21-1113

No. 22-

IN THE
# Supreme Court of the United States

BROCK FREDIN,
*Petitioner*,

v.

GRACE ELIZABETH MILLER.
CATHERINE MARIE SCHAEFER,
LINDSEY ELISE MIDDLECAMP,
JAMIE KREIL
*Respondents.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

On November 10, 2021, the Eighth Circuit ignored two-hundred and fifty years of First Amendment precedent and issued a breathtakingly unconstitutional 10-1 *en banc* order restricting Petitioner's free speech and his right to petition while threatening "detainment" if Petitioner refuses to comply.

Even more astonishing, the Eighth Circuit did not stop at merely directing Petitioner to remove existing content. Instead, the Eighth Circuit issued an *en banc* order affirming a wide-sweeping prior restraint on Petitioner's free speech by prohibiting him from publishing any content about the district court, the district court's staff, Respondents, Respondents' counsel and any future counsel retained by Respondents for **five (5) years**. No Court – either state or federal – has even come close to being so brazen or flippant towards the First Amendment and its protections.

As shown below, the Eighth Circuit's November 10, 2021 *en banc* order, which affirms the district court's November 23, 2020 order directing Petitioner from prospectively publishing content is facially unconstitutional and a blatant abuse of discretion. As such, the district court's November 23, 2020 order is void and must immediately be reversed pursuant to 28 U.S.C. § 1292(a)(1) and (a)(3).

### The Question Presented Is:

**1.** Did the District Court have the authority under its inherent powers to issue a wide-sweeping injunction to restrict speech for a period of five (5) years?

## PARTIES TO THE PROCEEDINGS

**Petitioner:**

Brock Fredin is the plaintiff in the district court and appellant in the court of appeals. He is the Petitioner in this Court. Petitioner Brock Fredin is a software developer.

**Respondents:**

The following parties were defendants in their individual capacities in the district court and appellees in the court of appeals. They are respondents in this Court:

Grace Elizabeth Miller is Petitioner's ex-girlfriend. Respondent Miller is a Major in the United States Air Force most recently working as a congressional fellow and U.S. Senate Aid to Kansas Senator Jerry Moran. *See* https://www.youtube.com/watch?v=3khx10BusKA

Catherine Marie Schaefer

Lindsey Elise Middlecamp is Respondent Miller's cohort who began harassing and stalking Petitioner at Respondent Miller's behest to silence him. Respondent Middlecamp attended the University of Pennsylvania Law School. Respndent Middlecamp is an Assistant United States Attorney for the District of Minnesota. Respondent Middlecamp is a former Minneapolis Assistant City Attorney that maintained a Twitter account @CardsAgstHrsmt publishing nude and semi nude photos of black men to target them.

Jamie Kreil

## LIST OF PROCEEDINGS

Petitioner filed suit in the District Court of Minnesota in a case captioned *Fredin v. Middlecamp*, Case No. 17-CV-3058, *Fredin v. Miller* et al., Case No. 18-CV-466, and *Fredin v. Kreil*, Case No. 20-CV-1929.

In the U.S. Court of Appeals for the Eighth Circuit, the consolidated cases were docketed as Case No. 20-3487. The *Fredin v. Middlecamp* case was captioned as Case No. 20-3487, 20-3525, and 21-1134. *Fredin v. Milller* was captioned as Case No. 20-3513, 20-3516, and 21-1135. *Fredin v. Kreil* was captioned as Case No. 20-3528 and 21-1132.

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## OPINIONS BELOW

The Eighth Circuit's opinion is unreported. The Eighth Circuit's petition for rehearing *en banc* and panel rehearing 10-1 denial is unreported.

## JURISDICTION

The mandate of the Eighth Circuit was issued on November 17, 2021. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

## CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Article III, Section 1: Inherent Powers of Federal Courts: Contempt and Sanctions, provides that a district court has inherent sanction powers.

U.S. Const. Fifth and Fourteenth Amend. guarantees procedural due process and a right to a hearing.

U.S. Const. First Amend. states that Congress "shall make no law ... prohibiting the freee exercise thereof; or abriding the freedom of speech, or of the press ... and to petition the government for a redress of grievances."

