

ORIGINAL

No. 22-279

In The
Supreme Court of the United States

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SUPREME COURT, U.S.

NORINE CAVE,

Petitioner,

v.

SUVIDHA SACHDEVA, et al.,

Respondents.

On Petition For A Writ Of Certiorari
To The Court Of Appeals
Of The State Of Georgia

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether a litigant's fundamental right to a fair trial, under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, is unjustly deprived where a directed verdict precedes discovery and gatekeeping requirements under *Daubert*.

PARTIES TO THE PROCEEDINGS

Petitioner, Norine Cave, was the plaintiff in The State Court of Fulton County of The State of Georgia, Appellant in the Court of Appeals of The State of Georgia, and Petitioner in the Supreme Court of the State of Georgia. Respondents, Suvidha Sachdeva et. al., were defendants in The State Court of Fulton County of The State of Georgia, Appellees in the Court of Appeals of The State of Georgia, and Respondents in the Supreme Court of the State of Georgia.

RELATED CASES

- *Norine Cave v. Suvidha Sachdeva, D.D.S., and Coast Dental of Georgia, P.C.,*
No. 16ev000350
State Court of Fulton County, Georgia. Judgment entered August 29, 2019.
- *Norine Cave v. Suvidha Sachdeva, D.D.S., and Coast Dental of Georgia, P.C.,*
No. 16ev000350
State Court of Fulton County, Georgia. Judgment entered December 17, 2020.
- *Cave v. Sachdeva et al.*, No. A21A1033, Court of Appeals of Georgia. Judgment entered October 21, 2021.
- *Cave v. Sachdeva et al.*, No. A21A1033, Court of Appeals of Georgia. Judgment entered November 5, 2021.

RELATED CASES – Continued

- *Norine Cave v. Suvidha Sachdeva et al.*, No. S22C0412, Supreme Court of Georgia. Judgment entered June 22, 2022.
- *Norine Cave v. Suvidha Sachdeva et al.*, No. S22C0412, Supreme Court of Georgia. Judgment entered July 14, 2022.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Norine Cave petitions for a writ of certiorari to review the judgment of the Court Appeals of the State of Georgia in this case.

OPINIONS BELOW

The Supreme Court of Georgia's order is reproduced at App. 33-52. The Supreme Court of Georgia's order is reproduced at App. 27. The Georgia Court of Appeals order denying motion for reconsideration is not reported and not reproduced. The Georgia Court of Appeals is not reported and is reproduced at App. 1-9. The State Court of Georgia Fulton County order is reproduced at App. 15.

JURISDICTION

This Court has jurisdiction of this petition for a writ of certiorari pursuant to 28 U.S.C. § 1257(a) to review the judgment of the Court of Appeals of Georgia and pursuant to Rule 38(b) of the Court of Appeals of Georgia. The opinion (A21A1033) was filed October 21, 2021 and Rehearing was denied on November 5, 2021. The opinion was not officially reported. App. 1-9. A petition for writ of certiorari was filed with the Supreme Court of Georgia on December 23, 2021, and denied on June 22, 2022 (S22C0412). App. 27. A motion for reconsideration was filed with the Supreme Court

of Georgia on July 5, 2022. App. 33-52. The motion was denied on July 14, 2022. App. 28.

This Court requires that a federal constitutional issue on appeal of a state court's judgment must have raised that issue with sufficient precision in the state court. The issues herein, erroneously adjudge federal rights.

Petitioner, Norine Cave ("Petitioner"), now timely files this petition for writ of certiorari in good faith in the interest of fairness equity and the upholding in uniformity of standards in this Court.

CONSTITUTIONAL PROVISION INVOLVED

Procedural Due Process: Civil

**United States Constitution Amendment
XIV § 1:**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

INTRODUCTION AND STATEMENT OF THE CASE

This medical malpractice case was unripe for trial. It did not meet the procedural requirements before its initiation. Petitioner filed a motion in limine (*Daubert*) prior to trial, raising the critical issue, largely in part, of the absence of a proffered opinion, that is now before this Court. App. 58-63. The motion was denied. The directed verdict, granted on the first day of trial, preceded critical discovery and gatekeeping requirements under *Daubert*. As a result, Petitioner was denied her fundamental right to a fair trial, as guaranteed under the Due Process Clause of the Fourteenth Amendment.

