No. 23 - 5129

In the Supreme Court of the United States

Earl L. Ward,

Petitioner,

v.

State of Minnesota.,

Respondents.

On Petition for Writ of Certiorari to the Minnesota Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The question presented is whether Minnesota's indefinite sex offender civil commitment scheme violates Petitioner's Fourteenth Amendment's due process rights. In 1994, Minnesota enacted an indefinite sex offender civil commitment scheme confining more than 700 people – the highest per capita commitment rate in the country. Because of the fundamental liberty interests infringed by civil commitment, the lower courts improperly applied found Petitioner met the statutory criteria largely because as written, the statutes require all relevant evidence, even if unreliable would no longer satisfy the standard for commitment. Due to this flaw, the state does not know, and cannot demonstrate, whether Petitioner met the commitment standard.

PARTIES TO THE PROCEEDING

Petitioner Earl Ward was the Respondent in the civil commitment proceedings at the state district court level, Appellant at the Minnesota Court of Appeals and Petitioner/Respondent at the Minnesota Supreme Court.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Earl L. Ward petitions for a writ of certiorari to the United States Supreme Court to the Minnesota Supreme Court in *In re the Civil Commitment of: Earl L. Ward,* Court of Appeals No. 2022 Minn. App. Unpub. LEXIS 774 (Minn. Ct. App. Dec. 5, 2022), *review denied* (Minn. Supreme Feb. 22, 2023).

OPINIONS BELOW

The Judgment of the Minnesota Court of Appeals is reported at: 2022 Minn. App. Unpub. LEXIS 774 (Minn. Ct. App. Dec. 5, 2022) (Ramsey County District Court, Court File No. 62-MH-PR-21-91). Petitioner files and serves a copy of the Supreme Court's Order denying further review.

JURISDICTIONAL STATEMENT

The judgment of the Minnesota Supreme Court was entered on February 22, 2023. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

INTRODUCTION

This case involves the scope and strength of the bedrock constitutional principle mandating the deliberate misconduct for those assigned to care for the civilly committed be assessed under an objective reasonableness standard. The Minnesota Court of Appeals, the Supreme Court and the Ramsey County District Court decided to go against this Court's decisions and precedents stating the objective reasonable standard does not apply to Petitioner, and civilly committed him to the Minnesota Sex Offender Program (MSOP). The fatal flaw of the lower court's decisions, and the crux of this Petition, is its failures—by implementation to meaningfully ensure that objective reasonableness standard is used and not the subjective component. After lengthy court proceedings and unsuccessful appeal to the Minnesota Court of Appeals and the Minnesota Supreme Court, Petitioner files this Petition with this Court.

Minnesota's failure to implement adequate periodic reviews establishes a death-in-confinement sentence without any of the safeguards of the criminal legal system, lacking assurance that continued confinement is legally justified. *In re Ince,* 2013 Minn. App. Unpub. LEXIS 244 (Minn. App. Mar. 18, 2014), *review granted* (Minn. Apr. 23, 2014) *rev. & rem. to Steele County District Court.* In reversing, the Supreme Court held in order to be committed, a person must be more than 50.1% probability that the person is "highly likely" to engage in sexual conduct in the future.

Now is the particularly important time for this Court to set out clearly that objective reasonableness must apply to Petitioner's civil commitment. *i.e. Wisconsin, Washington State, etc.* The lower courts' rulings make clear they will not abide or apply by the standards set out by this Court. *See also Youngberg v. Romeo,* 457 U.S. 307, 316 (1982). Such a rulings cannot stand under our Constitution, especially when Petitioner is the subject of the most politically powerless, despised, and vulnerable among us.

STATEMENT OF THE CASE

Petitioner Ward has received absolutely no Constitutional Standing Ground throughout this entire civil commitment process, he was never properly served Notice, he was denied access to the law library but given his discovery on a disc, he never even met his appointed counsel in person until the day of trial, he was not allowed to attend his pretrial hearing nor was he informed by his appointed counsel or served Notice by the court that it was taking place until it had already happened, he was not allowed to turn in a witness list, his 14th Amendment Right to Due Process was violated, his fundamental Rights to fairness was totally ignored by these lower courts. He received Ineffective Assistance of Counsel, they violated the Ex post facto Clause, and numerous Statutory violations.

