No. 21-7916

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES H. FETZER

Petitioner

v.

LEONARD POZNER

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO

THE WISCONSIN FOURTH COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. 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?

LIST OF PARTIES

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RELATED CASES (none)

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the Wisconsin Fourth Court of Appeals appears at Appendix A to the petition and is reported at *Pozner v. Fetzer*, 397 Wis.2d 243, 959 N.W.2d 89(Table), 2021 WI App 27(Table) (Wis. App. 2021).

JURISDICTION

The Wisconsin Supreme Court denied the Petition for Review on February 16, 2022. A copy of that decision appears at Appendix C. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

There are no government or agency parties in this case requiring notification.

There are no Rule 12.5 requirements to fulfill prior to this filing.

The Court has jurisdictional authority over this Petition for Writ of Certiorari under Rule 10.

Rule 10(b) applies in this case:

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.

The Supreme Court of Wisconsin denied Dr. Fetzer's Petition for Review on February 16, 2022, affirming all the summary judgment methodology of Wisconsin in violation of the purpose of summary judgments which is to expedite justice while protecting the 7th Amendment right to trial by jury and the 14th Amendment right to due process and equal protection.

There are no other courts or administrative remedies available to the Petitioner. There is nothing pending that would prevent the issue of a Writ of Certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

7th Amendment of the United States Constitution:

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

14th Amendment of the United States Constitution:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Wisconsin State Statute 802.08 Summary Judgment: (Appendix E)

STATEMENT OF THE CASE

The Pozner Complaint

Mr. Leonard Pozner sued Dr. Fetzer for libel for publishing a scan of a document purporting to be a "death certificate" of Pozner's son and four sentences stating that a "death certificate" of Mr. Pozner's son, to whom he refers to as "N.P.", was forged, fabricated and fake, three of which were published in a book Dr. Fetzer had co-authored and co-edited, entitled *Nobody Died at Sandy Hook, It was a FEMA Drill to Promote Gun Control* ("Nobody Died") and on a blog (Doc-1, ¶10-20).

Mr. Pozner attached to his complaint a scan of a different "death certificate" also purporting to be that of Pozner's son. The scan of the N.P. "death certificate," published by Mr. Pozner on his website and published by Dr. Fetzer in his book were different from the scan of another N.P. "death certificate" Pozner attached to his complaint. Both "death certificates," notably, declare that the decedent died at Sandy Hook Elementary on December 14, 2012, of "multiple gunshot wounds."

Pozner's complaint was also against Fetzer's co-editor, Mike Palecek, and his publisher, Wrongs Without Wremedies, LLC, d/b/a/Moon Rock Books, both of whom settled out of court.

The Fetzer Answer

Dr. Fetzer answered the complaint and plead (Doc-5, ¶8) that the "death certificate" he commented on was not the same as the one Pozner attached to his complaint. Dr. Fetzer showed that the one he commented on lacked a file number

and town and state certifications, whereas the one attached to the complaint had a file number and both town and state certifications.

Dr. Fetzer also plead in his answer (Doc-5, ¶15, 17) that he and other researchers had found that Sandy Hook Elementary School had been closed by 2008, four years before the alleged shooting. He also plead in his answer that he had a copy of the 20-page:

> "...FEMA manual for a two-day Mass Casualty Drill Involving Children at Sandy Hook, under the auspices of the United States Department of Homeland Security, the same expected to begin in the morning of December 12, 2012, and ending around midnight on December 13, 2012, then to be evaluated the next day...." (Doc-5, ¶21)

The manual was published in *Nobody Died* as Appendix A. *Nobody Died* is now filed as Exhibit-10 in the transcript of the summary judgment hearing (Doc-231, page 169)

Dr. Fetzer answered (Doc-5, ¶15-28), that he formed his opinion that the first scan of a N.P. "death certificate" was fake by his review of the copy originally published by Mr. Pozner on his website but, more importantly, by his and others' discovered evidence that would lead one to suspect that the "Sandy Hook Mass Shooting" did not happen: Dr. Fetzer mentioned the following evidence to support his allegation: 1) Sandy Hook Elementary had been closed since 2008; 2) no signs of heat production in the school on the cold morning of 12/14/2012; 3) deficient handicapped parking stripes and improper parking of cars in the lot that morning; 4) arrival of the state Chief Medical Examiner prior to the damage said to have been caused by the "shooting;" 5) Pizza, portable toilets, bottled water, check-in

requests, name tags and lanyards, all evidence of a preplanned exercise; 6) failure of the Danbury State's Attorney to create a nexus between the "shooter" and his "victims" or the weapon that supposedly killed them; 7) photographs of a police woman posing the same handful of students in different arrangements in the parking lot for a photographer; 8) and evidence that the Respondent is not really a person named "Leonard Pozner."

Pozner's Motion for Summary Judgment

On April 30, 2019, Mr. Pozner filed a Motion for Summary Judgment to find Dr. Fetzer guilty of libel as a matter of law (Doc-102). On June 10, 2019, Dr. Fetzer filed his Brief in Response to Plaintiff's Motion for Summary Judgment (Doc-176), pleading on page 8 that the FBI National Consolidated Crime Report for 2012, had reported that zero murders or non-negligent manslaughters occurred in Newtown in the year 2012. Dr. Fetzer supplied the link to the online FBI document which is still available with the same data.

