

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Duncan Abraham Goldberg--PETITIONER

VS.

STATE OF MISSOURI ET AL.--RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Duncan Abraham Goldberg
Pro Se Litigant

I

QUESTIONS PRESENTED

- 1.) On what grounds does Missouri continue to deny the fundamental civil rights of a whole class of people, namely people living with Brain Injury, who try to navigate the Missouri Judicial System with their particular legal efforts?
- 2.) How does Missouri, in providing no accommodation specifically to the needs and challenges of people living with Brain Injury due to their Brain Injuries, at all and any points of contact with the Missouri Judicial System, not deny the Brain Injured Community therein, fair access to the Courts and fair rule of law in its Missouri jurisdictions, given the nature of cognitive impairments that are medically, and scientifically recognized, and at the Federal level recognized, to be associated with disability from Brain Injury?
- 3.) How is denying a Brain-Injured Individual any accommodation specifically to their needs and challenges living with Brain Injury due to their Brain Injuries, and effectively closing the doors of Missouri's Courts and Justice System therein shut to them by making the matter of timing, deadlines, scheduled appointments and statute of limitations, essentially a series of eligibility barriers to people living with Brain Injury, of a non-Brain-Injured standard of timing to have fair access to the Courts and the rule of law therein, not a violation of the most fundamental of civil rights in the United States, and the fundamental civil rights of that Brain-Injured individual, so treated by Missouri?
- 4.) How can the State of Missouri and other Missouri Public Entities' be allowed to violate numerous Federal Laws and the US Constitution and that most fundamental of US civil rights, namely the fair access to the Courts of the land and the fair rule of law, in those Missouri Public Entities' maintenance and enforcement

II

of an endemic system of disability discrimination against an entire class of people of the Brain-Injured Community and their families by association by means of providing no accommodation specifically to the needs and challenges of people living with Brain Injury due to their brain injuries, at any and all points of contact with the Missouri Judicial System?

5.) How can Federal Courts ignore the segregation upon segregation upon segregation of an entire class of people based on that people's particular disability, namely Brain Injury and in the case of Robert Michael Goldberg, Anoxic Brain Injury, within Missouri and within American civil society therein as Missouri and other Missouri Public Entities' maintenance and enforcement of an endemic system of disability discrimination against the Brain-Injured Community and their families by association, and as relates to that most fundamental of US civil rights, namely fair access to the Courts of the land and the fair rule of law?

6.) When the State Judicial Systems and their Courts continue to shape and set medical policies, and blur the line of their jurisdiction, do they not then, effectively serve as Health Care Systems, that provide and deny health care, how can they not also be held accountable for their health care decisions as such organizations, in their turn, when those other Health Care Systems and organizations would be penalized for the same decisions when they are in transgression of Federal Laws?

7.) Is not the 22nd Circuit Court of the City of St. Louis, Missouri, to which Robert Dierker was a member and an individual of, in the times of question of the Petitioner's original civil motion, an association of individuals, and therefore a holder of rights, as *Bush v. Gore* holds, but like any individual, a holder of responsibilities and consequences of their actions from them as well, including transgressions such as freely violating Federal Law and the US Constitution?

III
PARTIES TO THE PROCEEDINGS

The parties are Petitioner Duncan Abraham Goldberg as a pro se litigant, and respondents, the State of Missouri, the City of St. Louis, Missouri, the 22nd Circuit Court of the City of St. Louis, and Judge Robert Dierker. In the district court, Goldberg pursued claims under the Lilly Ledbetter Fair Pay Act of 2009, against the Respondents, Section 504 of the Rehabilitation Act of 1973 against the Respondents, Title II of the Americans with Disabilities Act of 1990 against the Respondents,, and Section 1557 of the Affordable Care and Patient Protection Act of 2010 against the Respondents. This is a civil complaint against Public Entities that the Petitioner charges engaged in disability discrimination against his family.

IV
RELATED PROCEEDINGS

- 1.) *Ester (sic) Fiona Harrison et al v. Missouri et al*, US Court of Appeals for the Eighth Circuit, Case No. 23-2861 (first docketed at the US Court of Appeals for the Eighth Circuit as: Robert Goldberg et al v. Missouri et al, Case No. 23-2861)
- 2.) *Robert Michael Goldberg et al v. Missouri et al*, United States District Court Eastern District of Missouri Eastern Division, Case No. 4:23-cv-00089-SEP
- 3.) *Robert M. Goldberg v. Borg Warner Morse TEC LL et al* (E-case), 22nd Circuit Court of the City of St. Louis, Missouri, Case No. 1622-CC01232
- 4.) *Robert M. Goldberg et al v. Guardian, Restore Capacity*, Fauquier County Circuit Court Civil Division, Case No. CH99000104-01
- 5.) *Barbara S. Goldberg v. Robert M. Goldberg*, Fauquier County Circuit Court Civil Division, Case No. CH99000104-00

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- 2.) The Rehabilitation Act of 1973:
A.) Section 504: pXXV, 1,6,7,13,16,7a
- 3.) The Americans with Disabilities Act of 1990:
A.) TITLE II—PUBLIC SERVICES, pXXV,
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- 4.) The Americans with Disabilities Amendment Act of 2008:
A.) “TITLE 42 - THE PUBLIC HEALTH AND WELFARE CHAPTER 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES Sec. 12101. pXXV, 1,7,16,7a
- 5.) Lilly Ledbetter Fair Pay Act of 2009: pXXV,
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- 7.) The Traumatic Brain Injury Act of 1996: pXXV, 18,19
- 8.) The Traumatic Brain Injury Act Re-Authorization Act of 2018: p18
- 9.) Article VI of the U.S. Constitution:

“.. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. ..” p XXV, 1,7 ,7a,8a

VII

10.) The 14th Amendment of the U.S. Constitution:

“Section 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.” p1,7,21,7a

11.) 28 U.S.C. Section 1915(e)(2)(B), pXXV,8,12,5a,6a,9a

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- 22.) *Calzone v. Hawley*, 866 F.3d 866.872 (8th Cir. 2017), p9,11a
- 23.) *Gail Lucille Ingham, et al v. Johnson & Johnson*, 1522 - CC10417-01, Div. 10, p6
- 24.) *Goldberg v. Borg Warner Morse Tec LLC*, et al., No. 1622-CC01232 (St. Louis City Cir. Ct. 2016), pIV, 8,13,7a
- 25.) *Goldberg v. Goldberg, Fauquier County Circuit Court Civil Division*, Case No. CH99000104-00, pIV,3
- 26.) *Goldberg et al v. Guardian, Restory Capacity, Fauquier County Circuit Court Civil Division*, Case No. CH99000104-01, pIV,3
- 27.) *Gideon v. Wainright*, 372 U.S. 335 (1963), p20
- 28.) *Haines v. Kerner*, 404 U.S. 519, 520 (1972), p12,6a
- 29.) *Hamilton v. City of Hayti, MO*, 948 F.3d 921, 925 (8th Cir. 2020), p9,10a
- 30.) *Harris v. Missouri Court of Appeals, Western District*, 787 F .2d 427,429 (8th Cir. 1986), p9,10a
- 31.) *Jones ex rel. v. Correctional Medical Services Inc.*, 401, F3d 950,952 (8th Cir. 2005), p9,10a
- 32.) *Kelly v. City of Omaha*, 436 U.S. Neb., 813 F .3d 1070 (8th Cir. 2016), p9,10a
- 33.) *Marsh v. Phelps City*, 902 F .3d 745,751 (8th Cir. 2018), p9,11a
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- 36.) *Mick v. Raines*, 883 F.3d 1075, 1079 (8th Cir. 2018),
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- 37.) *Midfelt v. Circuit Court of Jackson Cty*, 827 F.2d
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- 38.) *Mireles v. Waco*, 502 U.S. 9, 11 (1991), p9
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- 48.) *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71
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- 50.) Centers for Disease Control and Prevention (2015),
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- 51.) Brain Injury Association of Missouri, "Brain Injury Overview," www.biamo.org., p17
- 52.) Erickson, W. Lee & von Schraeder, S. (2016 "2015 Disability Status Report": Missouri, Ithaca, NY,: Cornell University, Yang-Tan Institute on Employment and Disability, www.disabilitystatistics.org., p17
- 53.) Neilsberg Research, "Missouri Population by Year," www.Neilsberg.com., p17

PETITION FOR A WRIT OF CERTIORARI

Petitioner Duncan Abraham Goldberg respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the 8th Circuit.

