24-6819

No. _____

ORIGINAL

In the

Supreme Court of the United States

Kenneth Daywitt, Steven Hogy, Michael Whipple, Russell Hatton, Peter Lonergan,
Petitioners,

v.

JODI HARPSTEAD, ET AL.,
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

Peter Lonergan, et al.,
1111 Highway 73
Moose Lake, MN 55767
Petitioners Propria Persona

QUESTIONS PRESENTED

Should Court Specifically Address Whether Access to Internet and Technology-Based Speech Must Extend First Amendment Protection?

Do federal courts have a duty to citizens of the United States of America to apply established legal standards, to freedom of religion, freedom of speech, freedom to vote intelligently, and related First Amendment claims?

Can the courts of the United States, through bias, undermine justice and circumvent well established Supreme Court standards of legal doctrine, the doctrinal standards established in the circuit courts as a whole, based upon tyrannical and predisposed prejudicial political ideals that operate outside the United States Constitution?

Did Court err, disposing the case per curiam, without memorandum, where disposition opposes this Court's Ruling in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993)?

Does ruling create *paper-tiger* application of Court Rules? Are Petitioners harmed where they have a right to free exercise, to vote intelligently, to participate in society; which is reduced to *paper-tiger* rights with no enforcement?

PARTIES TO THE PROCEEDING

Petitioner Kenneth Daywitt is in St. Peter Minnesota, Petitioners Steven Hogy, Michael Whipple, Peter Lonergan, and Russell Hatton, are in Moose Lake Minnesota; all are serving orders of civil commitment to a *Shadow Prison* parading as a hospital; and all are plaintiffs in the district court and appellants in the Eighth Circuit Court of Appeals.

Respondents Jodi Harpstead, Marshall Smith, Nancy Johnston, Jannine Hébert, and Terry Kniesel, in their individual and official capacities are government agents, operating Minnesota's beleaguered *International Human Rights Violation,* infamously, known as Minnesota Sex Offender Program (MSOP), being defendants in the district court and appellees in the Eighth Circuit Court of Appeals.

STATEMENT OF RELATED PROCEEDINGS

Daywitt v. Harpstead, No. 24-1138 (October 7th, 8th Cir. 2024) (*pet. rehearing denied*)

Daywitt v. Harpstead, No. 24-1138 (September 19th, 8th Cir. 2024)

Daywitt v. Harpstead, Case No. 20-cv-1743-NEB-ECW (D. Minn., January 9, 2024, 2024) (Order on Motion for Amended or Additional Findings and Relief from Judgment and Motion to Amend Order to Communicate).

Daywitt v. Harpstead, Case No. 20-cv-1743-NEB-ECW (D. Minn., Sept. 28, 2023) (Final Order & Judgment)

Daywitt v. Harpstead, Case No. 20-cv-1743-NEB-ECW (D. Minn., July 28, 2023) (Report & Recommendation).

Daywitt v. Harpstead, Case No. 20-cv-1743-NEB-ECW WL 2210521 (D. Minn., June 1st 2021) (Order on Motion to Amend, Motion to Dismiss, and Motion for a Temporary Restraining Order).

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PETITION FOR A WRIT OF CERTIORARI

Kenneth Daywitt, Steven Hogy, Michael Whipple, Russell Hatton, and Peter Lonergan respectfully petition for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit in Daywitt v. Harpstead, Case No. No. 24-1138 (8th Cir. Sept.19, 2024) rehearing denied, (8th Cir. Oct. 29, 2024).

OPINIONS BELOW

The Judgment, Findings of Fact, Conclusions of Law, and Order of the United States District Court of Minnesota related to the issues on appeal are not reported at *Daywitt v Harpstead*, Case No. 20-CV-1743 (NEB/ECW) (D. Minn. Sept. 28, 2023) and reproduced in the appendix ("Pet.App.") hereto, at 103-152.

The Opinion of the United States Court of Appeals for the Eighth Circuit is at Pet.App. 2. The Order Denying Petition for Rehearing En Banc in the United States Court of Appeals for the Eighth Circuit is at Pet.App. 1.

JURISDICTION

The United States Court of Appeals for the Eighth Circuit denied Petitioner's petition for rehearing en banc and rehearing on October

29, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1); and Rule 10 of Rules of this Supreme Court. The Eighth Circuit Court of Appeals "has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; [] has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. *Id.*

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. amend. I, "Religious and political freedom. 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 - "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

42 U.S.C. § 1983 – "Civil Action for Deprivation of Rights - Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other

person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, 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."

Eighth Circuit Rule 47B – "Affirmance or Enforcement without Opinion. A judgment or order appealed may be affirmed or enforced without opinion if the court determines an opinion would have no precedential value and any of the following circumstances disposes of the matter submitted to the court for decision: (1) a judgment of the district court is based on findings of fact that are not clearly erroneous; (2) the evidence in support of a jury verdict is not insufficient."

INTRODUCTION

This case represents whether a novel, but fundamental *free speech* right must include internet access for all people under the First Amendment, whom desire internet access. Interned Petitioners are banned from all internet access, including any possession of computers, cellphones, tablets, etc... without any due process of law.

This Court has upheld the premise that ALL citizens enjoy the freedom to communicate with society; worship God in a meaningful way; and have the ability to make intelligent choices when voting, as applicable to a fundamental First Amendment Right. The biggest of these: there is one God, who is worshipped by and through differing distinct standards/doctrines. Petitioners' announce they do not enjoy any of these, being citizens in good standing; due to the restrictions by Respondents, as described previously and herein.

It is the Petitioners position they are denied these First Amendment rights by Respondents; with blessing from the Eighth Circuit.

Respondents hold unwarranted animus and irrational suspicion toward Petitioners; too autocratic to allow Petitioners into the modern age, due to the irrational suspicious fears/resulting animus, under the guise of public safety; hiding behind this Court's narrow ruling in *Turner v. Safley*, 482 U.S. 78 (1987), the oft misapplied/abused "go-to" for these respondents. *White v. Dayton*, No. 11-cv-3702 (NEB/DJF) ("Courts of this District have long applied a modified version of the test established in [Turner] to evaluate such claims when raised by MSOP clients."); first case *Ivey v. Ludeman*, No. 05-2666 (JRT/FLN) (D. Minn.

