STATE OF WISCONSIN **CIRCUIT COURT** **DANE COUNTY**

LEONARD POZNER

Plaintiff

vs. Case No. 2018-CV-003122

JAMES FETZER

Defendant

FETZER'S REPLY TO POZNER'S OPPOSITION TO MOTION TO STAY

Now comes James H. Fetzer, Ph.D., pro se Defendant, and Judgment Debtor, with his reply to Plaintiff's Brief in Opposition to Defendant's Motion to Stay and would show the court the following reasons the Brief in Opposition fails to show why the Motion to Stay should be denied:

INTRODUCTION

The Plaintiff bases their whole opposition to the Stay on only the first of four requirements necessary to obtain a Stay, namely, that Dr. Fetzer cannot show that he will prevail on the merits of the appeal. The Plaintiff asserts that Dr. Fetzer must show "more than the mere possibility of success of their appeal on the merits." This Reply to Plaintiff's Opposition to the Motion to Stay will show that the Defendant is not only "likely to prevail on the merits" but has a superior chance of obtaining a Writ of Certiorari over other petitioners.

The other three requirements to obtain a Motion to Stay are:

> (2) that he will suffer irreparable injury if the stay is denied, (3) that other parties will not be substantially harmed by the stay, and (4) that the public interest will be served by granting the stay. The Defendant has proven that he meets the other three requirements in his Motion to Stay to which the Plaintiff has not addressed.

Therefore, upon the showing herein that the Defendant, Dr. Fetzer, has a superior chance of obtaining a Writ of Certiorari and prevailing on the merits, his Motion To Stay should be granted without further consideration. See docket (**Exhibit A**)

FAILURE OF PLAINTIFF'S OPPOSITION ARGUMENTS

The Plaintiff claims that Dr. Fetzer "does not have even the slightest possibility of success." The Plaintiff bases their argument on their following assertions they think the Defendant makes, all of which are partially misstated strawman arguments not made the basis of Dr. Fetzer's Petition for Writ of Certiorari:

1. Lack of uniformity between summary judgment procedures in different states denies equal protection of the law under the 14th Amendment.
2. All evidence, even if inadmissible, must be accepted as true by the judge in a summary judgment to protect the 7th and 14th Amendment rights of the nonmovant.
3. Summary judgment procedures must be the same in all states in order to protect the 7th and 14th Amendment rights of the nonmovant.

Then the Plaintiff makes additional assertions as to why they think that Dr. Fetzer has a "zero percent chance" of obtaining a writ of certiorari:

4. The 7th Amendment right to trial by jury does not apply to state civil cases and never has.
5. Plaintiff asserts that "directed verdicts," and "summary judgments" are themselves proof that 7th Amendment rights are not guaranteed in all states of the union.
6. Wisconsin uses the same summary judgment standard as the Federal Rules of Civil Procedure therefore that standard is beyond review.

FAILURE OF PLAINFIFF'S FIRST & THIRD ARGUMENT

The first and third assertions are almost identical and are treated here as the same. Pozner asserts in the first that *lack of uniformity* among states, and in the third, because *summary judgment standards are not identical* between states, does not mean any of the summary judgment standards deprive any one of their 7th and 14th Amendment rights. And for that reason

the Supreme Court of the United States will not be interested in Dr. Fetzer's Petition for Writ of Certiorari.

The thrust of Dr. Fetzer's Petition for Writ of Certiorari is not *want of uniformity* or *want of identicalness* of summary judgment standards between the states but rather that the Wisconsin summary judgment methodology cannot and does not protect the rights of the nonmovant to a trial by jury, due process or equal protection of the laws to the same degree as that of the state of Texas. The Wisconsin method puts the burden to prove there are no material fact issues in dispute on the party at risk of losing their rights, the nonmovant, rather than on the party who cannot lose their rights under a summary judgment, the movant.

FAILURE OF PLAINFIFF'S SECOND ARGUMENT

The second strawman assertion made by Mr. Pozner is that Dr. Fetzer's notion that all evidence, even if inadmissible, must be accepted as true by the judge in a summary judgment to protect the 7th and 14th Amendment rights of the nonmovant, is false. That assertion is only partially true. Dr. Fetzer showed in his Petition for Writ of Certiorari that evidence that is irrelevant or not genuinely material can be considered inadmissible. However, the judge cannot label relevant evidence as "not helpful," "not persuasive," or "implausible," and "unreasonable," to make it "inadmissible" evidence disposing of material fact issues in dispute. The summary judgment methodology in Wisconsin simply does not guard against this kind of subjective prejudice in the summary judgment process.