On August 26, 2019, the trial court entered a directed verdict against Petitioner, on the evening of the first day of trial, due to two separate exclusions, pertaining to issues of timeliness of her expert witnesses. In essence, Petitioner's first expert witness was enroute to court for appearance and her second expert witness was excluded (on the morning preceding trial) solely on the basis of an alleged late identification. The trial court subsequently issued a directed verdict at the end of the first day of trial, due to, in part, its denial of the request of a recess to allow the appearance of Petitioner's first expert witness.

The fact that the trial court abandoned its gatekeeping responsibilities, overlooked disclosure rules of expert witness testimony and proceeded to a directed verdict based on issues of timeliness, which is also in

dispute, was violative of Petitioner's right to a fair trial, under procedural due process of law.

When expert testimony is proffered, the trial court's gatekeeping duties of admissibility are required before trial. Such deprivation of Petitioner's rights that were denied before the trial began, does not allow a directed verdict to stand, even if, the issue raised in the directed verdict had merit.

The *Daubert Standard* was established in this Court from the Supreme Court case *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993), in which factors what may be considered in determining whether the methodology of expert witnesses is reliable and relevant. This standard held that longstanding expert testimony standard in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) was superseded by Rule 702 of the Federal Rules of Evidence ("FRE"). This Court was called upon to determine the standard of admissibility of expert scientific testimony in a federal trial and ruled that "the trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable." In short, the court must conduct a "preliminary assessment of whether the methodology is scientifically valid and properly applied to the facts, focused on methodology."

In 2005, the Georgia General Assembly enacted OCGA § 24-7-702, which adopted the federal standard in FRE 702 in civil cases. Through interpretation and application of the code section, the courts of Georgia were allowed to draw from the opinions of the United

states Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993); *General Electric Co v. Joiner*, 522 U.S. 136 (1997); *Kumho Tire Co. v. Joiner*, 522 U.S. 136 (1997); *Kumho Tire Co. Ltd. v. Carmichael*, 526 U.S. 137 (1999); and other cases in federal courts that apply the standards announced by this Court.¹

This Court determined that trial judges should act as “gatekeepers” to ensure expert opinions are rooted in scientifically valid principles and that those principles are properly applied to the facts at issue.

In a June 28, 2010, decision, the Georgia Supreme Court directed courts to follow the federal *Daubert Standard*. See *HNTB Georgia, Inc. v. Hamilton-King*, S09G1224, emphasizing (“the importance of the trial court’ gate keeper role”) under tort reform.

It is necessary to note, that a previous petition for writ of certiorari (and subsequent motion for reconsideration) on a separate but parallel case associated with the insurance carrier, of this case, Delta Dental of California (*Cave v. Delta Dental of California, Norine Sylvia Cave v. Delta Dental of California, et al.*, No. 20-242, U.S. Ct. App. for the Ninth Circuit No. 18-17134, *Cave v. Delta Dental of California*, 3:18-cv-01205-WHO

¹ The criteria established by *Daubert* and its progeny have articulated four basic criteria. They are: general acceptability, established standards controlling the technique’s operation and accuracy, a known or potentially known rate of error, and the testability of the procedure.

U.S. District Court for Northern California, San Francisco) was denied by this Court on January 8, 2021.

The issues of that case involved full medical records (in particular, x-rays from Coast Dental) being withheld from Petitioner for more than four years, in misapplication of law and the challenge of failure of recoupment (back to the ERISA plan) for wrongful disbursement of benefits for an alleged fraudulent claim, by the provider of services, for unjust enrichment.

Each party is guaranteed the right, under the United States Constitution, to present one's case without prejudice or discrimination. Such rights are fundamentally guaranteed, that all persons are equal before the courts. This Court applies the strict scrutiny standard basis in evaluating issues involving deprivation of fundamental rights. In *Mathew v. Eldridge*, 424 U.S. 319; in pertinent part, held that procedural due process must be evaluated by using a balancing test that accounts for the interests of the involvement of all affected.

The rules of civil procedure define the issues of law and fact that are in dispute and control the methods by which opposing parties present factual and legal arguments in legitimate support of their respective positions and basis. Although rules vary, the most important for purposes are comprehensive codes, decisions and precedents that ultimately govern litigation processes.

The claims of this case were liability, fraud, battery and infliction of emotional distress, filed on January

26, 2016, by Petitioner's previous councils. Petitioner proceeded pro se from June 17, 2017, until present. It is unclear why the first count of this case, being liability, was not included in the appellate court's opinion, October 21, 2021. App. 1-9.

