No. 23-984

IN THE
SUPREME COURT OF THE UNITED STATES

Joseph Rued, et al,
Petitioners

v.

Charlene Hatcher, et al,
Respondents

On Petition for a Writ of Certiorari
to the Eighth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Joseph Rued, also on behalf
of W.O.R., a minor child;
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Pro Se Petitioners

QUESTION PRESENTED

This case implicates fundamental rights including those related to or for: children's welfare, unlawful confinement, association, natural parents, and access to venue for enforcement of Constitutional rights. In response to reports of child abuse, a local welfare agency facilitated investigations later admitted to be falsely concluded on the most material issues. Respondents relied upon such falsified conclusions to summarily determine Father's reports of Son's abuse were false depriving Father's and Son's rights, refusing to accept the deposition admitting the falsified investigation outcomes and preventing Father from calling the investigator, previously appealed here. Father later submitted the deposition admitting perjurious conclusions Respondents continuously rely upon to deprive custody. No Respondent has reached repeatedly presented federal issues related to sustaining orders based upon admitted perjury. Petitioners sought redress in federal court and jurisdiction has been denied based upon *Rooker-Feldman*. Petitioners appealed on grounds that the District Court's arbitrary application of *Rooker-Feldman,* when no state judgement had reached Petitioners' primary federal claims repeatedly raised in ongoing state proceedings, denying venue for Petitioners' fourteenth amendment claims, violates Petitioners' fifth amendment rights, which was summarily affirmed. Petitioners now petition here.

THE QUESTION PRESENTED IS:

Did the Eighth Circuit err in affirming the District Court's Order and denying Petitioners' petition for rehearing en banc?

PARTIES TO THE PROCEEDING

Petitioners are Joseph D. Rued, a person and father, also on behalf of W.O.R., a person and son; Scott D. Rued, a person and grandfather; and Leah J. Rued, a person and grandmother.

Respondents are persons that are state judicial officers, Charlene W. Hatcher; Jennifer L. Frisch; Sarah I. Wheelock; Randall J. Slieter; Mike Furnstahl; Richard Stebbins; Charles Webber; Lorie Skjerven Gildea; Peter M. Reyes; Susan M. Segal; Denise D. Reilly; Theodora Gaïtas; Tracy M. Smith; Jeanne M. Cochran; Nelson L. Peralta; Christian M. Sande; Lucinda E. Jesson; Renee L. Worke.

STATEMENT OF RELATED PROCEEDINGS

- *In Re Joseph Rued, et al v. Charlene Hatcher, et al,* Minnesota District Court No 0:23-CV-02685

- *In Re Joseph Rued, et al v. Charlene Hatcher, et al,* Eighth Circuit Court of Appeals No 0:23-CV-03092

- *In Re Joseph Rued, Petitioner,* Minnesota Supreme Court and Minnesota Court of Appeals Nos. A23-1754; A23-1755; A23-1936

- *Joseph D. Rued v. Catrina M. Rued,* Supreme Court of the United States No. 22-702

- *In Re the Marriage of Catrina Rued and Joseph Rued,* Minnesota Court of Appeals Nos. A21-0798; A21-1064; A22-0812; A23-0715; A23-1235; A23-1444; A23-1467

- *Joseph Daryll Rued and on Behalf of minor child W.O.R and Catrina Marie Rued, et al,* Minnesota Court of Appeals No. A22-0593

- *Joseph Daryll Rued and on Behalf of minor child W.O.R and Catrina Marie Rued, et al,* Minnesota Court No. 70-FA-21-13336

- *In Re the Marriage of Catrina Rued and Joseph Rued,* Minnesota Court No. 27-FA-16-6330

Related Cases

- *Joseph Rued v. Commissioner of Human Services*, Minnesota Supreme Court and Minnesota Court of Appeals No. A22-1420

- *Joseph Rued v. Commissioner of Human Services*, Minnesota Court No. 70-CV-22-7318

- *In Re Joseph Rued, Petitioner* Minnesota Court of Appeals No. A23-0044

- *In Re Petitioners Scott Rued and Joseph Rued, In Re Complaint Against 041423, A Minnesota Attorney,* Minnesota Supreme Court No. A23-1004

- *In Re Complaint Against 041423, A Minnesota Attorney,* Minnesota Supreme Court No. A23-0614

- *In the Matter of the Welfare of the Children of: Catrina M. Rued and Joseph D. Rued,* Minnesota Court No. 27-JV-18-5395

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The Order below of the United States District Court of Minnesota is *In Re Joseph Rued, et al v. Charlene Hatcher, et al,* Minnesota District Court No 0:23-CV-02685, and is included in the Appendix (App.-7-). The United States Court of Appeals for the Eighth Circuit affirmed the Order on appeal without receiving briefing (App.-2-).

JURISDICTION

The judgement for which review is sought is *In Re Joseph Rued, et al v. Charlene Hatcher, et al,* United States Court of Appeals for the Eighth Circuit No. 23-3092. Petitioners timely filed a Petition for Rehearing, which was denied on November 15, 2023 (App.-1-). This petition for writ of certiorari is timely filed within ninety days of the denial of the petition for rehearing. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Notifications required by Rule 29.4(b) have been made.

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. Art. VI § 2, 3

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

The Senators and Representatives before mentioned, and the Members of the several State Legislatures,

and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution.

U.S. Const. Amend. V

nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amend. XIV § 1, 5

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.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

28 U.S. Code § 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

FCIA of 1996 Additions to 42 U.S.C § 1983

except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

STATEMENT OF THE CASE: ARGUMENT AND FACT

Petitioners filed a complaint in Minnesota District Court seeking injunctive relief to cease sustaining violations of the fourteenth amendment under §1331 and in accordance with §1983 and §1343(3), including for a preliminary injunction, against Respondents (R.Doc1.3; App.-41-). The District Court dismissed Petitioners' complaint denying their requests for preliminary injunction and injunction pending appeal as moot applying *Rooker-Feldman* to Petitioners' complaint (App.-5-11-).

Petitioners appealed seeking a stay and injunction pending appeal with the Eighth Circuit (App.-51-), which affirmed dismissal for want of jurisdiction (App.-3-). Petitioners filed for rehearing with the Eighth Circuit on grounds that arbitrary application of judicial doctrine to deny jurisdiction violates Petitioners' federal due process and equal protections rights (App.-43-44-), which the Eighth Circuit denied (App.-1-).

At bottom, Petitioners assert that Respondents' refusal to adequately address these federal claims repeatedly presented to every level of the state's judiciary triggers bad faith, flagrant Constitutional violations, and great, irremediable harm exemptions to any *Younger-derivative* abstention. Furthermore, Petitioners' unaddressed federal claims are not inhibited by Congress' cognizable intent with the FCIA additions to §1983 language when related federal issues have already been brought under §1257(a). Finally, Petitioners' assert these federal claims are protected under fifth amendment due process and equal protections rights which lower federal courts'

arbitrary and incoherent application of *Rooker-Feldman* violate.