Feb. 12, 2007) (analyzing plaintiff's First Amendment claims under Turner analysis); see Pet.App. 217.

The Eighth Circuit in *this case (see Pet.App. 2)*, departed dramatically from itself and other circuits, in a *per curiam* ruling, affirming the District Court with one paragraph. Id. When District Court excluded Petitioners' expert witness, it did so directly against *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993); Pet.App. 17-20; 34-52;87-89. Based upon the *expert witness exclusion*, the district court, applying the wrong doctrinal standard, denied Petitioners Summary Judgment and granted Summary Judgment to Respondents. The Eighth Circuit failed to apply the correct *Daubert* standard with a memorandum opinion, but instead gave a *per curiam* ruling; affirming the District Court, even though there are disputed facts. Pet.App. 52-64.

All circuits uniformly hold that the prevailing standard of law to be applied to *expert witness* is *Daubert,* because the federal court has a duty to apply the correct law, as this Court interprets it. *U.S. v. Ali*, 508 F.3d 136, 144 n.9 (3rd Cir. 2007) ("While a party can waive his or her ability to appeal a ruling for failure to object, there can be no waiver here of the Judge's duty to apply the correct legal standard.").

This case represents five individual religious distinctions. Our First Amendment claims respect for them all. If plaintiffs' retain a right to "free exercise" under the First Amendment, "government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, unless the government demonstrates that application of the burden to the person – (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Holt v. Hobbs*, 574 U.S. 352, 357 (2015) (cleaned up); quoting *42 U.S.C. §§ 2000bb* Respondents herein, and the United States courts above have not produced valid justification how internet restrictions to petitioners' serves a compelling government interest; and failed to implement the least restrictive means.

The Eight Circuit failed to apply Youngberg's professional judgment standard to Petitioners' case about how civil commitment must avoid punishment.[1] Petitioner's argued the professional judgment doctrine to no avail. Id. Pet.App. 26-27; and 90-93. The one

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[1] See *Karsjens v. Harpstead*, 74 F.4th 561 (8th Cir. 2023), certiorari denied Feb. 20, 2024) (proclaiming professional judgment can be waived/supporting arbitrary government action); *Beaulieu v. Ludeman*, 690 F.3d 1017, 1031 (8th Cir. 2012) (protection from arbitrary governmental action. quoting *Youngberg v. Romeo*, 457 U.S. 307, 316 (1982).

(1) paragraph outcome in this case is particularly egregious, because the factual record is in dispute.

Respondents freely admit their acts/restrictions, claiming they are authorized to commit these unconstitutional acts for *public safety*, (misusing *Turner, supra)*, but then failed to produce one IOTA of credible evidence to support their claim. The International Community has determined that the treatment Petitioners receive at the hands of Respondents amount to *Human Rights* violations under the *European Convention on Human Rights*. Pet.App. 160-162.

Philosophically, anytime "MSOP Clinicians" have attempted to treat patients with any sort of decency, any professional judgment was expressly countermanded either by MSOP leadership, Minnesota's Legislature, or Minnesota's Governor; due to lack of political support from divergent political leaders. Pet.App. 234 *generally*. Thus, although exercising professional judgment to the facts of this case, indicate petitioners can safely navigate online services, respondents do nothing to implement any necessary form of internet access—and in fact, deliberately restrict it with blanket policy—to deny any First Amendment protection for petitioners.

Litigation with the MSOP is nearly constant, which has now spanned more than three (3) decades with approximately 55 appeals before the Eighth Circuit. According to these appeals, the Eighth Circuit has only once ruled to protect Petitioners' constitutional rights; a case later lost in further litigation. All while various reports authored by relevant professionals, organizations, and countries, continuously regard MSOP as constitutionally deficient. One such report recently published by *www.mitchellhamline.edu/sex-offense-litigation-policy, (Pet.App. 163)*, describes the essence of petitioners' civil commitment to MSOP; with the dismal statistic that petitioners are "five times more likely to die at MSOP than be released." Id. at 166.

As United States citizens in good standing, Petitioners' deserve to have the Court apply the proper legal standard to their claims and make a merit-based determination, regarding their fundamental right to free speech, free exercise of religion, and political freedom through current/modern/necessary communication models, as determined by two Presidents of the United States and the United Nations. Pet.App. 93. Each has explicitly detailed Rights of Petitioners in this case. Id. (White House claims internet has become a "pillar," is "fundamental," and is "essential" to free speech and active participation in society. * *

* "High-speed Internet service is no longer a luxury—it's a necessity."); *Id.* ("President Barack Obama, who in 2015 said that 'today, high speed broadband is not a luxury, it's a necessity.'"); and *Id.* ("Since 2012, the United Nations considers access to the internet as a human right, stating every individual has the right to freely connect and express themselves on the internet.").

Such denial of rights should prompt Supreme Court scrutiny, to determine what rights petitioners fundamentally retain as Americans.

STATEMENT OF THE CASE

Petitioners' position is: They retain a First Amendment Right to access the internet while hospitalized at MSOP; where petitioners are five times more likely to die in captivity than be released by the *Shadow Prison*.[2] Pet.App. 166. Respondents were never required to prove *Turner* concerns. This case is literally the result of the Eighth Circuit's refusal to issue proper memorial opinion on the merits of a pro se civil case. It's petitioners' belief this is due to intolerance toward any citizen labeled *sex offender* within the Eighth Circuit's jurisdiction. The term *sex offender* itself, is a derogatory political term used by unsavory politicians, government agents, and the American

[2] www.thevoicesofocean.net

press to describe any citizen ever accused or convicted of a sexual crime; but holds no rational description beyond the prejudicial political defamation.

It is petitioners claim that the Eighth Circuit failed to write an opinion on the merits, because petitioners obtained victory over the respondents, under law, at every turn of the litigation. Petitioners aver they lost their case due to the political status—sanctioned government animus—they are burdened with as citizens, whose distant past include convictions for sexual offenses within the United States.