As previously stated, this case went to trial on August 26, 2019, and ended on the very same evening, due to a directed verdict, granted to Respondents. The trial court concurred when Respondents asserted that they were not required to submit a report for its designated expert witness. The trial court agreed with Respondents in stating "Ms. Cave, your plaintiff – your motion is denied. I'm not aware of anything that requires the defense to provide you with a written report or an affidavit." (Ga. Ct. App. A21A1033, T. V3 p 7).

Petitioner asserted that Respondents were required to disclose their opinion and that a CV alone, was insufficient for entrance into trial. On appeal, Petitioner repeatedly raised the argument under OCGA § 24-7-702. The appellate court found the issue regarding Respondents' expert witness testimony was "moot"; although it did not answer whether Respondents' duty to disclose an opinion before trial, pre-empted the expected testimony, at trial.

On appeal, Petitioner argued that the trial court had a gatekeeping duty to evaluate all proffered expert testimony. Here, the record contained no opinion/evidence on which the trial court rationally could have based any determination for admission of Respondents' expert.

Throughout the course of litigation, a total of four affiants supported the case. Petitioner's two previous expert witnesses from January 2017 through May 2019, were unavailable to testify. The trial court reopened discovery for 10 days, from June 14, to June 24, 2019 to identify any new expert witnesses and an additional 20 days for defense discovery, if new experts were identified.

Petitioner sought and secured two new expert witnesses (there were no depositions taken of any of Petitioner's four affiants during the course of litigation, in fact there were no summary judgment challenges). At an August 20, 2019, hearing, trial was set for August 26, 2019, without leave for Petitioner to confirm the schedule of her new designated expert witness traveling from out of state. Petitioner's second expert had not completed reviewing Petitioner's medical records and the facts of the case until August 23, 2019; Petitioner immediately submitted her expert's report to the court as required, on August 23, 2019.

The expert witness was immediately excluded for an issue of timeliness on the morning of trial, August 26, 2019 (alleged late identification). See *Lee v. Smith*, 38 S.E.2d 870 (2020) 307 Ga. 815,² as per stare decisis.

² The Georgia Supreme Court determined that the following should be considered before exclusion of late identified expert witnesses: (1) the explanation for the failure to disclose the witness, (2) the importance of the testimony, (3) the prejudice to the opposing party if the witness is allowed to testify, and (4) whether a less harsh remedy than the exclusion of the witness would be

The case proceeded to trial with the known and critical deficiency of an undisclosed opinion, against Petitioner's right of discovery, under procedural due process. The case was subsequently dismissed on the evening of the first day of trial, due to the trial court's denial of Petitioner's request of a recess, to allow the legally required testimony of her designated expert witness traveling from Connecticut. Although, the issue of Petitioner's expert witness's scheduling conflict was raised six days prior to trial (August 20, 2019, hearing), with no relief granted; Petitioner proceeded, in good faith, believing that there would be a reasonable allowance of time for her expert to arrive to testify.

Petitioner argued that both expert witnesses' exclusions were abuses of discretion, and such exclusions were too harsh of sanctions and fatal to her case.

A directed verdict, a matter of law, was granted to the defense due to the trial court's biased rulings against Petitioner; while it overlooked OCGA § 24-7-702 and disclosure rules (OCGA § 9-11-26) of opposing party's obligations. The appellate court found the issue (no opinion) was moot.

If so, does this reasoning, of the appellate court's decision render the rules, statutes and standard (*Daubert*) of this Court "moot" as well?

When such codes, rules, and procedures are unequally applied, or not at all, in particular, procedural

sufficient to ameliorate the prejudice and vindicate the trial court's authority. *Lee v. Smith*, 307 Ga. 815 (Ga. 2020)

rules; there can be no reasonable access to due process of law. Petitioner was entitled to due process of law.

Local courts are permitted to promulgate rules concerning certain details of procedure before them, with the only restriction placed on the local rules, is that it may not be inconsistent or in conflict with the higher court rules. There are enough nexuses between the federal rules and divergent state rules. Pertinent to this case, Federal Rule of Evidence 702, the crux of Article VII, that guides the court's analysis in determining admissibility of expert testimony (codified in Georgia as OCGA § 24-7-702), which governs the admissibility of expert witnesses, was grossly overlooked and removed Petitioner's right to a fair trial process, before the trial actually began.