In 1994, Minnesota's legislature enacted the most sweeping sex offender civil commitment statute in the United States. The enactment followed the Minnesota Supreme Court's decision to vacate a civil commitment order in a highly-charged and politically salient case. *In re Linehan*, 518 N.W. 2d 609 (Minn. 1994), involving a man with a record of multiple sexual assaults of young women. The court found the government had not met its high burden of proving *Linehan* had an "utter lack of power to control himself," the then-existing test for commitment under Minnesota law. *Id.* at 614.

A political and media firestorm erupted after the Minnesota Supreme Court's decision. The Governor of Minnesota immediately called a special legislative session and, after just 97 minutes of debate, the legislature unanimously passed Minnesota's current sex offender civil commitment statute. *See In re Linehan,* 557 N.W.2d 171, 198 (Minn. 1996) *affirmed,* 594 N.W.2d 867 (Tomljanovich, J., dissenting).

In the three decades since the enactment of Minn. Stat. § 253D, the total number of civilly committed sex offenders in Minnesota has ballooned to more than 750 and counting. Minnesota's statute, in sharp contrast to other sex offender commitment statutes, including the Kansas statute this Court approved in *Hendricks*, 521 U.S. 346, fails to require the "highly-likely" standard of persons subject to indefinite commitment assuring they continue

to meet the commitment standard , and in practice, Minnesota does not conduct regular risk assessments. Hundreds of civilly committed people in Minnesota have never received a risk assessment regarding the "highly-likely" standard or risk assessments that are outdated and invalid. As a result, the State of Minnesota does not know who in their custody continues to satisfy the commitment standard. Even more troubling is the State knows, for some of the people in custody, they in fact satisfy discharge criteria but take no action to facilitate discharge.

Ultimately, the lower courts concluded, in relevant part, "even though it is not narrowly tailored because [it] indisputably fails to require periodic risk assessments" and thus "the statute, authorizes prolonged commitment, even after committed individuals no longer pose a danger to the public[.]"Although under the statute a committed person can trigger a risk assessment by filing a petition for release, this provision simply fails to guarantee that commitment ends when the basis for the commitment no longer exists. (the district court found that for petitioner, the State satisfied continue the criteria for ongoing commitment). Finally,

REASONS FOR GRANTING THE PETITION

I. The Lower Courts Ruling Conflicts With This Court's Fundamental Rights Jurisprudence And Bedrock Principal of Constitutional Law.

A. The Decision Below Undervalues The Right To Be Free From Massive Deprivations Of Physical Liberty.

"[A]s a matter of due process," civil confinement is only permissible so long as the basis for the initial commitment exists; once the rationale for commitment disappears, the confinement must end. *Foucha*, 504 U.S. at 77 (citing *O'Connor v. Donaldson,* 422 U.S. 563, 575 (1975)) ("Even if the initial commitment was permissible, it could not constitutionally continue after that basis no longer existed.") (internal quotation marks omitted). Commitment must cease when the person "has recovered his sanity or is no longer dangerous." *Jones v. United States,* 463 U.S. 354, 368 (1983) (citing *O'Connor,* 422 U.S. at 575-76) (emphasis added). The well-established foundation for these holdings is "[f]reedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at

the heart of the liberty that [the due process clause] protects." *Zadvydas,* 533 U.S. at 690; *see also Foucha*, 504 U.S. at 80. Although this Court has never squarely addressed the question presented in this case – whether the liberty impaired by civil commitment is a fundamental liberty interest – it has certainly recognized time and time again that "civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas,* 441 U.S. 418, 425 (1979); *see also Foucha,* 504 U.S. at 80 ("[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action); *Youngberg v. Romeo,* 457 U.S. 307, 316 (1982), which the petitioner Wards Due Process Clause Rights has been violated and not protected since he committed his (1991)promoting prostitution offense, the Department of Corrections (D.O.C.) probation and parole in conjunction with the Bureau of Criminal Apprehension (BCA) violated the Ex post Facto Clause, see Art. I, 9, cl. 3Federal Gov., Art. I, 10, cl. 1 State Gov., by applying the (1992) Registration Act statue retroactively to petitioner and again in (2005) they retroactively applied the community notification act statue 244.052, to the petitioner again violating the Ex post Facto Clause, these Constitutional Rights Laws were put in place to protect the petitioners Liberties, Life, and Freedoms from being taken away by government agencies, but in the petitioners case they have been allowed to do so by the lower courts.

