

*21CS*

No. 21-7124

ORIGINAL

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SUPREME COURT OF THE UNITED STATES

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Supreme Court, U.S.  
FILED

JUN 04 2022

OFFICE OF THE CLERK

Pamela Jo Polejewski,

Petitioner,

Vs,

State of Montana,

Respondent.

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On Petition for a Writ of Certiorari Leave of Court to file Reconsideration Brief  
Appeal from Montana Supreme Court  
Judgment November 2nd, 2022

Animal Cost for Caring Civil Forfeiture Bills Are Unconstitutional  
Use of media instead of fair proceedings under due process clause is  
unconstitutional

---

PETITION FOR A WRIT OF CERTIORARI RECONSIDERATION

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ppolejewski@yahoo.com

Pamela Jo Polejewski , pro se

77 Wexford Ln. Great Falls, MT 59404

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SUPREME COURT, U.S.

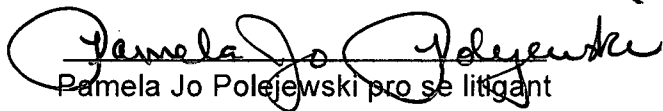
## Rule 44 Rehearing Petition

Rule 39 Petitioner proceeding under forma pauperis shall file under Rule 29 guidelines.

This Petition for Rehearing is presented in good faith and not for purposes of delay.

Grounds for Petition for Rehearing ;

- 1.) Is based on new relevant information
- 2.) Is filed within the appropriate time frame
- 3.) In addition asks the question "Is there truly a Court in the United States that is Interested in being vested in guaranteeing the sovereignty of the individual, and the moral and natural rights of a person the Constitutions were foundationally drafted and ratified to protect?
- 4.) Or has the Constitutions been replaced by mob rule and for the elites that can afford security guards?

  
Pamela Jo Polejewski pro se litigant

Dated June 4th, 2022

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## SUPPLEMENTAL BRIEF REGARDING NEW INFORMATION

### PROSECUTORIAL MISCONDUCT VIOLATES DUE PROCESS RIGHTS AND DEFENDANTS' RIGHT TO REMAIN SILENT PRIOR TO A TRIAL

Pursuant to Supplemental Brief Rules 15.8 ,17, 18.10 ,25.6, 28 USC 2403 (b), 28 USC 451

New intervening matter not available at the time of the last filing and before a writ is granted

#### INTRODUCTION

On May 6th, 2022 approx 3:pm on the Montana Republican social media site on the internet I was talking to an individual about current issues Montanans are facing when a Alden Tonkay posted the following:

"Pam Polejewski aren't you the woman who had 172 animals seized from your house for animal abuse?"

I stated that the case hasn't even gone to trial, the presumption of innocence and the relevance to posting this on the internet.

Alden Tonkay then replied "Pam Polejewski ok (laugh emoji) keep living in your own Fantasy land."

Then his girlfriend Brittany as identified in his social postings by name and picture Followed by posting "Pam Polejewski says the one who abused 172 animals (sad emoji."

I do not know either of these individuals and had to look up Alden Tonkay by his internet postings that revealed the following;

Apparently he moved to Montana so he is not a Native Montanan

He attended the University of Montana to study pre-law 2018-2021

Employed as a Campus Representative Social Media Manager 2/20-3/21

Employed as a Legal Secretary at the Montana Attorney General Office 3/21-9/21

Employed as Public Relations Specialist at Montana Department of Justice 9/21-1/22

Currently employed as the GOP Communications Director 2/22-present

Currently a candidate for Montana Legislature House District 82

States he served in Montana Attorney General's Office and with the Dept. of Justice  
And currently working on his and other GOP political campaigns

Republican candidates running for office involved in my case is Sheriff Jesse

Slaughter and Eighth Judicial District Court Judge Grubich

Alden Tonkay states his campaign promises entail fighting for individual rights, Montana values, fighting mandates, fighting government overreach, pro life advocate and believes in God????????? I argue not only is there hypocrisy present but ethical and constitutional considerations influencing my due process rights.

Ethical Considerations tied to being a former employee of the Montana Attorney General Austin Knudsen and his current role as a Communications Director for the Montana GOP who are law enforcement officials, Judges and Legislators.

