted motion *in limine*.

Finally, the Ninth Circuit's ruling creates an obstacle and disincentive for potential whistleblowers from coming forward with allegations of fraud under SOX. This Court should grant the petition for writ of certiorari to address the present issues to protect the legal rights of these already vulnerable individuals.

ARGUMENT

I. Despite Finding an Abuse of Discretion by the District Court in Excluding Material Evidence of Stroh's Protected Activity Under SOX, the Ninth Circuit's Decision Limits SOX Protections by Misapplying the Harmless-Error Statute.

Despite finding that the exclusion of fraudulent activity, including the direction to withhold material information from the FBI when asked, was an abuse of discretion by the district court, the Ninth Circuit nonetheless found harmless error by improperly limiting SOX protections affecting the substantial rights of Stroh. The Ninth Circuit's holding jeopardizes for other whistleblowers the broad protections of SOX's anti-retaliation provisions protecting whistleblowers.

The Second Circuit has described the broad whistleblower protections of SOX as follows:

> Section 806 of the Sarbanes–Oxley Act, 18 U.S.C. § 1514A, seeks to combat what Congress identified as a corporate "culture, supported by law, that discourage[s] employees from reporting fraudulent behavior not only to the proper authorities, such as the FBI and the SEC, but even internally." S.Rep. No. 107-146, at 5 (2002). To accomplish this goal, § 1514A "protects 'employees when they take lawful acts to disclose information or otherwise assist . . . in detecting and stopping actions which they reasonably believe to be fraudulent.'" *Guyden v. Aetna, Inc.*, 544 F.3d

> 376, 383 (2d Cir.2008) (quoting S.Rep. No. 107-146, at 19).

Bechtel v. Admin. Review Bd., U.S. Dep't of Labor, 710 F. 3d 443, 446 (2d Cir. 2013). The elements of a SOX anti-retaliation claim are: (1) employee engaged in protected activity; (2) the employer knew that he engaged in protected activity; (3) he suffered an unfavorable personnel action; and (4) the protected activity was a contributing factor in the unfavorable action. *Id.* at 447, citing to *Harp v. Charter Commc'ns, Inc.*, 558 F. 3d 722, 723 (7th Cir. 2009) (quoting *Allen v. Admin Review Bd.*, 514 F. 3d 468, 475-476 (5th Cir. 2008); *Genberg v. Porter*, 882 F. 3d 1249, 1254 (10th Cir. 2018).

If an employee makes out a prima facie case under SOX, the employer may assert a statutory defense known as the "same-action defense." *Genberg*, 882 F. 3d at 1254 (quoting *Lockheed Martin Corp v. Admin. Review Bd., U.S. Dep't of Labor*, 717 F. 3d 1121, 1130 n.3 (10th Cir. 2013). The employer's same-action defense requires proof by clear and convincing evidence that the same action would have been taken even without the protected activity. *Id.*

Here, the Ninth Circuit found that the wrongfully excluded evidence of the employer's fraud was harmless error by overly constricting the protections for SOX whistleblowers. 28 U.S.C. § 2111, the harmless-error statute, advises the courts of appeals to review cases "without regard to errors that do not affect the parties' substantial rights." *Id.*; *see Shinseki v. Sanders*, 556 U.S. 396, 407-408, 129 S.Ct. 1696 (2009). The

Ninth Circuit, however, disregarded the evidentiary requirement under SOX that Stroh prove substantial elements of his whistleblower claim, including showing protected activity and that the protected activity was a contributing factor to his termination. By finding the district court abused its discretion in excluding evidence of such protected activity by a motion *in limine*, necessary proof elements of Stroh's prima facie whistleblower case were substantially affected. Yet, the Ninth Circuit's ruling of harmless error in this regard will create precedent for other appellate decisions that improperly limit the important whistleblower protections of SOX by guiding determinations of error in other whistleblower cases affecting substantial rights. *See Shinseki*, 556 U.S. at 411 citing *Kotteakos v. U.S.*, 328 U.S. 750, 760-761, 66 S.Ct 1239 (1946) ("reviewing courts may learn over time that the 'natural effect' of certain errors is 'to prejudice a litigant's substantial rights' "(quoting H.R.Rep. No. 913, 65th Cong., 3d Sess. P.1 (1919)). Congress did not intend such a limitation on the SOX whistleblower protections. *Bechtel*, 710 F. 3d at 446.