This Court has found involuntary civil detainment is only proper in certain narrow circumstances. *Hendricks,* 521 U.S. at 357. A civil commitment scheme must either be limited in duration or contain important procedural protections ensuring it ends when circumstances no longer justify confinement. In *Hendricks*, for example, this Court upheld Kansas's civil commitment scheme in large part because it required an "annual review to determine whether continued detention was warranted." *Id.* at 353. In *Salerno*, 481 U.S. 739, this Court upheld a pretrial detention scheme in part because of its "stringent time limitations" as it was reserved for the most "serious of crimes." *Id.* at 747. In contrast, this Court has struck down confinement schemes of indefinite duration not accounting for changed circumstances that might eliminate the need for secure confinement. *See Zadvydas,* 533 U.S. at 691-92 (striking down a scheme confining aliens because it was potentially permanent); *Foucha,* 504 U.S. at 82-83 (finding a due process violation because the statute did not require discharge when the basis for confinement ended). The principle that a person always has a fundamental right to liberty underpins each of these decisions. To be sure, the

government can limit that right with a narrowly tailored solution to a compelling governmental interest. Especially when the government lacks professional judgment standard *Youngberg v. Romeo,* 457 U.S. 307, (1982) not vetting evidence that violates State and Federal Statues creating arbitrary governmental actions, but then refuses to allow the petitioner Ward an opportunity to raise these due process violations, by abusing the courts discretion, to keep these violations covered up.

When that reason evaporates, the person's fundamental right prevails. *Zadvydas*, 533 U.S. at 691-92; *see also Jones*, 463 U.S. at 368.[1] The lower Courts decisions are contrary to and conflict with this Court's rulings and the basic constitutional principle "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *Salerno,* 481 U.S. at 755. As explained *supra*, the lower courts ruled Petitioner "poses a significant danger to himself or others" and does not possess "fundamental liberty interests." Only by first diminishing the basic constitutional rights held by Petitioner could the lower courts apply a lesser standard of review and uphold the statute. The Constitution does not provide less protection to certain groups or less entitlement to fundamental rights. The lower courts framing of the question in such a narrow fashion mirrors the reasoning soundly rejected by this Court in *Obergefell v. Hodges*, 135 S. Ct.

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[1] The reasons for placing strict limitations on civil confinement are obvious. A person confined due to a serious mental illness or because of insanity, or a person labeled a sexually dangerous offender, can recover and successfully reenter society. *See e.g. O'Connor v. Donaldson*, 422 U.S. 563, 575 (1975) (finding that although a person is mentally ill, if they are not also dangerous and can live safely in the community, commitment cannot continue). Offenders' brains develop, and criminal and dangerous behavior concomitantly declines with age. Robert J. Sampson & John H. Laub, Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70, 41 CRIMINOLOGY 301, 315 (2003) ("Aging out of crime is thus the norm—even the most serious delinquents desist."), available at http://scholar.harvard.ed u/files/sampson/files/2003_crim_laub_1.pdf. The presumption of rehabilitation and recovery is the foundation of the criminal sentencing system, which allows for release for all but the most dangerous in society. Those principles are no less important in the civil commitment context, where people are potentially indefinitely confined for a condition that is often not permanent. *See Foucha v. Louisiana*, 504 U.S. 71, 81-82 (1992) (recognizing the likelihood of a person regaining sanity).

