No. 24-5046 ORIGINAL

In The Supreme Court of the United States

KYLE GREENE & KRYSTLE GREENE

Petitioners,

v.

MEEKER COUNTY SOCIAL SERVICES, MEEKER COUNTY COURT, MINNESOTA COURT OF APPEALS

Respondents.

On Petition For Writ Of Certiorari
From The United States Court Of Appeals
For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Kyle Greene
Krystle Greene
52508 U.S. Hwy 12
Grove City, MN 56243
Pro se Appellants

QUESTIONS PRESENTED

The following questions are presented by the petitioners:

1. Does the Eleventh Amendment Apply to the Americans with Disabilities Act (ADA)?
2. Are American Citizens entitled to know whether their case was adjudicated by an article III judge or a law clerk?

PARTIES BELOW

Petitioners Kyle and Krystle Greene were the Plaintiff-Appellants in the court below. Respondents Meeker County Social Services, Meeker County Courts and the Minnesota Court of Appeals were the Defendant-Appellants in the court below.

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MEEKER COUNTY SOCIAL SERVICES, MEEKER COUNTY COURT, MINNESOTA COURT OF APPEALS

Respondents.

On Petition For Writ Of Certiorari
From The United States Court Of Appeals
For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Kyle and Krystle Greene hereby petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circus in Greene v. Meeker County Social Services, Meeker County Court, & Minnesota Court of Appeals No. 23-2345 (Gruender, Shepard, and Kobes) filed on February 5, 2024. There was no

good-faith determination of law in petitioners' case in either the district court or the Eighth Circuit Court of Appeals.

OPINIONS BELOW

The unpublished opinion of the Court of Appeals affirming the District Court's judgment was entered on February 5, 2024 and is reproduced at *Pet. App. A*. The September 8, 2022 unpublished opinion of the District Court, dismissing petitioners action as "futile", holding that the Eleventh Amendment bars action under the Americans with Disabilities Act (hereinafter "ADA") is reproduced at *Pet. App. B*.

JURISDICTIONAL STATEMENT

The Court of Appeals' final judgment, affirming the dismissal by the lower court, was entered on February 5, 2024.

This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves Section 5 of the Fourteenth Amendment to the U.S. Constitution which provides:

> Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 12202

This case involves Title 42 U.S.C. §12202, which provides:

> A State shall not be immune under the eleventh amendment to the Constitution of the United State from an action in Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.
>
> 42 U.S.C. 12202

STATEMENT OF THE CASE

On January 17, 2022 petitioners received a "Notice of Suspension" from the Minnesota Department of Public Safety, informing petitioners that Mr. Greene's driver's license was being suspended for "failure to comply with a payment agreement" at the direction of Meeker County Social Services (hereinafter, "MCSS").

On January 31, 2022, Petitioners filed a civil rights action against MCSS for violation of the Americans with Disabilities Act (hereinafter, "ADA")[1].

On February 24, 2022, magistrate Hildy Bowbeer issued an "Order for Party to File Document/Respond to Court." See 22-CV-291 doc. 4

[1] Mr. and Mrs. Greene suffer from disabilities under 42 U.S.C. §12102. MCSS agrees. see Greene v. Meeker County Social Services et al., 22-CV-291, doc. 35 pg. 15 (Dist. Of Minn. 2023).

On March 7, 2022 petitioners filed a "Notice of Correction", to correct the issues magistrate Hildy Bowbeer addressed however, that notice was improperly docketed as an amended complaint. See 22-CV-291 doc. 5. *See also* 23-2345 Petitioners' Opening Brief, pg. 8 n. 2.

On April 11, 2022, MCSS filed a motion for more definitive statement in combination with a motion to dismiss, in violation of Fed. R. Civ. P. 12(e).[2]

In that motion, MCSS took a contrary position to their prior position in 2017 (case file A16-1701[3]) where the Minnesota Court of Appeals (hereinafter, "MCA") issued an "unpublished opinion" ruling in favor of MCSS.

MCSS just ran snout first into two (2) legal problems; Judicial estoppel and the full faith and credit clause under 28 U.S.C. §1738.

On April 14, 2022, MCSS admitted to suspending Mr. Greene's driver's license.

