No. ______________
21-7916
22A200

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES H. FETZER

Petitioner

v.

LEONARD POZNER

Respondent

PETITION FOR REHEARING OF DENIAL OF A WRIT OF CERTIORARI

(Rule 44.2)

James H. Fetzer, Ph.D.

800 Violet Lane

Oregon, WI 53575

Pro Se

(608) 835-2707

jfetzer@d.umn.edu

LIST OF PARTIES

Petitioner:

James H. Fetzer, Ph.D.
Pro Se

800 Violet Lane
Oregon, WI 53575
(608) 835-2707
jfetzer@d.umn.edu

Respondent:

Leonard Pozner
c/o
Emily M. Feinstein
Quarles & Brady LLP
33 E. Main St., Ste. 900
Madison, WI 53703-3095
(608)251-5000
emily.stedman@quarles.com

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STATEMENT OF THE CASE

Dr. Fetzer was sued for libel by Mr. Pozner for publishing a scan of an incomplete "death certificate" purporting to be of Mr. Pozner's son showing his death at the "Sandy Hook mass shooting" and claiming it was a fabricated, forged fake in his 400 page book entitled *Nobody Died at Sandy Hook: It Was a FEMA Drill To Promote Gun Control* (Nobody Died).

Mr. Pozner filed a motion for summary judgment against Dr. Fetzer claiming there were no genuine material facts in dispute. Dr. Fetzer alleged material facts in dispute supported by evidence that Sandy Hook Elementary had been permanently closed since 2008, four years before the alleged mass shooting. The Circuit Court Judge granted Pozner's summary judgment by disregarding all Dr. Fetzer's pleadings of fact and disputing evidence as "unreasonable" using the unsound summary judgment methodology, repugnant in Texas, but affirmed by both the Fourth Court of Appeals and the Supreme Court of Wisconsin.

Dr. Fetzer filed his Petition for Writ of Certiorari (21-7916) in this Court on May 16, 2022, along with his Motion to Leave to Proceed in Forma Pauperis along with two volumes of appendices. Mr. Pozner did not file a response. On July 7, 2022 the Petition was Distributed for Conference of September 28, 2022 as shown on the SCOTUS docket (App-A).

After the Petition for Writ of Certiorari was filed Pozner filed a motion and obtained an order to take intellectual property directly bypassing a receiver from

Dr. Fetzer from the same circuit court judge. Dr. Fetzer filed motions to stay and for reconsideration of the unlawful taking order to satisfy a money judgment in the circuit court, both being denied on August 29, 2022.

Dr. Fetzer then filed his Application to Stay the amended taking order (22A200) in this Court on August 31, 2022 to Justice Barrett. She denied it on September 6, 2022. It was then renewed and submitted to Justice Gorsuch on September 8, 2022. On September 21, 2022 the Application was Referred to the Court and Distributed for Conference of October 7, 2022.

The Petition was denied on October 3, 2022, four days prior to the conference on Fetzer's Application To Stay. On October 11, 2022, the Application To Stay was Denied by this Court.

REASONS FOR REHEARING

Application To Stay & It's New Evidence Supporting Petition For Writ of Certiorari Denied As Moot

Dr. Fetzer believes his Application to Stay was not reviewed for new evidence or new legal argument but instead was presumed moot having arrived in conference after the Petition had been denied by this Court. An Application to Stay is founded on the likelihood of winning an appeal on the merits and once that element is denied the Application to Stay becomes moot. Dr. Fetzer thus reasonably infers that the additional arguments and evidence presented in his Application to Stay has never been considered by the Court. Dr. Fetzer's Application To Stay contains new evidence and new legal argument that supports his Petition for Writ of Certiorari and for that reason he adopts it in full herein as if written here for consideration as

part of his Petition for Writ of Certiorari and Rehearing of its denial and support his Application To Stay.

The Application To Stay Contained New Evidence Supporting Petition For Writ of Certiorari

The Application To Stay contained new compelling and verifiable evidence in the form of misuse of process and admissions by Pozner that prove the lawsuit and the taking order were both an Abuse of Process which also supports Fetzer's Petition for Writ of Certiorari.

The Application for Stay presented new evidence arising from an indirect admission in open court made by the judge without objection regarding Mr. Pozner's ulterior motive and abuse of process of his lawsuit against Dr. Fetzer and his motion to take Fetzer's intellectual property which was not available prior to Fetzer's filing of his Petition for Writ of Certiorari. This evidence consists of both elements of an Abuse of Process, namely: evidence of the use of process outside and beyond the intended purpose of the legal process and evidence of an ulterior or improper motive.

