

No. 25-

IN THE
Supreme Court of the United States

KEVIN SCOTT KARSJENS, *et al.*,

Petitioners,

v.

SHIREEN GANDHI, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a federal court awarding costs pursuant to Fed. R. Civ. P. 54(d)(1) may consider the potential chilling effect on a civil rights litigant to reduce or deny costs to a prevailing party?

2. Whether a federal appeals court exceeds its proper authority by determining disputed or unknown facts to support an order of costs under Fed. R. Civ. P. 54(d)(1), instead of remanding to the district court to resolve unknown and disputed facts, resulting in prejudice to Petitioners? (For example, this prevented Petitioners from arguing that imposing \$366,461.96 in costs on indigent plaintiffs violates the Excessive Fines Clause).

PARTIES TO THE PROCEEDING

Petitioners Kevin Scott Karsjens, Kevin John DeVillion, Peter Gerard Lonergan, James Matthew Noyer, Sr., James John Rud, James Allen Barber, Craig Allen Bolte, Dennis Richard Steiner, Kaine Joseph Braun, Christopher John Thuringer, Kenny S. Daywitt, Bradley Wayne Foster, David Leroy Gamble, and Brian K. Hausfeld were plaintiffs in the district court and appellees in the Eighth Circuit.

Respondents Shireen Gandhi, Kevin Moser, Peter Puffer, Ann Zimmerman, Nancy Johnston, and Jannine Hebert, in their individual and official capacities, were defendants in the district court and appellants in the Eighth Circuit.

STATEMENT OF RELATED PROCEEDINGS

Karsjens v. Jesson et al., No. 11-3659-DWF/JJK (D. Minn. June 17, 2015).

Karsjens v. Jesson et al., No. 11-3659-DWF/JJK (D. Minn. Aug. 13, 2024).

Karsjens v. Gandhi et al., No. 24-2876 (8th Cir. Jan. 7, 2026).

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PETITION FOR WRIT OF CERTIORARI

Petitioners Kevin Scott Karsjens, Kevin John DeVillion, Peter Gerard Lonergan, James Matthew Noyer, Sr., James John Rud, James Allen Barber, Craig Allen Bolte, Dennis Richard Steiner, Kaine Joseph Braun, Christopher John Thuringer, Kenny S. Daywitt, Bradley Wayne Foster, David Leroy Gamble, and Brian K. Hausfeld respectfully seek a writ of certiorari to the United States Court of Appeals for the Eighth Circuit in *Karsjens v. Gandhi*, 164 F.4th 662 (8th Cir. 2026), *reh'g denied*, 2026 WL 524187 (8th Cir. Feb. 25, 2026).

OPINIONS BELOW

The Memorandum Opinion and Order of the United States District Court of Minnesota related to the award of costs pursuant to Fed. R. Civ. P. 54 is reported at 2024 WL 3791991 (D. Minn. Aug. 13, 2024) and reproduced in the appendix (“Pet. App.”) at Pet. App. B, 10a.

The Opinion of the United States Court of Appeals for the Eighth Circuit is reported at 164 F.4th 662 (8th Cir. 2026) and reproduced in the appendix at Pet. App. A, 1a. The Order Denying Petition for Rehearing *En Banc* and Petition for Rehearing by the Panel in the United States Court of Appeals for the Eighth Circuit is reported at 2026 WL 524187 (8th Cir. Feb. 25, 2026) and reproduced in the appendix at Pet. App. D, 20a. The Findings of Fact, Conclusion of Law, and Order of the United States District Court of Minnesota which relate to the earlier bench trial are reported at 109 F. Supp. 3d 1139 (D. Minn. 2015).

JURISDICTION

The United States Court of Appeals for the Eighth Circuit denied Petitioners’ petition for rehearing *en banc* and rehearing by the panel on February 25, 2026. Jurisdiction exists in this Court pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. amend. XIV, § 1—“[N]or shall any State deprive any person of life, liberty, or property, without due process of law.”

Minn. Stat. § 253D—Minnesota Commitment and Treatment Act: Sexually Dangerous Persons and Sexual Psychopathic Personalities.

42 U.S.C. § 1983—Civil Action for Deprivation of Rights.

INTRODUCTION

Federal courts cannot agree on whether the potential chilling effect on future civil rights plaintiffs should be considered when awarding costs to prevailing defendants in other civil rights cases pursuant to Fed. R. Civ. P. 54. The federal courts of appeal have taken conflicting approaches. The Ninth Circuit recognizes chilling effects as a relevant—and necessary—factor in this analysis, whereas the Sixth and Eighth Circuits generally treat civil rights plaintiffs no differently from other litigants raising federal or state claims and decline to consider such effects.

In *Karsjens v. Gandhi*, 164 F.4th 662, 666 (8th Cir. 2026), the Eighth Circuit rejected the district court’s consideration of the chilling effect that imposing \$366,461.96 in costs on indigent plaintiffs might have on future civil rights litigation. The consequences of this circuit split are significant, as made clear by the Eighth Circuit’s decision in *Karsjens v. Gandhi*, because a civil rights plaintiff in the Eighth Circuit must weigh the risk of significant cost liability while an identically situated plaintiff in the Ninth Circuit can rely on that factor affecting the outcome of a cost petition if they lose. This disparity needs resolution: “Without civil rights litigants who are willing to test the boundaries of our laws, we would not have made much of the progress that has occurred in this nation.” *Stanley v. University of Southern California*, 178 F.3d 1069, 1080 (9th Cir. 1999).

The Eighth Circuit compounded its error by failing to permit the district court to make further factual findings regarding the appropriateness of a cost award because in the appellate court opinion, the Eighth Circuit departed from this Court’s prohibition on appellate fact finding. Making its own factual findings—in tension with the record and the facts discussed at oral argument—the Eighth Circuit improperly supplanted the district court’s role and awarded costs to defendants. This error, grounded in factual determinations unsupported by the record, undermines the proper division of responsibilities between trial and appellate courts and warrants correction by this Court.