Dr. Fetzer obtained and filed reports and affidavits from two document authenticity experts finding that the four scans of "death certificates" purporting to be the same for Pozner's son were fake (a fifth version was offered in the hearing). Dr. Fetzer incorporates the findings of document expert Larry R. Wickstrom into his response (Doc 176, page 3) and attached it as Exhibit E which was filed June 7, 2019 (Doc-178). On page 5, Fetzer also incorporated the findings of the other document authenticity expert A.P. Robertson and attached it as Exhibit I (Doc-213) showing that all four scans of "death certificates" purporting to be those of Pozner's

son were fake for multiple reasons. Both document expert reports were never rebutted by any other document authenticity experts.

Hearing on Summary Judgment Motions

On June 17, 2019, a hearing was held on the Motions for Summary Judgment of both parties, the court asked Dr. Fetzer (Doc-231, page 133): "So what evidence should I rely on either to find in support of your Motion for Summary Judgment or to conclude there's a genuine issue on the -- any fact that's material to the falsity of the death certificate?" Dr. Fetzer proceeded to assert his facts and evidence showing that the death certificate of Pozner's son was fabricated or fake including the following: 1) Wrong estimated time of death (Doc-231, page 135); 2) The death certificate attached to Pozner's complaint is different from the one Fetzer commented on (Doc-231, page 136); 3) "both a state certification as a true copy and the certification of the town registrar, in the absence of which it properly qualifies as illegal and a fabrication;" 4) "There are now four death certificates in this case, Your Honor, where there ought only to be one. That's prima facie proof of fabrication and fakery." (Doc-231, page 153).

The judge then stated: "I don't think there's any genuine issue over any of the material facts. I think the last question that both parties are asking me to decide is the legal question." The judge continued concerning the four different versions of a death certificate for the same person:

> "Dr. Fetzer, you have correctly pointed out on more than one occasion the differences between the various copies. That does not alone indicate that any one of them are false, it only demonstrates a difference. For example,

some copies have a state file number, some don't. There's no genuine issue as to the fact that some have a file number and some don't. Whether the Defendants' original publications are a false statement is a legal question that the Court applies based on the undisputed facts. To say it in plain English, Mr. Palecek or Mr. -- Dr. Fetzer, juries decide facts, judges apply the law to those facts." (Doc-231, page 153)

The judge admits he doesn't decide facts and he has read everything in the record: "I do this because sometimes I hear later on, well, he didn't -- I hadn't -- he didn't let me finish or there's one more issue. I don't want you to be repetitive. I've listened. I've read everything. Is there anything else?" (Doc-231, page 152).

The judge stated one of his reasons for finding there were no genuine facts in dispute: "I know, actually, both parties have moved for summary judgment, and there is precedent in Wisconsin that when both parties move for summary judgment, that's an acquiescence or even a concession there's no genuine issue as to the underlying facts." (Doc-231, page154).

The court reiterated its understanding of Dr. Fetzer's allegations of fact and evidence: "At a certain level, Dr. Fetzer, I understand your and Mr. Palecek's position, having listened to your rather lengthy closing argument. At a certain level, Dr. Fetzer, you say all of these death certificates are a fabrication because there never was a death at Sandy Hook and [redacted] Pozner never died; is that right?" (Doc-231, page 156).

Dr. Fetzer did not withdraw or abandon any of his previous allegations of fact and supporting evidence regarding the Sandy Hook event or its relevance and reasonable inferences to be drawn from them related to the "death certificates," but

rather suggested the un-rebutted testimony of two document authenticity experts was sufficient: "I'm not making that argument here and now, Your Honor. In fact, the document examiners have given so many good reasons. There are boxes in these death certificates that were drawn in by hand, Your Honor. I cannot imagine you would want to make a decision without reviewing the experts' testimony." (Doc-231, page 156).

The judge continued to ask Dr. Fetzer to admit that there were no issues of fact in dispute: "Do you agree that there's no dispute about the facts, you want me to conclude based on my review of all the evidence that [redacted] Pozner's death certificates were false in fabrication?" (Doc-231, page 158).

Dr. Fetzer replied that only one death certificate mattered, and it was clearly deficient in its process of development:

> "The Plaintiff would have you make this decision on the basis of death certificates not in question, that weren't published in the book, that I never even saw before. I find it completely absurd, Your Honor, that I should be sued for a death certificate that I've never even seen prior to publication, prior to the falling of the lawsuit. If that isn't a manifest legal absurdity, I can't imagine what would be." (Doc-231, page 158).

At this same hearing Dr. Fetzer alleged that there was an obvious fraud being perpetrated on the court by the Plaintiff's lawyers:

> "As I called him out for it earlier this morning, Your Honor, Mr. Zimmerman presented you with not just one but two copies of the purported death certificate, which is not the death certificate that was posted by Leonard Pozner or was transmitted to Kelley Watt or I published in the book. That's a very significant fundamental question here. I described it then as a shell game. I reaffirm that, Your Honor. There's a fraud being perpetrated on the Court. As I understand it, counsel, as officers of the court, have an obligation to act consistent with the truth. That has not happened here in this courtroom this morning." (Doc-231, page 155).