The circuit court judge admitted that he saw the judicial action taken by Pozner as something everyone is entitled to do using the judicial system to get an advantage over one's competitor or adversary. This is the improper use of the judicial machinery. This is the weaponization of the judicial system to harm and initiate a state of war against an innocent party. The proper use of the judicial system is to put an end to the state of war between entities and to repair the harm done by the transgressor. The new words of the circuit judge in this case illustrate

how far away from the purpose of the judiciary that Wisconsin has strayed using its unsound summary judgment methodology repugnant to the summary judgment principles used in Texas. This new evidence of the use of the court to abuse legal process supports Dr. Fetzer's question he asked this Court to answer and fix in his Petition for Writ of Certiorari:

> May rules of summary judgment vary throughout the states allowing the Wisconsin Judiciary to conduct and affirm a non-jury trial under the pretense of a summary judgment proceeding, the process of which violates all the rules of summary judgment in Texas, depriving Wisconsin citizens of their equal rights to a trial by jury and due process under the 7th and 14th Amendments and further allowing a Wisconsin judge to determine the validity of major national events through unsound summary judgment methodology?

The circuit court judge stated the following in open court without objection by Pozner:

> THE COURT: Please. I think you're entitled to some fair compensation. And the point that I was making is Mr. Pozner could take the position that it has no value to anyone else, it has great value to you 'cause, yes, **his plan is to shut it down**. Appears, I should say. It appears. I don't anticipate him marketing, selling the book Nobody Died at Sandy Hook. It would be entirely inconsistent with the constant position he's taken since day one of this case. So it has great value to him, on a personal basis has value to you. But the measure under I guess the Fourteenth Amendment or the Fifth Amendment, the taking, if you're gonna take someone's asset, you should afford, I mean, some words that's used is just compensation. (Page 22 line 11) Bolding added

The circuit court judge stated again in open court without objection by Mr. Pozner:

> And you've demonstrated to me I think quite convincingly that these assets honestly don't have any value in the market. It's a personal between the parties. And that's what litigation often is, a personal, **an opportunity to use litigation to obtain the personal advantage and result of shutting down the book**, **seeing that it's not published, and**

> **redirecting the traffic from these websites now to a website owned and operated and controlled by Mr. Pozner for his personal view**. (page 25 line 9) Bolding added

Astonishingly, the judge saw no harm in what he concluded was Mr. Pozner's aim in the use of the lawsuit against Dr. Fetzer and with Pozner's taking of the intellectual property consisting of the book's four versions and websites, even though Dr. Fetzer's attorney (initially) and Dr. Fetzer Pro se (subsequently protested repeatedly that taking such property to satisfy a monetary judgment when done without a Receiver to convert that property to money is an Abuse of Process and blatant violation of Wisconsin statutes. Pozner did not want to do that because someone else would end up with the book and remove the three defamatory sentences and publish them again.

Notice too that the judge was not concerned with the truth only that Mr. Pozner control the book and websites for his "personal view." It is painfully obvious that this circuit judge knows very little about the purpose of the courts nor how to use a summary judgment properly and his groundless rulings were affirmed all the way through the Supreme Court of Wisconsin. And unless this Court reverses itself, it too will join an abusive groundless state of war against Dr. Fetzer which cannot be supported by any moral or judicial argument to prevent him from exercising his 1st, 7th and 14th Amendment rights and ultimately deprive all Americans of their 1st and 2nd Amendment rights.

The stated undisputed purpose of the lawsuit and taking order against Dr. Fetzer was <u>not</u> to remove three defamatory sentences from a book but to prevent the entire

book from being circulated containing a plethora of other evidence that Sandy Hook did not happen. This is a violation of the 1st Amendment of the U.S. Constitution. People have a right in America to investigate and publish what they want as long as they do not harm anyone in the process. And one cannot be harmed by the truth. That is the rule in defamation. But one who is prevented from exercising their constitutional rights to investigate and publish their findings is harmed by a lawsuit to remove a 400-page book when only three sentences are found to be defamatory. And if the book's thesis is true then those three sentences cannot be defamatory. This is why a jury to determine liability was and is indispensible in this case and it was denied Dr. Fetzer by the use of a non-jury trial passed off as a summary judgment.

