No. 25-919

IN THE

Supreme Court of the United States

UNION CARBIDE CORPORATION; COVESTRO LLC,

Petitioners,

v.

LEE ANN SOMMERVILLE, individually and on behalf of all others similarly situated,

Respondent.

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

BRIEF OF WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether, under Federal Rule of Evidence 702, challenges to the factual basis of an expert witness's testimony always go to the weight of the evidence rather than to admissibility, as the First and Fourth Circuits hold, or whether such challenges go to weight only if a court first finds it more likely than not that an expert has a sufficient basis to support the testimony, as the Fifth, Sixth, Eighth, Ninth, and Federal Circuits hold.

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INTEREST OF AMICUS CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as an amicus curiae to urge exclusion of scientifically unreliable expert evidence. An early critic of "junk science," WLF filed an amicus brief in each of this Court's *Daubert* trilogy cases. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999); *Gen. Elec. Co. v. Joiner*, 522 U.S. 136 (1997); *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993).

WLF's Legal Studies Division, the foundation's publishing arm, distributes articles by outside experts on the proper reliability threshold for expert testimony. *See, e.g.,* Lee Mickus, *Amended Rule 702 in 2025: Circuit Courts Embrace the Changed Standard*, WLF Legal Backgrounder (Oct. 7, 2025), https://perma.cc/Z5SY-JPSH.

The quality of decision-making in the federal courts turns increasingly on the willingness of federal judges to take seriously their responsibilities as gatekeepers to stop unsound expert evidence from ever reaching the jury. The decision below, if allowed to stand, would severely erode this vital gatekeeping function. Unless this Court intervenes, WLF fears that the Fourth Circuit's rule barring trial judges from scrutinizing the "factual underpinnings" of expert evidence will hollow out Federal Rule of Evidence 702,

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* No party's counsel authored any part of this brief. No one, other than Washington Legal Foundation and its counsel, helped pay for the brief's preparation or submission. Counsel for WLF timely notified all parties' counsel of WLF's intent to file this brief.

inviting injustices well beyond the facts and parties of this case.

INTRODUCTION & SUMMARY OF ARGUMENT

The Petition raises a profound question about the integrity of our federal justice system—whether trial judges must faithfully enforce Federal Rule of Evidence 702 as a bulwark against unreliable expert testimony, or whether they must sidestep that duty and pass the buck to juries. Joining the First Circuit, the Fourth Circuit has chosen the latter approach by holding that challenges to the factual foundation of an expert's opinion go only to weight, not admissibility. That ruling revives a lax, pre-*Daubert*-era view that Rule 702 has abolished. As the Petition ably shows, this view stands in direct conflict with the rigorous approaches of the Fifth, Sixth, Eighth, Ninth, and Federal Circuits. *See* Pet. 12–21.

This circuit split goes to the heart of fair trials, where expert evidence often sways outcomes in complex cases like this toxic-tort class action. By defying the plain text of Rule 702—as clarified by the 2023 amendment—the decision below undermines judicial gatekeeping, invites inconsistent verdicts, and erodes public confidence in the courts. Three compelling reasons support review.

First, Rule 702 demands that judges, not juries, decide whether expert testimony is grounded in sufficient facts or data before that testimony may reach the jury. As Judge Diaz emphasized in his dissent, "A modeling expert's methodology doesn't end with selecting a modeling system. The expert must also

develop the inputs and assumptions used to create the model." Pet. App. 35a–36a. The Fourth Circuit's insistence that factual-input deficiencies are mere jury questions abolishes this threshold inquiry, inviting verdicts built on speculation rather than sound science. Because jurors lack the tools to dissect and resolve scientific flaws in evidence, this approach to admissibility not only ignores the *Daubert* trilogy's mandate for vigilant gatekeeping but also the Advisory Committee's explicit warning that it is "an incorrect application" of Rule 702. Fed. R. Evid. 702, Advisory Comm. note to 2023 amendment

Second, the Fourth Circuit's ruling hinges on its prior precedent in *Bresler v. Wilmington Tr. Co.*, 855 F.3d 178, 195 (4th Cir. 2017). But *Bresler* is a bygone artifact of superseded caselaw, spawned by a daisy chain of pre-*Daubert* decisions that even their originating circuits—the Fifth and Eighth—have now abandoned in favor of the amended Rule's clear standard. Still clinging to this "weight not admissibility" relic, the decision below elevates stale precedent over textualism and greenlights the very junk science that Rule 702 excludes, flouting the Rule's evolution and purpose. *See* 28 U.S.C. § 2072(b) ("All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.").