On May 26, 2022, Petitioners filed their first amended complaint[4] to include Meeker County Courts (hereinafter, "MCC") and MCA as defendants for fraud.[5]

On June 17, 2022, due to the retirement of Magistrate Hildy Bowbeer, this case was reassigned to Magistrate Elizabeth Wright. See doc. 39

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2 See 22-CV-291, doc. 12, pg. 4 & doc. 12, pg.6

3 Case file A16-1701, was a case where MCSS stole $5,000 from Mr. Greene and suspended his driver's license after Mr. Greene discovered a MCSS employee, Melissa Granlund, breached her fiduciary duties and concealed her conviction for wrongfully obtaining assistance. *Meeker County v. Kyle Greene,* A16-1701 (Minn. Ct. of App. 2017).

4 Petitioners' amended complaint is mislabeled as doc. 5 which was a clerical error petitioners corrected at the direction of magistrate Hildy Bowbeer (doc. 4). Petitioners' amended complaint is doc. 29. See also Fed. R. Civ. P. 60 & 61.

5 To date, neither MCC nor MCA has clarified the State's position to these contrary positions. Is Mr. Greene "similarly situated" when compared to himself?

On June 21, 2022 (four days later) Magistrate Elizabeth Wright recused herself from the case. See doc. 44

On September 8, 2022, rather than allow Petitioners "their day in court," Judge Tostrud violated his 28 U.S.C. 453 oath of office by issuing a ruling that relies heavily on Minnesota District court "precedence" to override an Act of Congress. Pet. App. B.

On April 18, 2023, petitioners filed a "Motion for Relief of Judgment" under Fed. R. Civ. P. 60. *Pet. App. C.*

On July 7, 2023, Petitioners filed a "Motion to Correct the Caption" showing how the Eighth Circuit Court of Appeals law clerks were committing fraud upon the court by removing MCC and MCA as "Defendant-Appellees" from the caption, thereby adjudicating this case under rule 27A(a) (clerk's order) without a hearing by an article III judge. *Pet. App. D*

On July 31, 2023 petitioners raised one issue on appeal, "Does the Eleventh Amendment apply to the ADA?"

On February 5, 2024, The Eighth Circuit issued it's one-line ruling affirming the district court's decision providing no legal basis to support it's decision. *Pet. App. A*

On February 15, 2024 ten (10) days after entry of judgment, Petitioners filed a "Petition for Rehearing and Rehearing en banc." *Pet. App. E*

On February 26, 2024 the Eighth Circuit docketed the Greene's petition for rehearing, after "sitting on it" a week past the deadline, in order to deny the petition for rehearing as "untimely." *Pet. App. F*

The Greenes now petition this Court for Writ of Certiorari from the Eighth Circuit's February 5, 2024 decision in case file 23-2345.

REASONS FOR GRANTING THE PETITION

1. DOES THE ELEVENTH AMENDMENT APPLY TO THE AMERICANS WITH DISABILITIES ACT (ADA)

Avoiding the appearance of impropriety is as important to developing public confidence in the judiciary as avoiding impropriety itself. *United States v. Hollister*, 746 F.2d 420, 425-426 (8th Cir. 1984), Title II constitutes a valid exercise of Congress' authority under §5 of the Fourteenth Amendment to enforce that Amendment's substantive[6] guarantees. *Tennessee v. Lane*, 542 U.S. 509 (2009), and Congress stated, "A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter." 42 U.S.C. §12202.

Everything written in law is the exact opposite of what petitioners have been given in the federal courts ever since Judge Tostrud signed a document.

The Ninth Circuit agrees with the Greenes.

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[6] See Petitioners' Closing Brief, pg. 8

> We conclude, however, that the district court erred as a matter of law. Congress may abrogate the states' constitutionally secured immunity from suit in federal court through unmistakably clear statutory language. *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 (1985) (holding that action under earlier version of the Rehabilitation Act was proscribed by Eleventh Amendment absent express Congressional intent to the contrary). In section 502 of the ADA, Congress expressly provided that "[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter." See 42 U.S.C. §12202 (1995). Similarly, Congress amended the RA[7] in 1986 following *Atascadero* to abrogate the states' immunity under the Eleventh Amendment. See 42 U.S.C. §2000d-7(a)(1) (1986).
>
> *Duffy v. Riveland*, 98 F.3d 447, 452 (9th Cir. 1996).

