No. 20-1247

IN THE

Supreme Court of the United States

GERALD DIX,

Petitioner,

v.

EDELMAN FINANCIAL SERVICES, LLC, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Fourth Amendment protects a *person* and property from seizure by police using force and threats to arrest to effect an eviction in contravention of clearly establish law

Whether the circuit court exercising jurisdiction over state law claims which had been relinquished by the district court and refiled in state court is an unconstitutional intrusion on the core state power to define the terms of state law claims litigated in state court proceedings.

Whether the First Amendment provides a person the right to say offensive, derisive or annoying words to any person who is on the speaker's private property and who is free to leave at any time.

Whether the Federal Rule of Civil Procedure 9(b) requires a plaintiff to have personal knowledge of relevant facts within the defendants' exclusive control and where without doubt, the defendant knows of the fraud and persons responsible.

PARTIES TO THE PROCEEDING

The petitioner is Gerald Dix

Respondents are Edelman Financial Services, LLC; Theresa Miller; Village of Lisle; Officer Rob Sommer, individually and in his official capacity as a Village of Lisle Police Officer; Officer Sean McKay, individually and in his official capacity as a Village of Lisle Police Officer; MJ Suburban, Inc. d/b/a RE/MAX Suburban; Officer Vetaliy Lord, individually and in his official capacity as City of Wheaton Police Officer; Officer Dean Anders, individually and in his official capacity as a Village of Lisle Police Officer; Officer John Doe #3, individually and in his official capacity as a Village of Lisle Police Officer; Cheryl L. Shurtz; Jane Doe #1 (Karen Morse); Jane Doe #2 (Meme Coryell); Fire Towing Inc.; City of Wheaton.

Amicus Curiae is Daniel Scott Harawa, Director of the Appellate Clinic at Washington University in St. Louis School of Law

LIST OF ALL PROCEEDINGS

U.S. Court of Appeals for the Seventh Circuit, No. 18-2970, *Gerald Dix v. Edelman Financial Services, LLC, et al.*, judgment entered on October 19, 2020. Rehearing denied on November 17, 2020.

U.S. District Court for the Northern District of Illinois, Eastern Division, No. 1:17-cv-06561, *Gerald Dix v. Edelman Financial Services, LLC, et al.*, final judgment entered on August 14, 2018.

Eighteenth Judicial Circuit of Illinois, No. 2019L000900, *Gerald Dix v. Theresa Miller et al.*, proceedings stayed pending this petition.

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CONSTITUTIONAL AND STATUTORY AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Petitioner Gerald Dix, on his own behalf, respectfully petitions this court for a writ of certiorari to review the judgement of the United States Court of Appeals for the Seventh Circuit

INTRODUCTION

By way of § 1983 claims, Petitioner alleged violations of his Fourth Amendment rights resulting from unlawful seizure of his *person* and property during an eviction by police acting without judicial authority. The Seventh Circuit issued the opinion below in **defiance** of this Court's superior authority and ruling in *Soldal v. Cook County*, 506 U.S. 56 (1992) and the Illinois Forcible Entry and Detainer Statute (FEDS) (735 ILCS 5/9-101 *et seq.*) – "a long-established public policy that violence and even bloodshed could result from individuals using force and violence to regain possession even if the possession is rightfully theirs." *People v. Evans,* 516 N.E.2d 817, 819. (citing *Doty v. Burdick* (1876), 83 Ill. 473, 477). Additionally, the Petitioner alleged First Amendment violations resulting from a police officer's threat to arrest him after he made a derisive comment to a fraudster while standing on the last bastion of privacy – the grounds of his own home.

Petitioner also made pendent state law claims related to his unlawful eviction. The district court dismissed those claims "sounding in fraud" against Edelman Financial Services, LLC and its agents for failure to satisfy Fed. R. Civ. P. 9(b)'s ("Rule 9(b)") heightened pleading standard. The Petitioner along with most of the circuit courts contend that Rule 9(b)'s requirements should be relaxed in cases such as this where the defendants held exclusive control over the

deficient information. This Court tends to favor relaxing Rule 9(b) standards when a plaintiff lacks access to all facts necessary to detail a claim. *See Rotella v. Wood*, 528 U.S. 549, 560 (2000)

On August 14, 2018, the district court dismissed the Petitioner's federal claims and relinquished jurisdiction over his remaining state law claims including his claim for wrongful eviction pursuant to 28 U.S.C. § 1367(c)(3). The Petitioner notified the circuit court that he refiled his wrongful eviction claim in the Eighteenth Judicial Circuit of Illinois but the Seventh Circuit dismissed that claim as well (App.10a, 27a-28a).[1]

Review here would allow the Court to reaffirm lower courts' obligation to follow this Court's precedents, and provide much-needed guidance regarding how to apply those precedents so as to minimize wrongful evictions flowing from fraudulent and unscrupulous business practices and to deter egregious constitutional violations by state and private actors.

OPINIONS BELOW

The opinion of the court of appeals is reported at *Dix v. Edelman Financial Services, LLC*, 978 F.3d 507 (7th Cir. 2020) and is reprinted in the Appendix at App.1a-24a. The district court's order granting Edelman's motion to dismiss is reported at 2018 WL 1115937 and reprinted at App.53a-64a. The district court's order dismissing all of the Petitioner's federal

[1] During a hearing in the Illinois civil action listed above, the Defendants stated they will apply collateral estoppel to bar the Petitioner's wrongful eviction claim.

claims and relinquishing his state claims is reported at 2018 WL 3922199 and reprinted at App.29a-52a.

JURISDICTION

The judgment of the court of appeals was entered on October 19, 2020. A timely petition for rehearing *en banc* was denied on November 17, 2020. This petition was timely filed, consistent with the Supreme Court's March 19, 2020 Order within 150 days of that judgment. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the U.S. Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fourth Amendment to the U.S. Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

For about six years, Gerald Dix provided Theresa Miller with money, goods and services in exchange for

his tenancy in her single-family home in Lisle, Illinois. (D.Ct.Dkt.23 ¶¶20-23,46; Dkt.25 p.3,12-14). Dix was required to perform his services on Miller's beck and call and he had the option to continue his tenancy with Miller if she were to move to Arizona where she maintained a pharmacist license. (D.Ct.Dkt.23 ¶¶24, 25). The landlord-tenant agreement was oral and there had never been any mention that the agreement was a license. (*Id.* ¶42). Furthermore, by agreement, Miller was not permitted to sever their landlord-tenant relationship at will – a condition stipulated by Miller in hopes that Dix would follow her to Arizona where he had no job prospects, no friends or family or other resources. (*Id.* ¶25).