For this case, Petitioners not only contracted an IT Expert to support their First Amendment claims, but contracted an expert whom literally developed and implemented some of the earliest security software for internet applications; and continues to write internet security software and applications to this very day. See Pet.App. 407; 484-525.

Mr. O'Leary has worked for 13 corporations, including major airlines and the Santa Fe Railroad. Pet.App. 462-63. Petitioners expert also recently earned his "JD law degree." Id. Petitioners' produced this quality case, while Respondents produced nothing to

support their claims, but empty prejudicial animus-driven declarations, without any expert/factual support.

Notwithstanding the above, the District Court Granted a Motion to Exclude petitioners' expert and dismissed their case. Petitioners' appealed to the Eighth Circuit Court of Appeals and did not receive a memorial opinion, but a one (1) paragraph, two (2) sentence *per Curiam* ruling denying relief; demonstrating a judicial bias that has existed for an extended period. See *Karsjens v. Harpstead*, 74 F.4th 561 (8th Cir. 2023); *Van Orden v. Stringer*, 937 F.3d 1162 (8th Cir. 2018) (endorsing *paper-tiger* procedures); *Karsjens v. Piper*, 845 F.3d 394 (8th Cir. 2017); *Mead v. Palmer*, 794 F.3d 932 (8th Cir. 2015); *Willet v. Smith*, 627 Fed. Appx. 580 (8th Cir. 2015); *Strutton v. Meade*, 668 F.3d 549, 557 (8th Cir. 2012); *Beaulieu v. Ludeman*, 690 F.3d 1017 (8th Cir. 2012); *Serna v. Goodno*, 567 F.3d 944 (8th Cir. 2008); and *Senty-Haugen v. Goodno*, 462 F.3d 876 (8th Cir. 2006); to name a few of more than 55 appeals from these *Shadow Prisons* playing loose with the United States Constitution. The sheer number of litigations—both frivolous and not—ought to demonstrate something is wrong with these *Shadow Prison* programs.

What warrant's this case to receive oversight? This Court has never ruled specifically whether internet access extends First Amendment protection fundamentally. If the United States of America and it's Constitution still means any Thing, then this Supreme Court should Grant Certiorari, appoint counsel, and determine what constitutional rights *United States Citizens* on the bottom rung of American society retain under the First Amendment.

REASONS FOR GRANTING PETITION

I. Court Has Never Specifically Addressed Whether First Amendment Protection Must Extend Access to Internet and Technology-Based Media.

Justice Thomas acknowledged there are issues that "highlight[] the principal legal difficulty that surrounds digital platforms-namely, that applying old doctrines to new digital platforms is rarely straightforward." *Biden v. Knight First Amendment Institute at Columbia Univ.*, 141 S. Ct. 1220, 1221 (2021) (Justice Thomas, concurring).

The Court has addressed Internet-related cases on approximately 50 specific occasions. But it has never answered directly, whether First Amendment protection is extended to access the Internet and constitutes a free speech right. But historically, as our society evolves,

II. The Eighth Circuit Court of Appeals, as well as other Circuit Courts Disagree with the Judgment Because the *Minnesota District Court* and *Appellate Panel* Failed To Follow *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993).

A. How Daubert Factors are Applied.

In numerous rulings prior to the instant one, the Eighth Circuit has acknowledged, under Rule 702, the trial judge acts as a gatekeeper, screening evidence for relevance and reliability. *Polski v. Quigley Corp.*, 538 F.3d 836, 838 (8th Cir. 2008) (internal marks omitted); quoting *Daubert*, 509 U.S. at 589. "Rule 702 reflects an attempt to liberalize the rules governing the admission of expert testimony." Id. "The rule clearly is one of admissibility rather than exclusion." Id.; also see *Robinson v. GEICO Gen. Ins. Co.*, 447 F.3d 1096, 1100 (8th Cir. 2006) (Rejection of expert testimony is "the exception rather than the rule."); *U.S. v. Finch*, 630 F.3d 1057 (8th Cir. 2011) (resolving doubts about the usefulness of expert testimony in favor of admissibility). "The exclusion of an expert's opinion is proper only if it is so fundamentally unsupported that it can offer no assistance..." Id.

District court's gatekeeper "role should not, [] invade the province of the jury, whose job it is to decide issues of credibility and to

determine the weight that should be accorded evidence." *U.S. v. Vesey*, 338 F.3d 913, 917 (8th Cir. 2003). "Expert testimony should be admitted if it is based on sufficient facts, it is the product of reliable principles and methods, and the witness has applied the principles and methods reliably to the facts of the case." Id.

Petitioners' expert, Mr. O'Leary "read transcripts of [depositions/declarations] and reviewed documents that related to the" case establishing "fundamental support" for his opinion. *Vesey*, at 917; also see *Finch*, 630 F.3d at 1062; *Hartley v. Dillard's, Inc.*, 310 F.3d 1054, 1060-61 (8th Cir. 2002) ("[T]he factual basis of an expert opinion goes to the credibility of the testimony, not the admissibility, and it is up to the opposing party to examine the factual basis for the opinion in cross-examination."); *Smith v. BMW N. Am., Inc.*, 308 F.3d 913, 920-22 (8th Cir. 2002) (describing case-specific information expert used to support his opinion); *Lauzon v. Senco Prods., Inc.*, 270 F.3d 681, 685-693 (8th Cir. 2001) (same); *Clark v. Heidrick*, 150 F.3d 912, 914 (8th Cir. 1998) (same); *Arkwright Mut. Ins. Co. v. Gwinner Oil, Inc.*, 125 F.3d 1176, 1183 (8th Cir. 1997) (same); *Hose v. Chicago Nw. Transp. Co.*, 70 F.3d 968, 975 (8th Cir. 1995) (same).

This Court has determined "specific factors, such as testing, peer review, error rates, and 'acceptability' in the relevant scientific community, some or all of which might prove helpful in determining the reliability of a particular scientific 'theory or technique.'" *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 150 (1999); quoting Daubert, 509 U.S. at 593-594. "Daubert's general holding-setting forth the trial judge's general gatekeeping obligation-applies [] to testimony based on technical and other specialized knowledge." Id.