When state courts have repeatedly refused to reach federal issues there can be no reasonable presumption that they will operate other than they already have upon some other, further, related state court challenge.

28 U.S.C. §2403(a) may apply. Petitioners have received no indication that the Minnesota District Court has, pursuant to 28 U.S.C. §2403(a), certified to the Attorney General the fact that the constitutionality of an Act of Congress is drawn into question. Petitioners' sought relief does not need to directly challenge the constitutionality of the FCIA of 1996 additions to §1983 for multiple reasons discussed herein, but the nature of Petitioners' claims highlights the FCIA of 1996's clear potential for unconstitutional implementation absent considerate interpretation and application.

I. OVERVIEW

Justified application of *Rooker-Feldman* supports this Court's appellate jurisdiction when fifth amendment protections are undisturbed. The lower courts' application of *Rooker-Feldman* in this case generates serious Constitutional problems, conceiving U.S. Constitution and law to not provide venue for colorable constitutional claims, subordinating supremacy of the Constitution to judicial decree and doctrine. Judicial discretion does not lie to relegate the Constitution *brutum fulmen.*

> It is apparent that [the Supremacy] Clause creates a rule of decision: Courts "shall" regard the "Constitution," and all laws "made in

> Pursuance thereof," as "the supreme Law of the Land." *Armstrong v. Exceptional Child Ctr., Inc.*, 135 S. Ct. 1378, 1383 (2015).

In this case, state proceedings involving the federal constitutional claims presented to the District Court remain ongoing (App.-37-)—this Court's state appellate jurisdiction is inoperative. Appeal to this Court related to a primary federal claim still at issue in state proceedings has already been brought (App.-34-). Just as this Court's holdings in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005) counseled against, the Eighth Circuit affirmed the District Court's application of judicial doctrine to deny federal-state concurrent jurisdiction in supersession of appropriate preclusion law analysis:

> [T]he lower federal courts have variously interpreted the *Rooker-Feldman* doctrine to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law under...§1738.

Often, Justice Marshall's *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 24 (1987) concurrence on other grounds is leveraged in support of *Rooker-Feldman* application for any federal action related to state court proceedings—such is not controlling law. Justice Marshall also joined another concurrence, agreeing on merits analysis, stating *Rooker-Feldman* would not apply. Justice Marshall's conviction was that Texaco's action was review for error because there was no credible allegation that federally prohibited action had

occurred or would occur related to claims unraised in state court.

In concurrence in the same, Justice Scalia urges that applying *Rooker-Feldman* where there are not state judgements addressing the federal claims is improper, irrespective of any form of federal issue preservation like a counterpart to *procedural default doctrine* (*O'Sullivan v. Boerckel*, 526 U.S. 838, 855 (1999)), which has never required state *habeas corpus* action prior to federal initiation, for liberty interests beyond confinement.

A reading of all the opinions expressed in *Pennzoil* is instructive in that there is no postulation that the facts of this case could fit under any federal abstention doctrine. There is no indication that if state courts unlawfully sustained Constitutional violations without addressing litigants' federal claims presented therein that no federal court remedy would ever be available by the majority holding in *Pennzoil*:

> When, as here, a litigant has made no effort in state court to present his claims, a federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary. *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 2 (1987).

In Petitioners' case, the District Court cited *Mosby v. Ligon*, 418 F.3d 927, 930 (8th Cir. 2005) (App.-10-), which relates to attorney discipline proceedings brought upon violations of state *rules*, which are always only errors, and cannot sustain qualifying claims for federal jurisdiction related to state action which requires constitutionally prohibited action and definitionally includes deprived federally protected rights. *Mosby* relies on *Ballinger v. Culotta*,

322 F.3d 546, 548 (8th Cir. 2003) rendered prior to *Exxon* (U.S. 2005) relying upon Justice Marshall's concurrence in *Pennzoil* via *Lemonds v. St. Louis County*, 222 F.3d 488, 492 (8th Cir. 2000), a case in which no life, liberty, or property interest was at issue citing pre-*Exxon* (2005) holdings that *Rooker-Feldman* application requires record analysis to determine "exactly what the state court held." No such analysis was performed by the lower courts here.

The fact that there is no state court judgement related to Petitioners' primary federal claims (App.-23-27-) necessary to invoke state law preclusion principles or *Rooker-Feldman* (when such federal claims were raised in state proceedings) inhibits lawfulness of the lower courts' applications here. In addition, the lower courts have conflated the concepts of seeking federal appellate review of erroneous state action (App.-10-) with seeking a federal injunction against sustaining Constitutionally prohibited state action (R.Doc1.9). Both errors of the lower courts are violative of Petitioners' fifth amendment rights for reasons explicated herein.

Relevant jurisdictional analysis has not been apprehended and Constitutional requirements (App.-33-44-) remain unascertained by the lower courts here.

II. PETITIONERS PRESENTED QUALIFYING FEDERAL CLAIMS.

Petitioners seek an injunction against state actors for violations of the fourteenth amendment (R.Doc1.9), which is a qualifying federal claim if the conduct for which injunction is sought is prohibited by federal law depriving Constitutionally protected rights, which is what is occurring in this case (R.Doc1.6-8). Under federal law, only one example needs to be covered here and Petitioners allege that Joseph Rued's ("Petitioner", hereafter "Rued") federally protected right to custody of his natural child, W.O.R. ("infant Petitioner"), has been deprived in a manner prohibited by the fourteenth amendment by Respondents (R.Doc1.7).

Unlawful deprivations of liberty interests so firmly established in western civilization as Rued's for his natural child (*Stanley v. Illinois*, 405 U.S. 645, 651 (1972); (*Troxel v. Granville,* 530 U.S. 57, 64 (2000)) by state actors in violation of federal law is not a frivolous claim (*Verizon Maryland Inc. v. Public Service Commission*, 535 U.S. 635, 642 (2002)).

Relying on admitted perjury to deprive federally protected rights, as Respondents have repeatedly done in this case (R.Doc1.7), is violative of the most rudimentary elements of fourteenth amendment protection. Fundamental reliance upon admitted perjury to deprive federally protected rights is "so totally devoid of evidentiary support as to be invalid under the Due Process Clause of the Fourteenth Amendment" (*Douglas v. Buder*, 412 U.S. 430, 432 (U.S. 1973)) (*Bell v. Burson*, 402 U.S. 535, 542 (U.S. 1971)):

> The due process clause requires []that state action...shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions. *Brown v. Mississippi*, 297 U.S. 278 (1936).

If the most rudimentary aspects of fundamental fairness apply to state civil proceedings in which citizens' rights far more precious than any property right are implicated and deprived, then Petitioners have clearly stated a claim for which federal relief can be provided in this case:

> [F]ailure of State to correct testimony known to be false violates due process[.] *Albright v. Oliver,* 510 U.S. 266, 2999 (1994).