2584 (2015). In *Obergefell*, this Court refused to narrowly identify the right at issue as a "right to same-sex marriage." *Id.* at 2602. Instead, the Court cited a string of cases involving, for example, interracial marriage, *see Loving v. Virginia*, 388 U.S. 1 (1967), where the right is defined as the "right to marry in its comprehensive sense," and rejected the notion of a subclass for same-sex marriages. *Obergefell,* 135 S. Ct. at 2602.

The question in those cases was whether the state crafted a narrowly tailored response to meet a compelling interest in denying the fundamental right to marriage. *Id.* at 2598. Similarly, here the lower courts incorrectly framed the right at issue as the right of "persons who pose a significant danger to themselves or others... [to] freedom from physical restraint," rather than as a right of all persons to be free from the total and often permanent deprivation of physical liberty accompanying indefinite civil commitment. Since there is no dispute confinement of "persons who pose a significant danger to themselves or others" can constitute a compelling state interest, the appropriate question here is whether Petitioner's indefinite civil commitment is narrowly tailored to meet that objective. The lower courts decisions and findings demonstrate it is not, in large part because it lacks the necessary protection of regular, periodic review ensuring confinement extends only so long as its justification remains.

II. The lower courts rulings conflicts with the decisions of the Minnesota Supreme Court and other State and federal Courts.

The lower courts created an irreconcilable conflict with at least six state supreme courts, including the Supreme Court of Minnesota, when it ruled Petitioner's indefinite civil commitment does not implicate a fundamental right requiring application of heightened scrutiny (which in petitioner Wards case strict scrutiny would have helped Constitutional justice to prevail) . That ruling is also in serious tension with decisions from other federal courts and state supreme courts applying strict scrutiny to liberty interests in equal protection challenges to civil commitment. In direct conflict with its own precedent, the Minnesota Supreme Court has held that civil commitment statute implicates fundamental rights, and thus strict scrutiny should be

applied.[2] *In In re Blodgett,* 510 N.W.2d 910 (Minn. 1994), "[t]o live one's life free of physical restraint by the state is a fundamental right... [t]he state must show a legitimate and compelling interest to justify any deprivation of a person's physical freedom." *Id.* at 914 (internal citations omitted). Similarly, *In re Linehan,* 557 N.W.2d 171 (Minn. 1996), *affirmed,* 594 N.W.2d 867, found "the fundamental right to liberty is at stake" and therefore the commitment statute "is subject to strict scrutiny." *Id.* at 181. The lower courts ignored its own Minnesota Supreme Court's findings in *Blodgett* and *Linehan* on the appropriate standard of review for facial challenges to the commitment statute and instead proceeded with its own analysis.

Other state supreme courts have also held indefinite loss of physical liberty accompanying civil commitment implicates a fundamental right. *See Commonwealth v. Knapp*, 441 Mass. 157, 164 (Mass. 2004) ("[t]he right of an individual to be free from physical restraint is a paradigmatic fundamental right," and any "[c]onfinement, therefore, must be narrowly tailored to further a legitimate and compelling governmental interest"); *In re Treatment and Care of Luckabaugh,* 568 S.E.2d 338, 347 (S.C. 2002) ("a person's interest in freedom from bodily restraint is at the core of the liberty protected by the Due Process Clause from arbitrary governmental actions" and thus "we apply strict scrutiny analysis") (internal citation and quotation omitted); *State v. Post*, 541 N.W.2d 115, 129-130 (Wis. 1995) ("[f]reedom from physical restraint is a fundamental right" applying strict scrutiny analysis); *In re Young*, 857 P.2d 989, 1000 (Wash. 1993), superseded by statute as recognized in *In re Detention of Thorell,* 72 P.3d 708 (Wash. 2003) (finding civil commitment to "impinge on fundamental rights" applying strict scrutiny); *see also Atwood v. Vilsack,* 725 N.W.2d 641, 648 (Iowa 2006) (applying strict scrutiny to a substantive due process challenge to its sex offender civil commitment scheme; however, since the challenged part of the statute survived strict scrutiny, the Iowa Supreme Court believed it "unnecessary [] to resolve the question whether the petitioners' claimed

[2] Although these cases upheld the constitutionality of the civil commitment statute, they are distinguishable from this case because evidence from the over thirty years of implementation of the statute now exists to support Petitioners' claims.

interest is fundamental"). Petitioner could not locate a case where a state court of last resort or federal appellate court, concluded indefinite civil commitment does not implicate a fundamental right.