## STATEMENT OF THE CASE

What is even more insidious and illustrative of an abuse of power, the Eighth Circuit affirmed wrapping a plainly unconstitutional injunction and directives in the cloak of the district court's "inherent sanction power" to thwart Petitioner's right to an adjudication on the merits and to be free from prior restraint of free speech under the First Amendment.

Nowhere in the Eighth Circuit's original August 10, 2021 conclusory and summary order does it address any of the First Amendment concerns or issues that its directives or prior restraints raised. This is particularly so given that the Eighth Circuit affirmed Judge Nelson's use of her "inherent sanction power" to restrict Appellant from engaging in speech – without a trial, much less a meaningful opportunity to be heard – about a law firm, Robins Kaplan LLP, that Judge Nelson was not only employed at, but had a significant ownership stake in prior to being appointed to the bench by President Barrack Obama.

As described above, the Eighth Circuit's August 10 and November 10, 2021 orders, which affirms the district court's November 23, 2020 order directing Petitioner to remove certain content from the Internet is facially and unquestionably unconstitutional, and a blatant abuse of discretion. Just like President Joe Biden – weak, frail, and in cognitive decline – the Eigth Circuit's August 10, 2021 and November 10, 2021 actions show that it is taking incompetence to cartoonish levels. As such, the district court's November 23, 2020 order is void and must immediately be reversed pursuant to 28 U.S.C. § 1292(a)(1) and (a)(3).

## A. Factual And Procedural Background

1. The Eighth Circuit's 10-1 *En Banc* Denial

In a stunning November 10, 2021 *en banc* decision, Circuit Judge L. Steven Grasz issued a blistering dissent stating that Judge Nelson did not respect her duty. More importantly, Judge Grasz's dissent stems from his belief that the First Amendment forecloses the inherent sanction powers of federal courts from prospectively prohibiting Petititioner from exercising speech described above.

More specifically, Judge Grasz held that Judge Nelson's injunction is an "overly broad prior restraint on speech." *Tory v. Cochran*, 544 U.S. 734 (2005)

2. The Eighth Circuit's August 10, 2021 Opinion

In a panel decision, Judges Loken, Kelly, and Erickson issued a conclusory and summary order which ignored Petitioner's First Amendment concerns affirming Judge Susan Richard Nelson's plainly unconstitutional injunction.

3. The District Court of Minnesota's November 23, 2020 injunction and dismissal

Without a hearing, Judge Susan Richard Nelson issued an injunction directing the removal of specific websites and videos. This included a prior restraint prospectively prohibiting Petitioner from publishing any "substantially similar" content for a period of five (5) years.

These websites and videos are unquestionably protected First Amendment speech as they legitimately criticize attorneys K. Jon Breyer, Stephen C. Likes, Anne M. Lockner, J. Haynes Hansen, Ena Kovacevic and Charlie C. Gokey as well as their law firms Kutak Rock LLP and Robins Kaplan LLP for their attorney misconduct, unethical actions, racism and their facilitation of corrupt behavior of Assistant U.S. Attorney Lindsay Middlecamp.

## REASONS FOR GRANTING THE PETITION

### A. Review Is Needed To Determine the Constitutional Authority Of A District Court's Inherent Sanctions Powers To Remove Speech Without an Adjudicaiton on the Merits

It is well-settled that a court cannot issue a prior restraint and direct the removal of speech via an injunction or otherwise without there first being an adjudication on the merits that the speech is not protected by the First Amendment. This Court has affirmed this notion repeatedly. Indeed, it has held that "[t]he special vice of a prior restraint is that communication will be suppressed, either directly or by inducing excessive caution in the speaker, before an adequate determination that it is unprotected by the First Amendment." *Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Rel.*, 413 U.S. 376,

390 (1973). Put another way, "a judicial injunction that prohibits speech *prior to a determination* that the speech is unprotected [] constitutes a prior restraint." *Auburn Police Union v. Carpenter*, 8 F.3d 886, 803 (1st Cir. 1993) (emphasis added); *Salinger v. Colting*, 607 F.3d 68 (2d Cir. 2010) ("Every injunction issued before a final adjudication on the merits risks enjoining speech protected by the First Amendment."); *see also Sid Dillion Chevrolet*, 559 N.W.2d 740, 747 (Neb. 1997) ("Absent a prior adversarial determination that the complained of publication is false or a misleading representation of fact, equity will not issue to enjoin a libel or slander ....")