OPINIONS BELOW

- 1.) "*Ester (sic) Fiona Harrison et al v. State of Missouri et al*" unpublished,
A.) <https://dockets.Justia.com>:
- 2.) "*Goldberg et al v. State of Missouri et al*" :
A.) "23-089 - *Goldberg et al v. State of Missouri et al*"

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Opinions
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JURISDICTION

The Eighth Circuit gave judgment of dismissal, on October 26th, 2023 to the Petitioner's appeal for a re-hearing and a re-hearing en banc. This Court has jurisdiction from 28 U.S.C. Section 1254(1).

XII
RELEVANT STATUTORY PROVISIONS

- A.) 28 U.S.C. Section 1915(e)(2)(B)
- B.) 42 U.S.C, Section 1983
- C.) The Older Americans Act of 1965, Section 101, (2),(6),(7),(8),(9),(10)
- D.) The Rehabilitation Act of 1973, Section 504,
- E.) The Americans with Disabilities Act of 1990
TITLE II
- F.) The Traumatic Brain Injury Act of 1996:
- G.) The Americans with Disabilities Amendment Act of 2008
A.) TITLE 42
- H.) The Lilly Ledbetter Fair Pay Act of 2009:
- I.) The Patient Protection and Affordable Care Act of 2010:
A.)SEC. 1557.
- J.) The Traumatic Brain Injury Act Re-Authorization Act of 2018:
- K.) Article VI of the US Constitution :
- L.) The Fourteenth Amendment of the US Constitution:
- M.) Missouri Sovereign Immunity Statute
(Section 537.600 RSMo.)

INTRODUCTION

Title II of the Americans with Disabilities Act (ADA) of 1990 prohibits discrimination against people living with disabilities due to those disabilities by Public Entities, including State or local governments and any department, agency, special purpose district, or other instrumentality of those same Public Entities. The ADA follows and builds upon the earlier Rehabilitation Act of 1973, and its civil rights protections and similar to the Older Americans Act of 1965 in its focus on elderly Americans, promoted the protection of the civil rights of that specific demographic of the US populace, and their full participation in US society. Even the landmark ADA was expanded upon by the US Congress with the enactment of the Americans with Disabilities Amendment Act (ADAAA) in 2008, to broaden what Congress intended for people with disabilities in 1990, as gaps of civil rights protection coverage and an overly-restrictive application of those protections by the US Supreme Court in rulings over 18 years required the US Legislative Branch to do so, to further realize the original Legislative intention of broad coverage of civil rights protections for people with disabilities in the US. More legislative work was needed to promote such civil rights protections, as gaps of coverage of the ADA, ADAAA and other Federal Laws presented themselves to scrutiny, and more Federal Laws were ratified including the Lilly Ledbetter Fair Pay Act of 2009, and the Affordable Care and Patient Protection Act of 2010.

All of these Federal Statutes stand to protect fundamental civil rights, that are identified in the Fourteenth Amendment, and stand over State and Local laws, as identified in Article VI of the US Constitution. Petitioner Duncan Abraham Goldberg charges that Respondents, the State of Missouri, the City of St. Louis, Missouri, the 22nd Circuit Court therein, and Judge Robert Dierker violated all of those Federal Laws when they denied service and participation to the Judicial System of Missouri to which they were associated as Public Entities, to his Father ,Robert Michael Goldberg, himself of his own legal capacity though living with severe cognitive

impairments from his Anoxic Brain Injury (ABI), and the Petitioner's siblings and the Petitioner by association, while attempting to participate in that Missouri Judicial System in 2016, repeatedly, and as recently as June, 2022. The Petitioner holds that the Respondents violated those Federal Laws on account of neither considering, providing nor offering any accommodation or systems of accommodation specifically to the needs of people living with Brain Injury as a class of people, and holding his Father and family, and all people living with Brain Injury in Missouri to an unfair standard in the Missouri Judicial System, that effectively segregates them and excludes them from the courts and fair rule of law in that State.

The Eighth Circuit never heard the claims and charges of the Petitioner however, and only acted upon dismissing the appeal that came to that court as an Asbestos Personal Injury motion, so filed and sent by the District Court. The Eighth Circuit ruled against the appeal of the Petitioner due to "lack of jurisdiction" and dismissed it. The Eighth then dismissed all of the Petitioner's subsequent motions sent directly to this court. The Petitioner received no further clarification to any of his motions' dismissals, and the dismissal for re-hearing en banc, was on October 26th, 2023.

The Eighth Circuit ruled against the Petitioner's appeal despite the Eighth Circuit's rules of practice, that provide for "extraordinary circumstances" effecting the Petitioner to allow for re-hearing in face of issues of timing, and despite rules, that allow for the same, provided conditions that the Petitioner, as a pro se litigant, identified as meeting, from the lower District Court and to his best ability, given the extraordinary circumstances he faced, concurrent to that District Court's dismissals. The Petitioner's motion was mischaracterized, and misfiled by the District Court Judge, to prejudicial effect. No ameliorative information from the Petitioner reached the Eighth Circuit, however as it dismissed all of his motions. Thereby, the Eighth Circuit rebuffed a case of great importance to the Public in Missouri, and the US as relates to the deprivation of fundamental civil rights.

The charges of the Petitioner, and the Federal Laws protecting the Petitioner's Father as a person with Brain Injury are clear and expansive, and the

needs of that class of people with Brain Injury are great in the face of a Missouri Judicial System that provides no accommodation specifically to their cognitive impairments. In failing to, it effectively excludes them all from participation in and denies them the benefits of the services, programs and activities of the Courts and rule of law in Missouri. Therefore, the US Supreme Court should allow their own review of the Petitioner's case, and reverse the Eighth Circuit's dismissals.

STATEMENT OF THE CASE

1.) Factual Background:

Robert Michael Goldberg , attorney-at-law, aged 56, suffered an ABI in the Spring of 1997 from complications of heart surgery. He subsequently remained under a legal guardianship with his wife Dr. Barbara Sproston Goldberg as his guardian until 2001, when he argued for and regained his legal capacity before the Circuit Court of Warrenton, Virginia. (*Goldberg v. Goldberg, Fauquier County Circuit Court Civil Division, Case No. CH9000104-00 and Goldberg et al v. Guardian, Restore Capacity, Fauquier County Circuit Court Civil Division, Case No. C49000104-01*) Nonetheless, the effects of his Brain Injury were severe, and left him with cognitive impairments, medically identified to his Executive Function (his sense of initiative to all of his activities) and short-term and new memory retention, with each impairment amplified and co-joined in effect upon his person regularly, and amplified under stress, fatigue and illness, for the rest of his life, and so as to require significant care-giving for his benefit from 1997 to his passing in 2022. Initially this primary care was provided by Dr. Goldberg, for 15 years, but there was assistance from their family, including the Petitioner as a secondary care-giver for those initial 15 years before he became the primary care-giver for over another 10 years, within their household, and for a brief time from outside help. Though relatively young, and an accomplished lawyer, Mr. Goldberg was essentially retired from his law practice and legal career due to his ABI , but not to legal efforts.