In the Fourteenth Amendment equal protection context, additional courts have ruled that civil commitment implicates a fundamental right. *See In re Smith,* 178 P.3d 446, 453 (Cal. 2008) ("[s]trict scrutiny is the appropriate standard against which to measure equal protection claims of disparate treatment in civil commitment" because "personal liberty is at stake") (internal citations and quotation marks omitted); *In re Care and Treatment of Norton*, 123 S.W.3d 170, 173-174 (Mo. 2004) ("civil commitment... impinges on the fundamental right of liberty" applying strict scrutiny); *Williams v. Meyer,* 346 F.3d 607, 616 (6th Cir. 2003) ("[a]ny difference in treatment of involuntarily detainees is subject to strict scrutiny."). The lower courts departed from accepted case law, including its own highest court in Minnesota, to find no fundamental liberty right present refusing to apply strict scrutiny.

The Minnesota Supreme Court should have had these cases under strict scrutiny, this case is a perfect example of why they should. Petitioner Ward was Deprived Equal Protection by persons acting under the color of State Law see, West v. Atkins, 487 U.S. 42, 48, 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1988), there statutory procedures for designation was inadequate to ensure Due Process, see Parratt v. Taylor, 451 U S 527, 535, 68 L Ed 2d 420, 101 S. Ct. 1908 (1981). Then the trial court refused to acknowledge the fact that Petitioner Wards Attorney Rick Mattox put it on trial court record (see) that he was filing a post trail Memorandum, **(which him having a stroke prevented him from doing)** and that he would be filing the petitioners Pro se Motions and Memorandum with his, which is where they would have been Collateral Attacking the arbitrary governmental actions by the D.O.C., and BCA., the U.S. Constitution Ex post Facto Clause was to protect the petitioner from these Due Process Clause violations, see Wilkinson v. Dotson, 161 L. Ed. 2d 253, 125 S. Ct. 1242, 1245 (2005); Otey v. Hopkins, 5 F. 3d 1125, 1130-32 (8th Cir. 1993). The Deprivation of Protection was caused by the conduct of D.O.C. and BCA arbitrary actions that the Minnesota Supreme court should have scrutinized.

They violated ex post facto by applying these statues to the petitioner that did not apply to him in order to make him fit the criteria for sex offender treatment, which he did not fit into that criteria before they Unconstitutionally applied these statues to the petitioner, which is also how they were able to refer him for civil commitment, which they would not have had any grounds to refer him for civil commitment if they had not created this false narrative to take away the petitioners liberties, life, and freedom which are fundamental rights that supposed to be protected.

III. This Case Is An Ideal Vehicle To Decide The Urgent and Important Question Presented.

The foundational nature of the liberty right at stake, the magnitude of the violation, and the number of people harmed by the violation all point towards the urgency of review in this case. The right to be free from indefinite physical restraint is at the heart of the Constitution's protection of liberty. Yet, because of the failure to provide meaningful, regular opportunities for assessment and release under Minnesota's civil commitment scheme, this most fundamental of rights is in jeopardy, not for a single person, but for hundreds of people indefinitely, and perhaps permanently confined, without the benefits or protections of the criminal process. The fundamental nature of the right is matched in importance by the magnitude of the violation. Indeed, when a "statutory scheme 'is so punitive in purpose or effect'" it must be treated as having "established criminal proceedings for constitutional purposes." In this case, the lower courts found that Minnesota's civil commitment scheme, is narrowly tailored and results in a purpose of civil commitment. *Kansas v Crane*, 534 U.S. 407, 412 (2002) (emphasizing the danger that civil commitment become "a mechanism for retribution or general deterrence.") (citation and quotation marks omitted). This is not a statute where the Minnesota legislature worked to "limit[] confinement to a small segment of particularly dangerous individuals" while establishing "strict procedural safeguards." *Hendricks*, 521 U.S. at 368. To the contrary, Minnesota's legislature enacted a