While the citation directly above relates to criminal proceedings such holdings related to constitutional requirements upon state action are applicable, not because the proceeding is not civil, but rather because federally protected rights are at issue (*Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 168 (1951)).

Petitioners have federally protected interests at issue in both these state and federal proceedings implicating rudimentary due process principles of fundamental fairness cited in *Albright* (1994) and equal protections.

III. STATE LAW PRECLUSION PRINCIPLES DO NOT INHIBIT FEDERAL JURISDICTION HERE.

Analysis of state law preclusion principles under §1738 is appropriate here. Petitioners have raised the federal claims raised here in state proceedings and no state court has reached the merits of the federal issues (App.-23-27-; -31-32-; -59-67-), even articulating as much:

> If [Petitioners]'[] thousands of pages submitted in conjunction with the current requests are not sufficient for the Court to consider the subject issues, it is likely no amount of evidence or testimony likely will effectively address [Petitioners]'[] requests. (App.-27-).

The Minnesota Attorney General argued Petitioners' federal claims were reached in the initial appeal through determinations that due process claims were "unsupported" and "rejected" (App.-83-). Petitioners asserted such arguments are difficult to reasonably understand as being in good faith given the cited opinion could not reach primary federal claims of Petitioners (App.-93-) with evidence necessary to do so prevented from being included in the record of such opinion.

With no state determination acknowledging such claims that have been submitted to Respondents at all levels of the state judiciary multiple times (App.-94-) state preclusion principles do not apply (*Nelson v. American Family Ins. Group*, 651 N.W.2d 499, 510 (Minn. 2002); *Halloran v. Blue and White Liberty Cab Co. Inc.*, 253 Minn. 436, 442 (Minn. 1958)):

> The common test for determining whether an action is precluded is to determine "whether the

> same evidence will sustain both actions."...Additionally, "the party against whom res judicata is applied must have had a full and fair opportunity to litigate the matter in the prior proceeding."...[T]he focus is on whether its application would work an injustice on the party against whom estoppel is urged.[] *Mach v. Wells Concrete Prods. Co.*, 866 N.W.2d 921, 925 (Minn. 2015) (citations omitted).

Rued would be a state court loser only through Respondents' continuing to not address their constitutional abuses. Petitioners' claims asserting federal rights violations are independent claims (App.-32-) and are unreached by Respondents. State preclusion principles are unapplicable here.

IV. JUDICIAL IMMUNITY DOES NOT APPLY IN THIS CASE.

The Minnesota Attorney General argued absolute judicial immunity insulates Respondents from federal injunction (App.-84-86-).

Petitioners' claims are based on actions explicitly prohibited by Constitution that are also ultra vires under federal and state law binding upon Respondents:

> §1983 can presumptively be used to enforce unambiguously conferred federal individual rights...The Fourteenth Amendment hardly fails to secure §1983-enforceable rights because it directs state actors not to deny equal protection. *Health and Hosp. Corp. of Marion Cnty. v. Talevski*, No. 21-806 (U.S. Jun. 8, 2023).
>
> The legislative history makes evident that...[Congress realized] state officers

> might...be antipathetic to...vindication of [federal] rights...[,including] state courts...The very purpose of §1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, "whether that action be executive, legislative, or judicial."...[T]his court recognized long ago that federal injunctive relief against a state court proceeding can in some circumstances be essential to prevent great, immediate, and irreparable loss of a person's constitutional rights. *Mitchum v. Foster*, 407 U.S. 225, 241-242 (1972).
>
> Article VI of the Constitution makes the Constitution the supreme law of the land...No state officer or executive or judicial officer can war against the Constitution without violating his solemn oath to support it. *Cooper v. Aaron*, 358 U.S. 1 (U.S. 1958).

The relief Petitioners seek is cessation of federally prohibited action by Respondents (App.-28-29-; -94-98-) consistent with long-established precedent regarding federal injunction of state actors' actions:

> [A] suit may fail, as one against the sovereign,...if the relief requested can[]not be granted by merely ordering the cessation of the conduct complained of. *North Carolina v. Temple*, 134 U.S. 22 (1890).

As this Court held in *Larson v. Domestic Foreign Corp.*, 337 U.S. 682, 690 (1949), immunity is not conferred for prohibited conduct:

> [W]here the officer's powers are limited by statute, his actions beyond those limitations are considered individual and...is not...the business...the sovereign has empowered him to do or he is doing it in a way which the sovereign has forbidden. His actions are ultra vires his authority and therefore may be made the object of specific relief...without impleading the sovereign,...because of the officer's lack of delegated power. A claim of error in the exercise of that power is therefore not sufficient.

Such holdings are necessitated reality of our Constitutional society. Petitioners' claims rest on constitutionally prohibited conduct not subjectional to split holdings based on authority, not immunities, in *Pennhurst State School Hosp. v. Halderman*, 465 U.S. 89, 90 (1984) which differentiates if constitutionally inadequate *judicial* enforcements were at issue.

Judicial discretion does not lie to supplant supremacy of the Constitution with judicial doctrines or decrees. Such conduct is Constitutionally prohibited and thus invalidated under law. This Court has never held the doctrine of absolute judicial immunity:

> [W]e have never held that judicial immunity absolutely insulates judges from declaratory or injunctive relief with respect to their judicial acts...The Court did say, quoting from *Ex parte Virginia,* 100 U.S. 339, 346 (1880), to this effect, that §1983 was designed to enforce the provisions of the Fourteenth Amendment against all state action, whether that action be executive, legislative, or judicial. The Court also noted that the proponents of §1983 at the time it was enacted insisted that state courts were

> being used to harass and injure citizens...or...in league with those who were bent upon abrogating federally protected rights. (*Supreme Court of Va. v. Consumers Union*, 446 U.S. 719, 736 (1980)).

Judicial immunity exists for the public good and effective administration of justice—it should not be divorced from its rationale:

> Judicial immunity arose because it was in the public interest to have judges who were at liberty to exercise their independent judgment about the merits of a case without fear of being mulcted for **damages**[.] *Dennis v. Sparks*, 449 U.S. 24, 31 (1980) (**Emphasis** added).

Judicial immunity does not exist so that judicial officer persons may fearlessly violate the law and abuse citizens or children or sustain any unauthorized action for which no discretion lies to unlawfully deprive federal rights.

There is no valid basis to believe that Congress, even if it wanted to unconstitutionally abrogate judicial exposure to injunctive relief related to unconstitutional conduct, believes it has from the same senate report often quoted at the Circuit level to misleadingly represent that exposure to injunctive relief for judicial officers was abrogated by Congress (*Justice Network Inc. v. Craighead Cnty.*, 931 F.3d 753, 763 (8th Cir. 2019)):

> §1983 [is amended] to bar...injunctive relief against a State judge, unless declaratory relief ***is*** unavailable...This...does not provide absolute immunity for judicial officers...[for]...any conduct "clearly in excess"

> of a judge's jurisdiction, even...in a judicial capacity. S. Rep. 104–366, at *37, 1996 U.S.C.C.A.N. (***Emphasis*** added).