### B. Review Is Needed To Determine The Constitutional Authority Of A District Court's Inherent Sanctions Powers To Remove Speech Without Identifying With Particularity What Was Not Protected by the First Amendment With Respect to the Existing Website and YouTube Content

It is further well-settled that any restriction on speech must be narrowly tailored. Specifically, the Supreme Court has held that an order issued in the "area of First Amendment rights" must be "precis[e]" and narrowly "tailored" to achieve the "pin-pointed objective" of removal of unprotected speech. *Carroll v. Princess Anne*, 393 U.S. 175 (1968) at 183-84; *See also Tory v. Cochran*, 544 at 738 (holding that a prohibited on speech "should not "swee[p]" any "more broadly than necessary").

### C. Review Is Needed to Determine The Constitutional Authority Of A District Court's Inherent Sanctions Power To Issue Wide-Sweeping Prior Restraint on Future Speech

"Prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." *Tory v. Cochran*, 544 U.S. at 738. A prior restraint violates the First Amendment. *Near v. Minnesota*, 283 U.S. 697 (1931)

### D. Review Is Needed To Determine The Constitutional Authority of A District Court's Inherent Sanctions Power To Violate The First Amendment Protections Relating To Criticizing Public Officials

There is nothing harassing, invasive or otherwise objectionable about these statements, which are an exhaustive list of the statements made in the videos. They are all legitimate opinions and criticisms of public officials. *See Conroy v. Kilzer*, 789 F.Supp. 1457, 1468 (D. Minn. 1992) (holding that statements that 'accuse a public official of misconduct" are not "as a matter of law ... sufficiently extreme or outrageous"); s*ee also Garrison v. Louisiana*, 379 U.S. 64, 77 (1964) ("The *New York Times* ... public-official rule protects the paramount public interest in the free flow of information to the people concerning public officials, their servants. To this end, anything which might ouch on an official's fitness for office is relevant.").

### E. Review Is Needed To Determine The Constitutional Authority of A District Court's Inherent Sanctions Power To Violate The First Amendment Protections Relating To Matters Of Public Concern

These statements and criticisms directed squarely at matters of public importance are protected under the First Amendment. *Dun & Bradstreet, Inc. v. Greenmoss Builders*, 472 U.S. 749, 780 (1985) at 758-59 ("[S]peech on matters of public concern is at the heart of the First Amendment's protection" (internal quotation marks omitted)). "The right of an American citizen to criticize public officials and policies and to advocate peacefully ideas for change is 'the central meaning of the First Amendment.'" (*quoting New York Times v. Sullivan*, 376 U.S. 264 (1964))

### F. Review Is Needed To Determine The Constitutional Authority of A District Court's Inherent Power To Violate The First Amendment Protections Relating To Parody

Indeed, this Court has held unequivocally that the First Amendment protects satire and ridicule in the form of parody. *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988)

### G. This Court Should Grant Certiorari To Review Whether A District Judge Can Fundamentally Prejudice Litigants By Repeatedly Sanctioning Them Without Hearings And Denying Presumptive Discovery During Discovery Stages Of The Civil Suit

Judge Susan Richard Nelson's abusive actions prevented Petitioner from engaging in discovery. The blanket prohibition on discovery fundamentally prejudiced Petitioner. Denying discovery on all

"substantially prejudiced" Petitioner. *McMillian v. Wake County Sheriff's*, 399 F. App'x 824 (4th Cir. 2010). A "court's blanket denial of discovery is an abuse of discretion if discovery is 'indispensable to a fair, rounded, development of the material facts.'" *United States v. Warden, Pontiac Corr. Ctr.*, No. 95 C 3932, 1996 WL 341390, at *7 (N.D. Ill. June 18, 1996) (quoting *East v. Scott*, 55 F.3d 996, 1001 (5th Cir. 1995))

As such, Judge Nelson's abuse of discretion in denying Petitioner discovery during discovery stages must be reversed. *Toney v. Gammon*, 79 F.3d 693 (8th Cir. 1996) (reversing district court's denial of discovery.).

* * *

In sum, this Court must review Judge Susan Richard Nelson's abusive actions to uphold the constitutional protections afforded under the First, Fifth, and Fourteenth Amendments.

## CONCLUSION

For the reasons above, this Court should grant the petition.

Respectfully submitted,

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Dated: February 8, 2022