On July 24, 2017, Miller sent an email to Dix asking him if he would move his living quarters from the basement to the third floor of her split-level home so that she could relet the bottom floor to a female renter (App.65a). Dix absolutely refused and consequently Miller could not relet his space to anyone else – a clear indication that Dix had a better right of possession to his living quarters than Miller which was resolved amicably between the two without meddling and unconstitutional interference by the Lisle police.

Miller was being forced to sell her house for financial reasons related to Edelman's fiduciary misconduct and she began "staging" her home on or about August 19, 2017 as part of a seller's agreement with REMAX Suburban as the listing agent. (D.Ct.Dkt.23 ¶¶34,56,57). On the night of August 23, 2017, Theresa Miller summoned the Lisle police to evict Dix from his home where he was a lawful tenant in good standing. (*Id.* ¶¶105-106). The Lisle police duly informed Miller that they could not legally evict Dix and advised her that if she wanted him evicted,

she would have to obtain an order for eviction from a DuPage County judge through a Forcible Detainer and Entry Action. (*Id.* ¶107). All was seemingly resolved that night after the police left without incident and Dix returned to his home. (*Id.* ¶110). However, the next morning, Miller again summoned the Lisle police to illegally evict Dix. This time, Sergeant Dempsey, Rob Sommer, Sean McKay responded but did not leave soon thereafter without incident as they should have like their colleagues did the night before. (*Id.* ¶¶113,118).

In seeking Dix's eviction, Miller was attempting to breach the rental agreement on behalf of Cheryl Shurtz who did not want Dix living in Miller's house as a condition for listing it with REMAX and wanted Dix removed within seven days as well as the house staged within that time for listing photos — an undisputed impossible task given Miller's clutter and lack of worthy movers. (*Id.* ¶¶56, 84-93). Prior to listing her home with REMAX, Miller requested that Dix move with her into her mother's two flat in exchange for repairing that building which he was already doing while he still lived in the Lisle home. (D.Ct.Dkt.105-2; Dkt. 25 p.14).

While Sergeant Dempsey, acting like a maniac, caused the situation to become deranged by screaming at Dix and interfering with his attempt to protect his personal property from loss, Sommer and McKay colluded with Miller to illegally evict Dix despite the fact that there was no domestic violence or any other apparent reason for doing so. (D.Ct.Dkt.23 ¶¶115-118). Sommer and McKay colluded with Miller because they were involved in a scheme by some members of the Lisle police department to participate in duties which they ought not do, to make it appear

that the police department was understaffed and underbudgeted in an attempt to enlarge its funding and personnel which was known to the Chief of Police, David Anderson at the time. (*Id.* ¶¶154-157).[2] Sommer and McKay directed Miller and Meme Coryell to remove Dix's personal property from his home while Dix was to stay on the driveway (*Id.* ¶122). Although Miller was supposed to bring Dix's property onto the driveway, she closed the main exterior door and blinds so that he could not see into the home through the storm door (*Id.* ¶126). Dix objected to this arrangement since it gave Miller the opportunity to steal or destroy some of his property. (*Id.* ¶124). When Dix attempted to retreat into his own home to oversee the move, Sommer physically restrained him and prevented him from doing so. (*Id.* ¶125; D.Ct.Dkt.25 p.17).

While evicting Dix, Coryell was carelessly handling his property and after she moved his loose property without first packing and securing it, Dix called her stupid. (D.Ct.Dkt.23 ¶128). In response, Sommer informed Dix that if he referred to anyone else as stupid, he would be arrested even though Sommer acknowledged Coryell was not a "professional mover" as she had been fraudulently presented. (*Id.* ¶¶129, 130). Because Miller and Coryell were physically incapable of removing all of Dix's property, he was permitted into the kitchen and basement to retrieve his property. (*Id.* ¶145). When Dix attempted to retrieve his property from the second and third floors,

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[2] Dix relied on Anderson's policy of permitting police officers under his supervision to willfully violate constitutional rights as the basis for his *Monell* claim against Lisle. *See Monell v. Dep't of Social Servs.*, 436 U.S. 658, 690-91 (1978).

Sommer held a dog gate shut to prevent him from accessing rooms on those floors – rooms which still contained his personal property. (*Id.* ¶¶146-147). Dix informed Sommer that he would seek possession in a lawsuit if they could not resolve his right to claim his personal property right then and there. (*Id.* ¶148). Sommer stated that Dix was not permitted onto the second and third floors to reclaim his property and told Dix to file his lawsuit. (*Id.* ¶149).

While Dix was being forced to leave his home in the moving van, Sommer took his housekeys and told Dix not to return to Miller's house for any reason other than the sole purpose of retrieving his compact pickup truck which remained in the driveway. (*Id.* ¶¶152-153). Thereafter, Miller, the Lisle and Wheaton police concocted schemes to intimidate and harass Dix to prevent him from recovering the remainder of his property including his truck and prevent him from recovering his losses through the courts.

The preceding events were precipitated by Miller's job loss as a clinical pharmacist. (*Id.* ¶29). Edelman's agent and "financial advisor," Karen Morse never properly instructed Miller on how to manage her money and thereafter Miller met with Morse to withdraw enough money to cover her expenses during her temporary period of unemployment. *Id.* Morse refused to give Miller any of her own financial assets and gave Miller bad financial advice to sell her home, move into her mother's two-flat in the ghetto and steal from Dix. (*Id.* ¶¶39,40,45) Had Morse given Miller about $4,000 from her poorly performing portfolio, a relatively small sum of money compared to Miller's earning potential and investments with Edelman, none of the preceding events would have happened. (D.Ct.Dkt.126 p.5).

Because of Morse's conspiracy to defraud, Dix had to hide his wallet after Miller used his credit card to make several unauthorized purchases. (D.Ct.Dkt.23 ¶51). Miller began opening and concealing Dix's mail to steal his paychecks. (*Id.* ¶48). Miller also began going through Dix's personal, business and financial records and as a result, Dix lost several documents preventing him from conducting his business affairs including billing clients. (*Id.* ¶45). Because of Morse's advice to Miller and the unlawful eviction, Dix had to repair a dilapidated and uninhabitable duplex without compensation. (*Id.* ¶54).