The judge then acknowledges the un-rebutted testimony of two document authenticity "experts" finding all death certificates to be fake by saying: "I will also, although I did not do it before, have read the Plaintiff's Motion to Strike the Expert Opinions. I actually think the expert opinions, even, Mr. Zimmerman, if they weren't struck, are just that, someone else's opinions. Ultimately, I've made the decision based on the facts." (Doc-231, page 163).

The judge says the findings of the two experts were not helpful or persuasive:

> "Why do I say that? Well, I don't want to have someone come back and say, well, if the judge would have reviewed the expert opinion reports -- expert opinions, then that creates a genuine issue as to fact. I just don't think they were helpful and I don't think they were persuasive even above all the evidentiary problems they present." (Doc-231, page 164-165).

The judge granted Pozner's summary judgment to find Dr. Fetzer guilty of libel as a matter of law: "Having concluded there's no genuine dispute as to any of the material facts, I conclude that the Plaintiff is entitled to judgment on liability as a matter of law." (Doc-231, page 163).

On June 18, 2019 the judge issued an Order Granting Plaintiff's Motion For Summary Judgment (Doc-230, App-B) .

Before the hearing was over Dr. Fetzer got his 440-page book entitled *Nobody Died at Sandy Hook* entered into evidence for summary judgment purposes as Exhibit 10:

> "THE COURT: Okay. We'll keep it in the record. We'll mark it as an exhibit with -- what number are we on?
> THE CLERK: This will be 10." (Doc-231, page 169).

Fetzer's Interlocutory Appeal

Dr. Fetzer filed his Application for Interlocutory Appellate Review to the Wisconsin 4th Court of Appeals on July 6, 2019. It was denied on August 12, 2019 for not meeting the criteria for granting a review.

The Jury Trial on Damages

A jury trial was held on October 14, 2019 finding that Mr. Pozner suffered $450,000 in damages. The judge filed a Bill of Costs and Judgment For Leonard Pozner as a final judgment in favor of Leonard Pozner (Doc-355) which included $7,000.00 for contempt.

Post-Verdict Motions & Final Order for Appeal

On December 12, 2019 The circuit court judge found that there were no disputed facts in this case and that all versions of the death certificate were authentic: "The undisputed facts show that [redacted] Pozner's death certificate was (and is) authentic, and no reasonable factfinder can conclude that Dr. Fetzer acted with ordinary care when he published the statements claiming that the death certificate was a fake." (Doc-348, page 2).

Dr. Fetzer had filed a post-verdict motion to vacate Pozner's partial summary judgment which the judge declined in this Final Order as untimely. The judge then justifies his finding of no disputed facts by saying in a footnote in his Decision and Order On Post-Verdict Motions:

> "It is worth delving into the particular details of the decisions that Dr. Fetzer made pro se at the time the cross motions for summary judgment were filed. Dr. Fetzer never argued that there was any disputes of material

fact or that summary judgment could not be decided. On the contrary, Dr. Fetzer argued that the facts were clear, so the court should grant summary judgment in his favor. At one point in time, Dr. Fetzer even brazenly stated that he welcomed Mr. Pozner's lawsuit because it would provide a public forum for proving that Sandy Hook was all a hoax concocted by President Obama. During oral argument on the cross-motions for summary judgment, despite being asked multiple times to identify which, if any, facts were in dispute Dr. Fetzer failed to identify a single one. See Doc. 231, at 132-158, 161. Even in his interlocutory appeal taken immediately after the court ruled, although he claimed he created a genuine issue of material fact, his whole interlocutory appeal was based on his complaint that this court relied on the undisputed facts to come to what he claimed was the erroneous legal conclusion that Dr. Fetzer had defamed Mr. Pozner. Unfortunately, the court's attempt to expose factual disputes according to its order governing summary-judgement methodology fell flat in large part to Dr. Fetzer's misunderstanding of the legal process." (Doc-348, page 3)

The judge decided as a matter of fact, not law, that it is unreasonable for anyone to believe that groups of people would deceive other groups of people:

"No reasonable person would come to the conclusion that someone fabricated or falsified Mr. Pozner's son's death certificate. No reasonable person would believe that President Obama hired crisis actors to stage a pretend school shooting at Sandy Hook Elementary School in order to advance the former President's supposed agenda on gun control. No reasonable person could consider what Leonard Pozner tried to tell Dr. Fetzer and his fellow "researchers" immediately after the shooting and come to the conclusion that [redacted] Pozner never lived, and thus never died. It is impossible to imagine that anyone in today's digital world could believe, much less conceive, that three or four hundred "actors" could or would keep this "secret" safe and not be lured to sell this fantastic story to the highest bidder. Yet, even today, even now, Dr. Fetzer would have everybody believe that "Nobody died at Sandy Hook." (Doc-348, page 9)

Wisconsin 4th Court of Appeals

Upon entry of the final order, Dr. Fetzer filed his Brief of Appellant/Cross Respondent at the Wisconsin 4th Court of Appeals number 2020AP121 on June 24, 2020. The Appellees filed their brief and Fetzer Replied. Pozner filed a Response Brief.