dramatically expanded sex offender civil commitment scheme after just 97 minutes of debate, in the wake of public outcry over the Minnesota Supreme Court's decision in *In re Linehan,* 518 N.W.2d 609 (Minn. 1994). *See also Carver v. Nixon*, 72 F.3d 633, 655-56 (8th Cir. 1995) (explaining that legislative enactments normally, "while perhaps not always perfect, include[] deliberation and an opportunity for compromise and amendment, and usually committee studies and hearings."); Joanna Woolman, Going Against the Grain of the Status Quo: Hopeful Reformations to the Sex Offender Civil Commitment in Minnesota – *Karsjens v. Jesson*, 42 MITCH. HAMLINE L. REV. 1363, 1381-84 (2016) (describing the panicked atmosphere and the lack of serious deliberation that resulted in the 1994 statute). Since that time, MSOP's population has climbed to over 700 people, the highest per capita commitment rate in the country.

As its implementation has made clear, the breadth of the law was clearly designed for the purpose of continuing confinement, without ensuring that the statute applied only to a "narrow[] [] class of persons," *Hendricks,* 521 U.S. at 358, or providing adequate mechanisms to ensure that confinement was strictly limited to its necessary duration. For example, there is no provision for "immediate release upon a showing that the individual is no longer dangerous or mentally impaired." *Id.* at 368-69. Nor does the statute require meaningful periodic risk assessments or demand MSOP affirmatively facilitate release when a person no longer satisfies the commitment criteria or in Petitioner Wards case never fit the criteria until Ex post Facto Clause violations by arbitrary government actions made it fit you. *See generally id.* at 346 (approving a civil commitment scheme requiring state to demonstrate annually the person met the statutory standards justifying admission); *Foucha*, 504 U.S. at 82 (civil commitment statute unconstitutional because confinement continued beyond its justification). This is a scheme showing little regard for whether the people it confines will ever be released. Reviewing twenty years of experience, the evidence at trial confirmed the punitive thrust of the statute. Compare *Seling v. Young*, 531 U.S. 250 (2001) (involving an ex post facto challenge to a civil commitment program as applied to a single person at a certain moment in time rather than a broad pattern of implementation over a period of many years), with

Karsjens, 845 F.3d 394. MSOP does not provide regular periodic risk assessments for its civilly committed population, and, the state does not know if hundreds of people even meet the standards for commitment or discharge. and more than 400 committed persons have never received a risk assessment). Moreover, the MSOP admits that it knows many committed elderly and mentally challenged people who can be safely treated in the community rather than the MSOP's high security facilities. This situation, where potentially hundreds of people languish behind lock and key when the state cannot demonstrate they should be there, requires this Court's immediate intervention.

A clear standard of review needs to be announced now before the issues presented here arise again. Twenty states (including Minnesota) have laws providing for the civil commitment of sex offenders, many of which are being challenged on due process grounds. *Van Orden v. Schaefer,* 129 F.Supp.3d 839, 867 (E.D. Mo. 2015) (holding that the Missouri sex offender civil commitment statute violates due process, even on rational basis review, because, among other reasons, its "risk assessment and release procedures [] are wholly deficient"); *Willis v. Palmer*, No. C12-4086-MWB (N.D. Iowa) (post-summary judgment and pending trial on whether the Iowa sex offender civil commitment statute violates due process). Moreover, given the fear that continues to surround sex offenses and the people who commit them, not to mention the relative political powerlessness of those who are civilly confined, additional protections and caution are unlikely to be added through the legislative process absent a court ruling that requires the change. This Court has a unique and unequivocal obligation to guard the most vulnerable, despised, and politically powerless among us against majoritarian encroachment on fundamental rights and liberties. *See United States, v. Carolene Products, Inc.,* 304 U.S. 144, 152 n.4 (1938) (noting that "prejudice against discrete and insular minorities . . which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities . . . may call for a correspondingly more searching judicial inquiry"); *McCleskey v. Kemp,* 481 U.S. 279, 343 (1987) (Brennan, J., dissenting) ("[t]hose whom we would banish from society or from the human community itself often speak in too faint a voice to be heard above

society's demand for punishment. It is the particular role of courts to hear these voices, for the Constitution declares that the majoritarian chorus may not alone dictate the conditions of social life."). The lower courts did the opposite in this case. By finding no fundamental liberty interest existed, applying rational basis review and requiring Petitioner to prove conscience-shocking behavior, the lower courts sent a clear and dangerous message that federal courts are not going to intervene in state civil commitment schemes - even when the result is effectively permanent confinement without any basis for believing that the confined pose a continuing risk to society. This Court should not allow that dangerous impression to stand.