Because the Ninth Circuit's decision improperly declares the improper exclusion of evidence that prejudices Stroh's substantial rights as harmless error, this Court should review the case so that other courts of appeal do not unduly limit SOX whistleblower protections in contravention of the SOX whistleblower protections and Congress's intent regarding the same.

II. The Ninth Circuit's Decision Creates a Circuit Split Concerning the Appropriate Standard of Review for Motions *in Limine* that Function as *de Facto* Summary Judgment Motions

When faced with similarly overbroad motion *in limine* rulings, the Third, Sixth, Seventh, Tenth, and Federal Circuits have all either 1) declined to review the decision, instead choosing to simply reverse it; or 2) reviewed those decisions using either de novo or other less stringent standards, but not the traditional (and much higher) harmless error standard applied by the Panel. *See Louzon v. Ford Motor Co.*, 718 F. 3d 556 (6th Cir. 2013); *Meyer Intellectual Properties Ltd. v. Bodum, Inc.*, 690 F. 3d 1354, 1378 (Fed. Cir. 2012); *Mid-Am. Tablewares, Inc. v. Mogi Trading Co.*, 100 F. 3d 1353, 1363 (7th Cir. 1996); *Bradley v. Pittsburgh Bd. of Educ.*, 913 F. 2d 1064, 1070 (3d Cir. 1990); *Zokari v. Gates*, 561 F. 3d 1076, 1082 (10th Cir. 2009). The approach taken by these circuits stands in sharp contrast to the Ninth Circuit's approach in the case at bar.

In *Louzon v. Ford Motor Co.*, the Sixth Circuit explained why the standard of review should be different in situations involving overly broad *in limine* decisions. The district court granted defendant Ford Motor Company's motion *in limine* to exclude the plaintiff's evidence of age and national-origin discrimination and sua sponte issued an order to the plaintiff to show cause why summary judgment for the defendant should not be entered. *Louzon*, 718 F. 3d at 556. After the plaintiff conceded that he could succeed on his

discrimination claims without the evidence the court had ruled inadmissible through the motion *in limine*, the district court granted summary judgment to the defendant. *Id.*

Instead of analyzing the district court's decision as a simple evidentiary ruling, the Sixth Circuit explained that since the evidentiary argument "rest[ed] entirely on the presumption that Louzon would not be able to make out a prima facie case of discrimination," (i.e., a legal conclusion) the evidentiary ruling which would follow that conclusion would itself be "null." *Id.* at 563. The court warned that, "if these tactics were sufficient, a litigant could raise any matter *in limine*, as long as he included the duplicative argument that the evidence relating to the matter at issue was irrelevant." *Id.* The Sixth Circuit concluded that "[w]here, as here, the motion *in limine* is no more than a rephrased summary-judgment motion, the motion should not be considered." *Id.* at 563.

Here, Saturna employed this same tactic and was able to achieve the exact same result. Saturna argued in its motion *in limine* that, as a matter of law, Stroh could not establish that his objections to Saturna's instruction to create a hidden computer system on the company owner's private yacht were protected under SOX and accordingly, as an evidentiary matter, the issue should be excluded.

Other circuits have strictly enforced the prohibition against using a motion *in limine* to achieve the equivalent of a summary judgment. *Meyer Intellectual*

Properties Ltd. v. Bodum, Inc., 690 F. 3d 1354, 1378 (Fed. Cir. 2012) (finding it improper that the "district court essentially converted Meyer's motion *in limine* into a motion for summary judgment" and refusing to review the decision despite both parties having fully briefed the merits of the argument on appeal); *Mid-Am. Tablewares, Inc. v. Mogi Trading Co.*, 100 F. 3d 1353, 1363 (7th Cir. 1996) (upholding district court's refusal to look at the merits of an "argument that goes to the sufficiency" of evidence through a motion *in limine* when such an argument is proper for summary judgment or judgment as a matter of law).

Significantly, the Sixth Circuit did not review the decision under the "substantial prejudice" harmless error standard. *Louzon*, 718 F. 3d at 563-566. Other circuits have followed suit. *See also*, *e.g.*, *Bradley v. Pittsburgh Bd. of Educ.*, 913 F. 2d 1064, 1070 (3d Cir. 1990) (using a "no set of facts on which plaintiff could possibly recover" standard of review for dismissal); *Givaudan Fragrances Corp. v. Krivda*, 639 F. App'x 840, 843 n.6 (3d Cir. 2016) (applying a de novo standard, without substantial prejudice harmless error review, on motion *in limine* decision that had a "dispositive effect"); *Zokari v. Gates*, 561 F. 3d 1076, 1082 (10th Cir. 2009).