The 4th court of appeals affirmed all the rulings of the lower courts and concluded in their 58-page opinion, on March 18, 2021, that there were no reasonable disputed facts in this case (App-A, page 3-4):

> "There is no reasonable dispute regarding the following facts.
> On December 14, 2012, a mass shooting occurred at Sandy Hook Elementary School in Newtown, Connecticut. Tragically, twenty-six people were killed, including six staff members and twenty children who were aged six and seven. See, e.g., Jones v. Heslin, No. 03-19-00811-CV, 2020 WL 1452025, at *1, *4 (Tex. Ct. App. Mar. 25, 2020) (stating "Neil Heslin's son ... was killed in the Sandy Hook Elementary School Shooting in December 2012" and rejecting the substantial truth doctrine as a basis to dismiss Heslin's defamation claim related to statements disputing Heslin's assertion that he held his deceased son in his arms); Soto v. Bushmaster Firearms Int'l, LLC, 202 A.3d 262, 272 (Conn. 2019) ("On December 14, 2012, twenty year old Adam Lanza forced his way into Sandy Hook Elementary School in Newtown and, during the course of 264 seconds, fatally shot twenty first grade children and six staff members, and wounded two other staff members."). Pozner's six-year- old son, N., was one of the children killed during the Sandy Hook shooting."

Astonishingly, in the very next paragraph, the 4th Court of Appeals states very clearly the allegations of Dr. Fetzer raising relevant material facts supported by evidence as to the credibility of a scanned "death certificate" for one who purportedly died at a mass shooting event that did not take place (App-A, page 4-5):

> "Fetzer, a Wisconsin resident, takes the position that the Sandy Hook shooting was an "elaborate hoax" which, according to Fetzer, was staged by government authorities with the "agenda to deprive U.S. citizens of their rights pursuant to the Second Amendment of the U.S. Constitution." Fetzer takes the position that no one was killed during the Sandy Hook shooting and that part of the "elaborate hoax" included the fabrication of a "fiction[al]" person "called [N.]" Before and during this litigation, Fetzer has asserted that Pozner is a "fraud," "liar," "hypocrite," and "con-artist," and he has accused Pozner of concealing his true identity. Fetzer has also accused Pozner of "engaging in a massive cover-up" with regard to the Sandy Hook shooting. Fetzer is an editor of the book NOBODY DIED AT SANDY HOOK: IT WAS A FEMA DRILL TO PROMOTE GUN CONTROL (2d ed.

2016), and is the co-author of chapter 11 of that book, which is titled "Are Sandy Hook skeptics delusional with 'twisted minds'?"

Motion For Reconsideration

Dr. Fetzer filed a Motion for Reconsideration on April 6, 2021, asserting yet again, issues of genuine fact related to the un-rebutted expert findings and the validity of the "Sandy Hook Mass Shooting (¶4):"

> "The expert opinions, still being of record, created material questions of fact as to the falsity of statements in the Fetzer book and blog, i.e., was Fetzer negligent in his statements. In addition, the Fetzer pleadings and affidavits created a material fact dispute as to whether anybody died at SH, the answer to which refutes Pozner's defamation claim."

Dr. Fetzer's Motion for Reconsideration was DENIED on April 7, 2021.

The Supreme Court of Wisconsin

On August 6, 2021, Dr. Fetzer filed his Corrected Petition for Review. The Petition asserted that Dr. Fetzer was prevented from pursuing a defense based upon facts he discovered leading one to conclude that the "Sandy Hook Mass Shooting" did not happen:

> "The circuit court foreclosed Fetzer from defending on the basis of research establishing that Sandy Hook was a cover intended to promote gun control. The thesis and the substance of this research bore directly on the truth or falsity of Fetzer's alleged defamatory statements. The court, however, advised the parties that such a defense was "a rabbit hole we won't go down." (R. 303 at 49.) The court, moreover, at trial, cautioned counsel as well not to go down the foreclosed road. (R. 311 at 194-96.)" (page 16)

On February 16, 2022, the Supreme Court of Wisconsin denied Dr. Fetzer's petition (App-C).

REASONS FOR GRANTING THE PETITION

The Wisconsin summary judgment methodology used in the Pozner v. Fetzer case will prove that those in Wisconsin do not enjoy the same right to a trial by jury as those in Texas. Yet all states of the Union are guaranteed the same rights of due process and trial by jury under the 7th and 14th Amendments. Had Mr. Pozner filed the same summary judgment in Texas they would have gone before a jury trial on both liability and damages, instead of damages only.

Had this case not involved facts related to a mass shooting story reported world wide, aspects of which continue to the present, the discovery of the serious flaws in the Wisconsin summary judgment methodology may have continued unnoticed. The circuit judge in this case did nothing that the Wisconsin summary judgment methodology does not allow for any case no matter how small. A pro se petitioner for a writ of certiorari was able to institute the right to council in every state in Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963) and Dr. Fetzer now asks, as a pro se petitioner, that his writ of certiorari be issued to address the equal rights to trial by jury and due process under the 7th and 14th Amendments denied by the unsound summary judgment methodology in Wisconsin. The citizens of Wisconsin should enjoy the same right to a trial by jury and due process as the citizens of Texas. And this same unsound summary judgment methodology should not become the judicial foundation of major historical events that impact the life, liberty and possessions of all Americans and their ability to protect those blessings.

The principles that should guide the granting of a summary judgment in every state can be determined initially from application of natural law or logic. There are two functions of summary judgments. Knowing that juries find facts only, why would it be necessary to have a jury trial if the adversaries agreed upon the facts of the case? Therefore, the *first function* of a summary judgment is to avoid the delay and expense of a jury trial when all the facts are already agreed upon making the finding of facts by a jury redundant and unnecessary.

