No. 23-6010

IN THE

SUPREME COURT OF THE UNITED STATES

JAMES Woo — PETITIONER
(Your Name)

vs.

JOSE ANGEL BAEZ et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COLORADO COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James Woo, DOC # 179463, pro se
(Your Name)
Bent County Correctional Facility
11560 County Road FF.75
(Address)

Las Animas, CO 81054
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

I. Whether the Colorado Court of Appeals erred in holding that the certificate of review requirement pursuant to Colorado Revised Statute ("C.R.S.") § 13-20-602 is not unconstitutional as applied to the Petitioner – an indigent plaintiff unable to afford the cost of expert review – in barring his negligence claims.

II. Whether the Court of Appeals erred in holding or tacitly approving that: (A) dismissal for failure to file a certificate of review should be with prejudice; (B) expert testimony is required even for conduct that the Petitioner alleged was based on conspiracy, deceit, and malice; and (C) the Rules of Professional Conduct cannot establish any attorney standard of care.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

JAMES WOO V. JOSE ANGEL BAEZ, MICHELLE MEDINA, and RICHARD BEDNARSKI.

RELATED CASES

- James Woo v. Jose Angel Baez, Michelle Medina, and Richard Bednarski, No. 19CV227, District Court, El Paso County, Colorado. Judgments entered Mar. 10, 2020 and Feb. 19, 2021.

- James Woo v. Jose Angel Baez, Michelle Medina, and Richard Bednarski, No. 21CA343, Colorado Court of Appeals. Judgment entered Sep. 29, 2022.

- James Woo v. Jose Angel Baez, Michelle Medina, and Richard Bednarski, No. 22SC873, Colorado Supreme Court. Judgment entered May 22, 2023.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[✓] reported at Woo v. Baez, 2022 COA 113, 2022 Colo. App. LEXIS 1437; 2022 WL 4542404; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[✓] For cases from **state courts:**

The date on which the highest state court decided my case was May 22, 2023. A copy of that decision appears at Appendix C.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[✓] An extension of time to file the petition for a writ of certiorari was granted to and including October 19, 2023 (date) on July 7, 2023 (date) in Application No. 23 A 15.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Pursuant to Rule 14.1(e)(v) and Rule 29.4(c), 28 U.S.C. § 2403(b) may apply since the constitutionality of a State statute is drawn into question and neither the State nor agency officer or employee thereof is a party. As such, the notification requirement pursuant to Rule 29.4(c) has been made by serving a copy of this Petition on the Colorado Attorney General.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

§ 13-20-602, C.R.S. 2023

See Appendix D

U.S. Const. amend. I

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. XIV, § 1

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

STATEMENT OF THE CASE

Pro se pleadings are held to less stringent standards than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972).[1]

A. Facts and Procedural History

Petitioner James Woo ("Woo") filed the underlying civil complaint on July 9, 2019 against Respondents Jose Angel Baez, Michelle Medina, and Richard Bednarski – private attorneys who represented him in a criminal case in El Paso County, Colorado.[2] (Court File ("CF"), pp 1-20) Woo brought claims against Mr. Baez and Ms. Medina for: (1) fraud; (2) breach of contract; (3) willful breach of fiduciary duty; (4) professional negligence; (5) negligent misrepresentation; (6) unjust enrichment; and (7) replevin. (CF, pp 10-20) He brought claims against Mr. Bednarski for: (1) willful breach of fiduciary duty; (2) professional negligence; and replevin. Id.

Central to Woo's claims are allegations that the Respondent(s): (1) obtained him as a client via misrepresentation (CF, p 2, ¶ 6; p 118); (2) entered into a prohibited nonrefundable fee agreement with him (CF, p 2, ¶ 7; p 107, ¶ 1a); (3) created a conflict of interest in said agreement by assuming responsibility for case expenses, inducing them to minimize necessary expert and investigation costs from Woo's fixed budget while maximizing attorney fees (CF, pp 2-3, ¶¶ 9-12; p 107, ¶ 6); (4) attempted to double-charge Woo's 89-year-old father for attorney fees Woo already paid and transfer their contractual expense liabilities to Woo's father (CF, p 4, ¶ 21; p 117); (5) precluded the termination of their representation after said breach of trust due to the wrongful nonrefundable retainer (CF, p 4, ¶ 22); (6) willfully cured the prosecution's discovery violation by

[1] Petitioner has no physical access to a law library for word processing due to his inmate custody level. Although he has verified most cases cited herein to ensure that their holdings are current, it is virtually impossible for him to verify every single case because he is allowed a maximum of only a few Shepard's requests monthly and sometimes receives no response to legal requests for weeks at a time.

[2] Lead counsel Mr. Baez and Ms. Medina are Florida attorneys who appeared pro hac vice. (CF, p 1, ¶¶ 2-3) Mr. Bednarski was local counsel. Id.

using false information to induce Woo to waive speedy trial (CF, pp 5-6, ¶¶ 27-38); (7) breached the contract by cancelling scheduled expert testimony promised to the jury, mid-trial, immediately after their failed attempt to intercept funds from a check payable to Woo (CF, p 4, ¶¶ 23-26, pp 110-116); (8) failed to exercise due diligence by their own admission (CF, pp 7-9, ¶¶ 52-59; pp 119-126); and (9) deprived Woo of his digital property and case files (CF, pp 9-10, ¶¶ 61-64, 67-75). Woo provided documentary evidence to substantiate all of these claims. (CF, pp 107-134; explained in pp 139-147)

The district court granted Woo's motion to proceed without prepayment of filing and service of process fees, finding him indigent pursuant to § 13-17.5-103, C.R.S. 2019. (CF, pp 37-38)

The district court dismissed all claims against Mr. Bednarski with prejudice on March 10, 2020 based on Woo's failure to file a certificate of review pursuant to § 13-20-602, C.R.S. 2019. (CF, pp 182-84, 438; Appendix B)[3] The court granted the motion to dismiss of Mr. Baez and Ms. Medina, which alleged invalid service of process, on February 19, 2021. (CF, p 429; Appendix B)