It was indispensable to Mr. Pozner that no jury trial be permitted to revolve the disputed facts in this case because Dr. Fetzer's evidence included the FEMA manual (for a mass casualty exercise to commence at 8:00 AM on December 13, 2012, and to end at 11:59 PM, and to be evaluated as a LIVE event the following day (App-B). The evidence admitted (but set aside as "unreasonable" under Wisconsin's summary judgment protocols), included the book itself, which documents the events on the ground corresponded to what would be expected of a FEMA drill: Porta-Potties in place; pizza and bottled water at the Firehouse; many wearing name tags on lanyards; even parents bringing children to the event, which would be completely absurd for a child-shooting massacre.

The extensive and detailed evidence Dr. Fetzer proposed to present in his defense confirmed the conclusion of the 13 experts (including 6 Ph.D.'s), namely: that the school had been closed by 2008; that there were no students there; and that it had been a 2-day FEMA drill presented as mass murder to promote gun control. These findings have now been confirmed by the discovery of an archived search of the Connecticut FEMA branch showing a FEMA exercise to be conducted at Sandy Hook on December 14, 2012 (App-C). Dr. Fetzer was deprived of his right to present a defense and to have the disputed facts in this case determined by a jury because of the summary judgment protocols in Wisconsin, which he is petitioning this Court to correct for the people of Wisconsin and the 7th and 14th Amendments of the US Constitution, which are grossly violated by the present Wisconsin summary judgment methodology or lack thereof.

Application To Stay Contained New Legal Argument Supporting Petition For Writ of Certiorari

Not only did the Application To Stay contain *new evidence* that the circuit court judge conducted a non-jury trial in the cloak of a summary judgment to permit the abuse of process in the lawsuit and granted a motion to take property in direct violation of the rules of satisfaction of monetary judgments in the United States and Wisconsin but provided *new legal argument*. This new legal argument arose as the result of Dr. Fetzer filing his Motion To Stay and for Reconsideration of Pozner's Amended Taking Order in the circuit court. Dr. Fetzer presumed that he had 7th Amendment rights under the U.S. Constitution to be preserved in state courts. Mr. Pozner asserted *Minneapolis & St. Louis R.Co. v. Bombolis*, 241 U.S. 211, 217

(1916) showing that this Court held that the 7th Amendment did not apply to state courts in common law matters over 20 dollars.

This lead to Dr. Fetzer's discovery that the Federal District Court of Puerto Rico in 2014 had ruled that the 7th Amendment right to a trial by jury in all common law matters over 20 dollars applied to Puerto Rican citizens in their Puerto Rican courts not merely federal courts in Puerto Rico. Said court also found that the 7th Amendment applied in state courts to all citizens of the states and United States under the 14th Amendment but that the Supreme Court of the United States had not yet ruled on that issue as they have on the 2nd Amendment in the McDonald case making it applicable in all state courts to the dual citiznes of the states and United States under the 14th Amendment. This is a great opportunity for this Court to make needed precedent and to make uniform summary judgment rules that will in fact protect the universal human right to a trial by jury for all citizens of the states in their state courts. *Gonzalez-Oyarzun v. Caribbean City Builders, Inc.*, 27 F.Supp.3d 265 (D. P.R. 2014):

> Although the court reads McDonald as opening the door to selective incorporation of the Seventh Amendment in contrast to Bombolis,.... it reads McDonald to clarify that the Seventh Amendment applies within the states, commonwealths, and territories of the United States.
>
> In recent years, the Court has “shed any reluctance to hold that rights guaranteed by the Bill of Rights met the requirements for protection under the Due Process Clause.” Id. at 3034–35. With such reluctance behind it, the Court has “incorporated almost all of the provisions of the Bill of Rights,” and “[o]nly a handful” of rights remain unincorporated. Id. at 3034–35 (citation omitted). It is in this context that McDonald specifically addressed the right to a civil jury trial: “Our governing decisions regarding the ... Seventh Amendment's civil jury trial requirement long predate the era of selective incorporation.” Id. at 3035 n. 13.