Third, the Federal Rules of Evidence were enacted to foster national uniformity, ensuring that evidentiary standards do not vary from circuit to circuit. Yet this widening split now ensnares the district courts in nine States, encouraging forum-shopping and unequal justice under the law. In an era of nationwide litigation, such fragmentation threatens

the coherence of federal law and the evenhanded administration of justice that our system demands.

The interests of fairness, predictability, and the rule of law were all injured in this case. WLF joins with Petitioner in urging the Court to grant certiorari.

REASONS FOR GRANTING THE PETITION

I. REVIEW IS NEEDED TO ENSURE THAT SCIENTIFIC RELIABILITY REMAINS A QUESTION FOR THE DISTRICT COURT, NOT THE JURY.

In holding that the district court abused its discretion by excluding Dr. Sahu's speculative air-modeling opinions, the Fourth Circuit departed from this Court's clear directive, now firmly embedded in Rule 702, that all expert testimony must meet "exacting standards of reliability." *Weisgram v. Marley Co.*, 528 U.S. 440, 455 (2000). Under this Court's *Daubert* trilogy, district courts play a critical "gatekeeping" role in shielding jurors from unreliable expert evidence. It is thus incumbent on every trial judge to "ensure that any and all [expert] testimony or evidence admitted is not only relevant, but reliable." *Daubert*, 509 U.S. at 589.

That is why Rule 702 explicitly assigns the task of ensuring the reliability of expert testimony to district judges alone. Because an expert's "conclusions and methodology are not entirely distinct from one another," *Joiner*, 522 U.S. at 146, "an analysis of the sufficiency of the expert's basis cannot be divorced from the ultimate reliability of the expert's opinion." Fed. R. Evid. 702, Advisory Comm. note to 2000 amendment.

Under Rule 702, it's no longer enough to invoke the cross-examination of expert testimony while leaving any dispute about scientific reliability to the weight a jury decides to give that testimony. Yes, challenges to the factual basis underlying an expert's conclusion may ultimately go to weight, but only if a court first finds it more likely than not that the expert has a sufficient basis to support the testimony.

In 2023, the Judicial Conference amended the Rule to clarify this very point. The Advisory Committee stressed that many courts were still wrongly treating defects in the factual basis and methodology of an expert's opinion as questions of weight, not admissibility, contrary to Rules 702 and 104(a). *See* Fed. R. Evid. 702, Advisory Comm. note to 2023 amendment ("These rulings are an incorrect application of Rules 702 and 104(a)."); *see also* see Hon. Patrick J. Schiltz, *Report of the Advisory Committee*, at 6 (May 15, 2022), https://perma.cc/QN6N-KEHA (explaining that "treating these questions as ones of weight rather than admissibility . . . is contrary to the Supreme Court's holdings"). The Fourth Circuit's insistence here that the district court should have punted expert reliability to the jury—and, in fact, erred by *not* doing so—defies this command.

Rule 702's mandate that insufficient facts and data behind an expert's conclusion go not to weight but to admissibility also comports with experience and common sense. For while cross-examination has its benefits, it is no panacea; it cannot readily distinguish validly derived expert opinions from junk science. And it can never take the court's place in determining the reliability of an expert's opinion in the first instance. As Professor Jules Epstein has explained:

> This treatment of cross-examination as the palliative of choice has its flaws, not merely in its expectation that cross-examination without other resources can fairly respond to an expert witness. The mythic status of cross-examination in this regard actually impedes accurate fact-finding because leading questions are not always an appropriate or sufficient tool for truth finding. Courts have not acknowledged these limitations.

Jules Epstein, *Cross-Examination: Seemingly Ubiquitous, Purportedly Omnipotent, and "At Risk,"* 14 Widener L. Rev. 427, 437 (2009) (internal citations omitted). That is why simply subjecting an expert witness to a rigorous cross-examination does nothing to ensure the reliability of that expert's testimony; reliability must always be assessed *before* the testimony is admitted to the jury.