There is only one 'Thing' that can sit at the top. Under our Constitution it is the Constitution itself, which sits above all valid judicial declarations (which, individually, supersedes any legislative enactment or executive action (*Dickerson v. United States*, 530 U.S. 428, 430 (2000))), congressional acts, and executive actions (*Dodge v. Woolsey*, 59 U.S. 331, 347 (1855)).

Judicial immunity does not exist to shield government action from Constitutional requirements. Such holdings would undermine the Constitution and be antithetical to the doctrine's purpose.

V. *ROOKER-FELDMAN* IS INAPPLICABLE HERE.

Petitioners are not seeking review for abuses of discretion in state judgements by Respondents (R.Doc1.-6-9-). This injunction proceeding against Respondents is only actionable with respect to state action that is federally prohibited. State judicial officers depriving unambiguously conferred federal rights through constitutionally prohibited actions is lawlessness. While certainly erroneous, as commonly understood, and discretionally abusive, as it is possible, though impermissible, to violate Constitution, unlike mere errors of law through actions unprohibited by Constitution, judicial discretion to violate the Constitution is non-existent, the immunity to redress for which is definitionally legal fiction under our Constitution.

Rooker-Feldman is inapplicable when federal claims relate to Constitutionally prohibited act, as such illegal acts create independent claims

irrespective of the forms of action (*Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005)):

> If a federal plaintiff presents an independent claim, even one that denies a state court's legal conclusion in a case to which the plaintiff was a party, there is jurisdiction, and state law determines whether the defendant prevails under preclusion principles...Nor does §1257 stop a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court. If a federal plaintiff []present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party..., then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion.[]...There is nothing necessarily inappropriate, however, about filing a protective action.

The Eighth Circuit has previously recognized the necessity of evaluating preclusion principles, holding that if state courts declined to reach presented federal issues due process, presumably under the fifth amendment, is implicated (*Simes v. Huckabee*, 354 F.3d 823, 827 (8th Cir. 2004)) and *Rooker-Feldman* is inapplicable. As the Eighth Circuit explained in *Riehm v. Engelking* 538 F.3d 952, 965 (8th Cir. 2008), "[i]f...a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker-Feldman* does not bar jurisdiction. *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003) (cited favorably in *Exxon*)."

Yet, here, the Eighth Circuit affirmed *Rooker-Feldman* application when Petitioners' federal claims relate to illegal actions which were both presented and unreached in state proceedings, expanding *Rooker-Feldman* beyond its pre-*Exxon* (2005) scope, subordinating Constitution to doctrine.

In *Pennzoil,* this Court affirmed state interest in judgement enforcement and impliedly applied civil forms of *procedural default doctrine,* but *Exxon* clarifies that *Rooker-Feldman* does not apply to independent claims, including prohibited acts, ensuring Constitution is not subordinated to judicial doctrines. An unambiguous authority demonstrating state procedures cannot be expected to afford adequate remedy here is that no state court has reached the merits of Petitioners' primary federal claims despite multiple opportunities at each level of the state judiciary.

VI. ANY OTHER YOUNGER DERIVATIVE ABSTENTION DOCTRINES ARE OVERCOME BECAUSE STATE PROCEEDINGS ARE BEING CONDUCTED IN BAD FAITH, ARE FLAGRANTLY VIOLATIVE OF EXPRESS CONSTITUTIONAL PROHIBITIONS, AND ARE CAUSING PETITIONERS GREAT, IRREPARABLE HARM.

In *Moore v. Sims*, 442 U.S. 415, 416 (1979), this Court held *Younger* abstention applies to child welfare cases. While the state is not a direct party in these underlying proceedings, state law holds that the state sits as a third party in custody proceedings and state involvement for Petitioners is not elective (*Boddie v. Connecticut*, 401 U.S. 371, 374 and 380 (1971)). Petitioners believe that state interest is cognizable here relating both to providing for protection under its

ascribed related laws for the children of its state and providing for the best interest as mandated by statute of the same.

Jurisdictional analysis under *Younger* derivatives may be appropriate on such grounds, but fails to preclude federal jurisdiction in this case under the bad faith and related exemptions due to Respondents' actions violating child maltreatment and related laws of the state and violating the fourteenth amendment through disregarding the most rudimentary aspects of hearing and fundamental fairness controlling state action depriving federal rights (App.-28-29-; -89-94-) clearly mandated upon such proceedings:

> *Younger*, and its civil counterpart which we apply today, do of course allow intervention in those cases where the District Court properly finds that the state proceeding...is conducted in bad faith. *Huffman v. Pursue*, Ltd., 420 U.S. 592, 611 (1975).

Petitioners are suffering great and irreparable harm (R.Doc2; R.Doc5; R.Doc6; App.-13-78- and -99-126-). Extraordinary circumstances counsel against abstention (App.-38-). Federal jurisdiction for Petitioners' federal claims exists.

VII. CONSTITUTIONALLY SOUND INTERPRETATION AND APPLICATION OF THE ADDITIONS TO §1983 BY THE FCIA OF 1996 IS LACKING.

Petitioners are unaware of any Constitutionally considerate relevant precedent to this case related to exhaustion of available declaratory relief but believe that "§1983 is a prism not a procrustean bed" (Justice Scalia) when its interpretations and applications are

not ascertained so as to defeat the only ends for which Congress has authority to enact it.

Petitioners believe a threshold exists such that declaratory relief does not exist or can not be considered effective or adequate once crossed. Holding otherwise would defeat citizens' fourteenth amendment rights under §1983 for state court actions.

Congress has authority to inhibit private rights of enforcement of their acts, but the authority to inhibit enforcement of the fourteenth amendment does not flow from the fifth clause:

> It is State action of a particular character that is prohibited[,]...void[ing] all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws. It not only does this, but, in order that the national will, thus declared, may not be a mere *brutum fulmen*, the last section of the amendment invests Congress with power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition...Positive rights and privileges are undoubtedly secured by the Fourteenth Amendment; but they are secured by way of prohibition against State laws and State proceedings affecting those rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibition into effect; and such legislation must necessarily be predicated upon such supposed State laws or State proceedings, and

> be directed to the correction of their operation and effect. *United States v. Stanley*, 109 U.S. 3, 11 (1883).

The Enforcement Clause provides no authority to inhibit enforcement of fourteenth amendment guarantees or alter their substance (*McCulloch v. Maryland*, 17 U.S. 316, 404 (1819)). Congress is bound to support the Constitution (U.S. Const. Art. VI §3), prohibiting action unsupportive of the Constitution. Congressional acts cannot impede what the fourteenth amendment substantively provides—Congress has granted federal jurisdiction for Constitutional claims.