Notice and opportunity to be heard are foundations upon which a fair trial can be established. An opportunity to be reasonably heard was clearly and unjustifiably taken away from Petitioner at trial and a denial of this Court's intervention for review, would essentially require Petitioner to relinquish and waive her rights to a fair trial, which is constitutionally and civilly protected. See *Nix v. Long Mountain Resources*, 262 Ga. 506, 509 (3) (422 S.E.2d 195) (1992).³ Petitioner also filed a motion for a new trial, that was denied by the trial court on December 19, 2020. App. 10-14.

³ “[t]he fundamental idea of due process is notice and an opportunity to be heard.”

REASONS FOR GRANTING THE PETITION

1. **The decision of the Georgia Court of Appeals could have a major impact in conflict with this Court's standard of admissibility of expert witness testimony and the duty of trial court judges' gatekeeping obligations in future medical malpractice, and other cases.**

Whether or not a petition is granted, rests at the sole judicial discretion of this Court. If not granted, consequently the geographical jurisdiction of the court in this case would remain and could open a new door (gateway) of admissions of expert witness testimony. The alternative standard would allow experts to conceal their opinion(s) from the courts and opposing parties, prior to trial. It could essentially eliminate the intended purpose of the critical element of expert witness testimony.

As per OCGA § 24-7-702(f), states in pertinent part:

*"It is the intent of the legislature that, in all civil proceedings, the courts of the State of Georgia not be viewed as open to expert evidence that would not be admissible in other states. Therefore, in interpreting and applying this Code section, the courts of this state may draw from the opinions of the United States Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *General Electric Co. v. Joiner*, 522 U.S. 136 (1997); *Kumho Tire Co. Ltd. v. Carmichael*,*

526 U.S. 137 (1999); and other cases in federal courts applying the standards announced by the United States Supreme Court in these cases.”

The statute is clear . . . the procedure established by law, was repeatedly overlooked. The disclosure of the opinions of opposing experts are required under Rule 26 (codified as OCGA § 9-11-26), pertinent here, either through interrogatories or deposition in Georgia courts. Gatekeeping duties are clear; the duties, in this case, were aborted. The rules of disclosure are clear, although the trial court disagreed, and the appellate court affirmed.

“If errors are committed, the proper remedy is appeal.” See *Pulliam v. Allen*, 466 U.S. 522 (1984). Where an appellate court’s decision is contrary to the fundamental rights of a party and where procedural irregularities and omissions of applicable standards are involved; the only, and just, remedial source is the granting of a petition for review, from this Court. The underlying issues of this case were exacerbated by the abuses of discretion in the exclusions of Petitioner’s two expert witnesses, willing to testify at trial; while Respondents, on the other hand, were allowed to conceal their expert witness’s opinion. Although the trial court was clearly on record as having denied Petitioner’s rights to due process, the appellate court affirmed the judgment. The admission of Respondents’ expert witness, with a concealed, or no, opinion, violated Petitioner’s right to discovery, under procedural

due process of law and established an unjustifiable deprivation.

The admission, without opinion, also removed the trial court's duty of gatekeeping, thus presented an irregularity of procedural normality, whereas there was no way to determine if the methodology (if any) was reliable or relevant. It is irrational and contradictory to the standards of this Court. The allowance of any designated expert witness into trial with no proffered opinion, is an abrupt departure from *Daubert*, as well as the *Frye Standard* and should have no place in the courts. Procedural justice is embodied in the constitutional guarantee of due process of law, to all.

The preservation of the integrity of the judicial process, is incumbent upon the presumption that the trial court properly exercised its jurisdiction. Where plain errors and deviations from the rules of civil procedure and standards are revealed and raised in the record, there is an expectation of reversal or corrections. Here, the critical issues and plain errors were overlooked and affirmed on appeal.

The intent of standard of the Supreme Court in, *Daubert*, is well known in modern courts. The issues presented here, were not harmless errors. The issues involved unjust deprivation of fundamental rights, which provides sufficient reasoning for a consideration of review. It would address the improper and abusive rulings and, most importantly, remove misapplications of law and failure to apply the standards set by this

Court in *Daubert*.⁴ The errors are plain and documented in the record. Clear and unjustifiable violations of due processes of law (embodied in the constitution) removes the fundamental right to a fair trial and must be considered to be reviewed and corrected for the interests of the judiciary and the citizens who depend on the courts, for a balanced opportunity to strive to reasonably obtain justness, fairness and accountability.

There can be no fair opportunity for equal justice under the law, where there is an absence of equal application of the rules and standards and protection of the law. Petitioner simply expected, and was entitled to, a fair and legitimate day in court, just as all litigants, under established rights in the Constitution. Such protected rights were taken away by the trial court and validated by the appellate court, in its affirmance.