Court "endorses trial court discretion in choosing the manner of testing expert reliability is not discretion to abandon the gatekeeping function. I think it worth adding that it is not discretion to perform the function inadequately. Rather, it is discretion to choose among reasonable means of excluding expertise that is fausse and science that is junky. Though, as the Court makes clear today, the Daubert factors are not holy writ, in a particular case the failure to apply one or another of them may be unreasonable, and hence an abuse of discretion." Id. *Kumho*, 526 U.S. at 159 (Justice Scalia concurring).

The doctrine of Rule 702 is shared throughout the United States Judiciary:

Lawes v. CSA Architects & Eng'rs LLP, 963 F.3d 72, 98-99 (1st Cir. 2020); *Independence of the Disabled v. Metro. Transp. Auth.*, 11 F.4th 55 (2nd Cir. 2021); *Foust v. United States*, 989 F.3d 842, 846 (10th Cir. 2021); *U.S. v. Arthur*, 51 F.4th 560 (5th Cir. 2022); *Artis v. Santos*, 95 F.4th 518 (7th Cir. 2024); *In re: SemCrude L.P.*, 648 Fed. Appx. 205, 213 (3rd Cir. 2016); and *Mainstream Loudoun v. Brd. of Trustees of the Loudoun Cty. Lib.*, 2 F. Supp. 2d 783, 793-97 (E.D. Va. 1998).

This case was not a *close call*, District Court clearly abused it's discretion. *Glossip v. Gross*, 576 U.S. 863, 890 (2015) ("District Court's conclusion that his testimony was based on reliable sources is reviewed under the deferential abuse-of-discretion standard.")

B. Courts' Opinion of Internet Access Across the United States Judiciary.

When it comes to technology and internet access, all United States courts are in agreement with petitioners. Just a sample of the several circuits across the nation that have clearly stated:

U.S. v. Becerra, 977 F.3d 373, 379 (5th Cir. 2020) ("We have repeatedly emphasized that 'access to computers and the Internet is essential to functioning in today's society;'" quoting *U.S. v. Sealed Juvenile*, 781 F.3d 747, 756 (5th Cir. 2015) ("The Internet is the means by which information is gleaned, and a critical aid to one's education and social development."); *U.S. v. Holm*, 326 F.3d 872, 878 (7th Cir. 2003) (a ban on all Internet use "renders modern life [] exceptionally difficult"); *U.S. v. Peterson*, 248 F.3d 79, 83 (2nd Cir. 2001) (per curiam) (vacating a special condition imposing restrictions on computer ownership because, in part, "[c]omputers and Internet access have become virtually indispensable in the modern world of communications and information gathering"); *U.S. v. Eaglin*, 913 F.3d 88, 98 (2nd Cir 2019) ("access to the Internet is essential to reintegrating

> supervisees into everyday life * * * when imposing the sweeping Internet ban challenged here, the District Court did not address on the record the likely adverse impact of isolating Eaglin from these important positive uses of the Internet or engage in any explicit balancing of these competing interests."); *Becerra*, 977 F.3d at 380 (affecting Petitioners' "substantial rights because of the ubiquity and importance of the Internet to the modern world."); *Piasecki v. Court of Common Pleas*, 917 F.3d 161, 170, n. 73 (3rd Cir. 2019) ("in a time where the daily necessities of life and work demand not only internet access but internet fluency, [] courts need to select the least restrictive alternative for achieving their [] purpose."); *U.S. v. Ellis*, 984 F.3d 1092, 1104-1105 (4th Cir. 2021) ("the majority of circuits have held that a complete ban on internet access is overbroad even where the record contains evidence of non-contact child pornography activity, or similar conduct, on the internet. * * * ...it is unclear whether any internet restriction could be established as reasonably necessary [], let alone a complete ban."); U.S. v. *Crume*, 422 F.3d 728, 733 (8th Cir. 2005) ("We are not convinced that a broad ban from such an important medium of communication, commerce, and information-gathering is necessary given the absence of evidence demonstrating more serious abuses of computers or the Internet."); *U.S. v. Ullmann*, 788 F.3d 1260, 1261 (10th Cir. 2015) (An absolute Internet ban prohibits "a means of communication that has become a necessary component of modern life."); *U.S. v. Duke*, 788 F.3d 392, 400 (5th Cir. 2015); *U.S. v. Greenberg*, 2021 WL 5373355, at * 3 (6th Cir. 2024) ("We acknowledge that the internet's ubiquitous nature in today's modern life is practically unavoidable."); and *United States v. Holm*, 326 F.3d 872, 878 (7th Cir. 2003) ("Various forms of monitored Internet use might provide a middle ground between the need to ensure that Holm never again uses the Worldwide Web for illegal purposes and the need to allow him to function in the modern world.").

The above-cases repeatedly cited the ideals of the Judiciary regarding this case. The Eighth Circuit's inability to apply the doctrine of the Judiciary, or even it's own doctrine, means the Eighth Circuit has abused it's reviewable power.

Patrick O'Leary's been admitted as an internet expert by other courts. *Consulnet Computing, Inc. v. Moore*, 2008 U.S. Dist. LEXIS 10132 (E.D. Pa., Feb. 12, 2008) Case No. 04-3485 ("The court will admit testimony from O'Leary in the area of website programming and development."); *Gordon v. Arcanum Investigations, Inc.*, 646 Fed. Appx. 18 (2nd Cir. N.Y., Apr. 15, 2016) (Mr. O'Leary "who was an expert in credit-card vending transactions."); and *U.S. v. Zafar*, 291 Fed. Appx. 425, 426, n. 1 (2nd Cir. 2008) ("...limiting the testimony of his computer expert, Patrick O'Leary * * * district court did allow O'Leary to offer a more general expert opinion...").