The *second function* of a summary judgment is to protect the 7th Amendment right to a trial by jury of the nonmovant. Hence, the rules that regulate the granting of a motion for summary judgment must, first and foremost, protect the nonmovant's right to a trial by jury. There is no federal guarantee of a right to a summary judgment. We must therefore start the summary judgment process by protecting the one who is at risk of losing their property without due process guaranteed under the 7th and 14th Amendments, the monmovant.

We know that the *end product* of a summary judgment should be the application of the law to facts that are agreed upon by the parties, for without agreement to facts we need a jury to find them for both, not a judge to determine or impose them on the parties. Therefore, the judge must start the summary judgment process by accepting the allegations of fact by the nonmovant as true and it follows that the judge must also indulge all reasonable inferences that can be drawn from those facts and finally the judge can rest assured that he is not harming the nonmovant if they resolve all questions in favor of the nonmovant. This assures us all, that in the

end, a summary judgment will protect the nonmovant's rights and deliver justice to both parties.

Upon demonstration herein that the rules of summary judgment do not protect the 7th Amendment right equally throughout the Union, or between Wisconsin and Texas, it is the duty of this court to issue an opinion that guides every state in the Union on the principles of summary judgment that will protect the right to a trial by jury and expedite the summary judgment process in the most efficient manner.

The existence of a disputed material fact issue does not establish the right of a nonmovant to a trial by jury as said in Wisconsin. The nonmovant does not need to prove that they have a disputed fact before they can enjoy a trial by jury. The existence of a disputed material fact issue merely prevents the movant from bypassing the jury and obtaining a judgment as a matter of law when the movant's allegation of facts don't agree with the nonmovant. Hence, it is the burden or *concession* of the movant that there are no material fact issues to be found by a jury and that the movant agrees with the nonmovant's allegation of facts. We must start, not from the position of a nonmovant trying to prove they have a right to a jury trial, but rather, from the position that the movant needs to concede that they agree with the nonmovant's allegation of facts. The movant cannot twist, manipulate, or ignore the nonmovant's relevant allegation of facts to fit their own, but accept them as true and only then can a matter of law be determined by a judge.

Thus, the protection of the 7th Amendment right to a trial by jury in the summary judgment process has nothing to with the nonmovant convincing the

judge that they have a disputed issue of material fact. The erroneously supposed need, ability or requirement of a nonmovant to prove there is a disputed material fact issue cannot be a sufficient protection of their right to trial by jury. Thus, the judge must find that the movant's facts agree with the nonmovant's facts in every material aspect without manipulation of the nonmovant's allegation of facts. Then the judge may proceed to look for every element of the movant's claim or defense. If the facts of the movant do not agree with the nonmovant on every relevant aspect, the judge must deny the summary judgment immediately. If the facts of the movant agree with those of the nonmovant in all material aspects and the movant has supporting evidence for every element of their claim, the judge may grant the summary judgment while protecting both parties.

The three steps of protecting the 7th and 14th Amendment rights in a summary judgment are established in Texas (App-G): The first step "in deciding whether a disputed material fact issue exists precluding summary judgment, evidence favorable to the nonmovant will be taken as true." *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d at 548-49 (Tex. 1985). The second step is "Every reasonable inference must be indulged in favor of the nonmovant." *City of Keller v. Wilson,* 168 S.W.3d 802, 824 (Tex. 2005). And the third step requires that all "doubts" be "resolved in the nonmovant's favor." *Nixon, City of Keller.*

In contrast, the Wisconsin four step Summary Judgment Methodology is completely inverted and starts by wasting time and energy on the movant's case rather than protection of the nonmovant. Since a summary judgment cannot be

granted without agreement to the relevant facts of the nonmovant, why waste time with the movant, until it is established that their relevant facts agree with those of the nonmovant?

Aaron J. Loudenslager, U.W. 2015, staff attorney for the Dane Co. Circuit Court, writing for the Wisconsin Bar, explains the four step methodology to decide motions for summary judgment (App-F, page 2): 1) First, a court must review "the complaint to determine, on its face, it states a claim for relief." *Hoida Inc. v. M & I Midstate Bank*, 2006 WI 69, ¶16, 291 Wis. 2d 283, 717 N.W.2d 17 (citation omitted); 2) Then "Under the second step of this methodology, 'i[f] a claim for relief has been stated, the inquiry then shifts to whether any factual issues exist." *Tikalsky v. Friedman*, 2019 WI 56, ¶ 12, 386 Wis. 2d 757, 928 N.W.2d 502 (quoting *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987)); 3) "If the complaint states a claim and the pleadings show the existence of factual issues, the courts examines the moving party's ... affidavits or other proof to determine whether the moving party has made a prima facie case for summary judgment..." *Grams v. Boss*, 97 Wis. 2d 332, 338, 294 N.W.2d 473 (1980) ; 4) If the movant establishes a prima facie case for summary judgment, the court then must "review the opposing party's affidavits [or other proof] to determine whether there are any material facts in dispute, or inferences from undisputed material facts, that would entitle the opposing party to a trial." *Hoida*, 2006 WI 69, ¶ 16, 291 Wis. 2d 283 (citation omitted).

The four step summary judgment process in Wisconsin is to 1) verify that the movant has stated a claim; 2) determine if there are any material fact disputes; 3) If

there is a material fact dispute, the judge verifies that the movant has made a prima facie case with their proof; 4) If the movant has established a prima facie case, the judge looks at the nonmovant's facts and evidence to determine if there are any fact disputes or inferences from undisputed material facts.