In short, the Court should grant the petition for certiorari to resolve these conflicts between the courts of appeals on this important issue.

III. The Standard of Review Applied by the Ninth Circuit Harms Not Just Whistleblowers

A. The Ability to Utilize a Motion *in Limine* to Dismiss a Whistleblower Claim Sets a Dangerous Precedent

Motions *in limine* are defined as a "pretrial request that certain inadmissible evidence not be referred to or offered at trial. Typically, a party makes this motion when it believes that mere mention of the evidence during trial would be highly prejudicial and could not be remedied by an instruction disregard." *See* Black's Law Dictionary 1109 (Rev. 9th ed. 2009). This Court in *Luce v. United States*, 469 U.S. 38, 41 (1984) found that federal district courts hold the power to exclude evidence *in limine*, and that such motions request that a judge exclude from evidence certain facts deemed either unfairly prejudicial or inadmissible. "The purpose of a motion in limine is to allow the trial court to rule in advance of trial on the admissibility and relevance of certain forecasted evidence." *United States v. Chan*, 184 F. Supp. 2d 337, 340 (S.D.N.Y. 2002) citing *Luce v. United States*, 469 U.S. 38, 41 n.4 (1984).

While these motions are typically used to create a fairer environment for trial, helping to eliminate factors that might unduly influence a jury's decision, there is an increasingly common trend of using motions *in limine* as a way to create an unnoticed dispositive motion that have the effect of a partial summary judgment. This practice is not only a recognized tactic,

but various courts have made their concerns apparent. For instance, in *Duffy v. Midlothian Country Club*, 135 Ill. App. 3d 429, 481 N.E.2d 1037 (1985), the court cautioned against using motions *in limine* to prevent a plaintiff with a "thin case" from attempting to establish the claim before a jury. According to the court, a motion *in limine* could be used to bar proof of an essential element to a petitioner's claim, rendering the impact as powerful as a dispositive motion. This was the case in Petitioner's claim at the district court, and his eventual appeal to the Ninth Circuit.

This tactic has been used by litigants for years, and has been called "a perversion of the process." *R&B Auto Center Inc. v. Farmers Group Inc.*, 140 Cal. App. 4th 327, 371 (2006). In the past, judges have gone so far as to directly caution trial courts to not allow parties to use motions *in limine* as unnoticed motions for partial summary judgment. *See Rice v. Kelly*, 483 So. 2d 559, 560 (Fla. 4th DCA 1986). Despite this advice, practitioners continue the practice of using motions *in limine* simply as a veil to mask what is intended to have the effect of a motion for summary judgment or even motion to dismiss.

As a result, appellate courts are forced to review the propriety of these motions if granted by the lower court. Such was the case with Petitioner when the district court granted the defendant's motion *in limine* prohibiting the introduction of any evidence related to the FBI computer issue—virtually eliminating all factors that held up Petitioner's status as a SOX whistleblower. Although the Ninth Circuit found an abuse of

discretion in excluding the evidence, it upheld the lower court's erroneous decision to grant the motion *in limine* regarding the FBI computer issue by using the traditional "harmless error" standard regularly applied to purely evidentiary rulings. Thus, instead of reversing the lower court's improper ruling on the motion, the appellate court sanctioned the district court effectively dismissing the most important evidence of Petitioner's whistleblowing—casting an irreversible blow to his claim.

The Ninth Circuit's decision affirming the use of a motion *in limine* for claim preclusion is broadly applicable to any whistleblower, civil rights, or plaintiff's case heard in a district court. This ruling sets precedent for other parties whose entire claim could hinge on evidence that is unfairly withheld from trial based on an abused and misused tactic. This trend has been evidenced in cases such as *Amtower v. Photon Dynamics, Inc.*, 158 Cal. App. 4th 1582 (2008), where the trial court granted a motion *in limine* on a statute of limitations defense. The trial court granted a motion *in limine* on a limitations issue that should have required a motion for summary judgment. Although the appellate court upheld the misused motion *in limine*, it criticized using the motion as dispositive. "Plaintiff's argument highlights a procedure that has become increasingly common among litigants in our trial courts, which is the use of in limine motions as substitutes for summary adjudication motions, motions for judgment on the pleadings, or other dispositive motions authorized by statute. We have certified this case for

publication in order to express our concerns surrounding the proliferation of such shortcut procedures." *Id.* at 1588.