Determinations related to the interpretation of federal jurisdiction as granted by congress lie with this Court, which has repeatedly held specific congressional grants or prescriptions do not provide limitations to other or concurrent jurisdiction. This Court has also held that where Congress is provided prophylactic authority, no authority lies to substantively alter the rights to be enforced, like altering the fourteenth amendment to exclude certain state actors. Inhibiting vindication of such rights would be innately antithetical to Congress' provisioned authority:

> Were this not expressed in the act, it would none the less be implied, at least so far as pertains to any violation of rights guaranteed by the Fourteenth Amendment. *Plymouth Coal Co. v. Pennsylvania*, 232 U.S. 531, 547 (1914).

By placing qualifications on injunctive relief against judicial officers, the very language of Congress' additions to §1983 inherently recognizes federal court authorization to provide such relief. Interpretation of the additional language to §1983 from the FCIA

should not be interpreted as beyond Congress' authority or unconstitutional if it need not be. The Constitutionally appropriate interpretation of FCIA additions is that such effectively codifies constitutionally sound comity principles with one additional step, even if Congress may not have sufficiently appreciated its authorization scope when implemented:

> This Court has consistently favored that interpretation of legislation which supports its constitutionality...That reason is impelling here so that if at all possible [the congressional act] may be allowed to serve its great purpose — the protection of the individual in his civil liberties. *Screws v. United States*, 325 U.S. 91, 97 (1945).

Petitioners are aware that such interpretations run counter to represented Congressional intent related to the FCIA at a number of Circuits, which hold the FCIA abrogates this Court's holdings restoring 400 years of common law tradition purported to have somehow changed just in 1984 (*File v. Martin*, 33 F.4th 385, 391 (7th Cir. 2022)). The representations of the Circuits beg many questions like what such claimants believe occurred in *Mitchum v. Foster*, 407 U.S. 225 (1972) and if Constitutional supremacy is sufficiently either understood or respected by the same. The interpretation Circuits have claimed for the FCIA would negate this Court's holdings regarding Constitutional exemptions to comity-based abstentions and cases like *Mitchum*.

Petitioners' position is that such Circuit claims are not controlling and implicitly invalidated through multiple rulings from this Court, but if present Circuit

holdings on the FCIA of 1996's impact on §1983 were controlling, then the Congressional Act and interpretive holdings would be unconstitutional.

Interpreting the FCIA additions to §1983 as effectively the codification of comity principles in line with existing *procedural default doctrine* with the addition of having invoked the jurisdiction of this Court's state appellate authority prior to injunctive relief becoming generally actionable against state judicial officers is the only Constitutionally congruent application that would not substantively alter the fourteenth amendment, taking into account Congress' cognizable intent proportionate with the wrongs that Congress is authorized to prescribe for enforcement of under the fourteenth amendment.

Unless related precedent with respect to exhaustion of remedies does not apply here, individuals would not have to fulfill impossibly vague requirements repeatedly asserting the same claims in every imaginable way some unknown number of times to the same persons that are generating federal claims to exhaust remedies such that sufficient action has been taken to enable redress under congressionally prescribed cause of action implicitly authorizing private enforcement of such rights.

Petitioners have far exceeded any reasonable exhaustion threshold, giving the state apparatus repeated opportunities to address federal issues and notice that prohibited conduct would be addressed here, along with having sought review under §1257(a) (App.-37-38-; R.Doc32-1.11-31).

Such interpretation would generate no Constitutional issues so long as existing *Younger* exceptions as held in *Mitchum* are maintained, as this

Court has already implied would override FCIA additions (*Trump v. Vance*, 140 S. Ct. 2412, 2428 (2020)), and, some way, definitively extended to proceedings sans state parties, generating integral Constitutional protections consistent with the fourteenth amendment when protected interests are at issue. Under such effect, bad faith or flagrant constitutional violations with great, irreparable harm overrides Constitutionally unsound FCIA interpretations, preserving federal support for fourteenth amendment requirements, consistent with this Court's current holdings.

Requiring repetitive and/or extraordinary approaches to the same apparatus to exhaust remedies would generate a substantial degree of unreasonableness such that §1983 would no longer provide effective relief related to unlawful state deprivations prohibited by Constitution here. Petitioners' assertions align with the context and test this Court has already provided for these issues in *City of Boerne v. Flores*, 521 U.S. 507, 519 (1997):

> The design of the Amendment and the text of §5 are inconsistent with the suggestion that Congress has the power to decree the substance of the Fourteenth Amendment's restrictions on the States...Congress does not enforce a constitutional right by changing what the right is. It has been given the power "to enforce," not the power to determine what constitutes a constitutional violation. Were it not so, what Congress would be enforcing would no longer be, in any meaningful sense, the []provisions of [the Amendment...—t]he distinction exists and must be observed. There must be a congruence and proportionality between the injury to be

> prevented or remedied and the means adopted to that end. Lacking such a connection, legislation may become substantive in operation and effect...The Fourteenth Amendment's history confirms the remedial, rather than substantive, nature of the Enforcement Clause.

Nowhere in the Constitution, or the annals of this Court, is a right to appeal, itself, declared or held as sufficient for lawful process due. Interpreting §1983 as having defined Constitutional due process requirements for state actors as providing 'an appeal' where unconstitutional action is not addressed is to interpret §1983 as an unauthorized Constitutional amendment invalidating federal Constitutional requirements including all due process holdings from this Court for all state judiciaries whenever the state is not also a litigant.

Appropriate process due and fundamental fairness requirements are protected by due process under the Constitution whether an appeal is afforded or not. Congress is authorized to prescribe for remedy for fourteenth amendment violations but is not authorized to define violations of the fourteenth amendment or restrict enforcement of the same under the fifth clause.

VIII. PETITIONERS HAVE CLEARED REASONABLE REQUIREMENTS FOR SOUGHT INJUNCTIVE RELIEF UNDER §1983.

In attempting to convey what would be reasonably accessible to Petitioners, it is instructive to provide detail related to the state proceedings.

Rued, among others, reported abuse of W.O.R. to the responsible child welfare agency for

maltreatment ("CPS"). CPS investigated and filed a child in need of protection or services ("CHIPS") petition alleging Rued's reports were false, removing custody, care, and companionship of W.O.R. from Rued, and initiating a juvenile court proceeding. The adjudication of the proceeding resulted in dismissal of the petition returning all of Rued's rights to custody, care, and companionship of W.O.R. (App.-23-).

After this and prior to a custody trial in state civil court, Rued deposed the CPS investigator who investigated abuse of W.O.R. and signed the CHIPS petition under oath based upon his belief and the information in his investigations. In deposition, the CPS investigator admitted that the CHIPS petition was untrue and totally incorrect with respect to both the information in the investigation and the investigator's own belief related to the most significant issues in the investigation. In deposition, the investigator admitted there was evidence of abuse of W.O.R. and there was evidence of medical determinations of dietary restrictions for W.O.R. all consistent with Rued's reports. The support cited in the CHIPS petition to represent that Rued's reports were false was admitted by the investigator to be untrue in deposition. (App.-23-24-).