Notice that the Wisconsin process is a tangled mess which looks for disputed evidence twice. And if relevant fact disputes are found, why then verify the establishment of the movant's prima facie case? If the movant's facts do not agree with those of the nonmovant, the summary judgment must be denied immediately, not further investigated for a prima facie establishment and then review the nonmovant's filings again. What judicious principle limits the search for inferences to those from undisputed fact? This inverted process in Wisconsin causes the judge to be an advocate of the movant with a drive to make or force the nonmovant's facts to agree with the movant's facts.

Dr. Fetzer immediately answered Pozner's complaint by stating that the "death certificate" attached to the complaint was not the same as the one he commented on. Dr. Fetzer also alleged in his Answer that the "Sandy Hook Mass Shooting" did not occur but was a FEMA exercise where no one was killed and he supported that allegation with a 440 page book investigating Sandy Hook, an annual FBI report on crime in America showing zero deaths in Newtown in 2012, and a 20 page FEMA drill manual for mass casualties involving children scheduled for the same day shown on the "death certificates." When Pozner filed his Motion for Summary Judgment, the judge should have immediately taken all the allegations of fact by

Fetzer as true and looked to see if Pozner's pleadings of fact agreed with them. Pozner plead that "his son" died at the "Sandy Hook Mass Shooting" and the "death certificates" showed that "his son" died at Sandy Hook Elementary from "multiple gunshot wounds" on the same day of Pozner's alleged mass shooting and Fetzer's alleged FEMA drill at Sandy Hook Elementary.

The judge should have then indulged the inference from Fetzer's alleged facts that no one was murdered in Sandy Hook on 12/14/2012 or that Pozner's son was killed by an accident involving FEMA participants, the preponderance of Fetzer's evidence showing no one was murdered in Sandy Hook in all of 2012.

The judge, using the flawed Wisconsin summary judgment methodology, first confirmed that the movant, Pozner, had stated a claim and then looked for disputed facts, then went about establishing a prima facie case for the movant by finding all the alleged facts of the nonmovant were *disingenuous* by calling them unreasonable, unpersuasive, and not helpful. And finally the judge found the movant had all the elements for his claim of defamation as a result of no dispute on genuine issues of fact, as all had been found disingenuous by the judge. This summary judgment hearing was obviously nothing but a *non-jury trial.*

The summary judgment hearing should never have proceeded to hearing any evidence for the movant's elements of defamation because of the obvious showing that Pozner's allegations of fact did not agree with the nonmovant's allegation of relevant fact which must be accepted as true to protect the nonmovant's 7th Amendment rights. The judge should have asked the movant if they agreed with the

nonmovant's allegation that the "Sandy Hook Mass Shooting" did not happen. Pozner would have had to say; No, at which time the judge should have denied the motion for summary judgment.

The one at risk of losing 7th Amendment rights in a summary judgment is the nonmovant or, in this case, Dr. Fetzer. And since the facts must be agreed to by the parties, it follows to start by accepting all Dr. Fetzer's allegations of fact as true, including the inconvenient facts about Sandy Hook not happening. Then the judge could have saved everyone a lot of time and effort and had a jury trial on the material fact issues instead of accepting all the allegations of fact plead by the movant, the wrong party, and trying to force the nonmovant to agree with Pozner's facts as the judge did in this case as illustrated below:

The judge asked the nonmovants if they agreed with each of the four elements to prove defamation (Doc-231, page 107-109), starting in reverse; 4) the communication was unprivileged, 3) the communication tends to harm one's reputation, 2) the communication was made to persons other than the defamed, 1) the statement was false. The nonmovants' answers to these questions are irrelevant because they have already plead that the "death certificate" attached Pozner's complaint was not the one Dr. Fetzer was accused of making defamatory claims about. The answers to the questions that went to each element of defamation were irrelevant because the nonmovant's had already plead that the "death certificate" was fake because the "Sandy Hook Mass Shooting" did not take place and the reasonable inference from that is that Pozner's son did not die from "multiple

gunshot wounds" at an shooting that did not take place supported by evidence of a FEMA drill manual scheduled for the same time of death, and by an FBI report showing zero murders and nonnegligent manslaughters in Newtown in 2012. Dr. Fetzer also filed his 440 page book filled with much more compelling evidence that would support his allegations.

The judge was leading the nonmovants to admit they were in agreement with the movant's alleged facts rather than merely accepting what the nonmovant had been pleading and arguing all along. The judge in his attempt to get rid of the two expert reports finding all the "death certificates" fake, said that there are cases where if both parties file motions for summary judgment it is a concession that there are no genuine material fact issues in dispute (Doc-231, page154) and that it acts as a waiver of a trial by jury. But later Wisconsin cases show that only a judge can determine if there are genuine material fact issue in dispute, not the parties (App-F). The Wisconsin Supreme Court held that when "both sides moved for summary judgment" and "it would appear that there were no factual issues in dispute," "the practical effect of the bilateral summary judgment motions was the equivalent of a stipulation as to the facts." *Wiegand v. Gissal,* 28 Wis. 2d 488, 495a-95b, 137 N.W.2d 740 (1965). But this presumes that both parties filed meritorious motions for summary judgment. That general rule is not applicable as "the existence of a genuine issue of material fact is a question of law for the court, not for the parties" and "both parties might erroneously conclude that no factual dispute exists when in reality one does." *Grotelueschen,* 171 Wis. 2d at 462 (Abrahamson, J., dissenting).

