# STATE OF WISCONSIN
# COURT OF APPEALS
# DISTRICT IV

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Leonard Pozner,
Plaintiff-Respondent

v.

**Appeal No.** 2024AP001361

James Fetzer,
Defendant-Appellant

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Appeal From the Circuit Court of Dane County
Case No. 2018CV003122
Judge Frank D. Remington, Presiding

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## APPELLANT'S REPLY

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# STATEMENT OF ISSUES PRESENTED FOR REVIEW

**Issue 1: May a Circuit Court Judge deny a Motion to Open Judgment Pursuant to Extrinsic Fraud and Fraud upon the Court without a response from the Plaintiff or reply from the Defendant in violation of Wisconsin Rules of Civil Procedure, Chapter 802. before due process pleadings and discovery have occurred?**

**Respondent's Response to Issue 1:** The circuit court properly denied Fetzer's attempt to re-open judgment, raising issues he had previously raised in the circuit court and this Court years earlier, and was not required to allow further briefing or discovery on the matter.

**Appellant's Reply to Response to Issue 1:** The sequence of motion-response-reply qualifies as a fundamental desideratum of due process and civil procedure: parties are entitled to participate in the fact-finding and decision-making process following the Rules of Civil Procedure. The Circuit Court is not permitted to rule on a motion without following those rules, which it violated by ruling on the motion without soliciting a response from the Plaintiff and a reply from the Defendant (Appendix 1, where all previously submissions in this case are hereby incorporated in this reply).

This was no ordinary motion but one that implicated both the Circuit Court Judge and the Plaintiff's attorneys in multiple serious violations of law, including denial of Dr. Fetzer's right to a trial by jury, the suppression of copious specific and detailed evidence on his behalf (even including the exclusion of reports from two document experts supporting Dr. Fetzer), and even the subornation of perjury by introducing a witness whose identity Dr. Fetzer had challenged but was prevented from pursing) in depriving Dr. Fetzer of his Constitutional Rights under Color of Law (Appendix 2).

**Issue 2: May a Circuit Court Judge deny a Request for Relief from Judgment or Order without a response from the Plaintiff and a reply from the Defendant in violation of Wisconsin Rules of Civil Procedure, Chapter 802 before due process pleadings and discovery have occurred?**

**Respondent's Response to Issue 2:** The circuit court properly denied Fetzer's long-delayed attempt to re-open judgment and was not required to allow further briefing or discovery on the matter before doing so.

**Appellant's Reply to Response to Issue 2**. Dr. Fetzer had already pointed out to the presiding judge, The Honorable Frank Remington, that his order denying Dr. Fetzer's Motion to Open Judgment Pursuant to Extrinsic Fraud and Fraud upon the Court was in violation of Chapter 802—specifically, 802.01—of Wisconsin Rules of Civil Procedure (Appendix 3) and nevertheless Judge Remington did it again (Appendix 4), making this instance even more egregious than the prior.

In this instance, Judge Remington did not bother with a written response but simply wrote (in his own handwriting) on Dr. Fetzer's proposed order, "DENIED. Neither factually or (sic) legally meritorious" with no reasons given (Appendix 4). The Wisconsin Rules of Civil Procedure must be followed to ensure that the due process and Constitutional rights of litigants are uniformly upheld.

**Issue 3: May a Circuit Court Judge grant a Motion to Seal or Redact a Court Record in violation of Wisconsin Rules of Civil Procedure, Chapter 802, before pleadings, without a response from the Defendant and a reply from the Plaintiff, when the Court has denied due process discovery and cross- examination of the evidence?**

**Respondent's Response to Issue 3:** Under Wisconsin law, a circuit court, "may determine if a hearing is necessary on a motion to seal," Wis. Stat. § 801.21(3), and is not required to treat a motion as a pleading.

**Appellant's Reply to Response to Issue 3:** For the third time, the Circuit Court violated Wisconsin Rules of Civil Procedure. Plaintiff submitted a Motion to Seal or Redact a Court Record (Appendix 5) and Judge Remington granted the motion and ordered it sealed without submitting the Motion to the Defendant for his response and Plaintiff for her reply (Appendix 6). The Motion was to seal Dr. Fetzer's Motion to Open Judgment Pursuant to Extrinsic Fraud and Fraud upon the Court and a supporting affidavit, which thereby denied the public to access of what otherwise would have been a public record.

## STATEMENT OF THE CASE

Statement of the Case presented by Dr. Fetzer in his Motion to Open Judgment Pursuant to Extrinsic Fraud and Fraud upon the Court dated June 17, 2024 (Case #23AP1002), which is attached herein as Exhibit B, requires supplementation only by the recent proceedings addressed above, which along the other documents submitted in this case in the past are hereby incorporated and reaffirmed lest this court be subject to redundant reporting.

## STATEMENT OF FACTS

1. Dr. Fetzer submitted his MOTION TO OPEN JUDGMENT PURSUANT TO EXTRINSIC FRAUD AND FRAUD UPON THE COURT on June 17, 2024 (Appendix 2).
2. Circuit Court Judge Remington issued his Decision and Order Denying James Fetzer's Motion for Re4ief from Judgment on June 20, 2024 (Appendix 1).
3. Dr. Fetzer submitted his Request for Relief from Judgment or Order on June 20, 2024 (Appendix 3).