Morse was in business to retain as much money as possible in her clients' portfolios even if it was performing poorly and caused her clients to sell their homes at a loss as was the case with Miller. (*Id.* ¶44). When Miller was forced to quickly sell her home and having difficulty staging it, Morse presented Edelman's apparent-agent, Coryell as a "professional mover" and Morse did so knowing it not to be true. (*Id.* ¶240). Because of this fraud, Dix was required to perform Coryell's work instead of conducting his own business affairs causing him to lose income. (*Id.* ¶92).

Before filing his complaint, Dix did not know the name of Miller's financial advisor and he attempted to discover it by telephoning Edelman several times. (D.Ct.Dkt.79-1 ¶4). When Dix spoke with the Lisle police, Sergeant Dempsey made a false allegation that Edelman had to evacuate its headquarters because Dix had made a "bomb threat." (*Id.* ¶8). Dempsey then told Dix not to call Edelman and was trying to intimidate him and prevent him from pursuing his legal obligation to conduct a reasonable discovery before filing his complaint. (*Id.* ¶9). Dempsey then telephoned Vetaliy Lord and informed him that the

Lisle police had just illegally evicted Dix and deprived him of his property and encouraged Lord to call Dix and make a false claim that Dix threatened Shurtz. (*Id.* ¶11). Thereafter, to protect the wrongdoings of his friends in the Lisle police department, Lord called Dix and falsely claimed that Dix threatened Shurtz and that Lord was going to give the same false testimony to a DuPage County judge and that Lord would get a warrant for Dix's arrest. (D.Ct.Dkt.23 ¶¶175-182) Lord knew that Dix did not threaten Shurtz but used the threat to arrest Dix to prevent him from conducting discovery regarding Shurtz's role in the wrongful eviction prior to filling his lawsuit – discovery which Dix knew he was obligated to conduct pursuant to Rule 11(b). *Id.*

Miller and the Lisle police began destroying and disposing of Dix's personal property seized during his wrongful eviction to permanently deprive him of it. To prevent further loss of his personal property, Dix filed an emergency motion for a Temporary Restraining Order ("TRO") on September 27, 2017 pursuant to Rule 65(b). (D.Ct.Dkt.8). Dix hand delivered his motion to Miller's house in Lisle, placing it on the stoop as he was obligated and sworn to do. (D.Ct.Dkt.23 ¶¶203-204). When he delivered his motion, Dix never entered Miller's house and was on the grounds for no more than fifteen seconds. (*Id.* ¶205). The next day, Officer Dean Anders called Dix from the Lisle Police Department's dispatch room and informed him that when Miller came home, she found the TRO motion on her kitchen table and claimed that Dix had placed it there. (*Id.* ¶¶206-207). Anders falsely claimed that Dix committed criminal home invasion in violation of 720 ILCS 5/19-6 and informed Dix that he would convince the State Attorney to prosecute him. (*Id.* ¶¶212-213). Even though Anders

knew that Miller's house was for sale at the time and that a realtor's lockbox was attached to the fence permitting any licensed realtor including Shurtz to enter Miller's house at any time and place the TRO motion inside the home, Anders unequivocally claimed that Dix did it. (*Id.* ¶¶210-211).

Anders knew that Dix never entered the home the previous day but made false claims to intimidate him into dismissing his complaint and for the purpose of aiding and abetting Miller's attempt to extort money from Dix. (*Id.* ¶214).

REASONS FOR GRANTING THE WRIT

A. The Seventh Circuit has not adopted this Court's precedent in *Soldal*

According to Illinois public policy, no person has the right to take possession, by force, of premises occupied or possessed by another, even though such person may be justly entitled to such possession. *Evans* at 564. The FEDS provides the complete remedy at law for settling such disputes and persons seeking possession must use this remedy rather than force. *Id.* Consequently, the FEDS gives a home's occupants possessory rights even if temporarily while a trial judge determines which disputing party has the better right of possession.

Dix had possessory rights to Miller's house when he was wrongfully evicted because of (1) an oral landlord-tenant agreement with Miller; (2) pursuant to the FEDS, a temporary right of possession even if Miller no longer wanted him living in her house and even if Dix would later be found to be a "licensee" by a court with *competent jurisdiction*; and (3) this Court's precedent in *Soldal*.

The Seventh Circuit misrepresented the crux of Dix's complaint by making false statements and fallacious inferences. At the time of the illegal eviction, it was already well-settled by all parties including Miller and the Lisle police that Dix was a lawful tenant who had a right of possession to Miller's house. The Seventh Circuit was clearly confused about Illinois tenancy law when it erroneously opined that Dix was a licensee and not a tenant. Furthermore, the Seventh Circuit did not have jurisdiction over the Dix's wrongful eviction claim and its unsupported conclusion that he was a licensee violates Dix's fourth amendment due process rights, is meritless and inapposite to the undisputed facts requiring some discussion.

Because Dix was removed from his home by force and deprived of his property without judicial authority, his Fourth Amendment rights were violated. Miller's house was Dix's home for Fourth Amendment purposes since (1) he lived there for nearly six years; (2) he had a regular and continuous presence and regularly slept there; (3) he had exclusive use of the lower-level; (4) he stored his clothes and possessions there; (5) he received mail there; (6) he contributed to the upkeep of the household. *See People v. White*, 512 N.E.2d 677, 683 (Ill. 1987). Dix had possessory rights regardless of the existence of any lease as long as he began his occupancy of Miller's house *peaceably*. Subsequently, Dix was entitled to a trial or at least a judicial hearing before he could be removed from Miller's house against his will.

The Seventh Circuit erroneously inferred that Dix lacked the essential elements of a lease (App.9a) and in doing so, ignored the undisputed facts and

disrespectfully, even facts presented by *amicus*. Dix had the "ultimate hallmark of a lease" – an exclusive right to dedicated rooms and a right to refuse and did refuse Miller's request to relet his space to another renter. See *Cook v. University Plaza*, 100 Ill. App. 3d 752, 427 N.E.2d 405, 407 (Ill. App. Ct. 1981) (A leasehold requires that the lessee's possession be more than merely coextensive with the lessor; it must be exclusive against the world and the lessor even though there may be a reservation of a right to possession by the landlord for purposes not inconsistent with the privileges granted to the tenant.)