Woo appealed, contending that: (1) the district court erred in returning service of process responsibility to him, denying substituted service, and dismissing all claims against Mr. Baez and Ms. Medina without resolving factual disputes regarding service validity; (2) the court improperly dismissed all claims against Mr. Bednarski with prejudice without allowing Woo to respond to the motion to dismiss, despite Woo's request for extension of time to file a certificate of review and contention that some claims were not subject to a certificate; and (3) the certificate of review requirement was unconstitutional as applied to him as an indigent plaintiff. (CF, p 432, ¶ 8)

The Colorado Court of Appeals: (1) reversed the dismissal against Mr. Baez and Ms. Medina based on the district court's error in denying substituted service; (2) reversed the dismissal of the

[3] The dismissal occurred before Mr. Bednarski was required to file his Answer to Woo's Complaint.

replevin claim against Mr. Bednarski, finding that it did not require a certificate; and (3) affirmed the dismissal of the remaining claims against Mr. Bednarski, finding that they required a certificate and that the certificate of review requirement did not violate Woo's constitutional rights to due process, equal protection, and court access. Woo v. Baez, 2022 COA 113 ("Opinion"), ¶¶ 2, 4, 6 (Appendix A).

The Colorado Supreme Court denied certiorari review on May 22, 2023. (Appendix C)

B. Preservation with Pertinent Quotations Pursuant to Rule 14.1(g)(i)

With respect to Issue I, Woo preserved his as-applied constitutional challenge of C.R.S. § 13-20-602 in his January 2, 2020 district court motion entitled "Plaintiff's Motion for Waiver from Certificate of Review Requirement or Appointment of an Expert": "C.R.S. § 13-20-602... deprives indigent persons of due process and access to the courts to the extent that... an expert, especially in the legal field who is essentially an attorney, requires a fee for service." (CF, p 94) He reiterated his arguments in his January 30, 2020 "Plaintiff's Motion for Appointment of Expert, Extension of Time, and Reconsideration of Certificate of Review Waiver in Response to the Court's January 17, 2020 Order". (CF, pp 136-37, ¶¶ 3, 6-8) As for Issue II, Woo preserved his arguments in the same motions. (See CF, p 95, ¶ 15; pp 96-101, 138-48, ¶¶ 16-50; pp 107-134 ("when the subject matter of a claim is within the common knowledge of ordinary persons, ... no certificate of review is required"; demonstrating with evidence why each claim is a matter of common knowledge)) To the extent that any claim was beyond a matter of common knowledge, Woo argued that "a court may look to the [Colorado Rules of Professional Conduct ("RPC")] to determine whether an attorney failed to adhere to a particular standard of care". (Id.; CF, ¶ 25) (citing Moye White LLP v. Beren, 320 P.3d 373, 379 (Colo. App. 2013)). The district court did not address any of the foregoing arguments for Issue I or II. (CF, pp 103-04, 182-84; Appendix B)

On appeal, Woo raised the same arguments: "[C.R.S. § 13-20-602] creates an unconstitutional monetary barrier to court access... and violates due process, resulting in the dismissal of meritorious claims by legitimately injured plaintiffs based solely on procedural, rather than substantive grounds." (Opening Brief, p 28) "C.R.S. § 13-20-602 denies equal protection by conditioning the right of a class of negligence plaintiffs to litigate based upon their financial ability to obtain an expert". Id. "It further violates plaintiffs' right to court access by requiring them to obtain evidence necessary to obtain a [certificate of review] that may not be possible prior to discovery." Id. In addition, Woo cited authorities from other states finding similar statutes "a special law prohibited by state constitution... and a violation of the separation of powers", applying those arguments to C.R.S. § 13-20-602. (Id. at pp 7, 28) He argued that his due process and equal protection challenges required strict scrutiny. (Reply Brief, pp 16-17)

As for Issue II, Woo argued on appeal that "expert testimony was unnecessary since the subject matter of his claims [was]... within the common knowledge of ordinary persons". (Opening Brief, p 23) "Further, the RPC can establish the standards of care for some of [his] claims. (CF, pp 97-99, ¶¶ 24-28)". (Id. at p 24) Woo argued that the district court "erroneously dismissed all claims with prejudice rather than without prejudice as [Mr. Bednarski] requested." (Id. at pp 6-7; Reply Brief, pp 13-14)

REASONS FOR GRANTING THE PETITION

I. The Colorado Court of Appeals erred in holding that the certificate of review requirement pursuant to C.R.S. § 13-20-602 is not unconstitutional as applied to the Petitioner – an indigent plaintiff unable to afford the cost of expert review – in barring his negligence claims.

"In every action for damages or indemnity based upon the alleged professional negligence of ... a licensed professional, the plaintiff's ... attorney shall file with the court a certificate of review ... within sixty days after the service of the complaint". § 13-20-602(1)(a), C.R.S. 2023. The certificate must declare that the plaintiff "has consulted with a person who has expertise in the area of the alleged negligent conduct" and that the expert "has reviewed the known facts" and "concluded that the ... claim ... does not lack substantial justification". § 13-20-602(3)(a). "Lack of substantial justification" is defined as "substantially frivolous, substantially groundless, or substantially vexatious." § 13-17-102(4), C.R.S. 2021.[4] "The failure to file a certificate ... shall result in [] dismissal". § 13-20-602(4). (See Appendix D)

Since Woo was indigent and depended upon C.R.S. § 13-17.5-103 for initial filing and service of process fees, he clearly lacked the funds to pay the much higher costs of an expert for a certificate of review – here, a criminal attorney to review his criminal case in the context of his civil claims.

"[A] statute or rule may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right although its general validity as a measure enacted in the legitimate exercise of state power is beyond question." Boddie v. Connecticut, 401 U.S. 371, 379

[4] The district court was required to make a similar finding before granting Woo's motion to proceed without prepayment of filing and service of process fees (CF, pp 37-38). See C.R.S. § 13-17.5-103(1) ("if the action on its face is frivolous, groundless, or malicious ... the motion to proceed as a poor person shall be denied.").