Here the Fourth Circuit overrode the district court's decision to exclude patently unreliable expert testimony, insisting that a jury can somehow muddle through the relevant science with the aid of competing expert evidence and cross-examination. But dismissing key, objective flaws in expert evidence as bearing only on the weight of that evidence inevitably leaves jurors with the rarefied task of resolving the basic reliability of the expert's scientific findings. Jurors cannot be expected—and should not be permitted—to make those sorts of reliability determinations. Above all, unreliable evidence "contributes nothing to a 'legally sufficient evidentiary basis'" for a jury verdict. *Weisgram*, 528 U.S. at 454 (internal citation omitted). As for how much "weight" a jury should give unreliable

expert evidence, the only acceptable answer is *none*. It should never reach the jury in the first place.

Legal scholars have long noted that "cross-examination does little to affect jury appraisals of expert testimony." Christopher B. Mueller, Daubert *Asks the Right Questions: Now Appellate Courts Should Help Find the Right Answers*, 33 Seton Hall L. Rev. 987, 993 (2003). Indeed, multiple studies have revealed jurors' commonly held assumption that, because the trial judge admitted the expert evidence, it must have at least passed some test of reliability. *See, e.g.,* N.J. Schweitzer & Michael J. Saks, *The Gatekeeper Effect: The Impact of Judges' Admissibility Decisions on the Persuasiveness of Expert Testimony*, 15 Psychol. Pub. Pol'y & L. 1, 7 (2009). This is precisely why trial judges have a duty to avoid "dumping a barrage of questionable" evidence on a jury likely to be "awestruck by the expert's mystique." *Allison v. McGhan Med. Corp.*, 184 F.3d 1300, 1310 (11th Cir. 1999).

"The basic calipers that jurors use to evaluate testimony—their own life experience—are of little value when jurors evaluate whether an expert is telling the truth." Victor E. Schwartz & Cary Silverman, *The Draining of* Daubert *and the Recidivism of Junk Science in Federal and State Courts*, 35 Hofstra L. Rev. 217, 220 (2006). This Court has long insisted that any questions about the "factual basis, data, principles, [or] methods" of expert testimony—or "their application"—require the trial judge to determine whether that testimony is reliable *before* sending it to the jury. *Kumho Tire Co.*, 526 U.S. at 149 (emphasis added); *see* Fed. R. Evid. 702(b), (d).

"When a court looks to the data underlying expert opinion but neglects to evaluate its relation to the expert's conclusion . . . ostensibly legitimate data may serve as a Trojan horse that facilitates the surreptitious advance of junk science and spurious, unreliable opinions." Schwartz & Silverman, *The Draining of* Daubert, *supra*, at 237–38. Again, the only way to ensure that a jury does not give too much weight to unreliable evidence is to exclude it. Yet in the Fourth Circuit, as well as the First, doing so is deemed an abuse of discretion. That is untenable.

II. THE DECISION BELOW RESTS ON A DEFUNCT PRE-*DAUBERT* VIEW OF ADMISSIBILITY.

Among other things, a proponent of expert testimony must show that it is more likely than not that "the testimony is based on sufficient facts or data." Fed. R. Evid. 702(b). The Fourth Circuit's misguided notion that objections to the factual basis of an expert's opinion go only to the weight and credibility of that opinion, not to its admissibility, cannot be reconciled with Rule 702. No surprise, then, that close examination of the authorities cited by the panel majority reveals that the Fourth Circuit's rule of decision derives not from an attentive analysis of Rule 702's words, but from a hapless game of follow-the-leader stretching back half a century.

In holding that the district court abused its discretion by scrutinizing the factual basis for Dr. Sahu's opinions, the Fourth Circuit relies on its 2017 decision in *Bresler v. Wilmington Trust Co.*:

> This was an abuse of discretion because "questions regarding the factual

> underpinnings of the [expert witness'] opinion affect the weight and credibility of the witness' assessment, not its admissibility." *See Bresler v. Wilmington Tr. Co.*, 855 F.3d 178, 195 (4th Cir. 2017) (cleaned up).

Pet. App. 21a. Twice again for good measure, the opinion quotes this same language from *Bresler*. Pet. App. 22a, 27a.

Yet in relying on *Bresler* to reverse the district court, the Fourth Circuit commits two critical errors. First, the panel majority mistakenly assumes that caselaw, rather than Rule 702, supplies the proper standard for admissibility. *See* 28 U.S.C. § 2072(a) (authorizing the U.S. Supreme Court to prescribe "rules of evidence for cases in the United States district courts . . . and courts of appeals"); 28 U.S.C. § 2072(b) ("All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect."); *Daubert*, 509 U.S. at 588–589 (Rule 702 is the authority "governing expert testimony").