> Given the McDonald Court's characterization of those precedents, this is no small statement. As the Court observed, it had “abandoned ‘the notion that the Fourteenth Amendment applies to the States only a watered-down, subjective version of the individual guarantees of the Bill of Rights,’ stating that it would be ‘incongruous' to apply different standards ‘depending on whether the claim was asserted in a state or federal court.’ ”

This condition of the law and ripeness for precedent was not argued in Dr. Fetzer's Petition for Writ of Certiorari but was included as new evidence (not considered by this Court) in his Application for Stay, which is incorporated herein. Dr. Fetzer has shown that it is long overdue to remedy summary judgment defects, where summary judgment is the most abused judicial tool in America, by finally ruling that the 7th Amendment right to a trial by jury shall be preserved in all state courts in common law matters over 20 dollars; and by establishing a uniform summary judgment methodology that protects the nonmovant from denial of said right. Dr. Fetzer believes this Court did not entertain these assertions in rejecting his Petition for a Writ of Certiorari because his Petition For Writ of Certiorari had been denied on October 3, 2022, four days before the conference on the Application To Stay would take place on October 7, 2022, but was (casually but mistakenly) set aside a moot on that occasion.

New Circumstances Cry Out
For Trial By Jury Protection on Liability

Dr. Fetzer sought to intervene in all three of the Alex Jones trials to make the point and provide extensive and detailed evidence to support the allegation that the Sandy Hook mass shooting was a FEMA drill where no one was killed. He also wanted to make the defense aware that there have been no trials by jury to

determination that the alleged "Sandy Hook mass shooting" was a real event rather than a theatrical one endlessly affirmed to have been real by the mass media cartel. All of these trials have been settled on procedural grounds, either by stipulation, assumption or default for failure to comply with discovery. And the awards in this case have been truly mind-boggling as punishment for simply having expressed **an opinion** contrary to the "official narrative" about what did or did not happen at Sandy Hook.

The first Alex Jones Sandy Hook defamation trial in Texas led to an award of over $4 million to one set of parents. A second Sandy Hook defamation trial with more "parents" resulted in $45.2 million in damages. The Sandy Hook parents sued Bushmaster in Connecticut and won their entire $73 million in liability insurance closing the doors of the gun manufacturer. The most recent Sandy Hook defamation trial against Alex Jones was in Connecticut and awarded $965 million (nearly $1 billion). The Plaintiffs in that case are asking for $2.75 Trillion in punitive damages against Alex Jones. He has yet a third trial awaiting him. If there was an actual shooting, and the shooter had lived to endure a trial, it is doubtful they would have received such a high level of judgment. This means that questioning a mass media cartel narrative is far more dangerous and evil to this society than killing children.

The judicial procedures used to deprive all the defendants in these Sandy Hook trials producing these preposterous verdicts are more shocking than the alleged shooting. These so-called trials involving the alleged "Sandy Hook mass shootings"

coupled with the following new evidence of crime scene photos (App-D) should shock this Court into action to save the nation abject authoritarianism.

New Evidence Substantiates Necessity of Trial By Jury Protection on Liability

During an interview Dr. Fetzer conducted with a (Texas licensed) professional private investigator, Brian Davidson, demonstrating the power of investigative tools that are accessible via the Internet, Dr. Fetzer tested his ability to deal with photographic evidence by sending him a photo (published in *Nobody Died*) without any information about where and when it was taken (App-D). The photo shows a Crime Scene Investigation vehicle in the Sandy Hook parking lot apparently before the crime has taken place, since the windows of Classroom 10 are not broken but would be presented as broken in subsequent photographs from the Connecticut State Police (many of which were published without identifying their source in Chapters 7 and 8 of *Nobody Died*).

In order to provide this Court with the kind of evidence that PI Davidson has now unearthed and to demonstrate that the photographic files of the Connecticut State Police contradict the crime scene report of the Connecticut State Police (and thereby implicate them in covering up a staged event falsely presented as a mass murder), Dr. Fetzer invited him to execute an Affidavit illustration some of what he has discovered. Mr. Davidson has provided Dr. Fetzer with an affidavit of his findings accompanied by photographs of the crime scene on file with the Connecticut State Police which show no convincing evidence of any mass shooting (App-E). Among the most striking aspects of his discoveries is that the Connecticut State Police have

removed the meta data from these photos in an effort to ensure that they cannot be admitted as evidence in judicial proceedings—but where that very act constitutes destruction of evidence and implicates the Connecticut State Police in a crime of manipulation and fabrication.