(1971). § 13-20-602 operates to deprive Woo of the rights to court access, due process, and equal protection by imposing an unconstitutional monetary burden at the initial stage of litigation before Mr. Bednarski is even required to file an Answer (CF, pp 151-54), resulting in a dismissal strictly due to Woo's indigence. The statute creates an enhanced burden for a class of professional negligence victims, of which the indigent are a particularly vulnerable subclass, conditioning their right to litigate based upon their financial ability to obtain an expert. The widespread implication is that all indigent plaintiffs with meritorious professional negligence claims against Colorado licensed professionals and who are unable to afford the cost of an expert are barred from civil redress, their claims dismissed from the outset.

In addition, § 13-20-602 violates the right to court access by requiring plaintiffs to provide evidence supporting their claims before they have an opportunity to conduct discovery. It is a special law prohibited by State constitution, and violates the separation of powers between the legislature and judiciary. As discussed below, other jurisdictions have found similar statutes facially unconstitutional for the above reasons.

A. State courts of last resort are split in their holdings with respect to the constitutionality of statutes similar to § 13-20-602.

This Court should grant certiorari review pursuant to Rule 10(b) because the Colorado Court of Appeals has decided an important federal question and a matter of first impression in Colorado (Opinion, ¶ 2) in a way that conflicts with already conflicting decisions of various state courts of last resort. The federal question here is whether § 13-20-602 violates the constitutional rights of indigent professional negligence victims to due process, equal protection, and access to courts in barring their meritorious claims against Colorado licensed professionals. State supreme courts that

have addressed the question with respect to similar statutes are split in their holdings. Compare, e.g., Wall v. Marouk, 2013 OK 36, ¶ 27, 302 P.3d 775 (finding the Oklahoma affidavit of merit requirement an unconstitutional "monetary barrier to access the court system, ... appl[ying] that barrier only to a specific subclass of potential tort victims ... of professional negligence. The result is a law that is unconstitutional both as a special law, and as an undue financial barrier on access to the courts"), with Peck v. Zipf, 407 P.3d 775, 782, 783 (Nev. 2017) (finding Nevada's medical expert affidavit requirement "rationally related to a legitimate governmental interest and does not violate equal protection or due process"; "[w]hile an affidavit is required to pursue medical malpractice claims, the lack of an affidavit does not preclude indigent plaintiffs specifically from accessing the courts in general. Thus, [the statute] does not create a classification scheme that violates equal protection."). Compare also Putman v. Wenatchee Valley Med. Ctr., PS, 216 P.3d 374, 376, 377 (Wash. 2009) (finding Washington's certificate of merit requirement "unconstitutional because it unduly burdens the right of access to courts and violates the separation of powers"; "[r]equiring plaintiffs to submit evidence supporting their claims prior to the discovery process violates the plaintiffs' right of access to courts"), with Mahoney v. Doerhoff Surgical Services, Inc., 807 S.W.2d 503, 510, 512-13 (Mo. 1991) (finding that Missouri's health care expert affidavit requirement "neither denies free access of a cause nor delays thereafter the pursuit of that cause in the courts. It is an exercise of legislative authority rationally justified by the end sought"; the statute "does not unconstitutionally encroach upon [the] inherent function of the judiciary" and does not violate due process or equal protection).

Further, United States courts of appeals are split in their holdings as to whether such state

certificate requirements apply in federal courts. Compare, e.g., Chamberlain v. Giampapa, 210 F.3d 154, 160 (3d Cir. 2000)("We find no direct conflict between the New Jersey affidavit of merit statute and Federal Rules 8 and 9"), with Martin v. Pierce Cty., 34 F.4th 1125, 1129-30 (9th Cir. 2022)("there is a 'growing consensus' among federal circuit courts that such certificate requirements do not govern actions in federal court, because they conflict with and are thus supplanted by the Federal Rules of Civil Procedure"; citing cases from the 4th, 6th, 7th, and 2nd Circuits so holding; "[w]hile courts identified conflicts with various Federal Rules, in each case they describe conflict with Rule 8."). Although the cases cited in Martin consider the certificate statutes under the Erie doctrine and do not examine their constitutionality, these findings bear striking resemblance to that of the Washington Supreme Court in Putman, 216 P.3d at 378-79 (the certificate of merit requirement unconstitutionally violates the separation of powers between the legislature and judiciary because it "directly conflicts with [Washington Civil Rule ("CR")] 11, which states that attorneys do not have to verify pleadings in medical malpractice actions, as well as CR 8, which details our system of notice pleading.").

B. § 13-20-602 infringes on Woo's fundamental right to court access.

"'[T]he right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government.'" Borough of Duryea v. Guarnieri, 564 U.S. 379, 387 (2011)(alteration in original)(quoting Sure-Tan, Inc. v. Nat'l Labor Relations Bd., 467 U.S. 883, 896-97 (1984)). It is also located in the Due Process Clause of the Fourteenth Amendment (Nordgren v. Milliken, 762 F.2d 851, 853 (10th Cir. 1985)) and is "one of the fundamental rights protected by the Constitution" (Ryland v. Shapiro, 708 F.2d 967, 971 (5th Cir. 1983)).

The Court of Appeals holds that § 13-20-602 does not violate Woo's right to court

access by citing People v. Spencer, 185 Colo. 377, 381-82, 524 P.2d 1084, 1086-87(1974)(enjoining a pro se plaintiff who filed numerous unfounded lawsuits from proceeding pro se; holding that "the right of free access to our courts must yield to the rights of others and the efficient administration of justice"); City of Broomfield v. Farmers Reservoir & Irrigation Co., 239 P.3d 1270, 1278 (Colo. 2010) ("[t]he right of equal access to courts does not necessarily mean that a litigant has the right to engage in cost-free litigation"); and Firelock Inc. v. Dist. Ct., 776 P.2d 1090, 1096 (Colo. 1989)("[g]enerally, a burden on a party's right of access to the courts will be upheld as long as it is reasonable."). (Opinion at ¶¶ 37-38) However, these cases are inapplicable to Woo's constitutional challenge as applied to an indigent plaintiff because none of them involves an indigent party qualified to proceed in forma pauperis. Pro se plaintiffs such as Spencer do not qualify for such relief. See supra at p 8 n.4.