The judge was simply conducting a *non-jury trial* under the pretext of a summary judgment, which is what the flawed summary judgment methodology encourages in Wisconsin, as further shown by statements of the judge:

> "Plaintiff asserts that all the evidence that they've submitted, which is not genuinely disputed or not disputed or not rebutted by admissible evidence or not rebutted by admissible authenticated evidence entitles the Plaintiff to judgment as a matter of law, that the accusation as set forth in Defendants' book and -- Defendants' book and Defendant Fetzer's blog are false."

There is no such thing as "inadmissible evidence" in a proper summary judgment proceeding. The judge is not to decide what is admissible or not. The judge should not weigh evidence or rule on its admissibility. All the judge can do in a motion for summary judgment is find agreement or disagreement to the nonmovant's allegations of fact by the movant. If the movant cannot agree to the facts alleged by the nonmovant and indulge every inference to be drawn from those facts and resolve all questions in the nonmovant's favor, the motion for summary judgment must be denied to protect the 7th and 14th Amendment rights of the nonmovant.

The judge continued to conduct his non-jury trial, in the guise of a summary judgment, by finding facts rather than agreement or disagreement on material fact issues. The judge said that the two un-rebutted reports submitted by document authenticity experts finding the relevant "death certificates" for Pozner's son to be fake, were not helpful and unpersuasive and ignored them (Doc-231, page 164-165). This is not the prerogative of a judge in a summary judgment proceeding. The judge must accept all the nonmovant's allegations of material fact as true, not weigh the evidence as a jury would.

The judge, after weighing all the evidence in his non-jury trial cloaked as a summary judgment, found the explanations of the movant, Mr. Pozner, to be "legitimate and plausible and persuasive" (Doc-231, page 122) and after finding that all the pleadings and evidence of the nonmovant failed to present a genuine issue of material fact, granted the summary judgment (Doc-231, page 163).

The circuit judge, lawyers and justices in Wisconsin were not cheating according to their "summary judgment methodology" and that is why the summary judgment survived an appeal through the Supreme Court of Wisconsin. The 4th Court of Appeals affirmed the same summary judgment methodology used by the circuit court, which is nothing short of a non-jury trial conducted by a judge rejecting alleged facts of the nonmovant because they were "unreasonable, implausible, unpersuasive, and unhelpful," which are all matters for a jury, not a judge, who can only apply the law to facts in agreement or found by a jury.

Any objection or disagreement presented by a nonmovant in a faulty summary judgment procedure is not his obligation to obtain a 7th Amendment right to trial by jury but, is rather, in essence, a plea and prayer for protection under the 7th and 14th Amendments and it was answered with constant denial of Dr. Fetzer's right to due process and a jury trial and constant violation of the two purposes of summary judgment. Therefore, Dr. Fetzer asked for relief all through the Wisconsin judicial system and his pleas went unheeded due to an unsound summary judgment methodology practiced in Wisconsin.

A Texas judge may not find an allegation supported by evidence *unreasonable* that asserts that the so-called "Sandy Hook Mass Shooting" was nothing but theater. That same judge may, however, find it *reasonable* that such an allegation, if true, would mean a death certificate is fraudulent that shows the decedent died at that theatrical event. However, the same judge, without additional facts and evidence, could also find it *unreasonable* that such allegations and supporting evidence would show the actors were alcoholics. The notion of reasonableness cannot be applied to the *facts* of the nonmovant, but only to the *inferences* that can be drawn from those facts. If the judge could apply reasonableness to facts the nonmovant would never have material or relevant facts or secure 7th and 14th Amendment rights.

But in Wisconsin, a judge is permitted to apply the notion of *reasonableness* to the facts being plead with supporting evidence by the parties to a summary judgment. The determination of what a reasonable fact involves weighing the credibility or plausibility of facts, but that is a job for juries, not judges. Judges may determine if some fact is *relevant* or *genuine* to the claims without weighing the reasonableness of the fact. Facts are not weighed to determine their relevance. A fact is either applicable to the claim, or it is not. There is no weighing of plausibility to find relevance. An alleged fact can be true but not relevant, and an alleged fact that is most relevant to a claim may be false.

The nonmovant's allegation, that the "Sandy Hook Mass Shooting" was mere theater acted out in an abandoned school as a pretext to alter the 2nd Amendment,

was found *unreasonable* to the circuit judge and affirmed by the Wisconsin 4th Court of Appeals on review herein. But such a determination required the weighing of facts, which is the job of a jury.

The only option for a judge in Pozner's motion for summary judgment, if filed in Texas, would be to accept all of Fetzer's allegations of fact as true and indulge all reasonable inferences that could be drawn from those facts and resolve all doubts in favor of Dr. Fetzer. Hence, the judge would need to agree with the FBI that no one died at Sandy Hook in all the year of 2012 and that there was a FEMA drill held at Sandy Hook Elementary on December 14, 2012, not a mass shooting. And the judge would need to indulge the reasonable inferences that Pozner's son was not killed anywhere in Sandy Hook on December 14, 2012. The judge would further be required to resolve all doubts in Fetzer's favor. The judge had no option but to deny Pozner's motion for summary judgment. Pozner's defamation case would have gone to trial on both liability and damages had it been filed in Texas.