STATEMENT OF THE CASE

Petitioners filed a pro se class action in 2011 alleging various claims pursuant to 42 U.S.C. § 1983. *Karsjens v. Jesson et al.*, 11-cv-03659 (DWF/JJK), ECF No. 1. Their claims challenged the commitment statute, the treatment program, the conditions of confinement, and MSOP policies and practices. *Id.* Petitioners applied for and were granted in forma pauperis (“IFP”) status. *Id.*, ECF No. 180, at 1. The district court referred these cases to the Pro Se Project¹ and later appointed Gustafson Gluek PLLC to represent Petitioners. *Id.*, ECF No. 137, at 2; ECF No. 138, at 1; ECF No. 203, at 12.

Given that the Petitioners in this case were civilly committed and had been for years, they lacked the financial means to hire experts to assist them, so they originally requested that the district court appoint experts pursuant to Fed. R. Evid. 706, to assist the Petitioners. *Id.*, ECF No. 319, at 6. The Defendants objected. *Id.*, ECF No. 328, at 3–5. The district court concluded that, based on the complexity of the issues presented, it would need the assistance of expert testimony pursuant to Rule 706 to adjudicate the case. *Id.*, ECF No. 354, at 4. The parties jointly agreed to nominate four experts, and it was those experts that the district court ultimately appointed.

1. The Pro Se Project is a collaboration between the District of Minnesota and the Minnesota Chapter of the Federal Bar Association which seeks to connect volunteer attorneys to represent pro se litigants in civil cases to improve access to justice and ease procedural challenges. *See* <https://www.mnd.uscourts.gov/sites/mnd/files/forms/ESCP-Pro-Se-Litigant-Information.pdf> at n. 1.

The district court asked the parties to recommend how these 706 experts should be paid. The parties' counsel agreed to recommend to the Court that the 706 expert cost could be split between the parties at that time. *Id.*, ECF No. 421; ECF No. 403, at 1. As was made clear at the oral argument in the Eighth Circuit, Petitioners' counsel intended to seek reimbursement for Gustafson Gluek's share of these costs from the Pro Se Project or to pay them from the law firm.

The district court rejected that recommendation and ordered Defendants to pay the costs of the 706 experts. *Id.*, ECF No. 427, at 75. Defendants did not challenge the district court's decision at that time, and they did not appeal that decision later. Perhaps Defendants' decisions in this regard stem from the fact that Minnesota law requires Defendants to collect from Petitioners the cost of their confinement (hundreds of thousands of dollars), *see Gamble v. Minnesota State-Operated Services*, 32 F. 4th 666, 668 (8th Cir. 2021) (recognizing the state can recover from detainees their cost of care citing Minn. Stat. §§ 246B.07, subd. 1; 246B.08). It also is clear that Defendants knew in 2013, and they know today, that Petitioners have no resources to pay either the costs of confinement required by Minnesota law nor the costs of the 706 experts ordered by the Eighth Circuit.

After a nearly six-week trial, the district court found in favor of Petitioners and entered an injunction. *Karsjens*, 11-cv-03659 (DWF/JJK), ECF No. 1035, at 39–43. Defendants appealed to the Eighth Circuit, and it reversed, concluding that the district court applied the wrong legal standard. *Karsjens v. Piper*, 845 F.3d 394, 411 (8th Cir. 2017). After several more trips to the Eighth

Circuit, Defendants prevailed in having Petitioners' remaining claims dismissed. *Karsjens v. Harpstead*, 74 F.4th 561, 572 (8th Cir. 2023).

Defendants originally filed the bill of costs while the second appeal was pending in the Eighth Circuit. Defendants sought the payment of costs under Rule 54 (including more than \$700,000 for the 706 experts) following the 2018 entry of final judgment. *Karsjens*, 11-cv-03659 (DWF/JJK), ECF No. 1114, at 1. On October 4, 2018, Petitioners opposed Defendants' bill of cost arguing, among other things, that they were indigent and could not pay the costs. *Id.*, ECF No. 1116.

To support their arguments, Petitioners relied on their IFP status. *Id.* at 5. Petitioners also set forth the fact that they were indefinitely civilly committed to MSOP and that status was unlikely to change. *Id.* at 6. Petitioners noted they receive only half of their minimal salaries for work at MSOP and receive bills from Defendants for the cost of their care during their involuntary commitment. *Id.* (citing Minn. Stat. § 246B.06, subd. 6); *see also Gamble*, 32 F. 4th at 668 (recognizing that civilly committed sex offenders are paid \$10.00 per hour, but the state can and does withhold up to fifty percent of a detainee's wages to "reduc[e] state costs associated with operating the Minnesota Sex Offender Program" (citing Minn. Stat. § 246B.06, subd. 6), and that the state can recover from detainees their cost of care (citing Minn. Stat. §§ 246B.07, subd. 1; 246B.08)).

The Clerk of Court taxed \$837,534.23 in costs, including the 706 expert costs and the majority of the transcript costs sought. *Karsjens*, 11-cv-03659 (DWF/

JJK), ECF No. 1125, at 1. Petitioners moved for the district court to review the Clerk of Court's judgment, raising the same arguments. *Id.*, ECF No. 1126, at 1; ECF No. 1127, at 2 n.2. Petitioners subsequently withdrew the motion after the Eighth Circuit's decision in *Karsjens v. Lourey*, 988 F.3d 1047 (8th Cir. 2021). *Karsjens*, 11-cv-03659 (DWF/JJK), ECF No. 1146, at 1.