This Court most likely reviews cases that will affect the entire country, in such cases that necessitate clarification of legal issues and irregularities with large constitutional impact, that can affect the entire country. The vital protection of due process of law, impacts all litigants. The critical element of expert witness testimony has increasingly become an integral part in modern court proceedings and the standards of admissibility of expert witnesses' testimony, must be protected. Standards and applications of law and rules

⁴ Notably, there was no mention of the *Daubert Standard* in the appellate court's decision, although it was repeatedly argued by Petitioner for over three years to date.

of the court must work for all . . . or it won't matter at all.

A. The crux of the issues of this case is not solely a matter of opinion, but rather critical matters of law.

The Georgia Court of Appeals affirmed a final judgment where the trial court abandoned its gatekeeping duties, contrary to OCGA § 24-7-702. Furthermore, the directed verdict was granted prior to Petitioner's right to discovery per OCGA § 9-11-26. Hence, the affirmance of the final judgment of this case was highly inappropriate, as it was derived from fragmented findings and contrary to due process of law.

The exclusions of Petitioner's potential expert witnesses were discerned as no abuses of discretion by the trial court, in the appellate court's decision. It reasoned that the record showed that Petitioner's expert witness was flying stand by; in truth, the full record showed that although the flight of the expert witness was booked for later in the day of trial (flight ticket placed into evidence) additional efforts were being made to "endeavor" a possible stand by flight, to arrive earlier in the day. Trial was estimated for 2-3 days.

The travel concerns were first addressed six days prior to trial and again, conveyed to the court, before the jury was pooled. In the interest of economy of the court, Petitioner moved forward, in good faith, believing that the court would allow reasonable time to allow the expected testimony of her designated expert

witness traveling from out of state, due to the pre-disclosed issues of his scheduling. There was no inability to inform the court of this issue, instead, there was a concerted effort to unjustly dispose of the case, with weighted merit. After the trial court denied Petitioner's expected and requested recess of trial until the following morning; Petitioner was forced to rest her case, due to both exclusions of her expert witnesses. There were no issues raised about the qualifications or methodologies of any of Petitioner's affiants or expert witnesses, prior to trial.

Next, Petitioner's second expert witness (excluded prior to trial) was made known to court and the exclusion of Petitioner's expert witness based on alleged timeliness, was contrary to *Lee*, fatal to the case, and deprived the right to be heard and to present evidence. Hence, such exclusion removed the ability of fact finders to hear the legally required expert witness testimony, which also triggered the directed verdict for the defense. The potential expert witness was disclosed to Respondents.

The full record showed that he was first identified to Respondents as a potential expert witness, almost two months prior. Petitioner submits that the exclusions were abuses of discretion, that prevented her from being heard. Although the appellate court found that there were no abuses of discretion and no violations of due process, the right to present evidence and to be reasonably heard are fundamental rights. The full record showed, that throughout the course of litigation, the trial court was fully aware that Petitioner

secured four unchallenged affiants; while the Respondents' sole expert witness was allowed entrance into trial without a proffered opinion.

The appellate court reasoned: "the general rule is that "[a] motion for continuance of a trial is properly addressed to the sound legal discretion of a trial judge, who is in control of the management of the case in court." The exercise of that discretion will not be disturbed by the appellate courts unless the discretion is manifestly abused." (Citation and punctuation omitted.) *Capital Floors, LLC v. Furman*, 351 Ga. App. 589, 594 (3) (831 S.E.2d 522) (2019); see OCGA § 9-10-167(a) (applications for continuances are addressed to the sound legal discretion of the court). App. 1-9.

Here, the trial court's rulings presented ample displays of abuses of discretion, yet the appellate court found no manifestation of abuses sufficient to exercise the disturbance of the rulings. See *Homebuilders Association of Georgia v. Morris*, 238 Ga. App. 194, 518 S.E.2d 194 (1999) (admission of evidence at trial).

B. The appellate court misapplied the General Assembly's adopted informed consent doctrine, OCGA § 31-9-6.1, as there was a count of fraud associated with informed consent.