Rued submitted this deposition in civil proceedings that juvenile court extended, which Mike Furnstahl ("Respondent") did not allow in the record after reviewing. Rued informed Furnstahl he would call the CPS investigator during trial. Later, Furnstahl requested Rued's planned witnesses for the next day, which Rued provided, then Furnstahl indicated that Rued could not call his witnesses and instructed Rued to call the witnesses Furnstahl wanted in the order that Furnstahl wanted them.

Once the witnesses Furnstahl instructed Rued to call were called, there was no more trial time and Rued was not allowed to call the CPS investigator. No witnesses involved with the CPS investigations were called. (App.-25-).

Furnstahl determined the two primary issues were abuse of W.O.R. and W.O.R.'s food reactivity and made findings relying upon the CPS investigations that culminated with the CHIPS petition, consistent with its perjurious claims without any other reliable evidence, to determine Rued endangered W.O.R. by making false reports of W.O.R.'s maltreatment to eliminate Rued's rights to custody of W.O.R. Such lack of evidence presented in trial supporting such summarily derived conclusions was appealed, which certain Respondents found to be harmless in reliance upon the perjurious CHIPS petition, then appealed through this Court without further ruling. (App.-25-).

While initial appeal was pending, Rued sought an order for protection for W.O.R. given continued abuse W.O.R. reported and exhibited. After W.O.R. testified to the abuse Rued sought an order for protection for, without any other evidence in the record for support besides the admittedly perjurious CHIPS petition, a Respondent dismissed the proceeding and eventually made findings relying on the CHIPS petition and Furnstahl's initial order relying upon the same prior CPS investigation results. Thereafter, Charlene Hatcher ("Respondent"), relying upon the CHIPS petition, determined that Rued endangered W.O.R. by having sought an order for protection. The deposition admitting the CHIPS petition was perjury was submitted into the record and the fundamental issues of such reliance were clearly identified and not reached by Hatcher. Both proceedings were appealed

and affirmed based on the CHIPS petition and prior appellate affirmance while the initial appeal was under petition for writ of certiorari at this Court. (App.-26-27-).

Rued then presented Hatcher with expert input she ordered informing that Rued's beliefs and actions were the only reasonable beliefs and lawful actions he could have and take given the actual evidence, for Rued to do as directed by Hatcher would be illegal and harmful to W.O.R., and that the actions by certain Respondents are harming W.O.R., Rued, Scott Rued ("Petitioner"), and Leah Rued ("Petitioner") (R.Doc44-12.6-11; R.Doc44-13.4-22). Rued again informed Hatcher that prior orders are based on admitted perjury and due process violations (R.Doc24.16-30; R.Doc24.38-47). In response, Hatcher did not reach the constitutional violations and ordered all of Rued's companionship with W.O.R. to occur under confinement (R.Doc21.86) to the extent there is any (R.Doc2.3, 5-6), which there is not (R.Doc1.7), with Scott and Leah Rued prohibited from seeing W.O.R. under any circumstances, ever, all based upon prior orders based upon the CHIPS petition and no reliable evidence subjected to cross-examination (R.Doc24.3-31).

Rued appealed this order the month after this Court denied review on the initial trial appeal, informing certain Respondents that federal suit would be filed if these fundamental Constitutional issues were not appropriately and promptly dealt with. Susan Segal ("Respondent") claimed Rued's direct appeal was unripe due to issues that were not being appealed, which Rued appealed to the Minnesota Supreme Court where an accelerated appeal seeking emergency review of these issues was already pending

(R.Doc23; R.Doc23-1; R.Doc23-2). No state or federal court has reached the federal issues repeatedly raised. Multiple well-qualified experts have provided declarations based on the record in support of Petitioners' requests and supporting the irreparable harm Petitioners are suffering due to Respondents' unjustifiable and unlawful conduct (R.Doc5; R.Doc6).

The federal issues related to rudimentary due process including fundamental fairness have been presented to every level of the Minnesota Judiciary multiple times and no Respondent has even acknowledged the fundamental issue that all determinations by Respondents are fundamentally based upon admitted perjury as if it were true. (App.-23-29-)

A writ of *habeas corpus* does not to lie to address a number of Petitioners' federal claims. Suit against Respondents' established custom of violating the fourteenth amendment could provide caselaw, which is already abundant and not heeded, and could prohibit additional violations, but would not provide adequate relief related to continuing and sustained actions.

At time of Petitioners' filing, a writ of prohibition at this Court related to the Minnesota Supreme Court not taking discretionary accelerated review or review of a local holding unrelated to Petitioners' federal claims would not be sufficiently effective and a writ of prohibition at the Minnesota Supreme Court is redundant in substance and effect to the accelerated review which was just denied.

Given their great, irreparable harm, Petitioners had the option of filing for requisite injunction under federal law in state or federal court, which is within

Petitioners' discretion and this action should not be deterred because the same action can also be filed in state court.

IX. FIFTH AMENDMENT DUE PROCESS AND EQUAL PROTECTIONS CONCERNS ARE IMPLICATED IN THIS CASE.

Violation of law by government does not, in and of itself, amount to equal protection violations. Equal protections is protections of equal laws. However, equal protections does apply to individuals' treatment and the role of the judiciary is not the same as the role of the executive or legislative branches. It is as untrue that no state law violation violates equal protections, as it would be that all state law violations violate equal protections. The judiciary may not arbitrarily and capriciously deny access to established law accessible to any citizen within their *jurisdiction* without violating equal protections.

Where judicial process provides access to the law for issues that citizens have an interest there is a base level of due process prohibiting actions prohibited by law by the government in the proceeding that is required and protected federally, not only in many portions by due process but also by equal protections. These protections can overlap.

If state *judges* ordered abuse of children such would be a federally addressable issue, like arbitrarily inhibiting appeals conferred under right, and would not cease to be because what is abuse under state law was claimed by abusers to be best for a specific child.

Protections of equal laws cannot exist when actualized application of law is prohibited by law. State judges violating binding law in official action

material to citizens' rights is an unlawful application of the law, but no traditional unlawful application of law claim exists because the Constitutionally sound law was not applied but violated in application. Similar executive actor claims would exist if citizens were prosecuted or punished for not violating the law or in contravention of ascribed immunities, including Constitutional. Such unauthorized actions also violate equal protections.

Jurisdictions exist after and before subject-matter establishment. The Constitution establishes boundaries on state action. Even denying jurisdiction, as here, is government action despite lower courts' claims that subject-matter jurisdiction does not exist.