Second, *Bresler*'s sweeping "factual underpinnings" rule does not spring from the text of Rule 702, nor even caselaw construing it. Rather, it smuggles in a pre-*Daubert* view of expert admissibility that some judges have reflexively recycled, for decades, without analysis or scrutiny. In fact, the *Bresler* rule's lineage traces back to Eighth and Fifth Circuit opinions from the 1970s and 1980s.

Bresler stands on a single quote from the Eighth Circuit's opinion in *Structural Polymer Grp. v. Zoltek Corp.*, 543 F.3d 987, 997 (8th Cir. 2008). *See Bressler*,

855 F.3d at 195 ("[Q]uestions regarding the factual underpinnings of the [expert witness'] opinion affect the weight and credibility' of the witness' assessment, 'not its admissibility.'") (quoting *Structural Polymer*, 543 F.3d at 997).

"As a rule," *Structural Polymer* maintains, "questions regarding the factual underpinnings of the expert's opinion affect the weight and credibility of her testimony, not its admissibility." 543 F.3d at 997. But in support of this supposed "rule," *Structural Polymer* cites and paraphrases a pre-*Daubert* case, *South Central Petroleum, Inc. v. Long Brothers Oil Co.,* 974 F.2d 1015, 1019 (8th Cir. 1992) ("The expert's opinion should be excluded only if it is 'so fundamentally unsupported that it cannot help the factfinder.'"). *Id.*

South Central Petroleum, in turn, draws from *Hurst v. United States,* 882 F.2d 306, 311 (8th Cir. 1989). Recycling the discredited pre-*Daubert* view that "[a] trial court should exclude an expert opinion only if it is so fundamentally unsupported that it cannot help the factfinder," *Hurst* insists that "[a]ny weaknesses in the factual underpinnings of (the expert's) opinion go to the weight and credibility of his testimony, not to its admissibility." 882 F.2d at 311.

Yet *Hurst* borrows this notion from *Loudermill v. Dow Chem. Co.,* 863 F.2d 566, 570 (8th Cir. 1988) ("Any weaknesses in the factual underpinnings of Wuebben's opinion go to the weight and credibility of his testimony, not to its admissibility."), and *Polk v. Ford Motor Co.*, 529 F.2d 259, 271 (8th Cir. 1976) ("The weakness in the underpinnings of such opinions may be developed upon cross-examination and such

weakness goes to the weight and credibility of the testimony.").

Loudermill repeats the "general rule" that the "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." 863 F.2d at 570. But *Loudermill* derives this supposed rule from the Fifth Circuit's opinion in *Viterbo v. Dow Chem. Co.,* 826 F.2d 420, 422 (5th Cir. 1987). *Id.*

Decided thirteen years before Rule 702's post-*Daubert*-trilogy overhaul in 2000, *Viterbo* supplies this foundational statement: "As a general rule, questions relating to the bases and sources of an expert's opinion affect the weight to be assigned that opinion rather than its admissibility and should be left for the jury's consideration." 826 F.2d at 422.

And *Polk*, also cited by *Hurst*, includes language that closely tracks the Fourth Circuit's *Bresler* rule. 529 F.2d at 271. But that assertion is based on an unusually lax interpretation of then-Rule 705:

> Indeed, the newly adopted Federal Rules of Evidence make it clear that an expert may give his conclusions without prior disclosure of the underlying facts. Fed. R. Evid. 705. The weakness in the underpinnings of such opinions may be developed upon cross-examination and such weakness goes to the weight and credibility of the testimony.

Id. *Polk* turns 50 this year, and its anachronistic reliance on Rule 705 no longer holds water, given

Federal Rule of Civil Procedure 26(a)'s robust disclosure requirements since 1993. *See* Fed. R. Civ. P. 26(a)(2)(B) (mandating disclosure of "the facts or data considered by the witness in forming" an expert opinion).

Although *Bresler*'s wrong turn originated in the Eighth and Fifth Circuits, both those courts have, following adoption of the 2023 amendment to Rule 702, disclaimed any suggestion that the "factual underpinnings" of an expert's opinions go to weight and not admissibility. In *Sprafka v. Medical Device Bus. Svcs.*, 139 F.4th 656 (8th Cir. 2025), the Eighth Circuit notes that the 2023 amendment was "necessary because many courts had incorrectly held 'that the critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology, are questions of weight and not admissibility.'" *Id.* at 660 & n.3 (citing Fed. R. Evid. 702 Advisory Comm. note to 2023 amendment).