In 2010, Dr. Goldberg fell ill to an asbestos-related cancer, after she had recovered from surgery and a cancer-scare feared caused by Ovarian Cancer in 1992. Despite standard and experimental medical treatments for her illness, Dr. Goldberg's condition deteriorated over the next 2 ½ years, and then precipitously, to her passing in 2013. Mr. Goldberg suffered further medical ailments that presented under the trauma of the last weeks of Dr. Goldberg's life, persevered and found his way forward, now widowed, and still effected by his ABI. The Petitioner, his son, had become his primary caregiver at the passing of Dr. Goldberg. A year and more passed before Mr. Goldberg's new medical ailments were identified and effectively treated, despite occasional hospitalizations. During this time, Mr. Goldberg endeavored to understand how his wife was exposed to the asbestos that caused her illness and took her life. To that point it remained unknown, as Dr. Goldberg was not associated with asbestos-related work. Yet, Mr. Goldberg was instrumental in identifying the points of asbestos exposure in his wife's history and helped secure legal representation to pursue a wrongful death case from asbestos products on behalf of himself and his family.

This legal effort began in earnest in 2016, in the 22nd Circuit Court of the City of St. Louis, Missouri, under the auspices of Judge Robert Dierker and Missouri through its Missouri Judicial System. By the Spring of 2016, asbestos exposure to Dr. Goldberg had been identified to locations of habitation and work, thereby identifying liable industrial parties to file suit against, with Mr. Goldberg as lead plaintiff, and his children with him by association, as secondary plaintiffs in the effort. By the Summer of 2016, additional asbestos exposure to Dr. Goldberg had been identified in conjunction with national news that identified asbestos-contaminated Talc products as causing asbestos exposure and Ovarian Cancer and asbestos-related cancers in long-term users of Talcum products. Mr. Goldberg could confirm his wife's long-standing use of Talcum powder products, and which now fit into the patterns of her life, and her surgery and treatments for her 1992 cancer-scare, as well as the asbestos-related cancer from 2010 to 2013. Mr. Goldberg could also confirm from Dr. Goldberg's Talcum powder

usage, and identify Talc-related industrial parties he held liable for his wife's wrongful death.

Mr. Goldberg's legal effort was almost immediately arrested however in the Missouri Judicial System in the attempt of engaging the Talc-related asbestos industrial parties he had identified for his case. To this point, he had no accommodation, nor was any available from the Missouri Judicial System to compensate for the delays that complicated his effort due to his ABI. Neither was quarter given him by the Talc-industrial parties who charged him with failing to file on time as to a wrongful death case in Missouri, and Missouri held him to that and held him to a default standard of the Missouri Judicial System to that of non-Brain Injured people and effectively punished him for having his disability.

No effective communication, intervention, nor extension of filings, was given to Mr. Goldberg then or ever, at any and all points of contact, nor was any such accommodation in a manner specific to the needs of a person with Brain Injury, of their legal capacity, and accessible to them and those needs by the Missouri Judicial System. Instead he found a culture of negligence and disregard for the needs of people with Brain Injury commiserate with the Missouri Judicial System's lack of accommodations, so pervasive that his counsel could not do better than reach a stipulation with the Talc-related industrial parties that would end this part of his case, and effectively freeze any advance in the rest, for fear that revealing his Brain Injury would be seized upon by all parties, and jeopardize what scant restitution and progress he had accomplished to that point. The fear of such an ABI disclosure for the case's sake was so pronounced that not even the sense of retaliation for such a disclosure of ABI, being unlawful, was enough to assuage the fear from this culture. So, Mr. Goldberg saw his legal effort dwindle to a trickle, over the next few months, as each motion against a Talc related industrial party was dismissed in the 22nd Circuit Court, and the stipulation that Robert Dierker presided over, helping simplify and facilitate the steady movement of his and the 22nd Circuit Court's docket, to the apparent benefit of all involved parties of this case, except that of Mr. Goldberg, did so by excluding him and his family by association's

participation and further participation, in that Missouri Judicial System, on account of his ABI. This continued in this Missouri Judicial System over the next few years, but the case and discriminatory situation still exists. In contrast, the same court awarded 22 Plaintiffs the greatest settlement to date for asbestos exposure from Talc-usage, two years later (*Gail Lucille Ingham, et al v. Johnson & Johnson*, 1522 - CC10417-01, Div. 10).

2.) Procedural Background:

The Lilly Ledbetter Fair Pay Act of 2009 declares that it is:

“To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes.”

The Petitioner holds, that according to the Ledbetter Act, the decision of Robert Dierker and the associated Missouri Public Entities that supported the Missouri Judicial System that benefited from the stipulation that they presided over, in accepting the stipulation without any consideration or accommodation to the needs of people with Brain Injury, even as one's effort might be immediately before them, to their effective detriment, was in this, a discriminatory compensation decision according to the ADA and the Rehabilitation Act, as it thereafter reduced Mr. Goldberg's potential compensation from the case to a paltry amount, and all subsequent compensation received by the person so discriminated against, Mr. Goldberg, from this decision repeated the disability discrimination committed against him and his family by association, again and again.

Such compensation did arrive, pursuant to that discriminatory compensation decision in asbestos bankruptcy trust account checks that Mr. Goldberg's legal effort had managed to secure, intermittently, from

bankrupted asbestos-related industrial parties that the US had required to set monies aside for the future victims of these parties' corporate malfeasance. Beginning in 2017, these checks, began arriving to Mr. Goldberg and his family. These checks were essentially all that remained of the compensation he had been able to achieve for the wrongful death case of his wife, and the hurt and insult from the disability discrimination he and his family suffered that left him with these checks alone for compensation, is precisely why the Ledbetter Act works as it does, to this discrimination and still served to protect his civil rights as it launched the Petitioner's case. With the most recent asbestos check in hand, dated to June, 2022, the disability discrimination of 2016 repeated itself, to the surviving secondary plaintiffs of Mr. Goldberg's case, his children, and to his own memory as he had passed in May.

Despite the loss of his Father, the Petitioner filed suit in January, 2023, in the US District Court of Eastern Missouri, with District Court Judge Sarah E. Pitlyk presiding. He filed three separate motions as a pro se litigant to the District Court: (1) the civil motion against the Respondents as defendants, and himself with his siblings Esther Fiona Harrison and Angus Ephraim Goldberg as surviving Plaintiffs, in the disability discrimination he charged his Father Robert Michael Goldberg and family had experienced, under the ADA(Title II, Sec. 9-1000), the Rehabilitation Act(Section 504), the Affordable Care Act(Section 1557) and the Ledbetter Act, and citing those Federal Laws as well as the ADAAA, the Older Americans Act, and Article VI and the Fourteenth Amendment of the US Constitution, seeking compensatory damages to what was denied them by exclusion from the Missouri Judicial System based on disability discrimination, injunctive relief and "whistleblower" protection to his charges against the Missouri Public Entities in what remained of his family's asbestos-related case, and the cost of any legal fees , (2) a motion of request for Federal Legal Counsel Assistance, and (3) a motion to proceed *in forma pauperis*.

District Court Judge Pitlyk ruled in April, 2023, and dismissed the Petitioner's civil motion on erroneous grounds, and the motion requesting Federal Legal

Counsel assistance as moot, and only granted the motion for the Petitioner to proceed *in forma pauperis* based on the “financial information provided” and from 28 U.S.C. Section 1915(a). The District Court held that the civil motion was dismissed without prejudice as a 42 U.S.C. Section 1983 action, and on initial review “for failure to state a claim upon which relief may be granted.” Citing *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009), Judge Pitlyk rejected that the Petitioner provided the “factual content” necessary for a Court to “draw reasonable inference that defendant is liable for the misconduct alleged.” She continued that, “judicial experience and common sense” provides the reviewing court the criteria necessary to determine “whether a claim states a plausible claim for relief” and she found the Petitioner’s case to be of “threadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” She cited *Barton v. Taber*, 820 F 3d 958, 964 (8th Cir. 2016), *Brown v. Green Tree Servicing LLC*, 820 F.3d 371 372-73 (8th Cir. 2016), to disregard what the Petitioner regarded as claims, but she held as “legal conclusion couched as factual allegation.” She maintained that her own obligation to read into the Petitioner’s motion as a pro se litigant “that permit’s a layperson’s claim to be considered within the proper legal framework” that she cited from *Solomon v. Petray*, 795 F 3d 777, 787 (8th Cir. 2015) in quoting *Stone v. Harry*, 364 F .3d 912, 914 (8th Cir. 2004), was not accountable if the pro se litigant as from *Martin v. Aubuchon*, 623 F .2d 1282, 1286 (8th Cir. 1980) “allege facts. which if true, state claim as a matter of law.”