Further, the Court of Appeals opines that "[t]he certificate of review requirement is not unreasonable because Woo will inevitably be required to provide expert testimony to establish the standard of care[, ... without which] Woo's case would fail." (Opinion at ¶ 39) This conclusion goes well beyond § 13-20-602's purpose to certify that the plaintiff's claims do not lack substantial justification (see § 13-20-602(3)(a)), erroneously projecting upon the statute an additional legislative intent to demonstrate that the plaintiff will have the necessary funds and experts to prove the claims from the outset.[5] The dismissal of Woo's claims despite his provision of documentary evidence clearly demonstrating their merits is in stark contradiction to the Court of Appeals' conclusion that § 13-20-602 "does not create an insurmountable barrier to a litigant whose case does not lack substantial justification." (Opinion at ¶ 39) Without the funds to finance an expert - here a criminal

[5] See infra, pp 13, 21 for Oklahoma, Arkansas, and Mississippi cases invalidating similar certificate statute provisions applicable expressly to claims requiring expert testimony.

attorney – Woo's claims are deemed frivolous no matter how meritorious they are in actuality. To circumvent this wrong, the Court of Appeals opts to stray from reality, speculating that Woo "could have found a pro bono attorney" or expert. (Id. at ¶¶ 40-45)

John v. St. Francis Hosp., Inc., 2017 OK 81, 405 P.3d 681 summarizes the evolution of Oklahoma's certificate counterpart from: (1) a requirement for medical liability actions, with no indigency exemption, in Zeier v. Zimmer, 2006 OK 98, ¶ 1 n.2(A), 152 P.3d 861; to (2) a requirement for professional negligence actions, with indigency exemption conditional upon a $40 application fee, in Wall v. Marouk, 2013 OK 36, ¶ 1 n.1(A),(D), ¶ 23, 302 P.3d 775; and finally (3) a requirement for all negligence actions in which expert testimony is required, with indigency exemption and the $40 fee previously ruled an unconstitutional monetary burden (Wall, 2013 OK 36 at ¶ 23) removed in John, 2017 OK 81 at ¶ 3 n.1(A),(D), ¶ 19. John, 2017 OK 81 at ¶¶ 10-19, 33-34. The Oklahoma Supreme Court found all three incarnations of the statute unconstitutional. See Zeier, 2006 OK 98 at ¶ 1 ("the requirement that a medical malpractice claimant obtain a professional's opinion that the cause is meritorious at a cost of between $500.00 and $5,000.00 creates an unconstitutional monetary barrier to court access";[6] finding the statute "an unconstitutional special law"); Wall, 2013 OK 36 at ¶ 27 (finding the affidavit of merit requirement an unconstitutional "monetary barrier to access the court system, ... [applying] that barrier only to a specific subclass of potential tort victims ... of professional negligence. The result is a law that is unconstitutional both as a special law, and as an undue financial barrier on access to the courts"); and John, 2017 OK 81 at ¶¶ 34, 5, 19 (finding the affidavit of merit requirement "an impermissible barrier on a plaintiff's guaranteed right

[6] Woo indicated to the trial court that he had been quoted tens of thousands of dollars for a certificate of review. (CF, p 403, ¶ 21)

to court access and an unconstitutional special law" even after the statute was amended to provide exemption for indigent plaintiffs.[7]). See also Putman, 216 P.3d at 377("Requiring medical malpractice plaintiffs to submit a certificate prior to discovery hinders their right of access to courts. ...Obtaining the evidence necessary to obtain a certificate of merit may not be possible prior to discovery").

The Oklahoma holdings are particularly instructive since Oklahoma's affidavit of merit statutes bear close resemblance to § 13-20-602, and Oklahoma's constitutional provision for the right to court access is the same as its Colorado counterpart. Compare Colo. Const. art. II, § 6, with Okl. Const. art. II, § 6.

"[D]ifferences in access to the instruments needed to vindicate legal rights, when based upon the financial situation of the defendant, are repugnant to the Constitution." Boddie, 401 U.S. at 383 (Douglas, J. concurring in the result)(internal quotation omitted). § 13-20-602 unconstitutionally bars all indigent professional negligence victims from the instruments needed to vindicate their claims against Colorado licensed professionals, violating their rights to court access for the same reasons set forth in Zeier, Wall, John, and Putman.

C. § 13-20-602 violates Woo's rights to due process and equal protection.

> 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.

U.S. Const. amend. XIV, § 1. "[A] cost requirement, valid on its face, may offend due process because it operates to foreclose a particular party's opportunity to be heard." Boddie, 401 U.S. at 380. "[T]he right to a meaningful opportunity to be heard within the limits of practicality, must be protected against denial by particular laws that operate to jeopardize it for particular

[7] See Okla. Stat. tit. 12 § 19.1(D)(Supp. 2013)("A plaintiff in a civil action for negligence may claim an exemption... based on indigency").

individuals." Id. at 379-80.

The Court of Appeals holds that § 13-20-602 does not violate Woo's due process and equal protection rights. (Opinion at ¶¶ 28-33) Its analysis: (1) asserts that "Woo does not allege that his complaint seeks to vindicate a fundamental right" (Id. at ¶ 29); (2) applies the rational basis test accordingly (Id. at ¶ 31); and (3) finds § 13-20-602 rationally related to furthering a legitimate state interest to eliminate frivolous claims (Id. at ¶¶ 32-33)(citing State v. Nieto, 993 P.2d 493, 503 (Colo. 2000)).

The first point is factually inaccurate. Woo contended on appeal that strict scrutiny should apply because his replevin claim concerned a protected property interest and § 13-20-602 infringed upon his fundamental right to court access. (Reply Brief, p 17) Although the Court of Appeals reversed the dismissal of his replevin claim, Woo had further argued that "[a] legal right to damage for an injury is property and one cannot be deprived of his property without due process." Id. (citing Game & Fish Com. v. Farmers Irrigation Co., 162 Colo. 301, 310, 426 P.2d 562, 566 (1967)). Woo's property right to damages was "effectuated by preserving [his] cause of action for damages." See State v. DeFoor, 824 P.2d 783, 792 (Colo. 1992)(citing Rosane v. Senger, 112 Colo. 363, 370, 149 P.2d 372, 375 (1944)).