4. Emily Feinstein submitted her Motion to Seal or Redact a Court Record on June 20, 2024 (Appendix 4)

5. Circuit Court Judge Remington Denied Dr. Fetzer's Request for Relief from Judgment or Order on June 24, 2024 (Appendix 5).

6. Circuit Court Judge Remington issued his Order to Seal or Redact a Court Record on June 24, 2024 (Appendix 6)

7. Emily Feinstein submitted her Notice of Motion and Motion for Sanctions and Order to Show Just Cause on June 24, 2024 (Appendix 7).

8. Circuit Court Judge Remington issued his Notice of Briefing Schedule Regarding Plaintiff's Motion for Sanctions and Order to Show Just Cause on June 24, 2024 (Appendix 8).

**ARGUMENT**

Circuit Cour Judge Remington acted immediately to dismiss Dr. Fetzer's MOTION TO OPEN JUDGMENT PURSUANT TO EXTRINSIC FRAUD AND FRAUD UPON THE COURT (Appendix 1) but even more peremptorily with Dr. Fetzer's REQUEST FOR RELIEF FROM JUDGMENT OR ORDER (Appendix 4), in which Dr. Fetzer observed that the Court was violating the Wisconsin Rules for Civil Procedure. Rather than placing them on the docket and establishing a briefing schedule for Response Brief and Reply Brief (as Judge Remington did with the Plaintiff's Motion for Sanctions and Order to Show Cause (Exhibit H), he immediately dispatched them in violation of the Rules for Civil Procedure that he, as a Wisconsin Circuit Court Judge, was obligated to follow.

The contrast with Judge Remington's handling of Emily Feinstein's Motion for Sanctions and Order to Show Just Cause (Appendix 7) could not be more striking. It was noticed the same day it was filed (Appendix 8), which shows that Judge Remington follows Wisconsin Rules of Civil

Procedure when it suits his aims or goals and otherwise simply disregards them. The pattern of bias and prejudice against Dr. Fetzer is apparent, because of which Dr. Fetzer has filed a MOTION TO RECUSE JUDGE FRANK REMINGTON PURSUANT TO WIS. STATS. 757.19(2)(g) docketed on July 9, 2024.

The purported "long delay" in filing Dr. Fetzer's MOTION TO OPEN JUDGMENT had Several sources, including that Judge Remington had bifurcated the case to deny Dr. Fetzer the right to discovery on his counterclaims of Abuse of Process, Fraud and Theft by Deception and Fraud upon the Court, the last of which was predicated upon his belief that the party who was deposed under the name "Leonard Pozner" was not the same person known as "Leonard Pozner" whose image had been published worldwide millions of times because he (Expert Witness Pozner) was too young and too small to be the Crime Scene Pozner (Open Motion Exhibit W)

When Dr. Fetzer learned from Wolfgang Halbig that someone using that name had been issued a traffic ticket and that his address was now known for such purposes as the issuance of a subpoena to testify under oath and was the same party who had testified in Dr. Fetzer's case here in Madison (Open Motion Exhibit X), he requested of Brian Davidson, P.I., that he confirm or refute their separate identities, which he confirmed (Open Motion Exhibit Y). Dr. Fetzer was uncertain how to proceed when he learned of *United States v Throckmorton*, 98 U. S. 61 (1878), which established the principle that Fraud upon the Court may be brought at any time in any court when a party has been prevented from presenting a valid defense.

The denials under consideration here prompted Dr. Fetzer to submit MOTION

TO RECUSE JUDGE FRANK REMINGTON PURSUANT TO WIS. STATS. 757.19(2)(g) dated July 9, 2024, PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO RECUSE dated July 24, 2024, DEFENDANT'S REPLY date July 31, 2024, and DECISION AND ORDER DENYING JAMES FETZER'S MOTION TO RECUSE dated August 22, 2024, followed by MOTION TO RECONSIDER DENIAL OF MOTION TO RECUSE dated September 3, 2024.

The bases for Dr. Fetzer's motion for Recusal and for Reconsideration include suppressing the Affidavit of Kelley Watt, dismissing proof that nobody died at Sandy Hook and that Noah Pozner was a legal fiction, setting aside the reports of two forensic document experts, denying Dr. Fetzer discovery on his counterclaims, failing to acknowledge Dr. Fetzer as a media person and holding him in contempt when he sought to expose the impostor witness—together with his more recent procedural violations to suppress the proof of his egregious misconduct as quickly as possible, now before this court—showing that Judge Remington has egregiously violated Wis. Stats. Chapter 757. General Provisions Concerning Courts of Record, Judges, Attorneys and Clerks, Section 757.19(2)(g) Disqualification of Judge.