Judge Pitlyk cited *Goldberg v. Borg Warner Morse Tec LLC* et al, No. 1622-CC01232 (St. Louis Cir. Ct. 2016) but curiously stated that while “Robert Goldberg died and was dismissed from the wrongful death case.” she continued “... His children voluntarily dismissed the wrongful death case on September 19, 2022.” Passing mention was given by her to the Federal Laws cited by the Petitioner in their civil motion and that Mr. Goldberg suffered from “Anoxic Brain Injury” and as she noted which according to the Plaintiffs caused the St. Louis City Court to discriminate against him (Mr. Goldberg) as a litigant.” She further found her grounds for dismissal “pursuant to 28 U.S.C. Section 1915(e)(2)(B), because it

(the Petitioner's civil motion) falls outside the statute of limitations period for bringing Section 1983 suits." She further cited *Myers v. Vogal*, 960 F.2d 750, 751 (8th Cir. 1992). *Sulik v. Taney City, MO*, 393 F.3d 765 767 (8th Cir. 2005) and *Walker v. Barrett*, 650 F.3d 1198, 1205 (8th Cir. 2011) to claim the statute of limitations of Product-Liability-Personal-Injury-Claims had expired. She faulted the Petitioner for attempting to represent his family before the court as well as himself as a pro se litigant, in Federal Court as 28 U.S.C. Section 1654 holds and *Jones ex rel. Jones v. Correctional Medical Services, Inc.* 401 F3d 950, 952, (8th Cir. 2005) demonstrates. She also dismissed as she held that no claims were made against the Defendants, and could not be made against Robert Dierker, due to judicial immunity, citing *Hamilton v. City of Hayti, MO*, 948 F.3d 921, 925 (8th Cir. 2020), *Mireles v. Waco*, 502 U.S. 9, 11 (1991), and *Pierson v. Ray*, 3865 U.S. 547, 554 (1907) nor the City of St. Louis, as it is "immune to suit," citing *Monell v. Dep't of Soc. Servs. Of City of New York*, 436 U.S. 658, 658 690 (1978), and *Kelly v. City of Omaha, Neb.*, 813 F .3d 1070, 1075, (8th Cir. 2016), and that the Petitioner had failed to allege "liability based on a municipal policy, unofficial custom, or failure to train, and so have failed to state a claim based on *Mick v. Raines*, 883 F .3d 1075, 1079, (8th Cir. 2018) and also *Marsh v. Phelps Cty.*, 902 F .3d 745, 751 (8th Cir. 2018). She held that State Courts are protected from 42 U.S.C. Section 1983 liability by the Eleventh Amendment, according to the Eighth Circuit, citing *Midfelt v. Circuit Court of Jackson Cty., Mo.*, 827 F .2d 343, 345 (8th Cir. 1986), and *Harris v. Missouri Court of Appeals, Western Dist.*, 787 F .2d 427, 429 (8th Cir. 1986). Lastly, citing *McLean v. Gordon*, 548 F .3d 613, 618 (8th Cir. 2008) she held that the Petitioner declined to "state a claim against the State of Missouri, and that *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989) and *Calzone v. Hawley*, 866 F .3d 866. 872 (8th Cir. 2017). Thus dismissal came down to, "Plaintiffs' claims are barred by the statute of limitations, and the Complaint fails to state a claim against any Defendant. Moreover, Duncan Abraham Goldberg cannot represent his siblings and deceased father in federal court."

The Petitioner immediately began to draft his

appeal to the Eighth Circuit, and informed the office of the District Court Judge and their clerks' office his intention to appeal. However, the motion to file his civil motion *in forma pauperis* had been granted, and the Petitioner's status as such was all too evident in that time-frame of Judge Pitlyk's decisions, as he then faced the extraordinary distress to his person and condition of losing his home and possessions therein due to the dislocation he was experiencing in the wake of his Father's passing. This preoccupied the Petitioner for weeks, and it was only in the beginning of June, that he was able to work to his appeal to the Eighth Circuit. He filed appeal as a pro se litigant to the Eighth Circuit in August 2023. The Eighth Circuit dismissed it for "lack of jurisdiction," and all of the subsequent motions of the Petitioner without further clarification. The most recent dismissal, of a motion for a re-hearing en banc was on October 26th, 2023.

I.) Cause for Review due to Rules of Procedures of the US Court of Appeals for the Eighth Circuit:

The United States Court of Appeals For the Federal Circuit *Rules of Practice*, Rule 4, Appeal as of Right-- When Taken,(5) Motion of Extension of Time, (A), states, "The district court may extend a motion of appeal if (ii) regardless of whether its motion is filed before or during the 30 days or after the time proscribed by this Rule 4(a) expires, that party shows excusable neglect or good cause." To this the Petitioner can show excusable neglect and good cause based on the nature of his extraordinary distress that he experienced following the traumatic loss of his Father in the year of his motion filing and into the distress he experienced as related to his home following the District Court's judgment of dismissal of his original motion. From Rule 4, Appeal as of Right-- When Taken, (6) Reopening the Time to File an Appeal: "The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all of the following conditions are satisfied:

- (A) The court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of judgment or order sought to be appealed within 21 days of entry,
- (B) The Motion is filed within 180 days after the judgment or order was entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier, and
- (C) the court finds that no party would be prejudiced."

The Petitioner, did not receive "notice under Federal Rule of Civil Procedure 77(d) of the entry of judgment or order sought to be appealed within 21 days of entry" that was complete in nature of effecting a fully tangible appeal. The District Court Judge, noted that "claims are dismissed without prejudice." inferring possibility of appeal but neglecting to inform of any information as to timing.

The District Court Judge neglected to inform the Petitioner of the limits to appeal their judgment and order of dismissal. The District Court Judge did report in their order of dismissal, that they would not accept any appeal in their District Court from the Petitioner, "IT IS HEREBY CERTIFIED that an appeal from this action would not be taken in good faith." Thereby, by denying the Petitioner Rule 5, "Appeal by Permission" the District Court Judge left no recourse but appeal to the Eighth Circuit.

The Petitioner learned this later, but he did immediately inform the office of the District Court Judge and their Clerk upon dismissal of his intent, by phone. When he sought details of timing, with the District Court and Eighth Circuit, he was only told be "timely." The Petitioner, without further instruction, did his best. No notification was transmitted from the District Court to the Petitioner that completed the dismissal process in the time provided by the *Federal Court of Appeals Rules of Procedure*, which is a condition of Rule 4 "Appeal of Right-- When Taken: Section (6)(A) and only vague word was provided by the District Court, with the Petitioner's claims "dismissed without prejudice," which is itself a condition of the above Rule 4 Section (6)(C), with demand and yet not enough to assist. Despite the extraordinary circumstances that the Petitioner experienced

concurrent to the District Court's dismissal, which Rule 4 Section (5) Motion of Extension of Time(A)(ii) can take into account to extend time, as the Petitioner can show "excusable neglect or good cause" to his appeal's delay, the Petitioner managed to file his appeal to the Eighth Circuit 117 days later, within the 180 days allowed, thereby matching the rest of Rule 4(6)(B). According to Rule 26. Computing and Extending Time, Section (b) Extending Time, "For good cause the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done so after that time expires..." The Petitioner showing good cause for the delay, requests the reconsidering of his appeal to the Eighth Circuit.