The use of motions *in limine*, often made close to the start of trial and not always required to be in writing, should be clarified. Again, certain appellate courts have reluctantly ignored the practice. *See Rice v. Kelly*, 483 So. 2d 559 citing *Dailey v. Multicon Development, Inc.*, 417 So. 2d 1106 (Fla. 4th DCA 1982), where the court "condemned the use of motions *in limine* to summarily dismiss a portion of a claim." Other courts have gone as far as disallowing the practice. *See Lewis v. Buena Vista Mutual Insurance Association*, 83 N.W.2d 198 (1971) ruling that the lower court's granting of a motion *in limine* was in error, and stating, "We deem this appeal an appropriate one in which to say that cases are coming to this court revealing questionable use of the motion in limine. Questionable in the manner of its use or in its use at all. The motion is a drastic one, preventing a party as it does from presenting his evidence in the usual way. Its use should be exceptional rather than general."

Petitioner's situation here is not a unique one. Many others face the dilemma of opposing parties improperly using what has become a dangerous procedural tool that can create significantly adverse impacts. This Court determining the proper standard of review will clear the air of judicial confusion on this prevalent and persistent issue of leveraging motions *in limine* as dispositive motions that have the practical effect of ending many claimants' cases. The tactic

presently creates a dangerous precedent that will affect many individuals, not just those who bring a claim as a whistleblower. This court should review this pressing issue to clarify the legal procedural issues that will inevitably have an impact on countless civil cases.

B. The Wide-Array of Standards for Reviewing an Improperly Granted Motion *in Limine* Creates a Haphazard Judicial Environment

Besides the precedent that the Ninth Circuit set with its handling of the lower court's decision to grant the defendant's motion *in limine*, the use of any given standard of review when reviewing a granted motion *in limine* is wildly different depending on the Circuit. This has created a judicial environment that allows for radically different results based on venue. The Ninth Circuit's decision has created a three-way circuit split with five other circuit courts that face similar situations. For instance, if Petitioner's case was before the Third, Sixth, Seventh, Tenth or Federal Circuit Courts, the district court could not have excluded all of the evidence related to the FBI computer obstruction issue through a motion *in limine*.

Ultimately, when faced with similarly overbroad *in limine* rulings, these circuit courts have either declined to review the decision, instead choosing to simply reverse it; or have reviewed the decisions using either "de novo" or other less stringent standards—but not the traditional, and much higher, "harmless error"

standard applied by the Ninth Circuit here. For example, the Sixth Circuit in *Louzon v. Ford Motor Co.* reversed a federal district court's ruling granting a motion *in limine* when the petitioner in the case admitted he would be unable to prove his discrimination claims without the evidence at issue. The Sixth Circuit's ruling is just one in several from circuit courts who have ruled counter to that of the Ninth Circuit's decision here, finding that litigants must pursue potentially dispositive arguments through summary judgment motions. The Federal and Seventh Circuits have also taken to this theory, finding that summary judgment motions, and not motions *in limine*, were the correct vehicle for the dismissal of claims. *See Mid-Am. Tablewares, Inc. v. Mogi Trading Co., Ltd.*, 100 F. 3d 1353 (7th Cir. 1996) and *Meyer Intellectual Properties Ltd. v. Bodum, Inc.*, No. 11-1329 (Fed. Cir. 2012).

All of these courts rejected the standard applied by the Ninth Circuit, but they created at least three different standards to review such an improperly granted motion *in limine*. The importance of rejecting the "harmless error" standard of review was explained by the Sixth Circuit: "if these tactics were sufficient, a litigant could raise any matter *in limine*, as long as he included the duplicative argument that the evidence relating to the matter at issue was relevant." *Louzon*, 718 F. 3d at 563. According to the Sixth Circuit, "[w]here, as here, the motion *in limine* is no more than a rephrased summary-judgment motion, the motion should not be considered." *Id.*

This circuit split has serious ramifications, impacting all civil litigation, not just cases filed under the Sarbanes-Oxley Act. These courts have used radically different standards to review allegedly improper motions *in limine*, and have created a unique opportunity for this court to determine the proper standard of review.