Defendants then filed another bill of costs after the district court granted summary judgment in their favor. *Id.*, ECF No. 1203, at 1–2. Petitioners again opposed Defendants' bill of costs and again requested a hearing to resolve any disputes as to their financial status, clearly asserting the basis for why they would be unable to pay any costs. *Id.*, ECF No. 1207, at 1, 2 n. 2.

The district court stayed the matter pending the outcome of the appeal. *Id.*, ECF No. 1210 (Text Only Order). Following the *Karsjens v. Harpstead*, 74 F.4th 561 (8th Cir. 2023) decision, the district court lifted the stay and ultimately denied Defendants' motion for costs, making specific findings of fact related to Petitioners' ability to pay and the chilling effect awarding Defendants' costs would have on civil rights litigants, among other things. *Karsjens*, 11-cv-03659 (DWF/JJK), ECF No. 1218, at 7.

On appeal, the Eighth Circuit reversed, concluding that the district court abused its discretion because the district court “did not address a significant factor that bears on the assessment of costs” that the parties' counsel jointly recommended that the cost of the expert witnesses be equally split between the parties. *Gandhi*, 164 F. 4th at 665–666. Because of that offer, the Eighth Circuit found

that “the plaintiffs presumably had the ability, one way or another, to pay their suggested share of the costs.” *Id.* Based on the court’s presumption and contrary to counsel’s clear statement in response to a question at oral argument that the Pro Se Project or Gustafson Gluek planned to pay the expert costs, *see* Audio Recording of Oral Argument in *Karsjens v. Gandhi*, 164 F.4th 662 (8th Cir. 2026), the Eighth Circuit vacated the cost judgment and remanded the case to the district court. *Gandhi*, 164 F. 4th at 666. But the Eighth Circuit did not remand for the district court to make further factual determinations or conduct further proceedings. Instead, it remanded with directions to award costs in favor of the defendants in the amount of \$366,461.96, to be assessed against the Petitioners jointly and severally. *Id.*

REASONS FOR GRANTING THE PETITION

A. Awarding Defendants’ Costs Will Have a Chilling Effect on Similar Litigants

This Court should grant certiorari to resolve the circuit split on whether the potential chilling effect of cost awards is a proper consideration when denying or reducing costs to prevailing defendants in civil rights cases. The Eighth Circuit’s refusal to consider the chilling effect of awarding costs against civil rights plaintiffs imposes substantially greater financial risk on such litigants within that circuit than on those in jurisdictions that recognize the relevance of that factor. This circuit split needs to be resolved.

In its decision, the Eighth Circuit acknowledged that the district court relied on “the ‘potential chilling effect’

of awarding costs against the [civil rights] plaintiffs” to deny an award of costs to the prevailing defendants, but it rejected that rationale. *Gandhi*, 164 F. 4th at 666. The Eighth Circuit instead reasoned that “[w]hen deciding on an award of costs, [] there is ‘no reason to prefer civil-rights plaintiffs over some other class of litigants who have claims based on federal statutes.’” *Id.* (citing *Poe v. John Deere Co.*, 695 F.2d 1103, 1108 (8th Cir. 1982)). Those “chilling effects,” it said, like “deter[ing] plaintiffs from seeking court-appointed experts in a future action, [] does not mean that the state officials should bear the costs.” *Id.*

Other circuits have made similar conclusions when confronted with the question of whether a potential chilling effect can be considered as a basis to award costs against a prevailing defendant in a civil rights case. The Sixth Circuit, for example, rejected the consideration of the chilling effects on future plaintiffs, concluding that allowing imposition of costs against unsuccessful civil rights plaintiffs—even indigent plaintiffs—does not have any perceived chilling effect on the filing of such actions. *See Weever v. Toombs*, 948 F.2d 1004, 1008 (6th Cir. 1991).

The Ninth Circuit, however, has explicitly recognized chilling effects as a critical consideration in cost awards. In *Stanley v. University of Southern California*, 178 F.3d 1069, 1079 (9th Cir. 1999), the Ninth Circuit held that a district court abused its discretion when determining costs, in part, because it failed to consider “the chilling effect of imposing such high costs on future civil rights litigants.” The Ninth Circuit reaffirmed its conclusion in *Association of Mexican-American Educators v. State of California*, 231 F.3d 572, 593 (9th Cir. 2000) upholding a district court’s denial of costs to the prevailing defendants,

stating that “divesting district courts of discretion to limit or to refuse such overwhelming costs in important, close, but ultimately unsuccessful civil rights cases like this one might have the regrettable effect of discouraging potential plaintiffs from bringing such cases at all.”

This case underscores the broader implications of this split. Petitioners here are individuals subject to indefinite civil commitment following criminal convictions of sex crimes. Because of that commitment status, they cannot choose the venue to litigate their cases. They must file where they are committed. Thus, those committed in the Ninth Circuit are treated differently than those committed in the Sixth or Eighth Circuits.

Perhaps public opinion favors imposing costs on this group (a group that lawmakers in Minnesota have decided to lock away indefinitely) and deterring them from bringing civil rights lawsuits challenging violations of the constitution. But the legal principles at stake here will apply equally to other civil rights claims that raise controversial issues like abortion, religious freedom, or gay marriage (as examples) and how those rights impact public and private conduct. The law does not, and judges should not, treat a constitutional claim brought by a sex offender differently than an identical claim brought by a baker, or a website maker, or a football coach. Constitutional protections apply equally, regardless of the litigant’s status or public perception, and civil rights plaintiffs play a vital role in guarding and strengthening constitutional rights.