The Seventh Circuit claimed that this Court's opinion in *Soldal* is not applicable because those "evicted persons were not mere licensees (let alone trespassers)" (App.19a) – labels which the circuit court erroneously placed on Dix. This is another misrepresentation by the Seventh Circuit which seems to be oblivious to its own opinions. According to *Soldal v. County of Cook*, 923 F.2d 1241, 1245 (7th Cir. 1991) the morning after his trailer was removed,

> "[Edward Soldal] was seen entering the park, and while he was in the friend's trailer a deputy sheriff (who had not been present at the eviction the previous day) came and arrested Soldal because "you're not supposed to be here." He was kept in jail for several hours, **charged with criminal trespass**." [emphasis added].

Dix was never arrested for criminal trespass although the Lisle police tried using fabricated evidence and it was not until he read the circuit

court's opinion in October of 2020 did Dix learn that when he awoke on the morning of August 24, 2017, he did so as an "alleged" trespasser. The Seventh Circuit's contention that Dix was a trespasser who had no possessory rights to his home but Edward Soldal was not a trespasser who did have possessory rights to his trailer-home is outrageous and spurious and warrants reversal by this Court. It is obvious that the Seventh Circuit has no intention to capitulate to this Court's superior authority and has invented specious and contemptuous reasons for defying this Court's precedent which cannot be allowed. The seizure of Dix's person and property is even more egregious than *Soldal* since the Lisle police officers were more involved with Dix's illegal eviction than the deputy sheriffs in *Soldal* where at least some attempt was made to comply with the FEDS under a claim that payment for the lot was in arrears. *Soldal* at 58

The Seventh Circuit deliberately avoided the controlling state law cited by this Court in *Soldal* and instead cited impertinent state law with distinguishable controlling facts. In *People v. Evans*, 516 N.E.2d 817 (Ill. App. Ct. 1987), Joyce Evans was permitted to take possession of a bedroom in the home of Maxine West without signing a lease or paying rent and was forcibly removed and treated as a trespasser by the local police after she apparently refused to sign a lease. *Evans* at 818. According to Illinois law, only a trial judge in a forcible entry and detainer action can determine which party has the better right of possession, not a police officer or assistant State's Attorney. *Id* at 819. Furthermore, the Illinois criminal trespass to real property statute provides that the statute shall not apply to anyone living on the premises by a lease or other agreement. *Id* at 819-20.

In this instant case, Dix had established a more convincing right of tenancy than Joyce Evans in that case, yet the Seventh Circuit incorrectly opined that the Lisle police still had a right to treat him as a trespasser.

This Court has held that the Fourth "Amendment protects the people from unreasonable searches and seizures of 'their persons, houses, papers, and effects'" and that the Amendment's protection applies in the civil context as well. *Soldal* at 62, 67. This Court held that "the right against unreasonable seizures would be no less transgressed if the seizure of the house was undertaken to collect evidence, verify compliance with a housing regulation, effect an eviction by the police, or on a whim, for no reason at all." *Id* at 69. Sommer seized Dix multiple times; first preventing him from retreating into his own home and later preventing him from entering the second and third floors and, finally, along with McKay and Anders prevented Dix from returning to his abode, all for the purpose of seizing his property and giving it to Miller in violation of the Fourth Amendment.

The Seventh Circuit erroneously opined that Dix had no possessory rights by relying on Miller's wrongdoings as landlord where she unlawfully interfered with Dix's rights under Morse's instructions to steal from him in lieu of giving Miller her own money (App.10a). Since Dix had to lock his documents in his truck and Miller was opening and withholding his mail, (a wrongdoing which even the Lisle police advised Miller to refrain) the circuit court erroneously opined that Dix was not a tenant. To the contrary, Miller's breach of the implied covenant of quiet enjoyment did not nullify their landlord-tenant agreement, but only supports Dix's legal claims

against Morse and Miller who were attempting to defraud him out of money causing injury. "The tenant has the right to the possession of the property without interference by the landlord with her right to quiet enjoyment." *Grimm v. Arnold*, 253 Ill. App. 3d 404, 624 N.E.2d 432, 436 (Ill. App. Ct. 1993).

Nothing in Illinois tenancy law even suggests that interference by a landlord with possessory rights of a tenant converts a lease agreement to a license and it is an absurdity for the circuit court to even suggest so. Prior to Morse's plan to steal from Dix, he *actually* received his mail, left his wallet and financial documents laying around all over Miller's house, all without interference by Miller. (D.Ct.Dkt.23 ¶¶49-50). It is well-settled, however, that such interference typically permits a tenant to recover damages from the landlord. "It is the law that damages sustained by a tenant by reason of a breach of the covenants of the lease on the part of the landlord may be set up by way of recoupment in an action for rent, under the lease." *Baumgartner v. Montavon*, 276 Ill. App. 498, 505 (Ill. App. Ct. 1934). Under the Seventh Circuit's argument, a landlord would merely have to interfere with a tenant's rights by breaching covenants as a pathway to a forcible and extrajudicial eviction against a now vulnerable "licensee."

The Seventh Circuit also ignored the fact that under the terms of the lease, Dix had possessory rights which were superior to Miller's rights for common areas in the house. Dix had a right to dictate that Miller's clutter not pose an unsanitary and unsafe condition in the kitchen and that the illegal and dangerous conveyance of natural gas and electricity not be used. (D.Ct.Dkt.23 ¶¶64,75,82). Furthermore, even if Dix was a trespasser or a

licensee, he was entitled to due process of law wherein his possessory rights were to be determined at trial by a Forcible Entry and Detainer Action initiated by Miller *prior to* him being forcibly removed from his home and not three years after the fact by the circuit court with no jurisdiction over the matter. "The forcible entry and detainer act does not confine the remedy it provides to a landlord-tenant relationship. It provides a remedy whenever peaceable entry is made and possession unlawfully withheld." *Illinois Cent. R. Co. v. Michigan Cent. R. Co.,* 18 Ill. App. 2d 462, 483 (Ill. App. Ct. 1958)