Montana Constitution Article III Section III General Government Oath of Office

Members of the Legislature and all executive, ministerial and judicial officers shall not take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the Constitution of the State of Montana, and that I will discharge the duties of my office with fidelity(so help me God)." No other oath,

declaration, or test shall be required as a qualification for any office or public trust.

Alden Tonkay as a former Legal Secretary with the Montana Attorney General Office would have been employed while my case is still ongoing and briefs were being filed in that Office. He would also be bound by Post Government Employment Restrictions 18 USC 207 5 C.F.R. 2641 Activities that involve Federal Agencies or Courts after a former Federal employee left the government. It restricts what former Federal employees can do for new employers. There is a Lifetime Ban in place for employees prohibited from communications with or appearing before the government on a particular matter involving specific parties in which the employee participated personally and substantially during government service. Alden Tonkay also has an Official Responsibility that local government workers must ensure their actions comply with federal, state and local laws. State government workers operate under federal and state laws. Republican candidates running for public office must abide by federal and state laws.

I argue his affiliation with the Montana Department of Justice and the Republican party who is involved in implementing the bills that I am protesting and being criminalized under has an element of prosecutorial misconduct. This is about a political persecution under the smoke in mirror of it being about animal abuse. Alden Tonkay in his official capacities as representing public officials is expressing his personal opinion that I have already been deemed guilty of abuse without any actual evidence produced at a trial. I firmly believe that this is not only slander and libel but violated my

constitutional rights to due process during the pretrial phase of the proceedings. His prejudicial statements regarding my guilt coming from a former employee of the Montana Attorney General's Office is prejudicial misconduct against the defendant.

Prosecutorial misconduct is not limited to the context of a criminal trial. It can take place at any stage of the criminal court process. Some of these stages may include pretrial proceedings. I would argue it is misconduct when a prosecutor and his associates engage in inflammatory comments that are dramatic, appeal to the public's passions of injury and harass a defendant for the purpose of political gain. It materially affects the outcome of a trial. It is the improper use of social media in order to obtain those unethical and unconstitutional objectives. It also provides protection for the real wrongdoers. Alden Tonkay is using his past employment with the Attorney General, his ongoing associations with law enforcement and public officials to give his social media postings regarding my guilt as being credible in order to sway public opinion against me. Brady vs. Maryland

## SUMMARY OF THE ARGUMENTS

I. Prosecutorial Misconduct is when the State abuses its power that impacts one's Constitutional right to a fair trial. It also creates an atmosphere of lawlessness, fear, tyranny and mob rule. That can escalate to placing people in dangerous situations who dare to oppose their prevailing position regardless of the facts. Estes vs. Texas 381 US 532 540 (1965) Balkcom vs J. Solebees 339 US 9, 16 (1950) 5th Amend 14th Amend US Constitution XIV Govt State Proceedings Oliver Antifascist vs. McGrath 341 US 123, 162 (1951). Prosecutorial misconduct behaviors that deliberately seek an unfair advantage over the

accused and seek to prejudice his rights. Since prosecutors play such a central role in the criminal justice system, care must be taken to ensure that they execute their office in accordance with principles of due process "fair play."

Prosecutorial misconduct deserves close judicial attention because of discretion afforded to prosecutors in exercising their function, the dual role as advocates and government servants. *Doyle vs. Ohio* *Brady vs. Maryland* Therefore prosecutorial comments coming from their offices such as misstatements of evidence, expressions of personal opinions, appealing to the public and potential jurors emotions violate a defendant's due process. It is fundamentally unfair to use social media instead of courtroom settings for a criminal trial. That any

verdict rendered be by fair prosecutorial conduct. *Doyle vs. Ohio* *Brady vs. Maryland* *Miranda Rights* *Strickland vs. Washington* *Snyder vs. Massachusetts* 291 US 97 (1934) Justice Roberts related to conduct of a trial (I will also add the pre-trial phase) stated:

" 14th Amendment guarantee is not that a just result shall have been obtained but that the result, whatever it be, shall be reached in a fair way. "