Title 42 U.S.C. §12202 was appropriate legislation enacted under section 5 of the Fourteenth Amendment which Judge Tostrud and the Eighth Circuit Court of Schlemiels violated by dismissing petitioners case.

> "It is the function of a judge not to make, but to declare the law, according to the golden mete-wand of the law and not by the crooked cord of discretion."); Sir Matthew Hale, *The History of The Common Law of England* 44-45 (Univ. of Chicago ed., 1971).
>
> *Anastasoff v. United States*, 223 F.3d 898, 901 (8th Cir. 2000).

This case is proof, "no amount of Constitutional authority, statutory provision, case law, or Congressional Act can convince a federal court to administer justice."

> Remove not the ancient landmark, which thy fathers have set.
>
> Proverbs 22:28

[7] RA refers to the Rehabilitation Act of 1973. See 29 U.S.C. §701-797

2. PETITIONERS ARE ENTITLED TO KNOW WHETHER A LAW CLERK OR ARTICLE III JUDGE ADJUDICATED THEIR CASE

The term "society of losers" is what those who man the federal courts think of pro se litigants. *The Misunderstood Pro Se Litigant: More Than a Pawn in the Game*, 41 Brooklyn Law Review 769, 770 (1975). Petitioners rely heavily on the personal insights of federal judges of the Eighth and Ninth Circuit that suggest an *unconstitutional policy and custom* ~~common within federal courts~~.

MCA issued an unpublished opinion under Minn. Stat. 480A.08 subd. 3(b) in 2017 where MCSS prevailed.

> In this, they were following the common-law view, which considered entry on the official court record sufficient to give a decision precedential authority whether or not the decision was subsequently reported. See, e.g., Coke, 2 Institutes, Proeme, last paragraph (stating that judicial decisions are ~~reliable authority whether they are published~~, i.e., "~~related and reported in~~ our Bookes," or only "extant in judicial Records..."). This remained true even after reporting became more systematic. See James Ram, Science of Legal Judgement (1834) ("A manuscript note of a case is authority. It may be more full, or accurate, than a printed report of the same case. The existence of such manuscript may be little known. When cited by a party in a cause... it may be 'an authority precisely applicable' (18 Ves. 347); but the opposite party, or the Court, may never have heard of it before; it may then come as a great surprise upon both.").
>
> *Anastasoff v. United States*, 223 F.3d 898, 903 n.14 (8th Cir. 2000)

MCSS now assumes a contrary position. Judicial estoppel should apply.

The doctrine of judicial estoppel "protects the integrity of the judicial process." *Total Petroleum, Inc. v. Davis*, 822 F.2d 734, 738 n. 6 (8th Cir.1987). A court invokes

judicial estoppel when a party abuses the judicial forum or process by making a knowing misrepresentation to the court or perpetrating a fraud on the court. Id. "Judicial estoppel prevents a person who states facts under oath during the course of a trial from denying those facts in a second suit, even though the parties in the second suit may not be the same as those in the first." *Monterey Dev. Corp. v. Lawyer's Title Ins. Corp.*, 4 F.3d 605, 609 (8th Cir.1993). Therefore, a party that takes a certain position in a legal proceeding, "and succeeds in maintaining that position," is prohibited from thereafter assuming a contrary position "simply because his interests have changed," especially if doing so prejudices the party "who acquiesced in the position formerly taken by him." *New Hampshire v. Maine*, 532 U.S. 742, 748, 121 S.Ct. 1808.

In addition, the full faith and credit clause under 28 U.S.C. §1738 also applies to MCA's 2017 unpublished opinion.

> The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Instead, Judge Tostrud dismissed petitioners action as "futile", holding that the Eleventh Amendment bars action under the ADA. *Pet. App. B*

> "When the concern is the efficient administration of justice and the provision to defendants of fair trials, the consideration of competing values is one heavily reliant on the observations and insights of the presiding judge."
>
> *United States v. Webbe*, 791 F.2d 103, 106 (8th Cir. 1986).