Of course, this concession pulls out the rug from under *Loudermill*'s "general rule" that an expert's factual basis is not a proper gatekeeping consideration. But the court in *Sprafka* goes beyond simply recognizing the Advisory Committee's purpose—it declares that expert opinions "lack reliability" and must be excluded if the court finds that they lack an adequate factual basis. *Id.* at 660.

The 2023 amendment also changed the Fifth Circuit's understanding of the gatekeeping standard. Now "[t]here is no question that Federal Rule of Evidence 702 governs the admissibility of expert testimony," and under that rule "expert testimony may not be admitted unless the proponent demonstrates to

the court that it is more likely than not that the proffered testimony meets the admissibility requirements set forth in the rule." *Nairne v. Landry*, 151 F.4th 666, 697, 698 n.20 (5th Cir. 2025).

The Fifth Circuit has also heeded the Advisory Committee's caution that prior decisions suggesting that "critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology, are questions of weight and not admissibility" are "an incorrect application of Rules 702 and 104(a)." *Id*. at 697–98 (quoting Fed. R. Evid. 702 Advisory Comm. note to 2023 amendment). Breaking with the *Viterbo* line, the Fifth Circuit has clarified in multiple decisions that an expert's opinions must be excluded under Rule 702(b) if it is not based on sufficient facts or data. *Harris v. FedEx Corp. Svcs., Inc.*, 92 F.4th 286, 303 (5th Cir. 2024); *Williams v. BP Exploration & Production, Inc.*, 143 F.4th 593, 601 (5th Cir. 2025), *Nairne*, 151 F.4th at 698. Indeed, the trial court "abdicate[s] its role as gatekeeper" if it allows an expert "to testify without a proper foundation" under Rule 702(b). *Harris*, 92 F.4th at 303–04. Yet again, in the First and Fourth Circuits, this view constitutes an abuse of discretion.

Judge Thomas D. Schroeder, who chaired the Rule 702 Subcommittee that drafted the 2023 amendment, has openly criticized the Fourth Circuit's *Bresler* rule for causing great mischief. *See* Hon. Thomas D. Schroeder, *Toward a More Apparent Approach to Considering the Admission of Expert Testimony*, 95 Notre Dame L. Rev. 2039 (2020). In his law review article, Judge Schroeder catalogues a number of "illustrative cases" that the Advisory Committee identified "as evidence that courts are

abdicating their gatekeeper role." *Id.* at 2043–59. *Bresler* is one of them. *Id.* at 249–50.

"Without explanation," Judge Schroeder explains, *Bresler* unaccountably "concluded that the defendants' challenge amounted to a 'disagreement' with the values the expert chose for certain variables in his opinion and consequently 'affect[ed] the weight and credibility' of [the expert's] assessment, not its admissibility.'" 95 Notre Dame L. Rev. at 2049–50 (quoting *Bresler*, 855 F.3d at 195–96). "As a general rule, the Fourth Circuit's statement *effectively vitiated the application of Rule 104(a) to Rule 702(b).*" *Id.* (emphasis added).

The Fourth Circuit's "factual underpinnings" rule has all the hallmarks of what Cass Sunstein calls a "precedential cascade," in which some courts "come into line" with a few decisionmakers' initial (mistaken) judgments. Cass Sunstein, *Conformity: The Power of Social Influences* 42 (2019). As the number of authorities repeating the wrong rule accumulates, courts stop looking at the matter with fresh eyes. They feel "the great weight" of prior courts' repeated assertions of the supposed rule, "and perhaps insufficiently appreciat[e] the extent to which that weight is a product of an early and somewhat idiosyncratic judgment." *Id.* "This can happen a lot," actually, and "it makes for bad law." *Id.*

In sum, these throwback cases conflict with Rule 702's renewed rigor and are no longer good law. *See* 28 U.S.C. § 2072(b). This Court should intervene and bring admissibility in the First and Fourth Circuits into the 21st century.