II. Due Process Rights Violations depend on how the reviewing court approaches the problem but should not be determined by an outcome -determination test. Instead, due process should be defined according to rules developed with reference to traditional values of fair play and standards of professional conduct for prosecutors and their affiliates. An outcome analysis does not adequately define due process violations for any type of prosecutorial misconduct because it does not adequately protect all the values of due process. Due Process is not a fixed content unrelated to time, place and



circumstances. *Lassiter vs. Dept of Social Services* 452 US 18 24-25 (1981) *Cafeteria Workers vs. McElroy* 367 US 886, 895 (1961)

III. Procedural due process in criminal proceedings . The Due Process Clause requires that procedures used to determine guilt or innocence of the defendant be “fundamental ideas of fair play.” The primary goal of criminal proceedings must be consistent with other “process goals.” The central idea behind process goals is the means employed to achieve law enforcement and adjudication objectives respect fairness, human dignity and decency. A former employee with the Montana Attorney General’s Office posting guilt about an impending case violates procedural due process criminal proceedings as outlined under the constitutions. Due Process would protect “ultimate decency in a civilized society.” *Oliver* 333US @282 *Adamson vs. California* 332 US 46, 61 (1947) *Snyder vs. Massachusetts* 291 US 97, 137 (1934)

Therefore this would include the maintenance of the adversarial and accusatorial systems, the assurance of respect for individual dignity, the appearance of fairness and equal application under the law. The correct outcome can only be reached by the determination of truth by fair procedures. The fact Austin Knudsen; Montana Attorney General has a former employee predetermining the outcome of my case reflects very poorly on his Office and the lack of ethical conduct. I doubt Alden Tonkay came up with that legal interpretation outside the influence of the Montana Attorney General Office. I

have never met or knew who Alden Tonkay was before this encounter. *Winship* 397 US 358 372 (1970) *Offutt vs US* 348 US 11,14 (1954) *Strim vs NY* 346 US 156, 207 (1953) *Jackson vs. Denno* 378 US 368, 391 (1964) *W. LaFave vs. J. Israel Snyder vs. Massachusetts* 291 US 97, 137 (1934) *Turney vs. Ohio* 273 US 310, 535 (1927) *J. Rawls A theory of Justice* 239 (1971) Justice Roberts on conduct of a trial ( i will add pre-trial phase) states;

“ Procedural due process has to do with the manner of the trial (pre-trial added) , dictates that in the conduct of judicial inquiry certain fundamental rules of fairness be observed, forbids the disregard of those rules, and is not satisfied, though the result is just, if the process was unfair. ‘The scope of fairness regarding the entire proceedings has got to be extended outside of just what goes on in a courtroom because of the influential role that the internet now plays in everyone’s life for good and bad. Public opinion and the potential juror pool is swayed regarding prosecutorial misconduct in the public sphere. It also has a hand in creating mob rule and a culture norm that false statements and threats made outside a courtroom are acceptable. Especially if it renders the outcome and verdict the prosecutor is seeking. This dirty pool is ongoing and it is what I am trying to address in these arguments. These are not isolated events and along with all the other constitutional violations that have been presented in this case scenario it definitely has a cumulative effect to sway a verdict in an unconstitutional and unjust direction. Due Process Violations for a particular set of circumstances. US vs Bagley Strickland Test to Brady Violations Miller vs. Greer Doyles vs Ohio

IV. The Supreme Court harmless error standard applicable to constitutional errors in criminal proceedings Chapman vs. California The State would have to show a Constitutional error was harmless beyond reasonable doubt. This means the State would have to show there is no reasonable possibility the error contributed to a conviction of the outcome of the proceedings. This is an incident where I was able to view the statement for myself but it brings into question how many of these get made on social media that go undetected. I do not believe the Courts can argue any longer that these actions are inconsequential to the outcome of court proceedings. It is further attempts to bully, harass and intimidate people in order to achieve desired outcomes in the way of guilty verdicts for the State. These behaviors that are going unchecked will know no boundaries on what it will do to protect its own self interests. It is what tyranny and authoritarianism is made of not indicative of constitutional proceedings. The burden

of this impact on my case must fall upon the State. Thus, by placing the burden of demonstrating an impact of an outcome on the Defendant is equal to requiring a Defendant to prove their innocence. The fact I get put in a position to violate my right to remain silent before a trial in order to defend myself against accusatory comments on the internet. In the face of accusatory statements on the internet if a person remains silent it is taken as an admission of guilt. Bram vs US 168 US 532, 541 (1897) Tumey vs Ohio 293 US 510, (1927)