The Seventh Circuit relies on its own opinion in *White v. City of Markham,* 310 F.3d 989 (7th Cir. 2002) as "ground support" for its opinions issued in defiance to this Court's sound legal arguments in *Soldal* under a theory of qualified immunity (App.13a-16a). In *White*, when those police arrived, they discovered broken lamps, a shattered fish tank and other personal belongings scattered on the floor. *White* at 991-92. It was questionable whether the house in *White* was habitable given its condition at the time including a missing exterior wall. *Id* at 998. Those officers also witnessed Brian White and the homeowner arguing. *Id* at 992. This instant case is inapposite to the *White* scenario. There was no quarreling between Dix and Miller when the Lisle police arrived and they only observed Dix literally minding his own business. Furthermore, there was no visible broken, shattered or otherwise damaged property although some of the Dix's property was damaged during the hasty and unplanned eviction. It is undisputed that Sergeant Dempsey was the only one disturbing the peace and that Dix was relatively calm despite the situation and was able to amicably negotiate favorable agreements with Miller for

reimbursement of the moving van (the only time Dix spoke to Miller while the Lisle police were present) and a bailment agreement with Lisle while he left to rent the moving van. However, both agreements were later breached similar to the way they breached the landlord-tenant relationship. (D.Ct.Dkt.23 ¶¶139, 141).

In its attempt to falsely claim that the agreement between Dix and Miller was a "license agreement", the circuit court relies on a contract found in *Millennium Park Joint Venture, LLC v. Houlihan,* 948 N.E.2d 1 (Ill. 2010). (App.9a). The Seventh Circuit deliberately avoids the fact that *Millennium* is a clearly distinguishable commercial agreement for public space with one of many vendors to operate on a twenty-four acre tourist attraction which is ordinarily regulated by police and not a person's relationship to his private home where intrusions by over-reaching police are likely to violate constitutional protections. In *Millennium*, a vendor brought a declaratory judgment action seeking an untaxable license as opposed to a taxable lease. *Millennium* at 7. In deciding that agreement between the those parties was a license, the *Millennium* court relied on the fact that the Park District had extensive control over all aspects of that plaintiff's business including the location of mobile concessions and a right to permit other vendors to operate on the premise. *Millennium* at 19, 20. To the contrary, Miller had no right to control Dix's personal and business affairs including the location of his desk within her house where he conducted most of his private business affairs. Dix also exercised his right to refuse Miller's proposal of admitting another renter.

In citing *Millennium*, the circuit court infers that the essential elements for a lease contract are missing but this is not the case since (1) Dix had full access to all structures and the grounds of the Lisle property deeded to Milller with exclusive use of the basement (2) the terms were oral and extensive and not reviewed by the courts but it was undisputed that Dix performed those terms "to the satisfaction of Miller" (3) Dix gave Miller goods, services and cash in exchange for his tenancy but the covenant for repair and maintenance of the leased property ultimately varied the "cash value" for rent (4) the time and manner of payment was to be made on Miller's beck and call. *See Millennium* at 19

The Seventh Circuit looks to *Jones v. Kilfether*, 139 N.E.2d 801 (Ill. App. 1956) to falsely claim that Dix had no right of possession (App.9a-10a). The Seventh Circuit completely ignores the fact in *Jones* at 802, that decision came from a forcible entry and detainer proceeding which is absent here and which gives rise to Dix's due process claim. It was decided in *Jones* at 803-4, that plaintiff, an estranged husband, had no tenancy agreement with his wife and absent anything to establish the relation of landlord-tenant at trial between the divorcing couple, gave that plaintiff's wife exclusive right of possession to the subject property. This instant case in no way resembles *Jones*. First, the occupancy of the apparent-tenant, Jenny Kilfether, was protected by the Illinois FEDS even though she paid no rent. *Jones* at 802. Had Mr. Jones summoned the police to forcibly remove her from the family home under his theory that her trespassing was interfering with his marital affairs, there would have been some semblance to this case even absent a § 1983 right. If anything, *Jones* supports Dix's wrongful eviction claim since it shows that by using the courts instead

of maniacal and unscrupulous police disturbing the peace, the right of possession by Jenny Kilfether, the occupant whose removal was sought was uninterrupted and resolved without incident.

The Seventh Circuit made other spurious legal arguments for denying Dix's constitutional claims, but these are nothing more than a bane attempt to undermine this Court's precedent. The circuit court relying on *Higgins v. Penobscot County Sheriff's Dept*, 446 F.3d 11 (1st Cir. 2006) makes the erroneous claim that Sommer and McKay were not put on notice that they were violating the Constitution when they illegally evicted Dix (App.18a-20a). In *Higgins* at 14, that plaintiff's occupancy of the subject property was disputed by other members of his family and the officers in that case believed the property to be long unoccupied and Higgins had been operating a vehicle with out-of-state plates. This case is distinguishable since it is undisputed that Dix resided in Miller's house given his presence late at night and early the next morning in addition to the fact that he received mail there and commuted to work in a nearby town. Furthermore, the police never observed any quarrelling between Dix and Miller and it is undisputed that the only person screaming like a maniac was Sergeant Dempsey. Dix was standing outside of his vehicle sorting through his documents when the Lisle police officers arrived and Miller was nowhere around.

The Seventh Circuit cites *Lunini v. Grayeb*, 184 F. App'x 559 (7th Cir. 2006), attempting to mis-characterize the events in this instant case as a "domestic disturbance" (App.15a-17a) There was no complaint by Miller or Dix, that one injured the other and neither of them had any physical injuries nor did

any Lisle police officer see a need to ask Dix or Miller if either of them needed an ambulance. According to *Lunini v. Grayeb* 305 F.Supp.2d 893 (C.D.Ill. 2004), Joseph Lunini and Charles Grayeb lived in a single-family home in Peoria, Illinois. The Peoria police observed an injured and bloodied Lunini who claimed that Grayeb caused his injuries which Grayeb denied. *Lunini* at 901-03. A police officer observed a cut on the inside of Lunini's lip and blood on his hand and asked Lunini if he needed an ambulance. *Lunini* at 900. Because of the physical injuries in that case, that court found that the police were not unreasonable to order Lunini to leave and not come back unless accompanied by the police; thus they did not violate Lunini's fourth amendment right which was later affirmed by the circuit court. *Lunini* at 907-08.