The role of judicial officers is such that if they act on behalf of the state in a manner prohibited by law, protection of equal laws is necessarily violated through the usurpation of legislative authority under judicial authority to *change* the laws for such persons as subjected to such state action, which is different than adopting Constitutionally requisite redress where none is fashioned or declaring what was fashioned unlawful. Legally prohibited actions by judges could not conform to reasonable persons' reasonable expectations going before a judge and generally generates notice issues. Conceptually constructed similarly, open misrepresentation of the record unjustifiable absent insertion of "mere" (*Yick Wo v. Hopkins*, 118 U.S. 356, 366 (1886)) judicial will or impermissible judicial witnessing can be beyond reasonable expectations for persons before judges, violate due process, and generate numerous other issues.

The District Court claimed Petitioners' action was purely an appeal. Such a finding must be justified by the record. Petitioners are not seeking judicial review for error, but federal injunction against conduct prohibited by Constitution. Such misrepresentation of Petitioners' federal claims is violative of basic due process tenets, abridging Petitioners' rights to petition the government (*Sure–Tan, Inc. v. NLRB*, 467 U.S. (1984)). Claims must be reached as provided and discretion to identify misleading or cleverly crafted pleadings exists, but not to arbitrarily fit unwanted proceedings into abstention doctrines.

Not reaching Petitioners' claims as provided and arbitrarily applying *Rooker-Feldman* to support dismissal for want of jurisdiction denying Petitioners venue for enforcement of federally protected rights are errors that can never be harmless. Such actions violate Petitioners' federal equal protections rights, and, given Petitioners' unaddressed federal claims, violate Petitioners' federal due process rights (*Weinberger v. Wiesenfeld*, 420 U.S. 636, 638 (1975):

> [T]he Due Process Clause of the Fifth Amendment contains an equal protection component prohibiting the United States from invidiously discriminating between **individuals or groups**. *Bolling v. Sharpe*, 347 U.S. 497 (1954) (**Emphasis** added).

Arbitrary and capricious government actions when protected rights of citizens are implicated and the Constitution cannot cohabitate.

X. THERE IS NO JUDICIALLY COGNIZABLE BASIS TO DENY JURISDICTION HERE.

Petitioners' federal action is compatible with the requirements outlined in *Blessing v. Freestone*, 520 U.S. 329 (1997), with Constitutional provisions at issue.

Unjustifiably applying judicial doctrine to make the Constitution mere *brutum fulmen* is not judicially authorized action, by either state (App.-27-, -35-, -38-) or federal judicial officers (U.S. Const. Art. VI § 2, 3). Capriciously and arbitrarily applying *Rooker-Feldmen* to deny Petitioners access to congressional grant of jurisdiction violates Petitioners' equal protection rights to access federal law and congressional grants of jurisdiction on a level as or deeper than Petitioners' same rights would have been violated by the District Court inhibiting Petitioners' direct appeal (*Delaware Tribal Business Comm. v. Weeks*, 430 U.S. 73, 75*1 (1977)):

> [O]pportunity for appeal []cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause.[] *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 33 and (1987).

Such unconstitutional conduct by the lower courts generates the serious issue articulated in *Webster v. Doe* 486 U.S. 592, 603 (1988) here, irrespective of intent:

> [W]here Congress intends to preclude judicial review of constitutional claims its intent to do so must be clear...We require this heightened showing in part to avoid the "serious constitutional question" that would arise if a

> federal statute were construed to deny any judicial forum for a colorable constitutional claim.

The ultra vires nature of judicial action where jurisdiction does not lie is well-established, irrespective of intent:

> Courts have no constitutional authority to pass on the merits of a case beyond their jurisdiction—"to do so is, by very definition, for a court to act ultra vires." 523 U.S. at 102, 118 S.Ct. 1003. *City of Ocala v. Rojas*, 143 S. Ct. 764, 766 (2023).

And denying congressionally, plainly prescribed or constitutionally necessitated jurisdiction is equally ultra vires:

> We have no more right to decline...exercise of jurisdiction...given, than to usurp that which is...not given...[, either] would be treason to the constitution...Questions...we would gladly avoid [may occur], but we cannot avoid them. All we can do is...exercise our best judgment...and...perform our duty. *Cohens v. Virginia*, 19 U.S. 264, 403 (1821).

Petitioners' action is the properly contemplated counterpart to *habeas corpus*, equally necessary for long-established Constitutional liberty, defined by this Court, post *Lehman v. Lycoming County Children's Services*, 458 U.S. 502, 519 (1982) when addressing such *habeas corpus* redress previously turned on federal question insufficiency. *Lehman* provided clarification that forms of custody deprivation do not provide differentiation:

> [Despite] suggestion that the [sought remedy for state deprivation of child custody] could be available only when the State takes the child away from its natural parents, but not when the State simply determines custody in a routine intrafamily dispute[,]...[i]t is not apparent that such distinctions are possible, either in legal theory or as a practical matter. The circumstances of custody vary widely, though in each disputed case the child is in the custody of one person—over the objections of someone else—by order of a state court. *Ibid.* 512 *15 (1982).

This Court understandably disfavors judicially created remedies like actions for damages through the Constitution. Enforcement for Constitutional provisions requires no judicially constructed remedy. The Constitution proclaims prohibitions, rights, and protections, defined by this Court, providing enforcement prescription when adequate remedy is otherwise unavailable to citizens. Petitioners are persons.

The Constitution nowhere implies that government may be excused enforcement relief for unlawfully depriving rights so long as it discriminated unintentionally. There is no right to effect deprivations prohibited by Constitution and no federal general common law (*Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938)) abrogating the Constitution:

> If the end result is unlawful, it matters not that the means used in violation may be lawful. *California Transport v. Trucking Unlimited*, 404 U.S. 508, 515 (1972).

Effect of unconstitutional deprivation cannot constitutionally comport as immunized when citizens are proclaimed free from the same. Immunity application with respect to implied right of Constitutional enforcement is distinct from cognizable liability, including damages (App.-37-). Constitutional 'sense,' incorporating intent, is not applicable when only Constitutional compliance is at issue.

Holding otherwise would be the conflation of actionability under law with the immunization from liability under doctrine sneaked into implied rights of enforcement, furtively elevating immunity doctrine above Constitution. How little attention a judge applies effectuating constitutional deprivations is unrelated to redress available for enforcement. Existence and explication are separately predicable—what is at issue determines whether existence, or existence and explication, is relevant.

Protections related to enforcement of deprivation cessation lies upon arbitrary government action, not just intentionally arbitrary action (*Bank of Columbia v. Okely*, 17 U.S. 235, 243 (1819)). Were this not so, judges could lie, cheat, and steal violating the fourteenth amendment against any subjected to them and, if appeals did not correct the 'error,' then just claim they did not know the Constitution was their responsibility as their subjects have appeals where process due *exists*, since 1996. Thinking that the FCIA overrode the fourteenth amendment, insulating unconstitutional conduct by judges so long as such was unaddressed by the state apparatus, would explain the disturbing conduct of Respondents here.