## ARGUMENTS

There is no overwhelming evidence against the defendant that supports a finding of guilt. A trial has not been conducted. These slanderous statements of guilt coming from individuals associated with the GOP politicians and law enforcement are during the pretrial phase. I argue these are Due Process violations occurring when a prosecutor and associates of his office break the promise not to use my right to remain silent in the pretrial phase by posting on social media that I am guilty according to them. Whether it be the specific circumstance of events or the process on a whole it can be applied to all types of prosecutorial misconduct. Hunters in support of the GOP bills to kill wildlife also repeat this slander on the internet. The media as a spokesperson for the Cascade County Attorney's Office has put out multiple articles all damaging to my case. In addition my friends and supporters get bullied, harassed and intimidated. The general public has posted falsely that I am guilty on the internet. I do not know any of the people making these posts so the only way they have any knowledge about me is by what the

media is saying about me. Whether it be a right was violated or the fundamental fairness of the procedural process it can be applied to prosecutorial misconduct analysis.

Due Process violations stand on their own and do not require other enumerated rights. Misconduct in and of themselves violates rights such as a right to remain silent and right to a fair trial. The right to an impartial Judge and jurors not tainted by statements calling someone an animal abuser circulated on the internet coming from affiliates of the Attorney General Office and Montana GOP facebook site. These are improper arguments in the way of opinions concerning my guilt before a trial referencing hearsay not in evidence. This appeals to potential jurors in order to inflame the fears, passions and emotions of these potential jurors, name-calling and abuse to describe the defendant, appeals to race or class prejudice, appeals to prosecutorial expertise, and war-on crime speeches. Courts presented with a claim of prosecutorial misconduct regularly use such categorical language to describe misconduct. Also inflammatory speeches stirred by prosecutorial offices against the defendant puts the defendants welfare in danger. I have already had my home destroyed, property stolen and subjected to repeated vandalism because of such speeches and doxing by the media. Greer vs. Miller 107 S.C. 3102 3108 (1987) Wainwright vs Greenfield 474 US 264 (1986) Doyle vs Griffin 5th Amend Griffin vs California 380 US 609 (1965) Darden 477 US @ 180 Volkmor vs US 13 F.2d 594 595 (6th Cir 1926) People vs Garreau 27 Ill. 2d 388 391-93 189 NE 2d 287 289 (1963) Hance vs Zant 696 F.2d 940 952 11th Cir. 463 US 1210 (1983) Brooks vs Kemp 762 F.2d 1383 1411 (11th Cir 1985) Brown vs US 370 F.2d 242, 246 (DC Cir 1966)

Courts presented such language to describe misconduct use the professional

standard for determining due process violations. Prosecutorial misconduct violates due process because "due process requires fairness, integrity and honor in the operation of the criminal justice system. Conduct by a prosecutor's office and or affiliate in opposition of the criminal justice system's standards of conduct intended to direct their behavior cannot be reconciled with integrity and honor that due process requires. Furthermore, the requirements of due process are not only specific constitutional mandates but from "the traditional jurisprudence trial attributes of the legal system and widely held notions of fair play. Standards for prosecutorial conduct originate with a learned and informed segment of the public. Such standards are indications of the conduct that society and defendants alike legitimately expect prosecutors to adhere to in their participation in the procedures due under the law to criminal defendants. Disregard for these standards should be an indication of due process violation. The purpose of standards governing prosecutorial behavior is to protect fairness of the criminal justice system in which the prosecutor is a key participant in the performance of their duties. Although these standards in the notion of fairness from which the right to due process of law flows, is relevant to determining whether prosecutorial conduct is unfair. Society hopes to avoid unfairness in due process. It is an issue when unfairness from the prosecutorial end could possibly influence a potential juror. There is no way to evaluate how much damaging media exposure a potential juror has had by asking pretrial questions by a defense attorney. *Haley vs Ohio* 332 US 596 607 (1948) *Brooks vs Kemp* 762 F.2d 1383 1433 (11th Cir 1985)