II.) Cause for Review due to the District Court's Mistakes:

In the judgment against the Petitioner's civil motion to the District Court, Judge Pitlyk made numerous mistakes and mischaracterizations of the Petitioner's case and misfiled it, as it remains, and transformed the Petitioner's work into something it was not, and still applied law erroneously to the changed motion, that did not apply to the original of the Petitioner, to its detriment. The District Court Judge asserted Federal statutes that were not relevant to the Petitioner's case and his original intentions, as when the Judge asserted that this case was a 42 U.S.C. Section 1983 action, and then having asserted it, assailed the Petitioner for such usage. The Judge declared "When reviewing a pro se complaint under 28 U.S.C. Section 1915(e)(2), the Court must give it the benefit of a liberal construction. (*Haines v. Kerner*, 404 U.S. 519, 520 (1972)" Citing that "if the essence of an allegation is discernible...then the district court should construe the complaint in a way that permit's the layperson's claims to be considered within the proper framework(*Solomon v. Petray*, 795 F .3d 777, 787 (8th Cir. 2015)" the Judge deviated immediately and repeatedly in their review. Simultaneously leading the case so far as to misconstrue and accepting so little of that presented to identify the true nature of the Petitioner's case, the District Court transformed it beyond measure. The District Court

asserted the motion was an Asbestos Personal Injury Product Liability case, stemming from *Goldberg v. Borg Warner Morse Tec LLC, et al.*, No. 1622-CC01232 (St. Louis City Cir. Ct. 2016), and then joined it to the 42 U.S.C. Section 1983 civil rights action towards the Respondents (demonstrating limitations to it). The District Court then criticized the motion, for failure to provide claims against the Respondents. There were no asbestos exposure claims, as this was not an asbestos-exposure complaint, but there were civil rights violations claims, as this was a originally a complaint of civil rights deprivations.

The Ledbetter Act reopened statute of limitations of disability discrimination against Mr. Goldberg and family from 2016, as by that Act, those violations occurred again in June, 2022 with the receiving of the recent compensation checks subsequent to the discrimination compensation decision against Mr. Goldberg. Then, the ADA under its Title II provisions, allowed for an individual's private suits against Public Entities that have violated their civil rights due to disability discrimination, and the Rehabilitation Act's Section 504 allowed those private suits to engage Public Entities for taking Federal funding in their budgets for 2016, and waiving their sovereign immunity as they received Federal funding but violated Federal Laws. Backing the ability to file such suit against them, the Petitioner cites the following cases: *Barnes v. Gorman*, *Tennessee v. Lane*, and *Prakel v. Indiana*, to which the US Government adjoined in support of that case.

The Affordable Care Act's Section 1557 further provided the means to file suit against the Respondents that increasingly shape and set Missouri medical policies in their agencies, and among them, Robert Dierker has blurred his authority, and all of them seem to operate as Missouri Health Care Public Entities. In denying Mr. Goldberg his medical status of living with ABI, the Respondents excluded him from the health activity of navigating Missouri civil society as a litigant with Brain Injury. In providing no accommodations for people like Mr. Goldberg, the Respondents failed to recognize Brain Injury as a medical concern, effecting the populace that could come before them for civic help as he had, and to which his medical condition was not regarded even in

passing. Brain Injury was not a pressing concern of the Respondents and their purview, and Mr. Goldberg was held to a discriminatory standard, eliminating his disability from record. But the Respondents had and have not cured Brain Injury in their purview, they had and have ignored it, exposing a medical decision, that eliminates the medical condition of an entire class of people. They are enforcing and setting medical policies that effect people living with Brain Injury by their omissions of these people as a denial of service. In doing so, the Respondents have transformed their own agencies, into bodies of Missouri Health Care and in this light, the Petitioner included Robert Dierker, among the Respondents, not as a Judge, but as a health care official, and sued all of them as Health Care Parties under the Affordable Care Act for engaging in disability discrimination in their programs and activities.

The Petitioner looked to *Bush v. Gore* 531 U.S. 98 (2000), as further ground to bring suit against Robert Dierker, as an individual within an “association of individuals”, as the US Supreme Court holds large abstract organizations to be in allowing those organizations human rights such as freedom of speech, and the “association of individuals,” he is associated with stands charged with violating the civil rights of Mr. Goldberg. As those associations of individuals have rights, so too do they have responsibilities from the exercise of those rights, including to be liable to suit when violating the rights of people living with Brain Injury and Federal Laws designed to protect them.

The Petitioner understood the high bar that stands to bring suit against Robert Dierker, but felt the cause necessitated the attempts. As a pro se litigant, his inexperience is evident, as in the inclusion of his siblings in his initial motion, but the Petitioner did appeal for Federal counsel assistance concurrently, and hoped for such Federal Counsel to be allowed, as he had with his concurrent motion to proceed *in forma pauperis*. It was to his family’s civil rights that he had no legal counsel, and though the District Court maintained the case wrongly as an Asbestios Personal Injury case, the Petitioner did not need asbestos-related counsel for this civil right work. Had such counsel been granted by the District Court,

the Petitioner anticipated Federal Counsel assistance with civil rights, and amending aspects of his motion to conform to standards of the District Court, including Respondents to file suit against, but that does not include, Missouri, the City of St. Louis, nor the 22nd Circuit Court. Even Missouri State Law provides for waivers of sovereign immunity, as shown in Missouri's Sovereign Immunity Statute (Section 537.600 RSMo.):“537.600. Sovereign immunity in effect — exceptions. — 1. Such sovereign or governmental tort immunity as existed at common law in this state prior to September 12, 1977, except to the extent waived.” ... which includes that waived under the Rehabilitation Act’s Section 504 of 1973. Such points escaped the review of the District Court, that along with his claims, the Petitioner assumed he would have a fair chance of review and presentation in a period of Discovery for his case, but as of yet this has not been so. The District Court neither saw claims or facts in the Petitioner’s motion but they were there. The claims were to civil rights violations of the Respondents, and not of asbestos exposures by them against his family, and his family were there in agreement with him in his legal cause, if listed by inexperience as litigants near the pro se litigant. Conversely, the District Court Judge presented information that was not fact including that, the Goldberg family no longer had an asbestos case following the passing of Mr. Goldberg, “His children voluntarily dismissed the wrongful death case on September 19, 2022. ...” which is demonstrably false.

If the motion could reach Discovery, the nature of disability discrimination claimed in applying non-Brain-Injured-people’s standards of activity upon people with Brain Injury as they navigate the same Missouri Judicial System and penalizing the disabled people for falling short of that standard, as occurred to Mr. Goldberg with the timing of his filing of the wrongful death case of his wife, would be further exposed. The District Court cited *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) that to determine “whether a complaint states a plausible claim of relief” is a ‘content-specific task that requires the reviewing court to draw on its judicial experience and common sense.’ ” Evidently the District Court Judge did not have either as relates to the needs of people

with Brain Injury, that the Petitioner has earned over 25 years of service as a care-giver to his Father, nor to reading how such needs would fit into the rationale of the Federal Laws the Petitioner claims the Respondents have violated. According to the ADA, it is unlawful to set unfair eligibility criteria on the Brain-Injured Community in the Missouri Judicial System that create barriers to their access of the Courts and rule of law in the State, resulting in multitudes of civil rights violations against this population, as the Petitioner charges in the application of non-Brain-Injured time-of-filing standards to people with Brain Injury(ADA, II-3.5000, Eligibility criteria). As the effects of their cognitive impairments occur each and every time they attempt an activity, which the **ADAAA** recognizes as a common aspect of life with disability,

“An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active(ADAAA, TITLE 42 - THE PSec. 12102. (2) Major Life Activities (B) Major bodily functions,(1)(D).)”,

and in the lack of accommodation provided by the Respondent Missouri Public Entities to overcome such delays as people with Brain Injury face from their disabilities, the Petitioner could point to the Respondents disability discrimination on the approach of the Brain-Injured community to the Missouri Judicial System, and on departure as they face penalties, and closure of legal activities to their failures of timing. Such was the case of Mr. Goldberg.