The Eighth Circuit’s decision, and its proclamation that “there is ‘no reason to prefer civil-rights plaintiffs

over some other class of litigants who have claims based on federal statutes” applies across the full spectrum of civil rights litigation. *Gandhi*, 164 F. 4th at 666. Under that rule, all civil rights litigants risk being crushed under hundreds of thousands of dollars in costs should their legitimate but ultimately unsuccessful civil rights claims face a significant cost award. By granting certiorari, this Court can ensure a uniform standard governing cost awards in civil rights cases and preserve meaningful access to the courts for all litigants asserting constitutional claims regardless of the circuit location.

B. The Eighth Circuit Improperly Acted as the Factfinder to Support an Award of Costs Instead of Remanding the Question to be Resolved by the District Court.

This Court should also grant the petition to reinforce the well-accepted rule that appellate courts should not be factfinders. The Eighth Circuit ignored this Court’s precedent when it improperly stepped into the role of the district court by making its own findings of disputed fact. For over fifty years, this Court has made clear that being a factfinder is outside the role of appellate courts: “In applying the clearly erroneous standard to the findings of a district court sitting without a jury, appellate courts must constantly have in mind that their function is not to decide factual issues de novo.” *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 123 (1969); see *June Medical Servs. L.L.C. v. Russo*, 591 U.S. 299, 322 (2020) (upholding *Zenith Radio Corp.*’s rule limiting appellate courts’ factfinding abilities); see also *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573 (1985) (stating that “[t]he reviewing court oversteps the bounds of its duty

under Rule 52(a) if it undertakes to duplicate the role of the lower court.”). Allowing appellate courts to decide factual issues *de novo* “would tend to undermine the legitimacy of the district courts . . . , multiply appeals . . . , and needlessly reallocate judicial authority.” *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 135 (2015) (citing Advisory Committee’s 1985 Note on subd. (a) of Fed. Rule Civ. Proc. 52) (internal quotation marks omitted).

Despite this Court’s prohibition on appellate courts resolving facts *de novo*, the Eighth Circuit did just that in this case. Without a factual record from the district court, and standing completely contrary to the only record it had (counsel’s unequivocal statements during oral argument), the appellate court presumed Petitioners had the ability to pay because their counsel made an offer more than ten years ago to split the Rule 706 expert costs. *Gandhi*, 164 F.4th at 665–666 (improperly finding that “[i]n 2013, two years after the plaintiffs applied to proceed *in forma pauperis*, they jointly recommended to the court that the cost of expert witnesses should be allocated equally between plaintiffs and defendants. Having made this recommendation to the district court, the plaintiffs presumably had the ability, one way or another, to pay their suggested share of the costs”). Aside from the fact that the district court rejected that suggestion to split the costs, and that Petitioners’ counsel made clear at appellate oral argument that he planned to ask the Pro Se Project or his firm to pay the expert costs, the Panel concluded that “[t]he district court did not consider this *acknowledged* ability to pay, and the plaintiffs presented no evidence to establish why the court should not rely on the plaintiffs’ previous offer. The other factors cited are

insufficient to rebut the presumption that the prevailing parties are entitled to costs.” *Id.* at 666 (emphasis added).

Under well-established precedent from this Court, *e.g.*, *Zenith Radio Corp.*, 395 U.S. at 123; *June Medical Servs. L.L.C.*, 591 U.S. at 322, if the Eighth Circuit believed that the district court did not sufficiently consider the 2013 agreement between the parties to determine whether that meant the Petitioners had means to pay the costs either in 2013 or in 2025, when the costs were then going to be assessed, the court should have remanded the case back to the district court to consider that factual issue and make that determination. Instead, the appellate court improperly found facts regarding Petitioners’ ability to pay costs. The effects of this improper fact finding are the kind that this Court sought to prevent by prohibiting appellate courts from conducting *de novo* fact finding. *See Teva Pharms. USA, Inc.*, 574 U.S. at 135. Because the case was not remanded, Petitioners were precluded from arguing that imposing \$366,461.96 in costs on indigent plaintiffs violates the Excessive Fines Clause. *See United States v. Bajakajian*, 524 U.S. 321, 334 (1998) (a sanction violates the Excessive Fines Clause if it is “grossly disproportional to the gravity of a [party’s] offense.”); *see also Austin v. United States*, 509 U.S. 602 (1993) (establishing that the Eighth Amendment’s Excessive Fines Clause may apply to civil actions). This Court should grant certiorari to make clear once again that such *de novo* factfinding is not the proper role of appellate courts.

CONCLUSION

Because there is a circuit split on the costs issue related to civil rights cases and because the Eighth Circuit improperly decided disputed facts key to the decision contrary to this Court's clear precedent, Petitioners respectfully request that the Court issue a writ of certiorari to resolve these important questions that significantly affect important constitutional issues.

Respectfully submitted,

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APPENDIX

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**APPENDIX A — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT,
FILED JANUARY 7, 2026**

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 24-2876

KEVIN SCOTT KARSJENS, AND ALL OTHERS
SIMILARLY SITUATED; KEVIN JOHN
DEVILLION, AND ALL OTHERS SIMILARLY
SITUATED; PETER GERARD LONERGAN, AND
ALL OTHERS SIMILARLY SITUATED; JAMES
MATTHEW NOYER, SR., AND ALL OTHERS
SIMILARLY SITUATED; JAMES JOHN RUD,
AND ALL OTHERS SIMILARLY SITUATED;
JAMES ALLEN BARBER, AND ALL OTHERS
SIMILARLY SITUATED; CRAIG ALLEN BOLTE,
AND ALL OTHERS SIMILARLY SITUATED;
DENNIS RICHARD STEINER, AND ALL OTHERS
SIMILARLY SITUATED; KAINE JOSEPH BRAUN,
AND ALL OTHERS SIMILARLY SITUATED;
CHRISTOPHER JOHN THURINGER, AND ALL
OTHERS SIMILARLY SITUATED; KENNY S.
DAYWITT, AND ALL OTHERS SIMILARLY
SITUATED; BRADLEY WAYNE FOSTER, AND
ALL OTHERS SIMILARLY SITUATED; DAVID
LEROY GAMBLE, AND ALL OTHERS SIMILARLY
SITUATED; BRIAN K. HAUSFELD, AND ALL
OTHERS SIMILARLY SITUATED,

Plaintiffs-Appellees,

v.