III. ONLY THIS COURT CAN PRESERVE THE VITAL GOAL OF UNIFORMITY BEHIND THE FEDERAL RULES OF EVIDENCE.

The proponent of an expert witness must first show by a preponderance of the evidence that the expert's testimony answers the "critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology." Fed. R. Evid. 702, Advisory Comm. note to 2023 amendment. Rule 702 cannot mean one thing in the First and Fourth Circuits and the opposite in their sister circuits. It was precisely this kind of disparity on evidentiary questions among federal courts that was the catalyst for adopting federal rules of evidence in the first place. *See generally* Thomas F. Green, Jr., *Drafting Uniform Federal Rules of Evidence*, 52 Cornell L.Q. 177, (1967) (explaining that the new rules will be "uniform" in "that the precepts will be the same throughout the United States and will not vary from state to state or circuit to circuit to the extent that they do in some instances today").

Before enactment of the Federal Rules of Evidence, Federal Rule of Civil Procedure 43(a) governed evidentiary matters in federal courts. Under that rule, federal courts typically had to apply the forum state's evidentiary law to questions about the admissibility of evidence. 19 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 4512 (2d ed. 1996) ("[T]he norm was to follow forum state law on evidentiary matters, not because *Erie* demanded it, but simply because the Civil Rule so directed.").

That disjointed approach to admissibility created "a real need for a comprehensive code of evidence intended to govern the admissibility of proof in all trials before the Federal courts because of the lack of uniformity and clarity in the present law of evidence on the Federal level." S. Rep. No. 93-1277 (1974). The "culmination of 13 years of study by distinguished judges, Members of Congress, lawyers, and others interested in and affected by the administration of justice in the Federal courts," the Federal Rules of Evidence sought to eliminate the widespread disparity among federal courts on the admissibility of evidence. *Id.*

Indeed, the Federal Rules of Evidence were bottomed entirely on the need for uniformity and predictability in the federal courts. Kimberly S. Moore, *Exploring the Inconsistencies of Scrutinizing Expert Testimony Under the Federal Rules of Evidence*, 22 Tex. Tech. L. Rev. 885, 885 (1991) ("[T]he purpose of codified rules of evidence is to ensure consistency, uniformity, and fairness throughout the judicial system."). Rule 702 "not only codifies revolutionary changes in the substantive law" but also imposes "substantial new demands on judges by requiring a far more managerial role for judges than they are used to assuming in the American adversarial system." David E. Bernstein, *The Misbegotten Judicial Resistance to the* Daubert *Revolution*, 89 Notre Dame L. Rev. 27, 66 (2013).

Despite the renewed clarity of the Rule's recent 2023 amendment, the First and Fourth Circuits remain hopelessly lost on the issue of whether the court, and not a jury, should decide if an expert's testimony satisfies the Rule's stringent requirements. Because this disparity in the rule of law arises from a

fundamental disagreement over the proper application of the Federal Rules of Evidence, only this Court's intervention can provide a unified, coherent fix.

The Fourth Circuit's deeply misguided rule is already having harmful downstream effects. A defendant's "questions regarding the factual underpinnings of the [expert witness'] opinion," the District of Maryland recently expounded, "'affect the weight and credibility' of the witness' assessment, 'not its admissibility.'" *Michael's Fabrics, LLC v. Donegal Mut. Ins. Co.*, 2025 WL 2624280, at *4 (D. Md. Sep. 11, 2025) (quoting *Bresler*, 855 F.3d at 195, and citing *Sommerville v. Union Carbide Corp*, 149 F.4th 408, 427 n.7 (4th Cir. 2025)). Bound by the misguided decision below, district courts in the Fourth Circuit are now obliged to shirk their gatekeeping duties or else risk reversal for abuse of discretion. *See, e.g., R&J Components Corp v. Centimark Corp.*, 2025 WL 3732157, at *6 (D.S.C. Nov. 18, 2025) (admitting testimony of expert who "assigned value to items that his own investigation concluded did not show any evidence of damage or contamination") (citing and quoting *Sommerville*, 149 F.4th at 423).

It is impossible to overstate the detrimental effect the decision below—and imminent decisions in the nine federal districts bound by it—will have on the very uniformity the Federal Rules of Evidence are meant to accomplish. More than 30 years after its seminal holding in *Daubert*, the Court should end this alarming trend by interceding now—before the Fourth Circuit's recalcitrance can do any further damage.

CONCLUSION

This Court should grant the writ.

Respectfully submitted,

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