At most, Court could have restricted some subject-matter of Mr. O'Leary's testimony, but it was an abuse of discretion to exclude it altogether. *Daubert*, 509 U.S. at 590 ("Proposed testimony must be supported by appropriate validation-i.e., 'good grounds,' based on what is known. In short, the requirement that an expert's testimony pertain to 'scientific knowledge' establishes a standard of evidentiary reliability."); also see *Glossip*, 576 U.S. at 890 ("we are not persuaded []testimony should have been rejected because of some of the sources listed in his report. * * * [whereas court determined expert was] 'well-qualified to give the expert testimony that he gave' and that 'his

testimony was the product of reliable principles and methods reliably applied to the facts of this case.'").

Does America practice one set of ideals for *haves* and a different set of ideals for the *have not's*? The Eighth Circuit is just wrong! The Eighth Circuit needs to be reigned in and told they are wrong to hold these apparent distinctions. Petitioners deserved, but were instead denied by the Eighth Circuit "the opportunity to have the facts of their case considered in the light of the constitutional protection that 42 USC § 1983 is meant to provide." *DeShaney v. Winnebago Soc. Serv.*, 489 US 189, 213 (1989) (Justice Blackmun, dissenting.)

Our Constitution literally and proudly proclaims: "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." *U.S. Const, Preamble* (emphasis added). It does not proclaim "*only the people we like*" nor does it proclaim "*the people we hold no animus toward.*" The Constitution includes everyone – even Petitioners.

III. The Eighth Circuit Court of Appeals Ruled Contrary to It's Own Circuit Doctrine, That of the Other Circuits of Our Great Nation, and in Violation of This Court's Doctrine?

A. First Amendment Argument.

The total ban on *modern technology/internet* clearly and unmistakably violates the First Amendment and Fourteenth Amendment rights of Petitioners. There are several disputed facts, contrasting Respondents characterization of them being undisputed, which have been presented to both the District Court and the Eighth Circuit Court of Appeals, to no avail. Pet.App. 24-28.

This case deserves supervisory oversight, because the Eighth Circuit is outside of it's own long-held doctrinal position of the instant issues and is, therefore, just prejudicial against petitioners.

> The Eighth Circuit made an "observation nearly two decades ago that the internet is an 'important medium of communication, commerce, and information-gathering,' (id. *Crume*, 422 F.3d at 733) has by now become an understatement. Using the internet for such basic tasks as paying bills, finding directions, checking the weather, scheduling medical appointments, or searching and applying for a job is not just commonplace. It is, in many respects, the norm. Accordingly, prohibitions on the use of the internet and internet-capable devices that are more restrictive than necessary to protect the public and achieve the other goals of [rehabilitative services] might very well end up being counter-productive, creating needless obstacles to defendants' ability to re-enter, and become productive and engaged members of, their

communities." *U.S. v. Norris*, 62 F. 4th 441, 454 (8th Cir. 2023); *Judge Kelly concurring.*

The Eighth Circuit also said: "Computer-and internet-use restrictions, [] cannot be categorically imposed on all sex offenders, but instead must be justified by 'an individualized inquiry into a particular offender's circumstances.'" Id. (emphasis added).

Respondents literally submitted/averred blank assertions without proof was not enough for the District Court to grant Summary Judgment. Pet.App. 24-28, 55-57. Nor could the appellate court fail to reverse the District Court where such clear and pointed error exists—this was not a close case—Petitioners' soundly beat Respondents motion for summary judgment. Pet.App. 63-64. The Eighth Circuit credited "a legal conclusion couched as a factual allegation" or "naked assertions devoid of further factual enhancement." *Ashcroft v. Iqbal,* 556 U.S. 665, 678 (2009) (cleaned up); also see Pet.App. 67-68;72-78. In evaluating factual issues, the court is to view the evidence in the light most favorable to the non-moving party and draw all permissible inferences in the non-moving party's favor. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 247 (1986).

Petitioners' deposed Respondents, gleaned several controversial theories, that only proves Summary Judgment was inappropriate for

this case. *Texas v. Lesage*, 528 U.S. 18, 20 (1999) (per curiam); also see Pet.App. 51-63. Depositions established Respondents are only acting upon fear, laziness, and suspicion; not evidence of any fact and there exists questions, which hang in the balance. Therefore, no actual legitimate, individual and/or therapeutic interests have been established. Contrary to the result of the Court and the averments of Respondents: "The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read and freedom of inquiry, freedom of thought, and freedom to teach." *Griswold v. Connecticut,* 381 U.S. 479, 482 (1965).

This Court has held that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Turner, Safley,* 482 U.S. at 89. However, Petitioners are not in a "prison," but rather a "hospital," or *shadow prison.* Therefore, finding penological application of *Turner* factors are inappropriate. The Eighth Circuit wrongfully applied these factors to Petitioners. The appellate court relied upon a case where the parties both chose to say *Turner* factors applied. *Beaulieu,* 690 F.3d at 1039. Petitioners never once agreed those factors apply, yet the Court

enforced them with impudence; lacking proper jurisdiction, inappropriately. Pet.App. 65-68.

This Court agrees that even when the government has a compelling interest in restricting one channel of speech, there must be "**ample alternative channels**" left open. *Ward v. Rock Against Racism,* 491 U.S. 781, 791 (1989) (*emphasis added).* The Supreme Court uses the word "ample" not as an afterthought, but as a real safeguard. See, e.g., *Linmark Assoc., Inc. v. Willingboro Tp.,* 431 U.S. 85, 93 (1977). Petitioners do not have ample First Amendment alternatives. Petitioners' right to receive information, practice their religious faith, or conduct other important First Amendment activities appropriately is at stake here, all of which are being denied. Pet.App. 14-16.

In sum, if the restriction were narrowed to only those individuals who committed their crimes using one of the banned technologies, or if the policy were purged of its breadth and vagueness, MSOP could still allow Petitioner's the opportunity to use modern technologies upon the individual's voluntary consent to the installation of monitoring software. By doing so, Respondents could cure the "narrowing" problem while leaving open sufficient channels of communication.

There is not the slightest reason to believe that such a simple solution is insufficient to address MSOP's legitimate, rather than speculative, concerns for potential "abuses." See Pet.App. 273-275;393;454;536.