The appellate court agreed with the trial court's ruling that Petitioner's arguments related to informed consent were moot, because there was no informed consent needed for the medical procedures at issue in this

case. It also cited *Blotner v. Doreika*, 285 Ga. 481, 484 (2) (678 S.E.2d 80) (2009). Georgia's informed consent statute requires that: "any person who undergoes any surgical procedure under general anesthesia, spinal anesthesia, or major regional anesthesia . . . must consent to such procedure and shall be informed" of the diagnosis, nature, and purpose of the surgical procedure, material risks of the procedure, likelihood of success, the practical alternatives to the procedure, and the prognosis if the procedure is rejected. See OCGA § 31-9-6.1(a)." Petitioner repeatedly argued (pre-trial, at trial, and on appeal), pursuant to OCGA § 31-9-6(d),⁵ that once misrepresentations (fraudulent diagnosis) are conveyed to a patient, fraud exists. Once fraud exists, then consent is absent. Once consent is absent, then battery is present, which links to intentional infliction of emotional distress. Fraud always vitiates consent.

It is important to note, that at trial, Respondents requested a mistrial due to arguments raised, involving consent. The judge intervened, by signaling to defense counsel to consider withdrawing the mistrial request, by reminding him that the court was still awaiting the arrival of Petitioner's expert witness. The intervention by the trial court, indicated that it was

⁵ A consent to surgical or medical treatment which discloses in general terms the treatment or course of treatment in connection with which it is given and which is duly evidenced in writing and signed by the patient or other person or persons authorized to consent pursuant to the terms of this chapter shall be conclusively presumed to be a valid consent in the absence of fraudulent misrepresentations of material facts in obtaining the same.

clear that Petitioner would not be reasonably heard, regardless of the weighted merits and facts of the case, or law.

The genuine issues of material facts in this case were contrary to a directed verdict, which is reviewed *de novo*. The whole record, and facts of the case should have been fully considered.

Although this Court rarely grants a petition for a writ of certiorari, in particular, to the self-represented in civil litigation; however, the issues and unjustifiable deprivations in this case, extend beyond the classifications of opposing parties. This case requires justifiable intervention of review, in order to stabilize uniformity of standards, and powers under which the concept of fairness was established, by constitutional protections to all, under the Due Process Clause of Fourteenth Amendment of The United States Constitution. Due process cannot co-exist where procedural irregularities and removal of standards are present.

The coveted protection of constitutional rights is a critical mechanism that is the pathway to preservations of just judicial procedures. Such protections are vested in the appellate courts for proper reviews of procedures and reasoning in the trial courts, to ensure that such proceedings were fair, the rules and laws were properly and equally applied in each case, at hand.

Sustained uniformity across the courts, provide the opportunity of fair and just decisions. Just decisions can only occur where impartiality is present and

procedural irregularities are absent. Any indication of unjustifiable deprivations of due process of law, triggers a disruption of the principles embodied in the Constitution; consequently, due process of law is the only command that is stated twice, and for good reason.

Due process of law is owed to all, with no exceptions to the self-represented. The outcome of a fair trial is incumbent upon the protections of fundamental rights during the course of litigation. Intervention is critical where fundamental rights are unprotected by lower courts. Pro se civil litigations are almost always synonymous with due process of law violations. Often times self-represented pleadings are rebuffed by the assessors, before one word is read. The focus is often directed on the status of the pleader, rather than the facts, law and merits of the case. The law provides a legal space for pro se litigants to appear in civil cases in federal courts, contained in statute 28 U.S.C. § 1654), which provides that “[I]n all courts of the United states the parties may plead and conduct their own causes personally.”

The core duty of a trial court judge is to decide the facts of a given case and make a ruling. Obtaining valid rulings is an exercise of futility, where prejudices and biases are in focus, instead of the facts and applicable procedures, standards, rules and laws.

In sum, the parameters of this case include unjust deprivations of constitutional and civil rights to due process of law, misapplication of civil procedural rules

and evidence, overlooked standards and clear abuses of discretion.

Where safeguards of standards and rules are infringed, protected rights are deprived. If a just reversal of a verdict is warranted and not acted upon through an appellate process, where substantial and critical facts are contrary to an affirmance; then the focus shifts from the case at hand and should lean toward the delineations of values and preservations of the rule of law and all courts' doctrines. Here, there was an inarguable absence of judicial equity, before the start of trial; that began with the abandonment of gatekeeping *per Daubert* and the deprivation of one's right to discovery, or even perhaps, began when, or possibly because, Petitioner, within her rights, proceeded *pro se*.

CONCLUSION

For the foregoing reasons Petitioner prays that this Court grants this petition and issues a writ of certiorari.

Dated this 20th day of September 2022.

Respectfully submitted,

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