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950) "held that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause." Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1982). "The Court traditionally has held that the Due Process Clauses protect civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances." Id. at 429. See also Id. at 428-29, 428 n.4 (Martinez v. California, 444 U.S. 277, 281-82 (1980) "noted that '[a]rguably,' a state tort claim is a 'species of 'property' protected by the Due Process Clause.'"). Such right is constitutionally protected in various states. See, e.g., Hunter Contr. Co. v. Superior Ct., 947 P.2d 892, 894

(Ariz. Ct. App. 1997)("It is undisputed that [Ariz. Const. art. XVIII, § 6] creates a 'fundamental right' to pursue a damage action for one's injuries"); Farley v. Engelken, 740 P.2d 1058, 1064 (Kan. 1987) ("'The right of the plaintiff involved... is the fundamental constitutional right to have a remedy for an injury to person or property by due course of law. This right is recognized in the Kansas Bill of Rights § 18, which provides that all persons, for injuries suffered in person, reputation or property, shall have a remedy by due course of law, and justice administered without delay'")(quoting Ernest v. Falor, 237 Kan. 125, 129-30, 697 P.2d 870 (1985))(emphasis in original). See also Opinion at ¶ 35("Article II, Section 6 of the Colorado Constitution provides: 'Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property or character; and right and justice should be administered without sale, denial or delay.'").

The points emphasized in Farley and Logan encapsulate Woo's contention on appeal as to why strict scrutiny applied to his due process and equal protection challenge of § 13-20-602. "[L]egislation cannot be used to deny the constitutional guarantee of court access -- a fundamental right. Therefore, this Court strictly scrutinizes actions which deny such opportunity." Zeier, 2006 OK 98 at ¶ 25.

Some courts have applied an intermediate scrutiny test to constitutional challenges of medical malpractice statutes. See, e.g., Johnson v. St. Vincent Hospital, Inc., 404 N.E.2d 585, 587 (Ind. 1980); Farley, 740 P.2d at 1066.

> When the legislative balancing process is unduly skewed by the structural inability of the burdened class to form active political coalitions, a court must be sensitive to its institutional role as a countermajoritarian monitor of legislative legitimacy. The political powerlessness of future medical malpractice victims arguably justifies their status as a semi-suspect class entitled to judicial protection against majoritarian subjugation of individual rights.

Farley, 740 P.2d at 1064(quoting Learner, Restrictive Medical Malpractice Compensation Schemes: A

Constitutional "Quid Pro Quo" Analysis to Safeguard Individual Liberties, 18 Harv. J. on Legis. 143, 189(1981)).

Learner's conclusion easily applies to an argument as to why the political powerlessness of the class of indigents justifies treating them as a semi-suspect class requiring judicial protection against a politically powerful coalition of Colorado licensed professionals and insurance carriers. Cf. United States v. Carolene Products Co., 304 U.S. 144, 152-53 n.4 (1938)("whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry")(citations omitted).

§ 13-20-602 does not withstand strict scrutiny, as it clearly does not further a compelling state interest by the least restrictive means. A mere exemption for the indigent like that enacted by the Oklahoma Legislature in response to Zeier would be less restrictive. (See supra, p 14 n.7) See also Hunter Contr. Co., 947 P.2d at 898-99 (finding that Arizona's then-affidavit of merit requirement does not survive strict scrutiny analysis, violating equal protection because it "does not burden merely the filing of frivolous lawsuits; it burdens the filing of all lawsuits against contractors and registered professionals, whatever merit they may have.").

§ 13-20-602 does not withstand intermediate scrutiny; the classifications singling out a class of licensed professionals for preferential treatment not extended to other tortfeasors – at the cost of barring all meritorious professional negligence claims by a subclass of indigent tort victims unable to afford the cost of expert review – do not substantially further a legitimate legislative objective. The statute can hardly even pass the rational basis test; the purported legitimate state interest to cut down on frivolous lawsuits is but a manufactured interest redundant of measures already in place. See Id. at 899("[O]ur legal system already equips litigants with extensive means to filter out frivolous and non-meritorious

suits"; citing Arizona Rules of Civil Procedure 11(a), 12, 16(c)(5), 16(f), 26(f), 37, 56, Arizona Revised Statute ("A.R.S") § 12-341.01(c)(1992), and A.R.S. 12-349(1992)); Wall, 2013 OK 36 at ¶ 8("[N]otice pleading recognize[s] that discovery, pretrial conferences, and summary judgments are more effective methods of ... disposing of frivolous or unfounded claims"); Boucher v. Sayeed, 459 A.2d 87, 93-94 (R.I. 1983)("Insofar as frivolous claims are concerned, ... the Rules of Civil Procedure provide appropriate avenues for all litigants to achieve this objective"); Hudson v. Palmer, 468 U.S. 517, 554 n.30 (1984)(Stevens, J. concurring in part and dissenting in part)("Frivolous cases should be treated as exactly that, and not as occasions for fundamental shifts in legal doctrine. Our legal system has developed procedures for speedily disposing of unfounded claims; if they are inadequate to protect [defendants] from vexatious litigation, then there is something wrong with those procedures").