Such would arise from interpreting "was" in the FCIA additions to §1983 as time-operative upon the

ruling(s) for which injunction is sought, not the federal filing. The former inherently would, by default, furtively define due process as 'existence of opportunity for appeal.' Due process violations have objective standards, and violated rights are no less violated if the violation was not a violator's goal, or perfectly unintentional.

There is great need not to alchemize the Constitution, trading definitive words for some *sense* sans nexus to citizens' rights or such's deprived state—the difference is as fundamental as whether the Constitution accessibly exists, or its accessibility is based upon perception of depraved intent's existence irrespective of actualized deprivation—dematerializing the Constitution into just its *sense*.

A stay of federal proceedings could be appropriate if the state apparatus had not failed to reach such well settled constitutional issues and absent Petitioners suffering irreparable harm due to Respondents' unconstitutional actions (R.Doc2; App.-28-29-, -54-, -74-75-):

> Rights far more precious to [Rued] than property rights will be cut off if [he] is to be bound by the [Minnesota] award of custody. *May v. Anderson*, 345 U.S. 528, 532 (1953)

Only if it is unknown if the state may rely on perjury and refuse to address prohibited Constitutional deprivations of federally protected rights, would a "[previously undetermined] serious constitutional question" be at stake, (*Louisiana P. L. Co. v. Thibodaux City*, 360 U.S. 25, 38 *4 (1959)). Interrupting state action in explicit contravention of state policy can hardly be construed as interruptive of such policy. Petitioners' requested redress is the

state's cognizable interest. Absent Rued exercising unterminated parental rights, as here for W.O.R., who is not party to underlying state proceedings, W.O.R.'s welfare and rights will remain unlawfully neglected, abused, and deprived by Respondents.

Even if this Court has not stated 'the fourteenth amendment applies for paternal custody litigants in Minnesota,' the existence of *Shelley v. Kraemer*, 334 U.S. 1, 14-19 (1948), *May, Santosky, Troxel,* etc., and any of the fundamental fairness and hearing on essential determinative elements implications of due process holdings from this Court makes plain that fourteenth amendment protections may not be disregarded by Respondents here (App.-28-29-):

> He who defies a decision interpreting the Constitution knows precisely what he is doing. (*Screws v. United States*, 325 U.S. 91, 104 (1945).

The Constitution, itself, remains governing law, as Congress cannot reach it absent amendment and Congress' prescriptions cannot alter the Constitutional rights substantively protected. Petitioners have asserted federal jurisdiction under §1331 to both the District Court (R.Doc1.3) and at the Eighth Circuit (App.-41-), along with violations of the fourteenth amendment and do so here (*Lynch v. Household Finance Corp.*, 405 U.S. 538, 547 (1972); *Verizon Maryland Inc. v. Public Service Commission*, 535 U.S. 635, 644 (2002)).

This Court has determined Congressional Act related to fourteenth amendment enforcement provides exception to the Anti-Injunction Act and found further exception when no other adequate remedy is available (*South Carolina v. Regan*, 465 U.S.

367 (1984)). Enforcement under the fourteenth amendment would not be rebutted under interpretations of §1983 inhibiting enforcement here due to the resulting ineffectiveness of §1983 in any such case (*Carlson, v. Green*, 446 U.S. 14, 19 (1980)), if relevant (*Mt. Healthy City Board of Ed. v. Doyle*, 429 U.S. 274, 278 (1977)).

REASONS FOR GRANTING THE PETITION

I. EXERCISE OF FEDERAL JURISDICTION IS CONSTITUTIONALLY REQUISITE.

Petitioners' fifth amendment rights require that concurrent federal jurisdiction be exercised. Petitioners' claims are due hearing and arbitrarily and capriciously denying jurisdiction for Petitioners' claims is unconstitutional. Petitioners require Constitutional enforcement and are suffering great, irreparable harm from Respondents' flagrant violations of express Constitutional prohibitions that cannot reasonably be construed as good faith.

The judgement below should be vacated, and this case should be remanded for proceedings consistent with Constitution, applicable federal law, and facts of this case with instruction that federal jurisdiction exists.

II. THIS COURT SHOULD GRANT REVIEW BECAUSE THE UNLAWFUL ACTIONS OCCURRING HERE, AT THE STATE AND FEDERAL LEVEL, ARE NOT ISOLATED TO THIS CASE.

Protection of and provision for children has been known to be sacred by anyone worth knowing throughout western civilization (*The Bible*, Matthew 18:6), irrespective of any religious affiliation. Could

such be stratified, children are most worthy of protection and the law.

Child and parent civil rights are in crisis in this country. Nothing will change until this Court takes action just as other civil rights movements have been initiated when local officials unconstitutionally abuse citizens or children. This Court has opportunity to positively affect change for many children and families subjected to Constitutionally prohibited state action by affirming that the Constitution means what it says and the federal judiciary not only has jurisdiction but obligation to enforce Constitutional provisions for citizens:

> "No [judge]...may set [binding] law at defiance with impunity. All...officers of...government ...are creatures of...law, and...bound to obey it." *United States v. Lee,* 106 U.S. 196, 220 (1882).

Denying federal jurisdiction here requires the federal judiciary to stand behind claims that any honest person aware of the facts of this case and the words of the Constitution, as held by this Court, knows are unveridical. Such conduct has been beyond discretion for honorable persons throughout western civilization (*Ibid.*, Exodus 20:6).

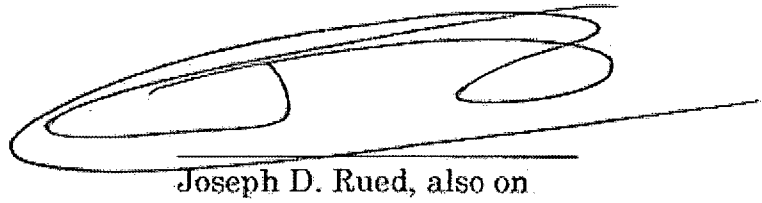
Utilization of the Court's experience and resources addressing accessibility of Constitutional protections for Constitutional abuses of children and citizens by state judicial officers across this country is worthwhile. This Court should take this case because it is the right thing to do here and for the country. Not all extraordinary cases make bad law. The attention of this Court is required for application and preservation of the Constitution for this child and family and citizens and children across this country.

CONCLUSION

[Human beings] being what [they are] cannot safely be trusted with complete immunity from outward responsibility in depriving others of their rights...—such is the conviction underlying our Bill of Rights...No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 171 and 161 (1951).

[D]ue process requires that "no change in ancient procedure can be made which disregards those fundamental principles, to be ascertained from time to time by judicial action, which have relation to process of law and protect the citizen in his private right, and guard him against the arbitrary action of government." *Screws v. United States,* 325 U.S. 91, 95 (1945).

Respectfully Submitted,



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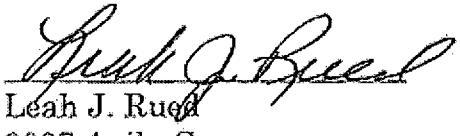

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