Respondents may effectuate a compelling interest only "by narrowly drawn regulations designed to serve those interests without unnecessarily interfering with First Amendment Freedoms." *Sable Communications v. FCC,* 492 U.S. 115, 126 (1989). Yet, Respondents are doing the exact opposite, not leaving ample alternatives synonymous with what is available via modern technology.

MSOP must choose "the least restrictive means to further the articulated interest." *Id.* In *Sable,* Court considered the constitutionality of a statute regulating "sexual expression which is indecent but not obscene," a form of speech protected by the First Amendment. Id. It is not enough to show that [MSOP's] ends are compelling; the means must be carefully tailored to achieve those ends." *Id.*

In *Sable,* the Court declared unconstitutional a statute banning all "indecent" commercial telephone communications. The Court found that the government could not justify a total ban on communication that is harmful to minors, but not obscene, by arguing that only a total

ban could completely prevent children from accessing indecent messages. *Id.* at 128. The Court held that without evidence that less restrictive means had "been tested over time," the government had not carried its burden of proving that they would not be sufficiently effective. *Id.* at 128-29.

To satisfy strict scrutiny, Respondents must do more than demonstrate that it has a compelling interest; they must also demonstrate that the policy is necessary to further that interest.

> "When the government defends a regulation on speech as a means to redress past harms or prevent anticipated harms, it must do more than simply 'posit the existence of the disease sought to be cured.' It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *Turner Broadcasting System, Inc. v. FCC* 512 U.S. 622, 664 (1994).
>
> "As Justice Brandeis reminded us a 'reasonable' burden on expression requires a justification for stronger than mere speculation about serious harms. 'Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women.... To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced." *U.S. v. Treasury Employees,* 513 US 454, 475 (1994); quoting *Whitney v. California,* 274 U.S. 357, 376 (1927) (Brandeis, J., concurring)); see also *Edenfield v. Fane,* 507 U.S. 761, 770-771 (1993); *Los Angeles v. Preferred Communications, Inc.,* 476 U.S. 488,496 (1986) ("This Court may not simply assume that the [policy]will always advance the asserted state interests sufficiently to justify its abridgement of expressive activity") (*internal quotation marks omitted).*

Respondents bear this burden because "[t]he interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of [restriction]." *Reno v. ACLU,* 521 U.S. 844, 885 (1997).

This Court took a similar approach in *Packingham v. North Carolina,* 582 U.S. 98, 104-105 (2017) recognizing both the "vast potential" and serious risks connected with the "revolution of historic proportions" wrought by new communicative technologies. *Id.*

Respondents failed to satisfy that the policy will further a compelling interest of the state. In summary, Respondents asserted a broad right to restrict the expressive activity of the receipt and communication of information through the internet with a policy that supposedly (1) address a compelling government interest but is not necessary to further such interest; (2) is not narrowly tailored; and (3) fails to employ the least restrictive means available to further that interest. The policy offends the guarantee of free speech in the First Amendment and this court in *Perry Ed. Assn. v. Perry Local Ed. Assn.*, 460 US 37, 45 (1983).

Petitioners are not subject to the controls of parole or probation. In fact, they may not be "punished at all." *Kingsley v. Hendrickson,* 576

U.S. 389, 400 (2015). The Eighth Circuit agreed "civilly committed individuals may [not] be punished." *Karsjens v. Lourey*, 988 F.3d 1047, 1052 (8th Cir. 2021); citing *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).

MSOP's total ban on modern technology does not leave open ample alternative channels for communication of information despite the Respondents attempts to say they do, refer to *Daywitt's Second and Third Declarations for Summary Judgment.* ¶¶4-9 (second declaration). ¶¶7-17 (third declaration).

This Court reiterates, "cell phones and the services they provide are 'such a pervasive and insistent part of daily life' that carrying one is indispensable to participation in modern society." *Carpenter v. United States*, 585 U.S. 296, 298 (2018); quoting *Riley v. California*, 573 U.S. 373, 385 (2014); see also *Packingham*, supra. Petitioners are serving a lifetime of civil commitment and confinement to Minnesota's *Shadow Prison.* Pet.App. 166 ("MSOP constitutes an unofficial, but very real, life sentence."); also see Pet.App. 234 (Minnesota Governor: "civil commitments have turned into virtual life sentences.").

The First Amendment has long been made applicable to the states, and "its protections are at the core of our democratic society." *Phelps-Roper v. City of Manchester, Mo.*, 697 F.3d 678, 686 (8th Cir. 2012);

citing *Gitlow v. New York*, 268 U.S. 652, 666 (1925). "Our nation has a "profound national commitment to the principal that debate on public issues should be uninhibited, robust, and wide-open." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

Respondents continued to make averments that Petitioners will misuse the internet, however, never gave any proof whatsoever, beyond conjecture and speculation. Pet.App. supra. Respondents' restrictive ban to use any website and essentially criminalize a substantial amount of protected speech—from associating with friends, family or businesses over the Internet—the most common method of communication in the modern age—the restriction is overbroad. *U.S. v. Williams,* 553 U.S. 285, 297 (2008).

> "In those cases, an individual whose own speech or expressive conduct may validly be prohibited or sanctioned is permitted to challenge a statute on its face because it also threatens others not before the court-those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have the law declared partially invalid. If the overbreadth is substantial, the law may not be enforced against anyone, including the party before the court, until it is narrowed to reach only unprotected activity, whether by legislative action or by judicial construction or partial invalidation." *Brockett v. Spokane Arcades, Inc.*, 472 US 491, 503-04 (1985).
>
> This "Court struck down an ordinance prohibiting any First Amendment activities at Los Angeles International Airport because the ordinance covered all manner of protected,

> nondisruptive behavior including talking and reading, or the wearing of campaign buttons or symbolic clothing." *Packingham,* 582 U.S. at 108-09 *(internal marks and citation omitted).* "If a law prohibiting all protected expression at a single airport is not constitutional, it follows with even greater force that the State may not enact this complete bar to the exercise of First Amendment rights on [internet activity,] integral to the fabric of our modern society and culture. *Id.*

"[W]hatever the challenges of applying the Constitution to ever-advancing technology, the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary when a new and different medium for communication appears." *Brown v. Entm't Merchants Ass'n, 564 U.S. 786, 790* (2011) *(internal marks omitted)*; quoting *Burstyn v. Wilson*, 343 U.S. 495, 503 (1952); also see *Moody v. NetChoice*, 144 S.Ct. 2383 (2024).