The judges of many circuits are overwhelmed. Drafting published opinions takes a lot of time and authors of published opinions may devote dozens (sometimes hundreds) of hours to writing, editing, and polishing multiple drafts. By contrast, unpublished opinions generally take very little time. They are written quickly by court staff or law clerks, and judges give them only cursory attention. See Patrick J. Schiltz:[8] *The Citation of Unpublished opinions in the Federal Courts of Appeals*, pg. 35.

> Because so little time goes into writing them, unpublished opinions will introduce into the corpus of the law thousands of ambiguous, imprecise, and misleading statements that will be represented as the "holdings" of circuits.
>
> Patrick J. Schiltz; *The Citation of Unpublished Opinions in the Federal Court of Appeals*, 74 Fordham Law Review 23 (2005)

"The right of a litigant to have his civil case heard by an Article III judge remains paramount" U.S. Congressional & Administrative News, 6873 (1990).

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[8] Patrick J. Schiltz is a U.S. District judge for the District of Minnesota who also issues unpublished opinions drafted by law clerks. e.g., Greene v. Gassman et al. 11-CV-618 (PJS/TNL), No. 12-1701, 489 F. App'x 997 (8th Cir. 2012), 133 S.Ct. 2348, 185 L.Ed. 2D 1066, 81 USLW 3634, 81 USLW 3515, 81 USLW 3638 (Cert. Denied)

> Federal courts,...are not free to extend the judicial power of the United States described in Article III of the Constitution. *Willy v. Coastal Corp.*, 503 U.S. 131, 135 (1992). The judicial power of the United States is limited by the doctrine of precedent. Rule 28A(i) allows courts to ignore this limit. If we mark an opinion as unpublished...Rule 28A(i) allows us to depart from the law set out in such prior decisions without any reason to differentiate the cases. This discretion is completely inconsistent with the doctrine of precedent; even in constitutional cases, courts "have always required a departure from precedent to be supported by some 'special justification.'" *United States v. International Business Machines Corp.*, 517 U.S. 843, 856 (1996), quoting *Payne v. Tennessee*, 501 U.S. 808, 842 (1991) (Souter, J., concurring). Rule 28A(i) expands the judicial power beyond the limits set by Article III by allowing us complete discretion to determine which judicial decisions will bind us and which will not. Insofar as it limits the precedential effect of our prior decisions, the Rule is therefore unconstitutional.
>
> *Anastasoff v. United States*, 223 F.3d 898, 905 (8th Cir. 2000)

Federal magistrates don't even have the authority to decide cases without the parties waiving their right to adjudication by an article III judge.[9] See 28 U.S.C. §636.

> When the limits of a statute thwart enforcement of the Constitution, the Supremacy Clause is turned on its head.
>
> Bandes, *Reinventing Bivens: The Self-Executing Constitution*, 68 So. Cal. L. Rev. 289, 359 (Jan. 1995).

In *Pacemaker Diagnostic Clinic of America v. Instromedix*, 725 F.2d 537 (9th Cir. 1984) U.S App. Prdg. The court, sitting en banc, reversed an earlier three-judge opinion (712 F.2d 1305 (9th Cir. 1983)), and held that the constitutional rights of parties in a federal forum to have their cause determined by an Article III judge is personal to the par-

[9] Petitioners have not waived this right, the record shows magistrates Bowbeer, Wright and Docherty were at all times, compliant with 28 U.S.C. §636.

ties and may be waived:

> We refuse to reach the anomalous result of forbidding waiver in a civil case of the personal right to an Article III judge.
>
> *Pacemaker Diagnostic Clinic of America v. Instromedix*, 725 F.2d 537, 542-43 (9th Cir. 1984) U.S App. Prdg.