Appendix A

SHIREEN GANDHI; KEVIN MOSER, IN THEIR
INDIVIDUAL AND OFFICIAL CAPACITIES;
PETER PUFFER; ANN ZIMMERMAN, IN THEIR
INDIVIDUAL AND OFFICIAL CAPACITIES;
NANCY JOHNSTON, IN THEIR INDIVIDUAL AND
OFFICIAL CAPACITIES; JANNINE HEBERT,
IN THEIR INDIVIDUAL AND OFFICIAL
CAPACITIES,

Defendants-Appellants.

AMERICAN CIVIL LIBERTIES UNION OF
MINNESOTA; CATHERINE L. CARPENTER;
IRA ELLMAN; FREDRIKSON & BYRON; GUY
P. HAMILTON-SMITH; ERIC STEVEN JANUS;
VAL JONAS; JEREMY LANE; MID-MINNESOTA
LEGAL AID; ADELE NICHOLAS; TIFFANY
A. SANDERS; MARK WEINBERG; UPPER
MIDWEST LAW CENTER; AMERICAN CIVIL
LIBERTIES UNION; NATIONAL CENTER FOR
LAW AND ECONOMIC JUSTICE; NATIONAL
HEALTH LAW PROGRAM; CENTER FOR PUBLIC
REPRESENTATION; WESTERN CENTER ON
LAW AND POVERTY; IMPACT FUND; EMILY
HOROWITZ; DORSEY & WHITNEY LLP; PAUL
DUBBELING; RICHARD GLADDEN,

Amici on Behalf of Appellee(s).

Appeal from United States District Court
for the District of Minnesota

Submitted: October 21, 2025
Filed: January 7, 2026

Appendix A

Before COLLOTON, Chief Judge, LOKEN and BENTON,
Circuit Judges.

COLLOTON, Chief Judge.

The Minnesota Department of Human Services operates the Minnesota Sex Offender Program, which treats patients who have been civilly committed under the Minnesota Civil Commitment and Treatment Act . Minn. Stat. § 253D. In 2011, a group of patients in the program brought a class action against state officials on behalf of all patients who were currently civilly committed under the Act. The officials ultimately prevailed on all claims.

This appeal concerns which party should bear the costs of compensating court-appointed experts who were retained during the litigation. The federal rules of civil procedure provide that, generally, costs other than attorney's fees should be allowed to the prevailing party. Fed. R. Civ. P. 54(d)(1). Although the state officials prevailed in the litigation, the district court ordered them to bear the entire cost of the court-appointed experts. On this record, we conclude that the officials are entitled to recoup half of the expert fees from the plaintiffs, so we vacate the district court's order and remand with instructions.

The patients filed this class action *pro se*, alleging that the sex offender program failed to provide treatment and employed unconstitutional conditions of confinement. The court granted the patients leave to proceed *in forma pauperis*. Then, at the request of the Minnesota Federal

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Bar Association's Pro Se Project, counsel agreed to represent the plaintiffs.

Based on the indigent status of the patients and the importance of expert evidence to their claims, the patients moved the court to appoint experts to assist the patients under Federal Rule of Evidence 706. Rule 706, entitled "Court-Appointed Expert Witnesses," provides that "the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations." Fed. R. Evid. 706(a). The court declined to resolve whether Rule 706 allows the court to appoint experts solely on behalf of the plaintiffs, but "acknowledge[d] the need for experts in this case in order to fully and properly litigate the claims at issue." The court required the parties to nominate experts, and then in December 2013 appointed four experts who were nominated jointly by the parties.

Later that month, the parties met and conferred on the allocation of payment to the experts. In a letter to the judge, the parties jointly recommended "an allocation of 50/50 between plaintiffs and defendants." Without explanation, however, the court instead ordered that "[w]ithout prejudice to subsequent adjustment, such costs shall be initially allocated to Defendants."

The state officials ultimately prevailed on all claims after more than a decade of litigation. By that point, the experts had generated fees of \$732,923.92. The officials filed a bill of costs totaling more than \$800,000, and the patients objected.

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The district court declined to award any costs to the officials as prevailing parties. The court concluded that the plaintiffs “are indigent, they will likely not be able to pay these costs in the future, they have brought this action in good faith, the case raised issues of great public importance, the case has been vigorously litigated, the issues were difficult and close, and imposing fees could have a potential chilling effect on future litigants.” The officials appeal, and we review the court’s non-award of costs for abuse of discretion. *In re Derailment Cases*, 417 F.3d 840, 844 (8th Cir. 2005). The officials seek an award of costs against the plaintiffs only; they do not ask the court to tax costs against counsel.

The rules of civil procedure provide that costs “should be allowed to the prevailing party,” unless a court order, federal statute, or federal rule directs otherwise. Fed. R. Civ. P. 54(d)(1). A prevailing party is presumptively entitled to recover costs, and the opposing party must overcome that presumption. *Thompson v. Kanabec Cnty.*, 958 F.3d 698, 709 (8th Cir. 2020).

The district court stated that the plaintiffs’ inability to pay was the most important consideration in declining to award costs to the prevailing parties. The court cited financial information from the plaintiffs’ applications in 2011 to proceed *in forma pauperis* and determined that there was “no reason for the Court to believe that these numbers have substantially changed.” In an appropriate case, it is within a court’s discretion to deny costs because a plaintiff is poor. *Poe v. John Deere Co.*, 695 F.2d 1103, 1108 (8th Cir. 1982).