The further mistakes of the District Court in its handling of his case has also left the Petitioner with a case that was judged by statute of limitations that did not apply to it, and for having no claims to a type of grievance of asbestos exposure and law that his case did not intend to address, as it was at heart about civil rights and their violations by Missouri Public Entities against his Father and family. The Petitioner is an inexperienced pro se litigant but is an experienced care-giver and an artist, and as such knew the case he presented was important to protect his Father against disability discrimination, and

could see the hand of someone else in his work, by the District Court Judge, due to their mischaracterizations and mistakes of the handling of his case, and he vociferously rejects being made into a '*Ducor Errans litigant*' as such by the District Court and requests review accordingly.

III.) Cause for Review due to the Importance to the Public:

The Petitioner holds that with this case, given its importance to the Public in Missouri and the US, "*Non Ducor Duco.*" According to the Brain Injury Association of Missouri and data it holds, there are an estimated 5.3 million Americans living with Brain Injury across the US, who could benefit from the case going forward, let alone in Missouri, as it can advance civil rights that are presently denied members of this community to such a fundamental degree. They and their families need help.

For example, since 2001, over 20 years of combat operations has returned many thousands of wounded Service Personnel and Veterans of the US Armed Forces to the US with Brain Injuries that may require assistance for the rest of those Veterans' lives, among significant U.S. populations particularly prone to them (www.CDC.gov). According to contemporary Missouri Information for Community Assessment (MICA) records, an estimated average of 16,500 residents within Missouri suffer some sort of Brain Injury each year, as was the case in 2015. The above records for 2015, show that 16,743 people suffered some sort of Brain Injury in Missouri, at a rate of some 275 people per 100,000, within the overall general population of 6,075,411 (www.biamo.org, www.Neilsberg.com). According to a Missouri Summary from a 2015 District Status Report, found at www.disabilitystatistics.org, 6.0% of the population had or reported cognitive disabilities that would include disabilities from Anoxic and Traumatic Brain Injury (ABI & TBT respectively), second only to those people that were recorded to have or identified as having ambulatory disabilities at 8.1% and the 6.2% with Independent Living Disability and more than the 4.2% that reported having hearing impairment disabilities and the 2.5% that reported vision impairment

disabilities. The records cited above indicated in a subsequent note to remind that there was a significant number of people of the 16,743 people that were identified to have suffered a TBI in 2015 in Missouri, who could not remember or identify when and where they had suffered their particular Brain Injury, nor had witnesses to the event. Such complications in the study of Brain Injury instance as undercounts, undefined instances of occurrence and TBI-centric attention as opposed to ABI-lack of attention is common to medical and governmental studies of Brain Injury in general.

The US identified Brain Injury as a disability issue of its own importance in 1996, to warrant research and studies of TBI, with the ratification of the Traumatic Brain Injury Act of 1996. Even in this signature Federal Law, the attention to ABI is immediately and clearly relegated secondarily, but the Federal Law has remained important, and has been reauthorized no less than four times to date, most recently in 2018, to continue and further the study of TBI and its effect on the populace, and through such efforts to help provide better treatments and service for those who have suffered such injuries. The TBI Act of 1996 also provided initial definitions of and the effects from Traumatic Brain Injury, that are very similar to ABI, though of course, the cause relating to the former is generally blunt-force head-trauma, while the latter is from denial of the flow of oxygen to the brain. The causes are different, but the needs of those people who suffer TBI and ABI are both great and grave. Injuries to the Brain are cognitive injuries, and the disabilities that arise from them are cognitive, but can effect the rest of the body and its activities over time, though remain centered in the brain of the individual who has sustained the injury, and on the whole, that injury is quite often internal, and not visible to the public, such as ambulatory, visual impairment and even many hearing impairment disabilities. For this, the Brain Injured Community, people living with TBI and ABI, are basically segregated from the larger disabled communities due to the “invisibility” so to speak of their Brain Injuries, and within the Brain Injured Community, people living with ABI are segregated even further, as the majority of medical, governmental and public attention given in

the US to Brain Injury is to those suffering TBI, as it is easier for the larger non-Brain-Injured population to see and notice close, and from a distance. Thus those people living with ABI, such as Mr. Goldberg did for more than 25 years, from April 1997, and into May, 2022, face segregation within the Brain Injured Community which faces segregation within the Disabled Community, which often faces segregation within the general non-Disabled population of the US. For this, the TBI Act of 1996 became Federal Law to join the ranks of the other Federal Laws that protect the civil rights of people living with disabilities in the US and to which other Federal Acts such as the Older Americans Act of 1965 continue to help provide additional support to conditions related to aging and old age, which can often amplify the effects of any disability.

All of these Federal Laws, fortified by the US Constitution stood in US Law, and in Missouri in 2015 and 2016, as Robert Michael Goldberg with his ABI and in his full legal capacity, began his legal effort, within the Missouri Judicial System, and for which he was provided exactly none of those Federal Laws' protections to safeguard his civil rights. To which, the charges presented here against the Missouri Judicial System, the Petitioner has understood from communications with the Brain Injury Association of Missouri, to be fair. In 2015, as the legal effort of Robert Michael Goldberg and his family by association was taking shape, an estimated 118,000 people lived with some sort of Brain Injury in Missouri, according to records held from the Brain Injury Association of Missouri. According to contemporary Missouri Information for Community Assessment (MICA) records, an estimated average of 16,500 residents within Missouri suffer some sort of Brain Injury each year, as was the case in 2015. It should be noted that these are generally recognized as TBI that are more accounted for than ABI, such as Mr. Goldberg had suffered in 1997, due to their greater frequency of occurrence and that they are easier for medical professionals to identify at the times and points of their infliction, and in their due course, those instances of TBI relayed to Brain Injury data compilers and studies across the US. Nonetheless people with either TBI or ABI are not afforded the protections

of the above Federal Laws, specifically to their needs and so fortified by the US Constitution because to date those Federal statutes are not applied or enforced to their needs in the Missouri Judicial System at all and any points of contact therein.

Lastly, many organizations that exist to help the Brain-Injured Community suffer from a critical failure that contributes to the general breach of civil rights protections for people such as Mr. Goldberg. Their failure is to assume a Brain-Injured individual has a “non-Brain- Injured individual” close to them, to help and/ or do the complex cognitive work and tasks required of civic participation necessary to contact and access the various organizations, agencies, specialists and their services. That mistaken assumption dominates many services available to people with Brain Injury in the US. There are Brain-Injured people who simply do not have anyone to help them. This assumption and the critical failure of service to the Brain-Injured Community that it heralds, assumes that people living with Brain Injury do not effectively have needs at all, because they have non-Brain-Injured people in their lives to provide access to all the various programs and services that exist for them. This is not right, and when private specialist services, State and Local services fail their needs, the Federal Government must close the breach in American civil society.

Federal Laws that protect people with Brain Injury, are only as powerful as their application, and if they are not applied or enforced at all, as within the Missouri Judicial System to date, they might as well not exist. But they do exist. As the Visually-Impaired, Hearing-Impaired and Ambulatory-Impaired have and can rely on reasonable accommodations to access the Missouri Judicial System, specific to the needs and challenges of their disabilities, so too should the cognitively impaired like those of the Brain-Injured Community and so should have Mr. Goldberg among them in 2016, to overcome the difficulties associated with timing and completion of tasks he faced with each and every action needed to complete any legal undertaking, let alone the basic activities of everyday life he needed to accomplish to get to work on the legal tasks at hand, as he tried and to which the US Supreme Court can still review.