On the contrary, the real benefit conferred upon Colorado licensed professionals under the veil of limiting the burden of frivolous claims on the state judicial system is that § 13-20-602 operates to curtail meritorious claims. For the indigent, the statute forecloses due process altogether. "The certificate of merit requirement is designed to prevent frivolous...lawsuits.... However, ... [it] does, in fact, prevent meritorious ... actions from being filed, and is therefore [] unreasonable". Hinchman v. Gillette, 618 S.E.2d 387, 404(W. Va. 2005)(Davis, J. concurring)(emphasis in original). It "weeds out not only frivolous claims, but effectively denies a remedy by due course of law to untold number of meritorious claims." Id. at 405. See also Zeier, 2006 OK 98 at ¶ 21 ("[T]he additional certification costs have produced a substantial and disproportionate reduction in the number of claims filed by low-income plaintiffs. The affidavit of merit provisions... prevent meritorious medical malpractice actions from being filed... result[ing] in the dismissal of legitimately injured plaintiffs' claims based solely on procedural, rather than substantive, grounds"); Barnes v. Eighth Judicial Dist. Court,

748 P.2d 483, 487 (Nev. 1987)(holding that a statute requiring indigent plaintiffs to file a certificate of an attorney attesting that the action is meritorious violates equal protection in barring petitioners' legal malpractice claims and is not rationally related to a legitimate state interest; "the statute may [] operate to screen out meritorious actions that would otherwise be filed by persons who cannot afford... the required certificate"); Lindsey v. Normet, 405 U.S. 56, 74, 78, 79 (1972) (holding that an Oregon statute requiring a tenant to post a double bond as a precondition to appealing an eviction order violated the equal protection clause because it operated not only "to screen out frivolous appeals", but also to "bar[] nonfrivolous appeals by those who are unable to [afford to] post the bond"; "[t]he discrimination against the poor... is particularly obvious. For them, as a practical matter, appeal is foreclosed, no matter how meritorious their case may be"); In re Hall by and Through Hall, 688 A.2d 81, 88 (N.J. 1997)("our Rules Governing Civil Practice should be sufficiently flexible to avoid the risk that even a few meritorious cases may be dismissed for non-compliance with the [affidavit of merit] statute."). Given the documentary evidence that Woo provided in support of his claims and the district court's implied finding that his claims were not "frivolous, groundless, or malicious" in granting his motion to proceed in forma pauperis (see supra, p 8 n.4), Woo's is an example of a meritorious case dismissed strictly due to his inability to afford expert review.

The Oklahoma Supreme Court's holdings that its affidavit of merit requirement is an unconstitutional special law (see Zeier, 2006 OK 98 at ¶ 1; Wall, 2013 OK 36 at ¶ 27; John, 2017 OK 81 at ¶ 1) not only apply precisely to why § 13-20-602 is an unconstitutional special law,[8] but are effectively findings of equal protection violation. "In a [Okl. Const. art. V, § 46] attack, the only issue to

[8] Compare Colo. Const. art. V, § 25("The general assembly shall not pass local or special laws in... regulating the practice in courts of justice; ... limitation of civil actions"), with Okl. Const. art. V, §46 ("The Legislature shall not pass any local or special law...[r]egulating the practice or jurisdiction of... judicial or inquiry before the courts").

be resolved is whether a statute upon a subject enumerated in that section targets for different treatment less than an entire class of similarly situated persons or things." Zeier, 2006 OK 98 at ¶ 11 (internal quotation omitted)(emphasis in original). Such is effectively an equal protection analysis specific to certain categories. "A statute that so conditions one's right to litigate [based on payment of an expert opinion] impermissibly denies equal protection and closes the court house doors to those financially incapable". Id. at ¶ 26. The affidavit of merit requirement "creates a new subclass of... professional tort victims and tortfeasors. ... [I]t places an out of the ordinary enhanced burden on these subgroups to access the courts... [and] requires the victims of professional misconduct to pay the cost of expert review." Wall, 2013 OK 36 at ¶ 6. § 13-20-602 likewise creates a class of professional tort victims and tortfeasors, violating equal protection by placing an enhanced burden on the former's right to court access and requiring them to pay the additional cost of expert review – an insurmountable burden for the indigent.

§ 13-20-602 is not rationally related to a legitimate state interest and is therefore an arbitrary classification. As discussed above, it certainly does not withstand higher scrutiny. "[E]ven under [the rational relationship] test, basic tenets of fairness and equality must not and cannot be abandoned." Farley, 740 P.2d at 1069 (Lockett, J. concurring). "Equal justice requires that all who are injured by another's negligent act have an equal right to compensation from the negligent tortfeasor, regardless of any classification that the legislature has attempted to impose." Id. "[T]he creation of separate classes of tort victims based on the classification of the tortfeasor is unconstitutional." Id.

D. § 13-20-602 violates the separation of powers.

The Court of Appeals does not address Woo's contention that § 13-20-602 violates the separation of powers. (Opening Brief, pp 27-28; Reply Brief, pp 19-20) See U.S. Const. art. IV, § 4; Colo. Const. art. III. As indicated above, Putman holds that Washington's certificate of merit requirement

violates the separation of powers because it is a "procedural matter" that directly "conflicts with CR 11 ... [,] requir[ing] the attorney to submit additional verification of the pleadings", and "CR 8 and our system of notice pleading, which requires only 'a short and plain statement of the claim' ... in order to file a lawsuit. CR 8(a)." Putman, 216 P.3d at 379.

> Under notice pleading, plaintiffs use the discovery process to uncover the evidence necessary to pursue their claims. ... The certificate of merit requirement essentially requires plaintiffs to submit evidence supporting their claims before they even have an opportunity to conduct discovery and obtain such evidence. For that reason, the certificate of merit requirement fundamentally conflicts with the civil rules regarding notice pleading - one of the primary components of our justice system.

Id. (citation omitted). See also Hunter Contr. Co., 947 P.2d at 896 ("A plaintiff need not offer proof ... before discovery. ... Rather, Rule 11 deliberately leaves room for a lawyer pursuing a theory in good faith to develop the theory through discovery processes available after filing suit")(internal quotation omitted); Summerville v. Thrower, 253 S.W.3d 415, 416, 418 (Ark. 2007)(holding that "the mandatory thirty-day requirement for the affidavit of reasonable cause after filing the complaint [for medical injury 'where expert testimony is required'] directly conflicts with Rule 3 of our Rules of Civil Procedure regarding commencement of litigation"); Wimley v. Reid, 991 So. 2d 135, 138(Miss. 2008)(holding "that a complaint ... may not be dismissed ... simply because the plaintiff failed to attach a certificate of" expert consultation required for medical injuries "where expert testimony is otherwise required"; "we are unable to ignore the constitutional imperative that the Legislature refrain from promulgating procedural statutes which require dismissal of a complaint ... filed in full compliance with the Mississippi Rules of Civil Procedure"); Hiatt v. S. Health Facilities, Inc., 626 N.E.2d 71, 72-73 (Ohio 1994)(invalidating a statute requiring that a medical malpractice action be accompanied by an affidavit attesting that the plaintiff's attorney requested medical records from each defendant - because it involves a procedural matter that

conflicts with Rule 11 of the Ohio Rules of Civil Procedure).