This case is the ideal vehicle for the Court to address these important issues. Furthermore, the lower courts findings makes this the perfect opportunity for this Court to clarify and establish the proper standard of review for substantive due process claims invoking fundamental rights issues, particularly in the civil commitment context, providing over twenty years of evidence about Minnesota's implementation of its civil commitment statute and allows this Court to reach a clear and well-supported decision regarding the existence of fundamental liberty rights and the subsequent analysis under which due process claims should proceed. This case thus presents a straightforward way to resolve these issues and prevent proliferation of confusing rulings such as the one reached by the lower courts.

IV. Ineffective Assistance of Counsel.

Involuntarily civilly committed Petitioner Ward had the right to have effective assistance of counsel in the commitment proceedings, which is indefinite. Accordingly, courts have widely recognized a constitutional right to effective court-appointed counsel in civil commitment proceedings. *Sarzen v. Gaughan,* 489 F. 2d 1076, 1083 (1st Cir. 1973); *Project Release v. Prevost,* 722 F. 2d 960, 976 (2nd Cir. 1983); *United States v. Budell,* 187 F. 3d 1137, 1141 (9th Cir. 1999). In making a determination whether counsel was effective or not, courts must balance: (1) the private interest at stake; (2) the government's interest, and (3) the risk that the procedures used will lead to erroneous decisions. *Lasiter v. Dep't of Soc. Servs.,* 452 U.S. 18, 27 (1981) (termination of parental rights); *Gagnon v. Scarpelli,* 411 U.S. 778

(1973) (parole and probation matters). There is a presumption favoring a right to effective court appointed counsel where personal freedom is at stake. *Johnson v. Zerbst,* 304 U.S. 458, 462-463 (1938). The issue in all cases is what "fundamental fairness" requires.

Petitioner Wards attorney Rick Mattox suffered a stroke before he could file his post-trial memorandum which he stated on court record that he would be filing along with pro se motions and post-trial memorandum with the petitioner, but unfortunately before that could happen counsel Mattox suffered a stroke this also made him ineffective assistance of counsel because he was unable to complete the trial, he was going to Collateral Attack the arbitrary governmental actions by the D.O.C. and the BCA in his post-trial memorandum. The petitioner never heard from his attorney again, petitioner tried to reach him on several occasions but to no avail, he heard or knew nothing, so the petitioner filed a pro se memorandum and the court never told the petitioner anything, until they appointed another attorney to inform him that he had been civilly committed, which the trial court abused their discretion by making a ruling knowing the trial had not been completed, and proceeded as if the trial was finished as if the attorney Rick Mattox had not put it on court record that he was filing post-trial memorandum, the court further violated the petitioners Right to Due Process. The court had an obligation to protect the Due Process Rights of the Petitioner, the petitioners fourteenth Amendment Rights to Due Process were violated on numerous occasion throughout this trial this is why the Petitioner had raised Ineffective Assistance of Counsel during trial process there were several procedural due process violations throughout the trial.

The private interest at stake is significant, as indefinite civil commitment, is a substantial infringement on virtually every liberty a person would otherwise have. Another interest derives from the States' role as *parens patrie,* or protector of the committed person—one purpose and justification of civil commitment is to secure treatment or the respondent for the benefit of the respondent himself. In its role as protector of Respondent, the government shares Respondent's interests in an accurate adjudication. Petitioner can show that his counsel was ineffective and that his counsel's

performance fell below an objective standard of reasonableness.[3] In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances. The Supreme Court further explained:

Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy." *Id.* at 689 (citations omitted); *see also Virgin Islands v. Weatherwax*, 77 F.3d 1425, 1431, 33 V.I. 399 (3d Cir.), *cert. denied*, 519 U.S. 1020, 117 S. Ct. 538, 136 L. Ed. 2d 423 (1996).