In this case, there was no sign of domestic violence; no broken household items; no bloody victims; and no yelling and screaming in the presence of police except for Sergeant Dempsey's screams. The Lisle police were only present to remove Dix forcibly and unlawfully from his home at the behest of Miller who was fulfilling her agreement with Shurtz. The circuit court cites the fact that Miller twice called the Lisle police to illegally evict Dix and infers that because of his refusal to leave, his forceful removal by the Lisle police was justified. However, the ninth circuit has held that repeated requests for police to effect an eviction only serves as an indication that a landlord is a joint actor in a § 1983 action and that police were present for reasons other than performing a "peace-keeping" function. See *Howerton v. Gabica*, 708 F.2d 380, 385 (9th Cir. 1983).

The Petitioner was evicted by Miller, Shurtz and the Lisle police purely for financial reasons in

violation of his Fourth Amendment rights and this Court should exercise its supervisory authority over an obstinate circuit court and reverse the opinion below.

B. Defendants abused the judicial process to prevent Petitioner from recovering seized property.

Before filing his complaint and presenting his motion for replevin, Dix was performing his legal obligations pursuant to Rule 11(b) and the Illinois Replevin Statute (735 ILCS 5/19-101). Dix had to demand that the defendants return his property which he did several times before he filed his motion for replevin. *See First Illini Bk. v. Wittek Industries*, 261 Ill. App. 3d 969 634 N.E.2d 762, 763 (Ill. App. Ct. 1994) ("Until demand has been made and refused, the defendant's possession of the property is not considered wrongful.")

While investigating Shurtz's role in the illegal eviction, Lord and Shurtz herself engaged in a conspiracy to deprive Dix of his constitutional rights to his property by threatening him with arrest using false and manufactured evidence. Although Dix was not arrested by the Wheaton police, the Sixth Circuit has held that an unlawful conspiracy to fabricate evidence caused constitutional injury even if plaintiff was never arrested or tried, but like this instant case, was used to support fourth amendment violations. *See Marvaso v. Sanchez*, 971 F.3d 599 (6th 2020) (Defendants engaged in an unlawful conspiracy to fabricate evidence to support a homicide by arson investigation against a restaurateur who was never arrested but was subjected to an unconstitutional search and seizure as a result of false evidence.)

Dix was seized by Lord's threat to arrest, preventing him from fully conducting his Rule 11(b) discovery by investigating REMAX and Shurtz's role in his illegal eviction. Furthermore, an unknown woman from REMAX later harassed Dix by telephone and the Wheaton police department refused to accept Dix's complaint but they still did not permit him to investigate Shurtz and REMAX by telephone. (D.Ct.Dkt.23 ¶¶183-186). The Seventh Circuit declared Dix's complaint as frivolous (another false and unsupported conclusionary claim) and made sanctions against him (App.23a) despite the fact that he was fully complying with Rule 11 the best he could given the threats by the Wheaton and Lisle police. The Seventh Circuit made sanctions against Dix despite the fact it previously found "that an officer's threat to arrest someone, conveyed over the telephone, is enough to raise constitutional concerns." *Zappa v. Gonzalez*, 819 F.3d 1002, 1005 (7th Cir. 2016). Also, the Sixth Circuit appears to assert that a police officer making a threat to arrest is not entitled to qualified immunity. See *United States v. Ivy*, 165 F.3d 397, 403 (6th Cir. 1998) (Police Sergeant's threat to arrest and take a child "constituted an objectively improper police action...significantly intensifying the coercive tenor of the request for consent.") Thus, there are merits to Dix's claims against Shurtz and Lord given the foregoing precedents and sanctions were improper.

Since Dix was never legally evicted, he still had a right to use Miller's house for any purpose that he saw fit (although he never entered Miller's house after his eviction), including using it to store his personal property and his motor vehicle as part of a bailment agreement until he was able to safely recover his property through replevin. Anders used the

undisputed fact that Dix was on Miller's property as an opportunity to accuse him of criminal home invasion by falsely contending that Dix entered Miller's house. There was no evidence other than "planted evidence" and there simply was no criminal home invasion – only a fabrication by Anders to intimidate and harass Dix to prevent him from pursuing his claims. "Law enforcement conduct becomes constitutionally unacceptable when "the police completely fabricate the crime solely to secure the defendant's conviction." *U.S. v. Winslow*, 962 F.2d 845, 849 (9th Cir. 1992).

Furthermore, in retaliation for Dix filing his federal complaint, a Lisle police officer who Dix reasonably believes to be McKay approached Miller and threatened to prosecute her if she refused to file a false criminal complaint against Dix which they eventually used to have Dix violently arrested in district court. (D.Ct.Dkt 23 ¶¶188-191). In a telephone conversation, Miller gave Dix the option to avoid prosecution by saying that she would not give her false testimony at trial in exchange for Dix giving her all of his money and voluntarily dismissing all of his claims (*Id.* ¶¶192-194).[3]

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[3] There was never any evidence to support a criminal complaint against Dix at any time. To maliciously prosecute Dix, DuPage County State Attorney, **Robert Berlin** fabricated and falsified a certified copy of a disposition from the Cook County Clerk for case number 10CR013840 which fraudulently claimed that Dix was convicted of aggravated DUI in 2010 and spent 207 days in jail in order to impeach Dix at trial. According to the *real* disposition from Cook County, the person named in case number 10CR013840 is GERARDO DIAZ not Gerald Dix as **Robert Berlin's certified copy** falsely claimed.

Thus, the only sanctionable conduct was committed by the Defendants and sanctions against Dix should be vacated.