Since Mr. Davidson's studies show little if any blood from alleged decedents (more likely stains from leaking abandon roof) and no pock marks or other indications of shots having been fired in the building (apart from what appears to the creation of fake bullet holes by drilling through the aluminum frame of one of the windows of Classroom 10), the "official narrative" appears to have been decisively falsified by this research. The ultimate test would take place in a properly conducted court of law where Dr. Fetzer could present his evidence and Mr. Davidson could be called as an expert witness, where the abuse of process that has taken place in the Courts of Wisconsin has effectively forestalled that from taking place. In the proper exercise of its responsibilities, the Supreme Court of the United States surely has no alternative but to reverse prior decisions and preserve Dr. Fetzer's right to trial by jury.

Disturbing questions arise from inspecting these police photographs in App-E:

1. If these are pictures of a cleaned-up crime scene why were they taken at all by the police and put in their file? Mr. Davidson testifies that police are not in charge of clean up only crime scene processing or recording.

2. If these pictures are of a cleaned-up crime scene why is there a pistol laying on the floor in the middle of an entry to classroom 10? (App-D p25). How could one miss picking up a pistol in the middle of an entry to a classroom?
3. If these pictures crime scene pictures where are the bodies and blood, not why take the pictures at all?
4. The pictures of the interior of classrooms where the alleged shooting took place moreover do not show evidence of an educational scene much less a crime scene. These pictures do look like an abandoned school used as storage precisely as alleged by Dr. Fetzer.

At the end of Mr. Davidson's investigation of the crime scene photographs on file with the Connecticut State Police he makes this statement of his professional opinion:

> In order to satisfy my concerns, I would like to see all crime scene photographs in their unredacted form with metadata present in order to make a final report. However at this point, I stand by my original analysis that the blood evidence does not appear consistent with the events as they have been described. At this point in time my position is that the evidence appears to be more consistent with the alternative account of a FEMA exercise presented as mass murder to promote gun control.

The legal reasons for reversing the Wisconsin Courts already provide sufficient grounds to take that measure to ensure that Dr. Fetzer's rights under the 7th and 14th Amendments—and those of other Wisconsin residents, past, present, and future—are not violated by the State of Wisconsin. This Court now has a perfect opportunity to affirm the application of the 7th Amendment to all 50 states. In addition, Dr, Fetzer deserves the chance to present this new evidence (along with

the evidence he has previously submitted but was "set aside" as "unreasonable") to a jury of his peers that they be able to see this evidence and hear this expert's opinion before proceeding with damages? Indeed, the whole point was to deprive Dr. Fetzer of his right to a jury to resolve disputed facts by means of a perverse summary judgment methodology.

Dr. Fetzer, like Alex Jones, has been severely punished for questioning the veracity of the private mass media cartel that speaks with one united voice ignoring all other perspectives and analyses and smearing those who question them. What is offered here is only some of the evidence that supports the opinion that there was no mass shooting at Sandy Hook Elementary on December 14, 2012. This Court now has the perfect rare opportunity and the ideal case to rule that the 7th Amendment applies to all state citizens and United States citizens in state courts in common law matters over 20 dollars.

When Dr. Fetzer was found guilty of defamation by summary judgment and then found liable for $450,000 in damages by a jury, the mass media cartel spread it far and wide. But his losses in this Court have not been mentioned anywhere. Could it be because the people would be shocked to see how Dr. Fetzer was found guilty and that they do not have a right to trial by jury in the United States Constitution in their own state courts? Do the citizens of Wisconsin know they have no right to a trial by jury and can be destroyed by nonjury trial made to look like lawful summary judgments? And what about future mass shootings and mass media cartel

narratives and those that think they have rights to question the private mass media?

CONCLUSION

For the reasons stated above this Court should grant Dr. Fetzer's Petition for Rehearing and Petition for Writ of Certiorari To The Fourth Court of Appeals in Wisconsin and his Application To Stay.

Respectfully submitted,

James H. Fetzer, Ph.D. (signature) Date: 28 Oct 2022

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Respondent

CERTIFICATE OF RESTRICTED GROUNDS AND GOOD FAITH
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Rule 44.2

I, James H. Fetzer, do declare on this date, October 28, 2022, that this Petition for Rehearing of this Court's denial of his Petition For Writ of Certiorari is restricted to intervening circumstances of controlling effect or other substantial grounds not previously presented in said Petition and that it is filed in good faith and not for the purpose of delay.

I declare under the penalty of perjury that the foregoing is true and correct.
Executed on October 28, 2022

James H. Fetzer, Ph.D.