"Limitations placed by the Supreme Court on the conduct of criminal proceedings is

to insure that a defendant's criminal trial comports with the fundamental fairness mandated by the due process clause." Cherry Creek Natl Bank vs Fidelity and Casualty Co. 207 A.D. 787 790-791 202 NYS 611, 614 (1924) "the rule confining counsel to legitimate argument is not based on etiquette but on justice." Its violation is not merely an overstepping of the bounds of propriety but a violation of a party's rights." Consideration of whether the particular type of misconduct involved could possibly effect an outcome recognizes that ethics is an important due process concern. Chief Justice Taft stated" that the requirement of due process of law in judicial procedures is not satisfied by the argument that men of the highest honor and the greatest self-sacrifice could carry it on without danger of injustice. Every procedure which would off a possible temptation to the average man. .... to forget the burden of proof required to convict a defendant or which might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law. " Tumey vs Ohio 273 US 510 532 (1927)

The United States Supreme Court should establish a precedent that prosecutors and their affiliates to their office that use the media for undue leverage in a criminal proceeding is prosecutorial misconduct. A case by case redetermination of whether the same type of misconduct in a later case violates due process should not be required but established through the application of precedent. First Amendment violations do not occur if the prosecutor is giving biased false statements to the media not established as facts by a trier of peers. Doyle vs Ohio 426 US 610 (1976) US vs Laughlin 772 F.2d 1382 (7th cir 1985)

Insults to the dignity of the process cannot be measured or undone. Defining due process violations according to whether there are measurable results effecting the outcome does not afford adequate protection in the non-truth seeking values inherent in the constitutional right to due process. The burden for demonstrating the impact of prosecutors using the media to establish one's guilt or innocence should be placed on the prosecutors. Placing the burden on the State to show harmlessness of error maintains the placement of the burden of proof of guilt at trial. Common Law Policy requires that the party benefiting from prosecutorial misconduct the State should have the burden of proving harmlessness. The State should be held responsible in order to prevent undue leverage effecting the outcome of the proceedings by social media postings tainting potential jurors and judges. The State must bear the burden of proving a defendant guilty in an accusatory system. A defendant should never have the burden of proving himself innocent by accusations of guilt posted by officials in their official capacity. Therefore, violating a defendant's rights to remain silent until trial then runs the risk of being seen as guilty by slanderous comments not refuted. In Chapman the Court stated: "Certainly error, constitutional error, in illegally admitting highly prejudicial comment, casts on someone other than the person prejudiced by it a burden to show that it was harmless. It is for that reason that the original common-law harmless error rule put the burden on the beneficiary of the error either to prove that there was no injury or to suffer a reversal of his erroneously obtained judgment. "

Appellant review of whether the defendant is "guilty anyway" the burden for

demonstrating the defendant's ultimate guilt or innocence on review should be placed on the State. Substantive Standard in misconduct context the prosecutor should be required to convince the reviewing Court beyond reasonable doubt that misconduct did not contribute to a defendant's conviction.

### CONCLUSION

The truth needs to be determined by fundamentally fair procedures, the process-oriented goal of the right to due process in the system generally. The result oriented approach to due process shifts the focus from fairness to guilt. The false establishment of guilt by way of social media violates one's constitutional right to a fair trial. The question of guilt appears on social media as conclusively determined absent due process rights and a just verdict. In order to properly protect the process values inherent in the right to due process, the due process fairness evaluation must remain separate from determination of impact on the outcome. Otherwise constitutional limitations on prosecutor's conduct would fluctuate with the strength of the State's case against the defendant, with egregious conduct permissible when they can establish the defendant's guilt in the court of public opinion. Therefore criminal proceedings are no longer fair because the ends-justify-the-means approach for the prosecutors. Lack of constitutional standards gives no boundaries to prosecutors so anything goes as long as the State gets the desired verdict. Increasing the incidence of prosecutor misconduct which in turn increases the likelihood that an innocent person will be convicted. Innocent



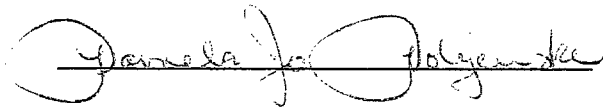
persons convicted because they did not prove their innocence to the mob mentality created by State officials social media postings about the defendant.