For the same reasons articulated in Putman, § 13-20-602 violates the separation of powers because it is procedural and conflicts with Rules 8 and 11 of the Colorado Rules of Civil Procedure ("C.R.C.P.") regarding pleading verification and notice pleading. As Summerville opines, "[T]here is little, if any, practical difference ... between a mandatory legislative requirement before commencing a cause of action ... and ... after filing a complaint such as we have here. Both procedures add a legislative encumbrance to commencing a cause of action that is not found in Rule 3 of our civil rules." Summerville, 253 S.W.3d at 421. The dismissal of Woo's claims before Mr. Bednarski even needed to answer the complaint demonstrates that, here, there was no difference whatsoever between a certificate requirement at the time of filing the complaint as in Putman, 30 days after filing as in Summerville, and 60 days after service as in Woo. The more important concern in the context of separation of powers is that the certificate requirement supersedes the notice pleading standard of Rule 8, placing an enhanced burden upon a class of professional negligence plaintiffs to submit evidence to an expert before they have an opportunity to conduct discovery and obtain such evidence.

"There are times in which the significance of the separation of powers doctrine ... is that the judicial branch of government must recognize the interests of the politically powerless and speak for those interests in order to defend the concept of justice." Hoem v. State, 756 P.2d 780, 787 (Wyo. 1988)(Thomas, J. concurring). § 13-20-602 imposes an unreasonable and insurmountable monetary burden to indigent plaintiffs' right to court access, violating due process, equal protection, and the separation of powers. The result is the foreclosure of justice for an entire subclass of professional negligence victims, their meritorious claims dismissed from the outset for no other reason than their inability to afford the cost of expert review.

II. The Court of Appeals erred in holding or tacitly approving that: (A) dismissal for failure to file a certificate of review should be with prejudice; (B) expert testimony is required even for conduct that Woo alleged was based on conspiracy, deceit, and malice; and (C) the Rules of Professional Conduct cannot establish any attorney standard of care.

A. Dismissal for failure to file a certificate of review should be without prejudice.

The Court of Appeals does not address Woo's contention that dismissal for failure to file a certificate of review should be without prejudice (Opening Brief, pp 6-7, 20; Reply Brief, pp 13-14), just as Mr. Bednarski requested (CF, p 178, ¶ 7; p 179) The Colorado federal district court holds that dismissal for failure to comply with Colorado's certificate statute "should be without prejudice." Coleman v. United States, 803 F. App'x 209, 214 (10th Cir. 2020)(citing Alpine Bank v. Hubbell, No. 05-CV-00026-EWN-PAC, 2007 U.S. Dist. LEXIS 5813, at * 13-18 (D. Colo. Jan. 26, 2007) (holding that dismissal with prejudice for failure to file certificate of review is improper unless egregious circumstances like gross negligence or forgery exist)). Here, the district court took it upon itself to dismiss all of Woo's claims with prejudice on March 10, 2020, only seven days after Mr. Bednarski filed his motion to dismiss on March 3, 2020 requesting dismissal without prejudice. (CF, pp 182-84, 177-79) This was a case of a district court foreclosing litigation by a prisoner without even allowing a response to a motion to dismiss.[9] The Court of Appeals should have at least remanded with instructions to modify the order to reflect dismissal without prejudice.

B. Expert testimony should not be required for the conduct of a licensed professional based on conspiracy, deceit, and malice.

A certificate of review "should be utilized in civil actions for negligence brought against

[9] "The responding party shall have 21 days after the filing of the motion or such lesser or greater time as the court may allow in which to file a responsive brief." C.R.C.P. 121, § 1-15(1)(b). Trial court's failure to comply with C.R.C.P. 121 § 1-15 before ruling on motion to dismiss is an abuse of discretion. Lanes v. Scott, 688 P.2d 251, 253 (Colo. App. 1984).

those professionals who are licensed by this state to practice a particular profession and regarding whom expert testimony would be necessary to establish a prima facie case." § 13-20-601, C.R.S. 2019. The Court of Appeals affirms the dismissal of Woo's Willful Breach of Fiduciary Duty and Professional Negligence claims against Mr. Bednarski, holding that they require expert testimony to establish the duty of care, thereby necessitating a certificate of review. (Opinion at ¶¶ 17-20) Citing Williams v. Boyle, 72 P.3d 392, 399-400 (Colo. App. 2003), it notes that even an intentional fraudulent misrepresentation claim required an underlying showing of duty of care. (Opinion at ¶ 20)

Woo's complaint alleges that "Mr. Bednarski... advised that Mr. Woo's father send [a check payable to Woo] to him so that Mr. Woo could more quickly endorse it to his family. However, upon receipt, Mr. Bednarski withheld the check for at least five days to assist Mr. Baez in his efforts to take the funds." (CF, p 4, ¶ 23; Reply Brief, p 10) "The [Respondents]... cancel[ed] Woo's DNA expert testimony to curtail costs, just hours after admitting on the record to their failed attempt to take funds from a check payable to Woo that was withheld by Bednarski to cover expenses for which [Mr. Baez and Ms. Medina] were contractually responsible." (Opening Brief, p 17 (citing CF, pp 139-42, ¶¶ 21-29; pp 107-16); CF, p 4, ¶ 24) Further, Woo alleges that Mr. Bednarski took malicious actions in the criminal court to bar Woo's access to his life's work and records in hard drives (Reply Brief, pp 12-13; Opening Brief, p 18; CF, p 10, ¶¶ 69-75; pp 16-17, ¶¶ 113-15; pp 145-46, ¶¶ 42-44); and withheld actual knowledge of adverse material in late discovery in order to manipulate Woo to waive speedy trial, curing the prosecution's discovery violation without objection (Reply Brief, p 13; Opening Brief, p 18; CF, pp 146-47, ¶¶ 45-49; pp 127-31, 134; pp 5-6, ¶¶ 27-38).