CONCLUSION

Mr. Goldberg had already made great effort despite his ABI to take his legal effort to Missouri, on behalf of his family, with a very strong case that could reasonably have seen victory and settlement in court. Instead, the asbestos-related industrial parties, identified as related to the illness and wrongful death of his wife were able to rely on the endemic disability discrimination against people with Brain Injury that is pervasive in the Missouri Judicial System to evade liability. But it was the Missouri Public Entities that closed the doors of their judicial system to Mr. Goldberg, by so failing to honor their Federal commitments to do just the opposite. In *Gideon v. Wainright*, 372 U.S. 335 (1963) Justice Hugo Black confirmed, "...We concluded that certain fundamental rights, safeguarded by the first eight amendments against federal action, were also safeguarded against state action by the due process of law clause of the Fourteenth Amendment..." that indeed, among the pressing conclusions of that judgment, fair access to the courts and rule of law is among those fundamental civil rights. Missouri has had many years, even decades, and centuries to be in compliance with the above Federal Laws and the US Constitution, and yet has not. In *Watkins v. The City of Memphis TN*, 373 U.S. 526 (1963), Justice Arthur Joseph Goldberg maintained,

"Most importantly, of course, it must be recognized that even the delay countenanced by *Brown* [*Brown v. Board of Education of Topeaka*, 342 U.S. 483 (1954)] was a necessary albeit significant, adaptation of the usual principle that any deprivation of constitutional rights calls for prompt rectification. The rights here asserted are, like all such rights, *present* rights; they are not merely hopes to some *future* enjoyment of some formalistic constitutional promise. The basic guarantees of our Constitution are warrants for the here and now and, unless there is so overwhelmingly compelling reason, they are to be promptly fulfilled."

So now, the Petitioner respectfully pleads with the US Supreme Court to grant the review of this petition for a writ of certiorari.

Duncan Abraham Goldberg
January 23rd, 2024

APPENDICES

Appendix A.)

1.)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No 23-2861

Robert Michael Goldberg

Ester Fiona Harrison, Surviving heirs of Robert
Michael Goldberg, et al.

Appellants

v.

State of Missouri, et al.

Appellees

Appeal from U.S. District Court for the Eastern
District of Missouri - St. Louis

(4:23-cv-00089-SEP)

ORDER

The petition for rehearing en banc is denied. The
petition for rehearing by the panel is also denied.

October 26, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/Michael E. Gans

2.)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No 23-2861

Robert Michael Goldberg

Ester Fiona Harrison, Surviving heirs of Robert
Michael Goldberg, et al.

Appellants

v.

State of Missouri, et al.

Appellees

Appeal from U.S. District Court for the Eastern
District of Missouri - St. Louis

(4:23-cv-00089-SEP)

ORDER

Appellants' motion to transfer this case to the
Ninth Circuit Court of Appeals is denied.

October 12, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/Michael E. Gans

3.)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No 23-2861

Robert Michael Goldberg

Ester Fiona Harrison, Surviving heirs of Robert
Michael Goldberg, et al.

Appellants

v.

State of Missouri, et al.

Appellees

Appeal from U.S. District Court for the Eastern
District of Missouri - St. Louis

(4:23-cv-00089-SEP)

ORDER

The motion for clarification is denied.

October 04, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/Michael E. Gans

4.)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No 23-2861

Robert Michael Goldberg

Plaintiff

Ester Fiona Harrison, Surviving heirs of Robert
Michael Goldberg; Angus Abraham Goldberg,
Surviving heirs of Robert Michael Goldberg; Duncan
Abraham Goldberg, Surviving heirs of Robert Michael
Goldberg

Plaintiffs - Appellants

v.

State of Missouri; City of St. Louis, Missouri; 22nd
Circuit Court of the City of St. Louis, MO; Judge
Robert Dierker

Defendants - Appellees

Appeal from U.S. District Court for the Eastern
District of Missouri - St. Louis

(4:23-cv-00089-SEP)

JUDGEMENT

Before KELLY, ERICKSON, and GRASZ, Circuit
Judges

The court has carefully reviewed the original file of
the United States District Court and orders that this
appeal be dismissed for lack of jurisdiction.

September 18, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/Michael E. Gans

Appendix B.)

1.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISIONROBERT MICHAEL GOLDBERG, et al.,
Plaintiffs,
State of Missouri, et al.,
Defendants.

Case No. 4:23-cv-00089-SEP

MEMORANDUM AND ORDER

Before the Court is the application of self-represented Plaintiff Duncan Abraham Goldberg for leave to commence this 42 U.S.C. § 1983 action without prepayment of the required filing fee.¹ Based on the financial information provided, the application is granted. *See* 28 U.S.C. § 1915(a). On initial review, the Complaint is dismissed without prejudice for failure to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(3)(2)(b).

LEGAL STANDARD OF INITIAL REVIEW

Under 28 U.S.C. § 1915(e)(2), the Court is required to dismiss a complaint filed *in forma pauperis* if it is frivolous or malicious, or if it fails to state a claim upon which relief can be granted. To state a claim under 42 U.S.C. § 1983, a plaintiff must demonstrate a plausible claim for relief, which is more than a “mere possibility of misconduct.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct

¹ Only Duncan Abraham Goldberg has filed an application to proceed without prepaying fees and costs.

alleged.” *Id.* at 678. “Determining whether a complaint states a plausible claim for relief” is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679. The court must “accept as true the facts alleged, but not legal conclusions or threadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” *Barton v. Taber*, 820 F. 3d 958, 964 (8th Cir. 2016); *see also Brown v. Green Tree Servicing LLC*, 820 F. 3d 371, 372-763 (8th Cir. 2016) (court is not required to “accept as true any legal conclusion couched as a factual allegation”).

When reviewing a pro se complaint under 28 U.S.C. § 1915(e)(2), the Court must give it the benefit of a liberal construction *Haines v. Kerner*, 404 U.S. 519, 520 (1972). A “liberal construction” means that, “if the essence of an allegation is discernible...then the district court should construe the complaint in a way that permits the layperson’s claim to be considered within the proper legal framework.” *Solomon v. Petray*, 795 F.3d 777, 787 (8th Cir. 2015) (quoting *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004)). But even pro se complaints must “allege facts, which if true, state a claim as a matter of law.” *Martin v. Aubuchon*, 623 F.2d 1282, 1286 (8th Cir. 1980); *see also Stone v. Harry*, 364 F.3d 912, 914-15 (8th Cir. 2004) (federal courts not required to “assume facts that are not alleged, just because an additional factual allegation would have formed a stronger complaint”).

BACKGROUND

Robert Michael Goldberg and his three children, Esther Fiona Harrison, Angus Ephraim Goldberg, and Duncan Abraham Goldberg, filed this case against the State of Missouri, the City of St. Louis, the 22nd Circuit Court of the City of St. Louis, and Judge Robert Dierker. This federal case arises out of a state court action for wrongful death, filed in the

Circuit court of St. Louis City in May 2016 by Robert Goldberg and his children, seeking damages for the loss of their wife and mother Dr. Barbara Sproston Goldberg. *See Goldberg v. Borg Warner Morse Tec LLC, et al.*, No. 1622-CC01232 (St. Louis City Cir. Ct. 2016). Plaintiffs claimed that Dr. Goldberg developed mesothelioma after exposure to asbestos fibers emanating from products manufactured, sold, or installed by 35 separate entities.

On May 15, 2022, Robert Goldberg dies and was dismissed from the wrongful death case. His children voluntarily dismissed the wrongful death case on September 19, 2022. *Id.*

THE COMPLAINT

On January 26, 2023, Plaintiff's Robert Michael Goldberg, Esther Fiona Harrison, Angus Ephraim Goldberg, and Duncan Abraham Goldberg filed suit in this Court alleging discriminatory treatment of Robert Goldberg in the wrongful death case of his wife. Plaintiffs allege their father was discriminated against in the St. Louis City Circuit Court because of his brain injury. Although Plaintiffs broadly and repeatedly allege “[s]tate-run systemic disability discrimination against people living with [b]rain [i]njury within Missouri,” Plaintiffs point to nondiscriminatory acts that occurred in the state court. Doc. [1] at 4.

Plaintiffs state that their lawsuit is based on violations of the following federal laws: “(1) Lilly Ledbetter Fair pay Act of 2009; (2) The Older Americans Act of 1965; (3) The Rehabilitation Act of 1973; (4) the Americans with Disabilities Act of 1990; (5) The Americans with Disabilities Amendment Act of 2009; (6) The Patient protection and Affordable Care Act of 2010; (7) rights of Equal Protection under the laws as written in the 14th Amendment of the U.S. Constitution; and (8) the Supremacy Clause of

Federal Law over State Law as written in Article VI of the U.S. Constitution.” Doc. [1] at 3.