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In this case, however, the district court did not address a significant factor that bears on the assessment of costs. In 2013, two years after the plaintiffs applied to proceed *in forma pauperis*, they jointly recommended to the court that the cost of expert witnesses should be allocated equally between plaintiffs and defendants. Having made this recommendation to the district court, the plaintiffs presumably had the ability, one way or another, to pay their suggested share of the costs. The plaintiffs bore the burden of overcoming the presumption that costs should be awarded to the prevailing party, and they produced no evidence that the situation had changed since the joint recommendation in 2013. The district court found no reason to believe that the patients' financial situation had changed since 2011, but did not address their willingness to fund half of the expert costs as of 2013. The failure to consider a relevant factor that should have been given significant weight is an abuse of discretion. *Kern v. TXO Prod. Corp.*, 738 F.2d 968, 970 (8th Cir. 1984).

The other factors considered by the district court do not justify denying entirely an award of costs to the prevailing parties. The court cited the public importance of the issues and the "potential chilling effect" of awarding costs against the plaintiffs. When deciding on an award of costs, however, there is "no reason to prefer civil-rights plaintiffs over some other class of litigants who have claims based on federal statutes." *Poe*, 695 F.2d at 1108. Congress limited the authority of a court to tax *attorneys' fees* against civil rights plaintiffs but has not "carved out an exception to Rule 54(d) relieving a losing civil-rights litigant of the burden of bearing the costs of litigation." *Id.*

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Even if an award of costs might deter plaintiffs from seeking court-appointed experts in a future action, that does not mean that the state officials should bear the costs. The plaintiffs did not present evidence about an agreement or lack of agreement with counsel about responsibility for costs. If there is no such agreement, then perhaps future plaintiffs will insist that their lawyers agree to bear the risk of paying costs in an unsuccessful action. But lawyers also have an opportunity to benefit from an award of fees if they are successful, 42 U.S.C. § 1988, and there are mechanisms by which attorneys for plaintiffs in civil rights cases manage the risk of failure. *See White v. Sundstrand Corp.*, 256 F.3d 580, 586 (7th Cir. 2001). It is unlikely that a partial award of costs in a case like this one will significantly chill meritorious civil rights cases. As for the other factors cited, “[t]he mere fact that the losing party litigated the action in good faith” and that “the case presented close and difficult issues” are not sufficient grounds for denying costs to a prevailing party. 10 *Moore’s Federal Practice* § 54.101[1][b] (3d ed. 2025); *see, e.g., In re Paoli R.R. Yard PCB Litig.*, 221 F.3d 449, 467 (3d Cir. 2000); *Pacheco v. Mineta*, 448 F.3d 783, 794 (5th Cir. 2006).

The record shows that the plaintiffs offered in 2013 to accept an allocation of half the costs attributable to court-appointed experts. The district court did not consider this acknowledged ability to pay, and the plaintiffs presented no evidence to establish why the court should not rely on the plaintiffs’ previous offer. The other factors cited are insufficient to rebut the presumption that the prevailing parties are entitled to costs.

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For these reasons, we vacate the cost judgment, R. Doc. 1219, and remand the case to the district court with directions to award costs in favor of the defendants in the amount of \$366,461.96, to be assessed against the named plaintiffs jointly and severally. If it turns out that the judgment is not collectible, then so be it, but the prevailing parties are entitled to the judgment under the governing rule on this record.

**APPENDIX B — MEMORANDUM OPINION AND
ORDER OF THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF MINNESOTA,
DATED AUGUST 13, 2024**

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Civil No. 11-3659 (DWF/TNL)

KEVIN SCOTT KARSJENS, KEVIN JOHN
DEVILLION, PETER GERARD LONERGAN,
JAMES MATTHEW NOYER, SR., JAMES
JOHN RUD, JAMES ALLEN BARBER, CRAIG
ALLEN BOLTE, DENNIS RICHARD STEINER,
KAINE JOSEPH BRAUN, CHRISTOPHER JOHN
THURINGER, KENNY S. DAYWITT, BRADLEY
WAYNE FOSTER, DAVID LEROY GAMBLE,
JR., BRIAN K. HAUSFELD, *AND ALL OTHERS
SIMILARLY SITUATED,*

Plaintiffs,

v.

JODI HARPSTEAD, KEVIN MOSER, PETER
PUFFER, ANN ZIMMERMAN, NANCY
JOHNSTON, AND JANNINE HÉBERT, *IN THEIR
INDIVIDUAL AND OFFICIAL CAPACITIES,*

Defendants.

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MEMORANDUM OPINION AND ORDER

INTRODUCTION

This matter is before the Court on Defendants’ Bill of Costs.¹ (Doc. No. 1203.) Plaintiffs object. (Doc. No. 1207.)

BACKGROUND

This action began over a decade ago. The history of the case is both lengthy and complex. Plaintiffs in this case are fourteen individuals residing at the Minnesota Sex Offender Program (“MSOP”) who are civilly committed under Minn. Stat. § 253D, the Minnesota Civil Commitment and Treatment Act (“MCTA”). (Doc. No. 635 (“TAC”) ¶ 2.) Plaintiffs represent a class consisting of all patients currently civilly committed to MSOP. (Doc. No. 203.) Plaintiffs brought this action in 2011, challenging the constitutionality of the MCTA on its face and as applied, as well as various aspects of the MSOP’s operation and treatment regimen. (*See generally* TAC.)