On Appeal, The Eighth Circuit issued its one line ruling without providing any legal basis to support its position. *Pet. App. A*

> It is wrong and highly abusive for a judge to exercise his power without the normal procedures and trappings of the adversary system—a motion, an opportunity for the other side to respond, a statement of reasons for the decision, reliance on legal authority. These niceties of orderly procedure are not designed merely to ensure fairness to the litigants and a correct application of the law, though they surely serve those purposes as well. More fundamentally, they lend legitimacy to the judicial process by ensuring that judicial action is—and is seen to be—based on law, not the judge's caprice...Judicial action taken without any arguable legal basis—and without giving notice and an opportunity to be heard to the party adversely affected—is far worse than simple error or abuse of discretion; it's an abuse of judicial power that is "prejudicial to the effective and expeditious administration of the business of the courts."
>
> *In re Complaint of Judicial Misconduct*, 425 F.3d 1179, 1185 (9th Cir. 2005) (Kozinski dissenting).

Does rule 27A(a) override Article III as easily as it does section 5?

> Richard Arnold of Arkansas, a judge who sits on the U.S. Court of Appeals for the 8th Circuit, is a product of the Old South school of courtly manners. He is equally comfortable holding forth on an early 19th-century British case, the U.S. Constitution or a richly embellished anecdote. But he is less genteel when talking about what is happening to the federal courts. Speaking at the Drake University Law School last week, Arnold was asked

about a story in The New York Times reporting that because of crushing workloads, some federal appeals courts are resorting to perfunctory one-word rulings—"Affirmed" or "Denied"—with no written opinion giving the court's reasoning.
The practice is an "abomination," Arnold said. He told of participating recently in a court session where more than 50 cases were decided in two ~~hours~~. "~~We heard many, many cases with no opinions or unpublished~~ opinions," Arnold said. "I felt dirty. It was a...betrayal of the judicial ethos. It makes me feel terrible."

Perfunctory justice: Overloaded federal judges increasingly are resorting to one-word rulings, Des Moines Register (March 26, 1999).

Former senior judge for the Eighth Circuit, Myron H. Bright[10] gives similar insight when considering unpublished opinions in the federal Appellate Courts.

"There may have been some unpublished opinions that have been cited. I can't remember them and I didn't pay any attention to them if I could. And the same goes in every one of the circuits-even the Eighth Circuit, the same."

Patrick J Schiltz: *Much Ado About Little: Explaining the Sturm Und Drang over the Citation of Unpublished Opinions*, 62 Was. & Lee L. Rev.1429, 1463. n. 192.

It is unclear whether Judge Tostrud is as stupid as his writings suggest or if he's just as lazy as the Eighth Circuit. Either way, petitioners have a right to know, "Who ~~wrote this shit~~?"

Petitioners now ask this Court to GRANT this Petition for Writ of Certiorari.

The judge who knows other judges have erred, but agrees because he does not want to shame them, will end in *Gehenna*.

[10] Myron H. Bright opposed the citation of unpublished opinions.

Leo Rostens Treasury of Jewish Quotations, page 316 (1972).

SUMMARY

The lower court law clerks denied petitioners legal protections guaranteed under the ADA by adjudicating their case as Article III judges.

The District Court overrode an Act of Congress, the 8th Circuit Court of Appeals (law clerks) denied petitioners their right to be heard by an article III judge, and this Court is likely to do the same. See https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/supreme-1

> The aggrieved party read and reread the briefs as well as the transcripts. His mind is fed on nothing else during the three months waiting for the action of the court. He knows every point raised. He can repeat every argument advanced. All his savings through a lifetime are tied up in the case. He knows he is right. Then comes the decision. It deals with none of the points argued. It shows on its face the court refused to read the brief. He had been tossed aside like a white chip. He knows, and his friends know, he has been denied his day in court.
>
> To that man, to his family and to his friends, organized society is organized iniquity.
>
> And the present system is manufacturing citizens of such sentiments by the thousands every year.
>
> Underneath the social unrest of the world today, as its main underlying cause, is the feeling in the breasts of the masses that justice is not for them. They do not know the cause, nor can they suggest the remedy,—and so they only want to destroy. Society to them has come to mean organized injustice.
>
> John Rustgard, *Dry Bones—The Remedy for the Evil*, 88 Central Law Journal, p. 341, 344 (May 9, 1919).

Why should federal judges enjoy lifetime tenure when they don't do any work?

CONCLUSION

For the reasons set forth above, this petition for a writ of certiorari should be granted.

Respectfully Submitted,

Kyle Greene & Krystle Greene
Pro se Petitioners
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