C. The First Amendment must protect offensive but accepted speech on private property.

Miller frequently used vulgar language about others in her own home and permitted Dix to do the same. Miller often used the n-word (n*gger) and the word, b*tch in communications with Dix (D.Ct.Dkt.126 p.7;App.66a). Applying his own prudish standards of speech, Sommer personally objected to Dix's words and unlawfully restricted his fundamental right with a threat to arrest. "With rare exceptions, content discrimination in regulations of the speech of private citizens on private property. . .is presumptively impermissible, and this presumption is a very strong one." *Whitton v. City of Gladstone*, 54 F.3d 1400, 1408 (8th Cir. 1995). Furthermore, the circuit court's finding that Sommer did not violate Dix's First Amendment right because he was not entitled to be on Miller's property is inaccurate; Dix was permitted on Miller's property for the purpose of removing his personal property which Miller didn't want.[4]

Other than misrepresenting the record, the Seventh Circuit does little to support its affirmation of the district court's dismissal of the Petitioner's First Amendment free speech claim. The circuit court makes outright false statements that Dix was hurling

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[4] If Dix had created a fracas and volatile dispute as the Seventh Circuit fraudulently inferred, he should have been told not to come back until he "settled down" and only then accompanied by the Lisle police.

insults at Miller in the presence of Lisle police and there is nothing in the record to support this false contention (App.14a). The circuit court relying on *Frisby v. Schultz*, 487 U.S. 474, 485 (1988) infers that Dix calling Coryell stupid was unwelcome speech in Miller's house (App.20a*n8). However, two days prior, Miller expressed her disgust with Coryell's ineptitude since she moved so slow and Miller had to frequently interrupt Dix while he was working at his desk so that he would move relatively light boxes that Coryell would not move. Although abiding by Shurtz's demand that the house be staged within seven days was futile, Miller continued to employ Coryell's services since she had been endorsed by Morse who controlled Miller's financial assets.

Consequently, the circuit court's reliance on *Frisby* is misplaced since Coryell was not a captive audience who could not avoid Dix's criticism even if it could be deemed offensive speech as she was free to leave at any time and discontinue her fraud. *See Kunz v. New York*, 340 U.S. 290, 298 (1951) (A meeting on private property is made up of an audience that has volunteered to listen.) Dix was on the grounds of his own home, the place where he had woke up just hours earlier and where the Lisle police had already acknowledge his right of possession and he was only communicating a sentiment shared by the homeowner but only objectionable to a meddling police officer and thus *Frisby* provides no protection for Sommer. *See Frisby* at 488 (Ordinance may not apply in such circumstances where resident uses his home as a place of business or to picketers present at a particular home by invitation of the resident.)

Dix only called Coryell stupid *while* he was being evicted but the circuit court used this single word to

protect Sommer and McKay with qualified immunity by ridiculously suggesting that Dix and Miller would "duke it out" had it not been for the police presence (App.15a).[5] Dix was justified in making his comment to Coryell since someone with common sense and most certainly a professional mover would have repackaged his appliance before placing it on the asphalt driveway. The tenth circuit has found that calling someone a "boob" or an "idiot", terms synonymous with stupid, are relatively mild and that although they may be offensive were not inherently likely to cause a violent reaction and were not fighting words devoid of First Amendment protection *See Klen v. City of Loveland*, 661 F.3d 498, 510-11 (10th Cir. 2011). For all the foregoing reasons, Dix calling Coryell stupid was not unwelcome speech but a rather ordinary way for Dix or Miller to express themselves in their own home.

D. The Seventh Circuit did not have jurisdiction over Petitioner's wrongful eviction claim

Dix duly notified the Seventh Circuit that it did not have jurisdiction over his wrongful eviction claim but, nonetheless, it exercised jurisdiction with a clearly erroneous decision designed to interfere with Dix's constitutional protection. This Court has held that "Personal jurisdiction...is an essential element of district court jurisdiction, without which the court is powerless to proceed to an adjudication." *Ruhrgas AG*

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[5] This Court is currently considering whether a "community caretaking exception" permits seizure of a firearm from a home (*Caniglia v. Strom*, 953 F.3d 112 (1st Cir. 2020)). A grant here would serve as a guide to this exception in cases involving forcible and unlawful evictions by police.

v. Marathon Oil Co., 526 U.S. 574, 575 (1999). In this instant case, the district court divested the circuit court of personal jurisdiction over Dix's wrongful eviction claim, making it powerless to adjudicate the matter. Out of deference, the circuit court should have permitted the state court to decide the merits of the wrongful eviction claim since "[c]ooperation and comity, not competition and conflict, are essential to the federal design." *Ruhrgas* at 576. *See also Levin v. Com. Energy, Inc.*, 560 U.S. 413, 421 (2010) (Comity considerations preclude the exercise of lower federal-court adjudicatory authority over controversy, given that an adequate state-court forum is available to hear and decide state-law claims.)

Even under the Seventh Circuit's own standard, Dix should have been permitted to pursue his wrongful eviction claim in state court without interference from the federal courts since ordinarily after state law claims have been relinquished a "[plaintiff] will be free to seek to pursue them in state court" *Howlett v. Hack*, 794 F.3d 721, 728-729 (7th Cir. 2015).

Furthermore, the circuit court's usurpation of state court proceedings eradicates Illinois' dignitary interests in resolving possessory rights peacefully and without possible bloodshed. By erroneously deciding the merits of Dix's wrongful eviction claim, the circuit court was overreaching. Common practice dictates that "[f]ederal courts should not be overeager to hold on to the determination of issues that might be more appropriately left to settlement in state court litigation" *Mine Workers v. Gibbs*, 383 U.S. 715, 727 n.15 (1966). "This Court has consistently recognized the right of States to deal with violence and threats of violence appearing in labor disputes," *Gibbs* at 729.

Illinois developed the FEDS as a remedial measure to resolve disputes over possession of real property without bloodshed and violence by forcing the parties to resolve their disputes in state court. However, the circuit court decision nullifies the state's measures, leaving a path to "might makes right" to possession with civil remedies, if any, occurring after a show of force with possible bloodshed. Bloodshed which the state courts will have to contend while the federal courts reject and lash out at every wrongfully evicted individual who walks through its doors as the Seventh Circuit has clearly done here.

E. The pleading requirements set forth in Rule 9(b) are not clearly settled among the circuit courts.

The district court erroneously opined that Dix's claim against Morse was sparse, conclusory and inconsistent to support a plausible claim for conspiracy to defraud (App.58a). Dix pled a simple and straight-forward conspiracy to defraud between Miller and Morse. Morse denied Miller access to short-term cash and presented a convoluted plan to Miller that was not in Miller's best interests and which had dire financial consequences for all parties involved except the attorneys who actually did pretty well. Morse convinced Miller to move to the ghetto and make Dix responsible for financing Miller while she was unemployed. Morse and Miller had conversations about Dix with Morse offering some useless career advice to Dix through Miller but, of course, the conspiracy part was never conveyed to him. The conspiracy was that Miller and Morse decided that Dix was going to finance Miller "by hook or by crook" while she was unemployed. That is, if Dix didn't give her his money outright, Miller was to steal from Dix

so that Morse did not have to release any funds from Miller's poorly performing portfolio. While the conspiracy plan itself was simple, its execution was rash and convoluted enough that Dix recognized that he was being "hustled" and took reasonable precautions to prevent financial loss.