"While there are numerous other examples of the incoherence of the [position], the foregoing examples make the point starkly. The [respondents position] is expansive and unclear, even after good defense lawyers tried to make sense out of it. In short, it is not narrowly tailored." *Id Doe v. Neb.*, 898 F. Supp. 2d 1086, 1117 (D.Neb. 2012). "[O]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Reno*, 521 U.S. at 880; quoting *Schneider v State (Town of Irvington),* 308 U.S. 147, 163 (1939).

As established by vast amounts of evidence gained through Defendants' depositions, none could give one iota of valid evidence that internet is not appropriate. Pet.App. 54-55. Respondents demonstrated "evidence of intentional falsity," and the petitioners' should have been able to "survive summary judgment." *Kinder v. Acceptance Components Inc. Cos.*, 423 F.3d 899, 906 (8th Cir. 2005). Because "[i]t has long been established that []deliberate deception of a court []by the presentation of known false evidence is incompatible with rudimentary demands of justice." *Banks v. Dretke*, 540 U.S. 668, 694 (2004). That occurred here.

Respondents produced no material evidence why Petitioners are unable to have access to the internet. Pet.App. 54-55. Respondents' unsubstantiated statements that Petitioners' are going to commit acts of nefarious conduct if they obtain access to modern technology is all that is in the record. Pet.App. 26-28. Unsubstantiated statements just are not good enough.

In light of the constitutional protections of the First Amendment, this Court has "often recognized that such speech occupies the highest rung of the hierarchy of First Amendment values and merits special protection." *Snyder v. Phelps,* 562 U.S. 443, 452 (2011) (internal

marks/citations omitted). Yet denial of this exact thing is what courts did in this instance.

In summary, the courts burdened substantially more speech than necessary to further the government's legitimate interests. The denial of internet, violates the First Amendment.

B. Expert Exclusion.

Respondents argued petitioner's Expert lacked the necessary requirements to serve as an expert, and then moved for his exclusion. The proper analysis is *Daubert,* 509 U.S. 579 (1993). The District Court abused it's discretion and excluded Patrick O'Leary as an expert.

Where this runs afoul? It is not in line with any case law that governs this issue. This issue has been heavily litigated in several cases, both within and outside Eighth Circuit and there exists clear consensus. District Court failed to employ those standards; and the Eighth Circuit Court of Appeals failed to properly address the issue at all in it's one paragraph, two sentence per curiam ruling.

The Eight Circuit has repeatedly ruled "the rejection of expert testimony is 'the exception rather than the rule.'" *Perry*, 61 F.4th at 605; quoting *Robinson*, 447 F.3d at 1100; also see *Finch*, 630 F.3d at

1062 (resolving doubts about the usefulness of expert testimony in favor of admissibility); also see above citations.

Petitioner's expert holds two Bachelor's degree, one in Electrical Engineering and the other in Computer Science. Pet.App. 251. He additionally holds seven separate information Technology Certifications which includes: Certified Information Systems Security Professional (CISSP), Certified Ethical Hacker, Certified Hacking Forensic Investigator, ICS2 (qualifying O'Leary to certify CISSP results). Pet.App. 461-462. "Generally speaking, an expert's methodology should be deemed reliable when that expert derives [their] courtroom opinions using the same level of rigor that characterizes practice in the relevant field of expertise." *29 Charles A. Wright & Victor J. Gold, Federal Practice and Procedure:* Evidence § 6268.1 (2d ed. Apr. 2023 Update).

Eighth Circuit went against it's own well-established doctrinal principles. Petitioners' can only adopt the supposition of some non-judicial reason for the Judgment; such as bias, or prejudice; to help Minnesota keep it's secret of the *Shadow Prison* and subsequent *human rights* abuses by oppressing Petitioners' speech.

C. Application of the First Amendment Free Exercise Claims.

The *Shadow Prison* policies place a substantial burden on Plaintiffs' ability to practice religion. *Patel v. U.S. Bureau of Prisons*, 515 F.3d 807, 813 (8th Cir. 2008). For this claim, "substantial burden" constitutes a denial of Plaintiffs' "reasonable opportunities to engage in those activities that are fundamental to [Plaintiffs'] religion." *Id.* (internal quotation and citation omitted).

No petitioner has proper access to their respective religion. These First Amendment restrictions serve no purpose other than to hinder Petitioners' faith in God, as they understand their God. *Cruz v. Beto*, 405 U.S. 319, 322 (1972) clearly states Plaintiffs retain First Amendment protections, including its directive that no [policy] shall prohibit the free exercise of religion; also see *Thomas v. Gunter*, 32 F.3d 1258, 1260-61 (8th Cir. 1994), holding that unelaborated assertions between a facilities regulation of First Amendment activity and the facilities interest in security were insufficient to support granting summary judgment. *Id*; see *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 358 (1987) (holding that "if a regulation merely restricts the time, place, or manner in which [patient] may exercise a right, a [facility] regulation will be invalidated [] if there is no reasonable

justification for official action"). Here there is no justification for the action, as there is software that is available to do the very thing respondents say they need to do.

"The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion." *Wisconsin v. Yoder*, 406 US 205, 215 (1972). See *Fulton v. City of Philadelphia*, 593 U.S. 522, 540-41 (2021), *quoting Church of the Lukum Babalu Aye v. City of Hialeah*, 508 US 520, 546 (1993), in turn *quoting Yoder* 406 US at 215; *McAllen Grace Brethren Church v. Salazar*, 764 F.3d 465, 472 (5th Cir 2014) (*quoting Yoder*).