In 2015, the Court denied Defendants’ Summary Judgment on all counts in Plaintiffs’ Third Amended Complaint. (Doc. No. 828.) The matter proceeded to trial in two phases. (Doc. No. 647.) The first phase lasted nearly six weeks. On June 15, 2015, the Court issued its Findings of Fact, Conclusions of Law, and Order, granting Plaintiffs’ request for declaratory relief on Counts I and II. (Doc. No. 966 at 75.) The Court determined that the

1. Defendants request \$837,926.13 in costs. (Doc. No. 1203.)

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MSOP program is unconstitutional on its face and as applied. (*Id.* at 65.) The Court issued a First Interim Relief Order, directing injunctive relief to remedy its findings of unconstitutionality. (Doc. No. 1035.)

Defendants appealed the Court's Phase One and Injunctive Relief Orders to the Eighth Circuit. (Doc. No. 1036.) The Eighth Circuit reversed the Court's Phase One Order and entered judgment in favor of Defendants on Counts I and II. *Karsjens v. Piper*, 845 F.3d 394, 411 (8th Cir. 2017) ("*Karsjens I*"). It also vacated this Court's Injunctive Relief Order and remanded for further proceedings on the remaining claims. *Id.* The Supreme Court denied *certiorari*. *Karsjens v. Piper*, 138 S. Ct. 106 (2017).

In response to *Karsjens I*, the parties filed supplemental briefings on the remaining Phase One claims, and Defendants moved for summary judgment on the Phase Two claims. In August 2018, the Court dismissed with prejudice the remaining Phase One claims under the "shocks the conscience standard." (Doc. No. 1108.) In the same Order, the Court granted Defendants' motion for summary judgment and dismissed with prejudice the Phase Two claims. (*Id.*)

Plaintiffs appealed the Court's ruling on the Phase One claims to the Eighth Circuit. (Doc. No. 1118.) The Eighth Circuit then reversed the dismissal of Counts V, VI, and VII after finding that this Court applied the wrong legal standard and remanded the case again for further proceedings. *Karsjens v. Lourey*, 988 F.3d 1047, 1054 (8th

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Cir. 2021) (“*Karsjens II*”). The Supreme Court denied *certiorari*. *Karsjens v. Lourey*, 142 S. Ct. 232 (2021).

On remand, the parties filed additional briefings and disputed the scope of the remand. The Court ultimately dismissed Plaintiffs’ remaining claims with prejudice. (Doc. No. 1197.) Plaintiffs appealed and the Eighth Circuit affirmed. *Karsjens v. Harpstead*, 74 F.4th 561, 572 (8th Cir. 2023).

Defendants filed the Bill of Costs while the Eighth Circuit appeal was pending. The Court therefore found it appropriate to stay the matter pending the outcome of the appeal. (Doc. No. 1210.) Following the Eighth Circuit’s decision, Plaintiffs petitioned the Supreme Court for *certiorari*, which the Supreme Court denied on February 20, 2024. *Karsjens v. Harpstead*, 144 S. Ct. 814 (2024). The Court lifted the stay in March 2024 and now considers Defendants’ Bill of Costs.

DISCUSSION

Under 28 U.S.C. § 1920 and Fed. R. Civ. P. 54(d), the Court has “substantial discretion” in awarding costs to a prevailing party. *Zotos v. Lindbergh Sch. Dist.*, 121 F.3d 356, 363 (8th Cir. 1997). Unless a federal statute, rule, or court provides otherwise, “costs—other than attorney’s fees—should be allowed to the prevailing party.” Fed. R. Civ. P. 54(d)(1).

To overcome the presumption of taxation, Plaintiffs have the burden to show that the cost judgment “is

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inequitable under the circumstances.” *Concord Bd. Corp. v. Brunswick Corp.*, 309 F.3d 494, 498 (8th Cir. 2002) (citation and internal quotation marks omitted). The Plaintiffs must give “specific reasons explaining why . . . it would be inappropriate or inequitable to award costs.” *Kaplan v. Mayo Clinic*, No. 07-cv-3630, 2011 WL 3837095, at *2 (D. Minn. Aug. 29, 2011) (internal quotations and citation omitted). If a court denies taxable costs, “it must provide a rationale.” *Nicholson v. Biomet, Inc.*, 537 F. Supp. 3d 990, 1032 (N.D. Iowa 2021), *aff’d*, 46 F.4th 757 (8th Cir. 2022) (internal quotations and citation omitted). “A general statement of fairness . . . is insufficient to rebut Rule 54(d)(1)’s presumption.” *Id.* at 1033.

Plaintiffs ask the Court to not order Plaintiffs to pay costs because Plaintiffs brought this case in good faith, and they cannot pay the requested costs.

The Court can consider whether Plaintiffs brought their claims in good faith. *See Kaplan*, 2011 WL 3837095, at *2 (considering the fact that the plaintiffs “brought their claims in good faith and their claims were not frivolous”). In this case, not only were the claims brought in good faith and not frivolous, but the Court initially ruled in Plaintiffs’ favor on Counts I and II. The issues were difficult and required years of litigation, a sixweek trial, and multiple appeals.

Moreover, the case brought issues of public importance, as the action affects over 700 individuals and concerns the constitutionality of statutes governing Minnesota’s civil commitment and treatment of sex offenders. As the Court

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noted in its Phase One Findings of Fact and Conclusions of Law, the case “challenges the boundaries that we the people set on the notions of individual liberty and freedom, the bedrock principles embedded in the United States Constitution.” (Doc. No. 966 at 2.) Other courts have considered whether the suit was brought in the public interest when determining whether to deny costs. *See Ass’n of Mexican-American Educators v. California*, 231 F.3d 572, 593 (9th Cir. 2000) (noting that the action affected tens of thousands of people and concerned the state’s public school system); *Goolsby v. San Diego*, No. 17-cv-564, 2020 WL 6361876, at *4 (S.D. Cal. Oct. 29, 2020) (noting that the case involving the Eighth Amendment was important for safeguarding individual civil rights while incarcerated).