When it is said that the judge must find there are no genuine issues of material fact in dispute prior to granting a summary judgment, it does not mean the judge must determine the truthfulness of a fact to be *genuine*. Rather, it means the judge must determine if the facts plead relate to an *issue* or element of the claim. *Reasonableness* applies to *inferences*, not facts and *genuineness* of a fact applies to *relevance* and *materiality* related to the elements of a claim, and is not applied to the truthfulness or believability of a fact which a jury must find.

Therefore, Mr. Pozner could not have won a summary judgment in Texas finding Dr. Fetzer guilty of libel or defamation as a matter of law. And Mr. Pozner would be required to take his cause of action to a jury to prove both liability and damages. But in Wisconsin, Mr. Pozner could easily win a summary judgment on liability and then simply take his damage claims to a jury, which he did.

It is clear that the circuit judge's application of the notion of *reasonable* to facts is accepted in Wisconsin law, because it was affirmed through the Wisconsin 4th Court of Appeals and the Supreme Court denied the Petition for Review. All Wisconsin courts reiterated the notion that facts found to be unreasonable by a judge may be ignored in summary judgments. Both circuit and appellate courts cited and ignored unreasonable facts and evidence alleged by Dr. Fetzer.

This summary judgment methodology not only deprived Dr. Fetzer of a trial by jury as guaranteed under the 7th and 14th Amendments of the U.S. Constitution but creates the *environment conducive* for the use of just such theatrical events as alleged by Dr. Fetzer supported only by private mass media narratives. Even if Dr. Fetzer's facts were wrong, the law in Wisconsin has created a fertile ground for similar pretended crimes used as a pretext to alter the law of the land. The rules of summary judgment must be uniform throughout the union as they are fundamentally applicable to all and must be protective of the 7th Amendment right to trial by jury and 14th Amendment right to equal access to due process.

A judge in a summary judgment may not find the reasonableness of facts and evidence but rather *agreement* or *disagreement* to facts plead or the *relevance* of

facts plead to the elements of a claim. The appellate court recited the reasonable undisputed facts in this case just as the mass media described the "Sandy Hook" event (App-A, page 3, ¶4). Then, most astonishingly, in the very next paragraph, the 4th Court recited the allegations of Dr. Fetzer in direct opposition to Mr. Pozner's allegations of fact, asserting that "Sandy Hook" was a FEMA exercise, where no one was killed, reported by the media as a real event to promote gun control (App-A, page 3, ¶5). No two sets of relevant facts, both supported by evidence, could be in more dispute. Only a jury can find either set of allegations reasonable or unreasonable.

Therefore, the circuit and appellate courts in Wisconsin knew full well that all the important facts related to the genuine issues of fact in this case were in dispute but found all the nonmovant's facts to be *unreasonable*. This cannot be done by the judicial system on summary judgment. The courts can't do that in Texas. The issue of whether anyone was killed at "Sandy Hook" or if it was merely a FEMA drill is most certainly a genuine fact issue having material relevance to the claims and it is in serious depute between the parties.

Dr. Fetzer was fined $657,395.13 for contempt of a contemptible non-jury trial cloaked as a summary judgment. And then Fetzer was subjected to humiliation during a trial by jury for damages where the judge allowed Pozner to introduce the evidence that Fetzer was found to be in "continual contempt of court," to influence the jury justified as an alternative means of a contempt remedy. The jury found $450,000 in damages or $207,395.13 less than the judge found for Fetzer's contempt

of the contemptible Wisconsin summary judgment methodology. The award of $650,000 to Pozner for Fetzer's "continual contempt" was for Pozner's attorney's fees, but Pozner said he had none as the attorneys represented him pro bono.

CONCLUSION

The Petitioner does not appeal to this court on their own right but upon the duty of this court to enforce the 7th Amendment guarantee of the right to a trial by jury and the 14th Amendment equal right to due process of all Americans no matter how unreasonable they are. Dr. Fetzer has demonstrated clearly how the state high courts can disagree on their summary judgment rules and their application depriving some of their right to trial by jury. He has further shown that the four step Wisconsin summary judgment methodology neither protects the nonmovant's right to trial by jury nor expedites a rapid and efficient determination for the movant. This court should establish the standard for all states on how to safeguard the right of the nonmovant and apply the notion of reasonableness and genuineness related to facts, inferences and issues.

The Supreme Court of the United States should grant this Petition for Writ of Certiorari and set aside the Pozner v. Fetzer decision and issue an opinion that will assure that summary judgment proceedings throughout America equally protect the right to due process by a trial by jury. The high profile nature of this case ultimately draws attention to the flaw in the summary judgment methodology of Wisconsin that all citizens of that state presently suffer regardless of the magnitude of their cases.

Finally, it is repugnant to human nature that one judge by the perversion of summary judgment principles may determine as a matter of law that a major event took place exactly as reported by private media companies and one plaintiff while the defendant provides a plethora of evidence to the contrary and is deprived of a trial by jury to defend himself and his evidence. To knowingly allow this to continue is a sign that the great American experiment of liberty by self government has ended.

Respectfully submitted,

James H. Fetzer, Ph.D.

Date: 13 May 2022