C. This Judicial Confusion and Inconsistency Dissuades Whistleblowers from Coming Forward

The way in which the district court, and eventually the Ninth Circuit, ruled on the improper motion *in limine*, creates an environment of judicial confusion and inconsistency that ultimately will be have a cooling effect on whistleblowers willing to come forward. As previously mentioned, the impact of vastly different standards for reviewing already granted motions *in limine*, as well as the prevalence of practitioners using these motions as a tool to essentially pull the rug out from under claimants, forces a situation where those who seek to enforce and protect their legal rights in court are unable to do so.

To say that whistleblowers are forced to make sacrifices when they come forward with a claim of wrongdoing would be an understatement. Whistleblowers make vulnerable their careers, reputation, peace-of-mind and, often, the wellbeing of themselves and their family in order to do what's right. The ability of an opposing party to strip away the very evidence that is

crucial to a whistleblower's claim, and more so the lack of consistency from venue to venue on this issue, does nothing but compound the stress already felt by these crucial informants. Courts have acknowledged that proof of an actual violation is not wholly necessary in maintaining a whistleblower claim, but have found that allowing the proof to come forward is critical to both effectuating the purposes of whistleblower laws and encouraging individuals to come forward. *See Sewerage Commissioners v. United States Department of Labor*, 992 F. 2d 474, 478-479 (3d Cir. 1993).

However, as mentioned, this impact will not just be felt with cases filed under the Sarbanes-Oxley Act. Cases involving wrongful death claims, the Fair Debt Collection Practices Act, Section 1983 claims, violations of the Equal Pay Act, due process violations under the Fourteenth Amendment, violations of the Family and Medical Leave Act, violations of the Fair Labor and Standards Act, Age Discrimination in Employment Act and Title VII claims, unlawful arrest, Employee Retirement Income Security Act claims and employer retaliation suits are susceptible to this abuse as well. *See*, *e.g.*, *Oahn Nguyen Chung v. StudentCity.com, Inc.*, 854 F. 3d 97 (1st Cir. 2017); *Williams v. Rushmore Loan Management Services LLC*, No. 3:15CV673(RNC), 2017 WL 822793 (2d Cir. Mar. 2, 2017); *Bradley v. Pittsburgh Bd. of Educ.*, 913 F. 2d 1064 (3d Cir. 1990); *Brobst v. Columbus Services Intern.*, 761 F. 2d 148 (3d Cir. 1985); *Ihnken v. Jenkins*, No. CCB-11-3508, 2015 WL 590562 (4th Cir. Feb. 11, 2015); *Bell v. Prefix, Inc.*, 05-74311, 2009 WL 3614353

(6th Cir. Nov. 2, 2009); *Felder v. Charles H. Hill Contractors, Inc.*, No. 12-2102-dkv, 2013 WL 12033162 (6th Cir. Oct. 24, 2013); *Louzon v. Ford Motor Co.*, 718 F. 3d 556 (6th Cir. 2013); *Dubner v. City and County of San Francisco*, 266 F. 3d 959 (9th Cir. 2001); *Kyle Railways, Inc. v. Pacific Admin. Services, Inc.*, 990 F. 2d 513 (9th Cir. 1993); *Zokari v. Gates*, 561 F. 3d 1076 (10th Cir. 2009).

Further, the ability of a party to, in effect, wholly eliminate an opposing party's claim through a motion *in limine* places an unfair burden on a claimant whose entire case rests on that particular evidence. In sum, both the constitutional and statutory rights of countless claimants could be impeded if this issue is not addressed. Accordingly, the writ of certiorari should be granted.

CONCLUSION

Congress has determined that whistleblower protections serve an important function, and that the Sarbanes-Oxley Act, 18 U.S.C. § 1514A is intended to protect employees when they take lawful acts to disclose information or otherwise assist in detecting and stopping actions which they reasonably believe to be fraudulent. The case for review presents the important, and potentially reoccurring, issue of evidentiary preclusion of proof in the enforcement of the anti-retaliation, whistleblower protections. The case for review will also clarify review of the exclusion of

evidence by a motion *in limine* that affects the substantial rights of a party by limiting evidence related to elements of the claimant's underlying cause of action, in this case a whistleblower claim. Accordingly, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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