Plaintiffs state that Robert Goldbert suffered from “Anoxic Brain Injury,” which caused the St. Louis City Court to discriminate against him as a litigant. Per the Complaint:

In place of any accommodation for someone living with brain injury, Mr. Robert Michael Goldberg encountered systemic disability discrimination against people living with Brain Injury as maintained and enforced by Missouri across the breadth of the Judicial System of the state and the 22nd circuit court of the City of St. Louis therein and his family suffered by association from that endemic disability discrimination maintained by the aforementioned Missouri public Entities and Parties. This systemic disability discrimination the aforementioned Missouri public Entities and personnel subjected Mr. Robert Michael Goldberg and his family to, denied him and his family by association, fair and all effective access to the courts and rule of law within their particular jurisdictions in Flagrant non-compliance and complete and utter transgression of united States Federal Law to which these Missouri Public Entities and Parties are bound and required by the same laws to uphold and honor.

Id. at 5. For relief, Plaintiffs seek \$50 million in “financial compensation to match for our case that was denied us by the denial of access to the courts and fair rule of law in Missouri due to the systemic disability discrimination against people living with brain injury that the Defendants maintain and enforce in their jurisdictions.” *Id.* at 8.

DISCUSSION

On initial review, the Complaint is subject to

dismissal pursuant to 28 U.S.C. § 1915(3)(2)(B), because it falls outside the statute of limitations period for bringing § 1983 suits.² The United States Supreme Court “has held that § 1983 claims accruing within a particular state should be governed by that state’s statute of limitations governing personal-injury claims” *Walker v. Barrett*, 650 F.3d 1198, 1205 (8th Cir. 2011). The five-year statute of limitations for personal injury actions found in Missouri Revised Statute § 516.120(4) applies to § 1983 actions arising in Missouri. *Sulik v. Taney Cty., Mo.*, 393 F.3d 765, 77 (8th Cir. 2005). A district court may dismiss an *in forma paupris* complaint under 28 U.S.C. § 1915 if the statute of limitations has expired. *Myers v. Vogal*, 960 F.2d 750, 751 (8th Cir. 1992).

Plaintiffs complain of conduct occurring between July 2016 and early January 2017. Doc. [1] at 4-6. The five-year limitations period expired between July 2021 and early January 2022. Plaintiffs did not file their case until January 26, 2023, more than a year after the statute of limitations had expired; therefore it must be dismissed. 28 U.S.C. § 1915(e)(2)(B).

In addition, the Court notes that only Duncan Abraham Goldberg has filed an application to proceed without prepaying fees and costs; his siblings have signed the complaint but have not paid the filing fee or filed applications to proceed without paying the filing fee. As a non-attorney pro se litigant, Goldberg may not represent his siblings or his deceased father in federal court. See 28 U.S.C. § 1654 (in United States courts, “the parties may plead and conduct

² To the extent Plaintiffs seek relief under the Americans with Disabilities Act, that claim fails for failure to allege any discriminatory acts by Defendants. Plaintiffs allege “systematic” and “endemic” disability discrimination “across the judicial system of Missouri and actually occur[ing] at every level therein.” Doc. [1] at 5. Such legal conclusions supported only by conclusory statements are not enough to state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

their own cases personally or by counsel"); *Jones ex rel. Jones v. Correctional Medical Services, Inc.* 401 F.3d 950, 952 (8th Cir. 2005) ("a non-attorney...may not engage in the practice of law on behalf of others").

Plaintiffs' case is also subject to dismissal for failure to state a claim against any of the four named Defendants. The allegations against Judge Robert Dierker are barred by the doctrine of judicial immunity, which provides that a judicial officer exercising the authority vested in him is free to act upon his own convictions and be immune from suit. *Hamilton v. City of Hayti, Mo.* 948 F.3d 921, 925 (8th Cir. 2020). "[J]udicial immunity is an immunity from suit, not just from ultimate assessment of damages." *Mireles v. Waco*, 502 U.S. 9, 11 (1991). It applies even if a judge is accused of acting maliciously or corruptly. *Pierson v. Ray*, 386 U.S. 547, 554 (1967).

The Circuit Court for the City of St. Louis is likewise immune to suit. State courts are protected from 42 U.S.C. § 1983 liability by the Eleventh Amendment. *Mildfelt v. Circuit Court of Jackson Cty., Mo.*, 827 F.2d 343, 345 (8th Cir. 1987); *see also Harris v. Missouri Court of Appeals, Western Dist.*, 787 F.2d 427, 429 (8th Cir. 1986) ("courts as entities are not vulnerable to § 1983 suits, because they are protected by state immunity under the eleventh amendment").

Plaintiffs fail to state a claim against the City of St. Louis. To prevail on a § 1983 claim against a governmental entity under *Monell*,³ a plaintiff must establish the entity's liability of the alleged conduct. *Kelly v. City of Omaha, Neb.*, 813 F.3d 1070, 1075 (8th Cir. 2016). Such liability may attach if the constitutional violation "resulted from (1) an official municipal policy, (2) an unofficial custom, or (3) a deliberately indifferent failure to train or supervise."

³ *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 58, 690 (1978).

Mick v. Raines, 883 F.3d 1075, 1079 (8th Cir. 2018); *see also Marsh v. Phelps Cty.*, 902 F.3d 745, 751 (8th Cir. 2018) (recognizing “claims challenging an unconstitutional policy or custom, or those based on a theory of inadequate training, which is an extension of the same”). Plaintiffs have not alleged liability based on a municipal policy, unofficial custom, or failure to train, and so have failed to state a claim against the City.

And Plaintiffs also fail to state a claim against the State of Missouri. “Section 1983 provides for an action against a ‘person’ for a violation, under color of law, of another’s civil rights.” *McLean v. Gordon*, 548 F.3d 613, 618 (8th Cir. 2008). “[N]either a State nor its officials acting in their official capacity are ‘persons’ under §1985.” *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71 (1989); see also *Calzone v. Hawley*, 866 F.3d 866, 872 (8th Cir. 2017).

CONCLUSION

Plaintiffs’ claims are barred by the statute of limitations, and the Complaint fails to state a claim against any Defendant. Moreover, Duncan Abraham Goldberg cannot represent his siblings and deceased father in federal court. Therefore, this case is dismissed. 28 U.S.C. § 1915 (e)(2)(B).

Accordingly,

IT IS HEREBY ORDERED that Plaintiff Duncan Abraham Goldberg’s application to proceed in the district court without prepaying fees or costs is **GRANTED**. Doc. [2].

IT IS FURTHER ORDERED that on initial view pursuant to 28 U.S.C. § 1915(e)(2)(B), Plaintiff’s claims are **DISMISSED** without prejudice.

IT IS FINALLY ORDERED that Plaintiffs’ motion for appointment of counsel is **DENIED** as moot. Doc. [3].

12a

An order of dismissal accompanies this
Memorandum and Order.

Dated this 21st day of April, 2023.

SARAH E. PITLYK
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 4:23-cv-00089-SEP

ROBERT MICHAEL GOLDBERG, ESTER FIONA
HARRISON, ANGUS EPHRAIM GOLDBERG,
DUNCAN ABRAHAM GOLDBERG,

Plaintiffs,

v.

STATE OF MISSOURI, CITY OF ST. LOUIS,
MISSOURI, 22ND CIRCUIT COURT OF THE CITY
OF ST. LOUIS, MISSOURI, and JUDGE ROBERT
DIERKER,

Defendants.

ORDER OF DISMISSAL

In accordance with the memorandum and order
issued on this date and incorporated herein,

IT IS HEREBY ORDERED that this action is
DISMISSED without prejudice.

IT IS HEREBY CERTIFIED that an appeal from
this action would not be taken in good faith.

Dated this 21st day of April, 2023.

SARAH E. PITLYK
UNITED STATES DISTRICT JUDGE