Some courts have also considered the chilling effect “that imposing costs would have on future civil rights actions.” *Brewer v. Leprino Foods Co., Inc.*, No. 16-cv-1091, 2019 WL 3842881, at *2 (E.D. Cal. Aug. 15, 2019); *see also Cramer v. Equifax Info. Servs., LLC*, No. 18-cv-1078, 2020 WL 887996, at *2 (E.D. Mo. Feb. 24, 2020) (considering whether awarding costs would cause a chilling effect). In civil rights cases, especially those like this one involving indigent individuals involuntarily committed for an indefinite period of time, it is important that plaintiffs “not be unduly intimidated by the threat of imposition of costs.” *Hanger v. Gawron*, No. 95-cv-30239, 1998 WL 199982, at *1 (D. Mass. Apr. 22, 1998) (internal quotations and citation omitted). This alone is not enough to deny costs, as civil rights plaintiffs are not exempt from Rule 54(d). But the Court nonetheless may consider

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the potential chilling effect, especially in extraordinary cases, like this one, and considering the substantial fees Defendants seek in this case—over \$800,000.

Lastly, and most importantly, the Court may consider Plaintiffs' ability to pay the costs. "Indigence is recognized as an appropriate justification for denial of costs." *Kaplan*, 2011 WL 3837095, at *2 (citing cases); see *Poe v. John Deere Co.*, 695 F.2d 1103, 1108 (8th Cir. 1982) ("It is of course within a court's discretion to deny costs because a plaintiff is poor."). The Court considers both the party's current financial status, as well as whether "the litigant is not likely to be able to pay the costs in the future." *Denson v. Ne. Ill. Reg. Commuter R.R. Corp.*, No. 00-cv-2984, 2003 WL 21506946, at *1 (N.D. Ill. June 27, 2003).

Here, the named Plaintiffs in this case are all currently, involuntarily civilly committed to the MSOP and have been for the pendency of this case. It is unlikely that they will be released in the near future.² When Plaintiffs filed this action, they were earning between \$0 and \$933³ per month, with most earning less than \$200 per month (*See* Doc. Nos. 2-15.) There is no reason for the Court to believe that these numbers have substantially changed. Defendants are requesting over \$800,000 in costs. (Doc.

2. Between 1994 and 2015, "no committed individual ha[d] ever been fully discharged from the MSOP, and only three committed individuals ha[d] ever been provisionally discharged from the MSOP." (Doc. No. 966 ¶ 25.)

3. The Plaintiff earning \$933 per month reported over \$1,000 of monthly expenses. (Doc. No. 10.)

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No. 1203.) It is highly doubtful that Plaintiffs will be able to pay these costs now or in the future, given that they remain indefinitely committed and their opportunities to earn an income are substantially limited. Such an award would undoubtedly cause an undue hardship on Plaintiffs, especially given the substantial amount of costs that Defendants are requesting.

The Court concludes that Plaintiffs are indigent, they will likely not be able to pay these costs in the future, they have brought this action in good faith, the case raised issues of great public importance, the case has been vigorously litigated, the issues were difficult and close, and imposing fees could have a potential chilling effect on future litigants. The fair and equitable thing to do is for the Court to deny costs entirely in this case. For these reasons, the Court declines to award costs.

ORDER

Based upon the foregoing, and the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiffs' objection to Defendants' Bill of Costs (Doc. No. [1207]) is **SUSTAINED**.
2. Defendants' Bill of Costs (Doc. No. [1203]) is respectfully **DENIED**.
3. Defendants are not entitled to costs. The clerk shall enter the cost judgment accordingly.

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LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 13, 2024

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge

**APPENDIX C — JUDGMENT OF THE UNITED
STATES DISTRICT COURT FOR THE DISTRICT
OF MINNESOTA, DATED AUGUST 15, 2024**

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Case Number: 11-cv-3659 DWF/TNL

KEVIN SCOTT KARSJENS, KEVIN JOHN
DEVILLION, PETER GERARD LONERGAN,
JAMES MATTHEW NOYER, SR., JAMES
JOHN RUD, JAMES ALLEN BARBER, CRAIG
ALLEN BOLTE, DENNIS RICHARD STEINER,
KAINE JOSEPH BRAUN, CHRISTOPHER JOHN
THURINGER, KENNY S. DAYWITT, BRADLEY
WAYNE FOSTER, DAVID LEROY GAMBLE,
JR., BRIAN K. HAUSFELD, AND ALL OTHERS
SIMILARLY SITUATED,

Plaintiff(s),

v.

JODI HARPSTEAD, KEVIN MOSER, PETER
PUFFER, ANN ZIMMERMAN, NANCY
JOHNSTON, AND JANNINE HÉBERT, IN THEIR
INDIVIDUAL AND OFFICIAL CAPACITIES,

Defendant(s).

Appendix C

JUDGMENT IN A CIVIL CASE

- ☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- ☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

1. Plaintiffs' objection to Defendants' Bill of Costs (Doc. No. [1207]) is SUSTAINED.
2. Defendants' Bill of Costs (Doc. No. [1203]) is respectfully DENIED.
3. Defendants are not entitled to costs. The clerk shall enter the cost judgment accordingly.

Date: 8/15/2024 KATE M. FOGARTY, CLERK

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**APPENDIX D — ORDER OF THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT,
DATED FEBRUARY 25, 2026**

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 24-2876

KEVIN SCOTT KARSJENS, AND ALL OTHERS
SIMILARLY SITUATED, *et al.*

Appellees

v.

SHIREEN GANDHI, *et al.*

Appellants

AMERICAN CIVIL LIBERTIES UNION OF
MINNESOTA, *et al.*

Amici on Behalf of Appellee(s)

Appeal from U.S. District Court for the
District of Minnesota
(0:11-cv-03659-DWF)

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ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

February 25, 2026

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.
/s/ Susan E. Bindler