Denial of discovery on Dr. Fetzer's counterclaims figures in this case currently before this court. To ensure that Dr. Fetzer not discover more proof of the non-occurrence of mass murder or that the decedent had not died at Sandy Hook, Judge Remington took the further step of bifurcating the case to deny Dr. Fetzer discovery on his counterclaims of Abuse of Process, Fraud and Theft by Deception, and Fraud upon the Court, a deft maneuver to cut off Dr. Fetzer's access to new evidence that might strengthen his case (MOJ, Exhibit N). This denial of Dr. Fetzer's right to discovery has now been used by Pozner to claim that Dr. Fetzer

has not made allegations of Fraud upon the Court in a timely manner, brought about by Judge Remington's denial of Dr. Fetzer's discovery rights.

Respondent's Response thus fails on multiple grounds. Judicial discretion is intended to fill the gaps in jurisprudence regarding unique circumstances where the law and/or facts are unclear or silent. It is intended to be a tool for a judge to find justice in a particular circumstance. Judicial discretion is not a license for a court to abuse a party simply because the judge favors the opposing attorneys, has a side deal with those attorneys, does not like a party and wants to punish him or her. This is the definition of tyranny and not to be permitted in US Courts. Curiously, Pozner is arguing to preserve judicial misconduct and is speaking to defend the lower court judge who is evidently misbehaving, as any reasonable person can see. Equally curious, Pozner is attempting to avoid oral argument about the judge's misconduct as Fetzer contents. Oral argument is one of America's most fundamental rights: the right to face one's accuser.

Pozner labels Fetzer's due process rights to face one's accuser in oral argument as having "marginal value" and a waste of the Court's time. This assertion is preposterous on its face. They are arguing that the judge, a public employee, should not do his job by permitting the accused to be heard in a public forum. This argument is from someone who wishes to hide from the light of public scrutiny. Of course, the wrongdoer would choose to avoid any argument where his or her conduct might come to light on the court record. Statement of Publication prejudges a conclusion that Pozner cannot possibly know unless the fix is in and he does not want the results to reach the public's eyes and ears. Here again, Pozner regurgitates procedure because the court's abuse of Fetzer's due process rights is so blatant and obvious to a reasonable person.

Pozner argues that Fetzer does not have a right of appeal because "the June Orders are not final orders". This is so arrogant and wrongheaded. The court was denying everything, ignoring

civil procedure, and attempting to force Fetzer into silence. Clear the court was attempting to ignore him into giving up. His motions were all denied. Appeal to this Court was the only option. “Interlocutory review” is for a court with some semblancy of decency, not for a court that shuts down due process and seals document that were never even admitted into evidence. The lower could was making a mockery of due process and had been afforded all the procedural option Dr. Fetzer could meet. It was evident that further appeals to justice in the Remington court were pointless. The fix was in. Dr. Fetzer hopes that this court can fix Remington’s egregious abuse of hid due process rights.

Again, fairness and justice is what his demanded here, not procedural sophistry. If this court needs such unnecessary procedural sophistry, then consider this appeal a request to turn this appeal into an interlocutory review. Pozner’s arguments are a study in legal gymnastics meant to deny the due process rights of a citizen. Courts are required to show Pro Se procedural flexibility. And yet, all we read from Pozner’s arguments are procedural sophistry clearly meant to deny due process. Indeed, this entire case (from beginning to end) has been an exercise in the denial of Dr. Fetzer’s Constitutional Rights under Color of Law in violation of 18 USC § 241 and § 242.

Pozner excuses Remington’s misconduct in sealing documents that were never considered in evidence and were notorious public document in any case. Among Pozner’s most arrogant and repulsive arguments is “He does not argue that certain factors mitigate in favor of setting a hearing”, But Dr. Fetzer did indeed make the superior argument that he has a fundamental right to due process. He had no duty to support that further. Sophistry is obfuscation, not argument. It comes as no surprise that the Pozner attorneys Dr. Fetzer alleges to have colluded with Judge Remington in perpetrating Fraud upon the Court, including Genevieve M. Zimmerman (WI#1100693), Jacob Zimmerman (MN#0330656), and Emily Feinstein (WI SBN

1037924) are eager to seal the evidence that implicates them in these activities, not to mention WI Code of Judicial Conduct violations of SCR 20:3.1 and of SCR 20.3.3.

## STATEMENT ON PUBICATION

Contrary to Respondent's contention, this case deserves publication that the public should be apprised of issues related to the misuse of the Wisconsin Courts by means of Abuse of Process, Denial of Constitutional Rights under Color of Law, and additional tndices of the failure by Judge Remington and Pozner attorneys to uphold the standards imposed by the Judicial Code of Conduct and Wisconsin Rules of Civil Procedure.

## CONCLUSION

In *Pozner v. Fetzer 18CV3122,* the Circuit Court has violated its obligations under the Wisconsin Rules of Civil Procedure, Chapter 802. Judge Remington's Decision and Order Denying James Fetzer's Motion for Relief from Judgment (June 20, 2024), Denial of Request for Relief from Judgment or Order (June 24, 2024), and Order to Seal or Redact a Court Record (June 24, 2024), must be reversed and restored to the docket for due process in accord with Wisconsin Rules for Civil Procedure.

Respectfully submitted,

electronically signed by: */s/ James H. Fetzer, Ph.D.*

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