IV. Does the Eighth Circuit Court of Appeals Hold a General Bias Toward Any Person Labeled "Sex Offender?"

When it comes to petitioners, the Eighth Circuit has ruled: "Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish;" Pet.App. 58;86; see *Serna*, 567 F.3d at 949; quoting *Youngberg* 457 U.S. at 321-322. Considering the realized "more considerate treatment" offered

convicted criminals in the Eighth Circuit, there is definitely something wrong with the application of law in Minnesota.

Even the Chief Judge for the District of Minnesota, has now publicly warned these respondents of what—it want's to rule—is wrongful activities, in an attempt to thwart the despotically administrated *Shadow Prison*. Pet.App. 231. The Honorable John R. Tunheim so eloquently acknowledges, the Minnesota District Court is denying "claims because the Eighth Circuit significantly narrowed the scope of a Fourteenth Amendment claim for confinement conditions at MSOP in the *Karsjens* litigation." Id.

What Judge Tunheim is really saying is the unwritten *Rule of Might* in *Karsjens*, from the Eighth Circuit, has taken over the District Court in Minnesota; and left citizens inside this Circuit in unconstitutional peril, exposed to the whimsical policies of the animus-laden *Shadow Prison;* without regard to constitutional ideals, because it does not *like* those citizens.. *Karsjens v. Harpstead*, 74 F.4th 561 (8th Cir. 2023), rehearing denied by *Karsjens v. Harpstead*, WL 5920137 (8th Cir. Sept. 12, 2023), certiorari denied by *Karsjens v. Harpstead*, (U.S., Feb. 20, 2024); see also *Gering v. Geo Group Inc.*, Case No: 2:16-cv-267-FtM-99MRM, n. 4 (D. Fla. Fort Myers Div. March

1, 2017) (The Eighth Circuit "appears to run afoul of the Supreme Court's statements in Foucha and Hendricks.") (*citations omitted.*) See *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) and *Kansas v. Hendricks*, 521 U.S. 346, 358 (1997) (both holding that proof of dangerousness must be coupled with a finding of mental illness to justify continued civil detention); compare *Karsjens 845 F.3d at* 411 (finding no constitutional infirmity in the Minnesota SVP statute).

The Eighth Circuit Court of Appeals dismal record when it comes to protecting civilly committed citizens labeled as "*Sexually Violent Predator*" or "*SVP*" is paramount here. The level of bias engaged for any case promoting civil commitment of people suspected or labeled *SVP* is evident. *Karsjens v. Harpstead*, 74 F.4th 561 (8th Cir. 2023) cert denied (U.S., Feb. 20, 2024); *Karsjens v. Lourey*, 988 F.3d 1047 (8th Cir. 2021); *Branson v. Piper*, No: 23-1160 (8th Cir. 2019), dismissed; *Lonergan v. Ludeman*, Civil No. 16-02066 (JRT/LIB), (D. Minn., Dec. 29, 2022), appeal dismissed; Hogy v. Ludeman, No: 23-1177 (8th Cir. Minn., June 22, 2023); *Van Orden v. Stringer, 937 F.3d 1162 (8th Cir. 2019); Andrews v. Schafer*, 888 F.3d 981 (8th Cir. 2018); *Karsjens v. Piper*, 845 F.3d 394 (8th Cir. 2017), cert denied (U.S., Oct. 2, 2017); and *Strutton v. Meade*, 668 F.3d 549 (8th Cir. 2012), cert denied (U.S., Oct. 1, 2012).

Defendants' sold the idea to the district court: That Plaintiffs' should "be driven from the field [of litigation], not by the rule of right, but rather by the power of might." *Marconi Wireless Telegraph Co. v. Kilbourne & Clark Mfg. Co.*, 235 F. 719, 722 (Ca. D. 9th Cir. 1916). Justice may be better served if "it involves the exchange of an 'independent decisionmaker' for an 'avowedly politicized administrative agent seeking to pursue whatever [political] whim may rule the day.'" *Voigt v. Coyote Creek Mining Co., LLC*, 980 F.3d 1191, 1204 (8th Cir. 2020); quoting *Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142, 1153 (10th Cir. 2016) (Gorsuch, J., concurring).

On the field of battle here, Petitioners repeatedly exceeded the legal expectations to gain summary judgment or proceed to trial by a jury of their peers. Pet.App. 52-64. The un-refuted evidence produced exceeds that which is required to proceed for trial. Therefore, certiorari is necessary to preserve the notion of a fair and impartial judiciary, applying American ideals, which made this country great.

Without Supreme Court intervention, petitioners' quite literally have no constitutional rights—being members of the union, on the lowest ladder-rung of American society.

V. Did Court err, disposing the case per curiam, without memorandum, where disposition opposes this Court's Ruling in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993)?

Court disposed of this case *Per Curiam*, even though the ruling conflicts with this court's holding in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. at 588-590. Mr. O'leary's Reports *(Pet.App. 229-598)* and testimony *(Pet.App. 23, 33, 40)* satisfies the "standard" established in *Daubert* to proceed. *Id.* For the *short* complaint: It is the improper exclusion of petitioners' expert that disposed of a case the Minnesota District Court did not want to adjudicate at trial. The Eighth Circuit, with it's *per curiam* ruling, declined to give review of this issue with a memorandum at all. This constitutes misuse of the appellate procedure and deserves Court intervention to correct.

VI. Does Ruling Create *Paper-Tiger* Application of Eighth Circuit Rules? Are Petitioners Harmed Where They Have a Right to Free Exercise, to Vote Intelligently, to Participate in Society; Which is Reduced to *Paper-Tiger* Rights with No Enforcement?

On paper, petitioners have certain rights, which may be reduced with proper application of Professional Judgment. *Youngberg*, 457 U.S. at 321-322. Court has now read the case, petitioners' think the answer obvious. Either we are a people of law, or not.

CONCLUSION

Where decades of established jurisprudence is being ignored, or otherwise circumvented, Petitioners respectfully request that the Court issue a writ of certiorari to resolve the present conflict, demonstrated animus throughout the Eighth Circuit; hold that proper standards must prevail here; compel the Eighth Circuit to apply the legal standards as proclaimed by this Court.

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