The district court should not have applied Rule 9(b)'s standard to Dix's claim against Edelman and Morse which was for *conspiracy to defraud* rather than plain fraud which the Seventh Circuit had previously held that Rule 9(b)'s particularity standard is not applicable to a conspiracy to defraud claim. "[C]onspiracy is not something that Rule 9(b) of the Federal Rules of Civil Procedure requires be proved with particularity, and so a plain and short statement will do." *Loubser v. Thacker*, 440 F.3d 439, 442 (7th Cir. 2006). (Citing *Hoskins v. Poelstra*, 320 F.3d 761, (7th Cir. 2003)) "Rule 9(b) has a short list of matters (such as fraud) that must be pleaded with particularity; conspiracy is not among them. It is enough in pleading a conspiracy merely to indicate parties, general purpose and approximate date, so that the defendant has notice of what he is charged with." *Hoskins* at 764. Nonetheless, the Seventh Circuit did not reverse the district court's dismissal of his conspiracy to defraud claim against Edelman and its agents.

The district court opined that since the Petitioner had still not known the name of Miller's financial advisor and its apparent agent, Meme Coryell at the time he amended his complaint, he failed to meet the requirements set forth in Rule 9(b) (App.55a, 57a-59a). Specifically, he failed to identify the "who" in the oft incanted "who, what, when, where, and how: the

first paragraph of any newspaper story." *DiLeo v. Ernst Young*, 901 F.2d 624, 627 (7th Cir. 1990).

Despite his attempts and at great risk to himself, the Petitioner had not been able to identify Miller's financial advisor although he identified her as such and he knew she was an agent of Edelmen. Consequently, Dix contends that he met the requirements set in *DiLeo* and noted the fact that the first paragraph of any "newspaper story" does not necessarily identify the parties involved by their legal name. Many initial news stories often omit the identity of burglars or accident victims – the information most sought. That information is often kept confidential by the police until they see fit to release it which is similar to this instant case. Regardless, here, the Seventh Circuit adopted the practice where Rule 9(b)'s stringent standards required that the Plaintiff's amended complaint include information within the Defendants' exclusive control.

The First Circuit held that when specific information "is likely in the exclusive control of the defendant, the court should make a *second* determination as to whether the claim as presented warrants the allowance of discovery and if so, thereafter provide an opportunity to amend the defective complaint." *New England Data Services, Inc. v. Becher*, 829 F.2d 286, 290 (1st Cir. 1987). Despite Dix's inevitable discovery of the true identities of Morse and Coryell, he was never permitted to amend his complaint a second time by the district court.

The Sixth Circuit has held that a plaintiff can base his allegation on "information and belief...where the relevant facts lie exclusively within knowledge and control of the opposing party" as long as the plaintiff

pled a "a particular statement of facts upon which his belief is based" *Craighead v. E.F. Hutton Co., Inc.*, 899 F.2d 485, 489 (6th Cir. 1990).

The Ninth Circuit has held that "the general rule that allegations of fraud based on information and belief do not satisfy Rule 9(b) may be relaxed with respect to matters within the opposing party's knowledge. In such situations, plaintiffs can not be expected to have personal knowledge of the relevant facts." *Neubronner v. Milken*, 6 F.3d 666, 672 (9th Cir. 1993). The tenth circuit has a similar policy wherein it "excuse[s] deficiencies that result from the plaintiff's inability to obtain information within the defendant's exclusive control" and where the employer, no doubt knows which employee is responsible for the fraud. *United States ex rel. Polukoff v. St. Mark's Hosp.*, 895 F.3d 730, 745 (10th Cir. 2018).

The Tenth Circuit also held that "in determining whether a plaintiff has satisfied Rule 9(b), courts may consider whether any pleading deficiencies resulted from the plaintiff's inability to obtain information in the defendant's exclusive control." *George v. Urban Settlement Servs.*, 833 F.3d 1242, 1255 (10th Cir. 2016). Dix was only required to make allegations that sufficiently apprised Edelman of its alleged role in the overall scheme to defraud him and of its involvement in the conspiracy with Miller which he has clearly done. See *George* at 1257.

Edelman knew the identity of Miller's financial advisor and because of the harassment and intimidation by the Lisle police, Dix was prevented from conducting discovery expeditiously to obtain her identity by the time he filed his amended complaint. While this case was still lingering in the district court,

Dix should have been permitted leave to amend his complaint a second time once he learned of Morse's identity in order to remedy any deficiencies under Rule 9(b); the district court's dismissal of his claims against Edelman without granting leave to amend was an abuse of discretion. See *Luce v. Edelstein*, 802 F.2d 49, 57 (2d Cir. 1986).

Finally, the Seventh Circuit makes personal attacks on Dix's good character with false claims that he disputes and even a false claim that former TSA Director, Melvin Caraway disputes (App.21a-24a). This Court should disregard the circuit court's slanderous claims. "[W]e may not, on the basis of evidence outside of the Complaint, take judicial notice of facts favorable to Defendants that could reasonably be disputed." *U.S. v. Colleges*, 655 F.3d 984, 999 (9th Cir. 2011) (citing *Lee v. City of L.A.*, 250 F.3d 668, 689-90 (9th Cir. 2001)).

The Seventh Circuit has long held personal animosity against the Petitioner, Gerald Dix, for several reasons that he need not discuss at this time. The Defendants in this case agreed to litigate the claims presented and so they incurred their legal costs willingly while the Petitioner was harmed. Dix was not surprised that the lower courts chose to omit and misrepresent facts which permitted their public scorn of him, however, the Seventh Circuit made Daniel Scott Harawa participate in the briefing knowing its decision would be a debacle. Mr. Harawa is an associate professor of law at a school with an annual tuition of $60,900 and he should have devoted his time to his customers – law students at Washington University in St. Louis. Instead, Mr. Harawa had to involve himself in an appeal which was decided in direct conflict with this Court's precedent in *Soldal*.

Because a legal scholar was exploited, this Court should review the opinions below.

CONCLUSION

The petition should be granted.

Respectfully submitted.

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