"When the subject matter of a claim is within the common knowledge of ordinary persons,

expert testimony is not required to prove it. Accordingly, no certificate of review... is required for such a claim." Baumgarten v. Coppage, 15 P.3d 304, 307 (Colo. App. 2000). To the extent plaintiff's claims concern allegations that defendants breached statutory duties or standards that are based on defendants' actual knowledge of adverse material facts they failed to disclose, no certificate was required. Id. at 306-07. See also Credit Serv. Co. v. Dauwe, 134 P.3d 444, 445 (Colo. App. 2005) (to the extent that plaintiff's malpractice claim was based on defendant's willful, wanton, and malicious actions, no certificate of review was required).

Mr. Bednarski's conduct in advising that Woo's check be sent to his office for quicker family endorsement, only to conspire with Mr. Baez to take the funds, is a matter of common knowledge that requires no expert testimony. A layperson can recognize such act as fraudulent in nature, causing substantial injury to Woo when he declined to relinquish the funds and Mr. Baez retaliated by immediately cancelling defense's scheduled DNA expert testimony mid-trial. Mr. Bednarski's willful, wanton, and malicious actions in depriving Woo of his digital property and concealment of adverse information to induce Woo to waive his right to speedy trial likewise do not require expert testimony. Malicious and deceitful acts are within the common knowledge of laypersons.

The Court of Appeals should have reversed the dismissal of Woo's Willful Breach of Fiduciary Duty claim against Mr. Bednarski and held that the acts alleged therein did not require expert testimony.

C. The RPC can establish an attorney's standard of care in some instances.

The Court of Appeals disagrees with Woo's contention that the Colo. RPC can establish an attorney's standard of care in some instances, indicating: "the preamble to the [Colo. RPC] states that a '[v]iolation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached.'

Colo. RPC Preamble ¶ 20." (Opinion at ¶ 17) However, "since the Rules do establish standards of conduct by lawyers, in appropriate cases, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct." Colo. RPC Preamble ¶ 20. Various jurisdictions' treatment of this seemingly contradictory paragraph is discussed in The Paragraph 20 Paradox: An Evaluation of the Enforcement of Ethical Rules as Substantive Law, 8 St. Mary's J. Legal Mal. & Ethics 254 (2018).

"[A]lthough the [RPC] do not create a fiduciary duty, they may evidence standards of care." Moye White LLP, 320 P.3d at 379. "Thus, [a court] may look to the rules to determine whether an attorney failed to adhere to a particular standard of care, and thus, breached his or her fiduciary duty to a client." Id. See also Stanley v. Richmond (1995) 35 Cal. App. 4th 1070, 1086 [41 Cal. Rptr. 2d 768, 776] ("The scope of an attorney's fiduciary duty may be determined as a matter of law based on the [RPC]"; "[e]xpert testimony is not required ... but is admissible to establish the duty and breach elements of a cause of action for breach of fiduciary duty where the attorney conduct is a matter beyond common knowledge"); Allen v. Lefkoff, Duncan, Grimes & Dermer P.C., 453 S.E. 2d 719, 721 (Ga. 1995)(holding that "pertinent Bar Rules are relevant to the standard of care in a legal malpractice action"); The Evidentiary Use of the Ethics Codes in Legal Malpractice: Erasing a Double Standard, 109 Harv. L. Rev. 1102, 1119 (1996)("The fact that [rules of conduct] were designed specifically for application in the disciplinary context does not overcome the logic, feasibility, or functional value of extending their application -- at least in part -- to the malpractice context.").

As such, even assuming Woo must establish that Mr. Bednarski owed a professional duty of care not to: (1) conspire with Mr. Baez to take Woo's money from a check meant for his

family; (2) maliciously deprive Woo of property; and (3) conceal adverse information in order to manipulate Woo to waive speedy trial; the Colo. RPC 8.4 provisions can establish such standard.

Unlike complex standards pertaining to competence at trial, some standards of care are rendered clear and palpable with RPC guidance. For example, the Respondents entered into a nonrefundable retainer agreement with Woo (CF, p 107, ¶ 1a; p 108, ¶ 5), which was prohibited under Colo. RPC 1.5(g) ("[N]onrefundable fees and nonrefundable retainers are prohibited. Any agreement that purports to restrict a client's right to terminate the representation, or that unreasonably restricts a client's right to obtain a refund of unearned or unreasonable fees, is prohibited."). Woo alleges that this wrongfully precluded his right to terminate their representation and obtain a refund to hire another attorney when, early in their representation, Mr. Baez and Ms. Medina deceitfully solicited attorney fees that Woo already paid by sending a contract to his father – an 89-year-old man who suffered from dementia. (CF, p 18, ¶¶ 120-22; p 117; pp 142-43, ¶¶ 30-36) This was a fraudulent act that destroyed all trust. As such, the question is whether expert testimony is indispensable to merely iterate the simple standard clearly set forth in RPC 1.5(g). The consequence of an answer in the affirmative is that our legal system effectively forecloses pro se indigent plaintiffs from ever litigating meritorious claims against attorneys.

The questions as to whether § 13-20-602 is unconstitutional as applied to indigent plaintiffs – and whether the RPC can establish an attorney's standards of care in some circumstances for those unable to afford the cost of an expert – are important issues that affect the rights of all indigent victims of professional negligence at the hands of licensed professionals in Colorado and elsewhere with similar legislations. This Court should grant certiorari review to provide guidance to courts addressing these issues throughout the nation and ensure indigent victims of professional negligence are protected against deprivation of their rights to court access, due process, and equal protection.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James Woo
Petitioner, pro se

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