Courts appear to not discipline prosecutors for their shady tactics. The only way to ensure a defendant's due process rights are fully protected is for the Courts to be willing to reverse convictions for prosecutors misconduct. It is necessary to deter prosecutors from violating rules of ethical conduct designed to ensure fairness and protect the integrity of the truth-seeking process. Judge Frank summed up the problem well more than 40 years ago:" This Court has several times used vigorous language in denouncing government counsel for such as that of the prosecutor here. But, each time it has been said that, nevertheless, it would not reverse. Such an attitude of helpless piety is, I think, undesirable .....If we continue to do nothing practical to prevent such conduct, we should cease to disapprove it.....Government counsel, employing such tactics, are the kind who, eager to win, will gladly pay the small price of a ritualistic verbal spanking. "

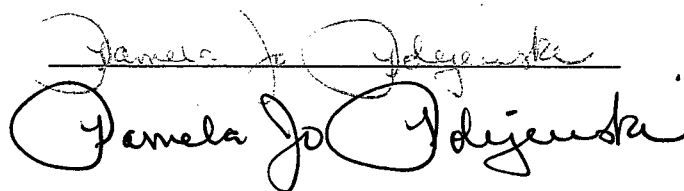
Antonelli Fireworks 155 F.2d@ 661 Frank, J. ,dissenting

Date May 9<sup>th</sup> 2022

Respectfully submitted,



I hereby swear the statements I made in the brief are true and to the best of my understanding.



## AUTHORITIES

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Chapman.....	12.
Substantive Standard.....	13.
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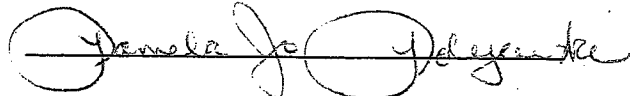
CERTIFICATE OF COMPLIANCE RULE 33.1 (d) (g)

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I, Pamela Jo Polejewski. Pro se litigant, hereby certify that, according to the word count tool on my computer the Petition for a Writ of Certiorari Supplemental Brief consists of 3,000 words.

Is in 12 point font and is double spaced per the Court's rules. This excludes the sections enumerated by Rule 33.1 (d). Verbatim quotations required under Rule 14.1 (f) and Rule 24.1 (f) , if set out in the text of the brief rather than in the appendix , are also excluded.

The Brief therefore complies with Rule 33.1 (g)



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Dated May 9th, 2023

CERTIFICATE OF SERVICE

I, Pamela Jo Polejewski, hereby certify that I have served a true and accurate copy of the foregoing paperwork to

Montana Attorney General  
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Great Falls, MT 59403-1746

Dated May 9th, 2022

June 4th, 2022

Pamela Jo Polejewski  
Pamela Jo Polejewski pro se litigant

AFFIDAVIT

I hereby swear that the Statements I made were to the best of my ability to be true and accurate.

Pamela Jo Polejewski  
Pamela Jo Polejewski pro se litigant

## SUPPLEMENTAL BRIEF REGARDING NEW INFORMATION

### PROSECUTORIAL MISCONDUCT VIOLATES DUE PROCESS RIGHTS AND DEFENDANTS' RIGHT TO REMAIN SILENT PRIOR TO A TRIAL

Pursuant to Supplemental Brief Rules 15.8 ,17, 18.10 ,25.6, 28 USC 2403 (b), 28 USC 451

New intervening matter not available at the time of the last filing and before a writ is granted

#### INTRODUCTION

On May 6th, 2022 approx 3:pm on the Montana Republican social media site on the internet I was talking to an individual about current issues Montanans are facing when a Alden Tonkay posted the following:

"Pam Polejewski aren't you the woman who had 172 animals seized from your house for animal abuse?"

I stated that the case hasn't even gone to trial, the presumption of innocence and the relevance to posting this on the internet.

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