Petitioner can also clearly show that counsel's performance was substandard and that he was actually prejudiced. Thus, "the right to counsel is the right to effective assistance of counsel." In addition, the trial court violated Petitioner's constitutional rights, when counsel had a stroke and continued with the committing proceedings, knowing that counsel could not represent Petitioner in the condition he was in. *Lee v. United States,* U.S. , 137 S. Ct. 1958, 1966, 198 L. Ed. 2d 476 (2017) (Defendant had adequately demonstrated a reasonable probability that, but for counsel's erroneous advice, he would have rejected a guilty plea where his plea colloquy and surrounding circumstances showed deportation was the determinative issue in his decision to accept the plea, and it was not irrational to reject the plea deal when there was some chance of avoiding deportation, however remote); *see also Bartley v. Kremens,* 402 F. Supp. 1039, 1051 (E. D. Pa. 1975).

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[3] *Jacobs v. Horn,* 395 F.3d 92, 102 (3d Cir. 2005); *Smith v O'Grady*, 312 US 329, 334, 85 L Ed 859, 61 S Ct 572 (1941).

Petitioner also challenges the impartiality of the trial judge based on an exchange between the trial judge and Petitioner's counsel during the commitment proceedings. "The state must provide a trial before an impartial judge . . . ." *Rose v. Clark*, 478 U.S. 570, 577, 106 S. Ct. 3101, 92 L. Ed. 2d 460 (1986) (citing *Tumey v. Ohio*, 273 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749, 5 Ohio Law Abs. 159, 5 Ohio Law Abs. 185, 25 Ohio L. Rep. 236 (1927)). The courts indulge "a presumption of honesty and integrity in those serving as adjudicators." *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975). In this case, the presiding judge was the same judge who oversaw and adjudicated Petitioner in his criminal proceedings. There is no way that the same judge could have been fair, neutral and impartial.[4]

Finally, when Petitioner was handed the civil commitment documents, he was not allowed to attend any hearing, except through a phone conference in his caseworker's office at the Minnesota department of Corrections Facility at Faribault.

CONCLUSION

As stated, the lower courts rulings created an irreconcilable conflict with a number of Federal Courts, Appellate Courts and this Court's precedent regarding indefinite civil commitment and the assistance of counsel or the lack thereof. *See also Strickland v. Washington,* 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). The lower courts rulings are the opposite of what this Court has ruled and the standard set forth in *Strickland,* which is in direct conflict of *Strickland.* This Court has a unique and unequivocal obligation to guard the most vulnerable, despised, and politically powerless among us against majoritarian encroachment on fundamental rights and liberties. *See United States v. Carolene Products, Inc.,* 304 U.S. 144, 152 n.4 (1938) (noting that "prejudice against discrete and insular minorities . . . which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities . . .may call for a correspondingly more searching judicial inquiry"); *Id. McCleskey.* The

[4] *Bracy v. Gramley*, 520 U.S. 899, 908-09, 117 S. Ct. 1793, 138 L. Ed. 2d 97 (1997) (quotation marks, alteration omitted).

lower courts did the opposite in this case. By finding no objectively unreasonable component existed, applying rational basis review and requiring Petitioner prove subjective state of mind behavior, the lower courts sent a clear and dangerous message that they are not going to intervene in objectively unreasonable cases - even when the result is effectively permanent without any basis. This Court should not allow that dangerous impression to stand.

This case is the ideal vehicle for the Court to address this important issue. Furthermore, the dispositive issue is the appropriate standard of *Youngberg v. Romeo*, and *Foucha v. Louisiana,* apply. This case thus presents a straightforward way to resolve the issue and prevent proliferation of confusing rulings such as the one reached by the lower Courts.

For the foregoing reasons, the petition for writ of certiorari should be granted.

Re-Executed on June 21st, 2023

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