FAILURE OF PLAINTIFF'S FOURTH ARGUMENT

What would appear as an absolute bar to the High Court to hear this case actually may be the best reason they will review it. The High Court has never settled the idea of how the Bill of Rights apply to states and the federal government. The present theory of the Court is that each of

the first ten amendments are "selectively incorporated" or applied to the states upon the High Court being persuaded by a petition that it is applicable to the states by operation of the 14th amendment. The U.S. Constitution does not incorporate rights − it incorporates states. Rights describe the lawful character of the federal corporation or Union.

No state is any more immune to tyranny than a federation of states. Why would any state require a union of states to protect certain rights while reserving for themselves and fellow states the prerogative to violate those same rights? Why join such a union?

The actual purpose of the 14th amendment was to make the newly freed slaves equal with the state citizens from which citizenship they were being excluded. It did this by making another citizenship and everyone born or naturalized in one of the several states became federal citizens (U.S. citizens). The 14th amendment guaranteed that federal citizens had all the rights of state citizens through equal protection under the law and it did so immediately. If it did not do this then the slaves were never freed.

People have a right to trial by jury. It is not acquired by grabbing the attention and favor of the United States Supreme Court by an outstanding petition. It is preserved by the federal government not selectively incorporated and trickled down to the states two hundred years later. Likewise, the dual citizen has a right to a trial by jury and it is not acquired by a nonmovant in a summary judgment proving there are material fact disputes. A judiciary that claims the 7th amendment right to trial by jury does not apply to state citizens is depriving the identical federal citizens of the same while declaring it applies to them. Those that claim the 7th amendment does not apply to state citizens but can be won in the future through "incorporation" have no problem depriving a nonmovant in a summary judgment of a right they don't possess but may obtain if they can win the favor of the judge who is not constrained by methodology to protect said right.

FAILURE OF PLAINFIFF'S FIFTH ARGUMENT

The Plaintiff's fifth assertion attempts to show that the right to trial by jury is not guaranteed because of the existence of summary judgments and directed verdicts. The Defendant is not challenging the judicial concept of summary judgments but rather shows in his Petition for Writ of Certiorari that the summary judgment procedure has two purposes, the first, to avoid the expense of a jury when all the facts of the case are known and agreed to by the parties in contest, and the second, to make sure the nonmovant is not cheated out of their right to a trial by jury.

Directed verdicts, if applied according to law, have nothing to do with confirmation that the 7th and 14th Amendment rights to not apply to common law trials in the states but rather is a safe guard against a jury finding that cannot be supported by the evidence or the law. Directed verdicts prevent unnecessary trials and protect litigants from juries when grossly deceived, prejudiced or confused.

FAILURE OF THE PLAINTIFF'S SIXTH ARGUMENT

The sixth assertion of the Plaintiff is that Wisconsin uses a very similar summary judgment methodology as that of the federal Rules of Civil Procedure and hence the Supreme Court of the United States cannot review the obvious weakness of both. What rule or judicial concept prevents the Supreme Court of the United States from reviewing its own Rules of Civil Procedure and that of state high courts in conflict?

DEFENDANT'S PETITION STANDS OUT IN EVERY SELECTION CRITERIA

Dr. Fetzer has more than "a mere possibility of success on the merits" of reversing the circuit court's summary judgment, as shown by his fulfillment of the 4 known reasons the Court selects only a few of the many qualifying cases over others. Michael R. Dreeben, in his *Statement For*

The Presidential Commission On The Supreme Court Of The United States[1] on June 25, 2021 said there were four reasons the Court grants review:

> I will begin by describing a typology of cases in which the Court grants review—(1) publicly important cases; (2) legally important cases; (3) cases implicating lower-court conflicts; and (4) error-correction cases. Next, I will offer impressions about the Court's performance in selecting cases to hear in these four categories.

THIS IS A PUBLICLY IMPORTANT CASE

Mr. Dreeben, describes **publicly important cases** as follows (**Exhibit B**):

> ...cases that generate national news and garner intense interest from the public. They may raise profound social, cultural, or political issues that grab headlines and have broad ramifications in society. These are often constitutional cases. But they also may involve interpretation of sweeping statutory provisions such as the Affordable Care Act, Title VII, or the Voting Rights Act.

The facts of this case alleged by both sides relate to a very high profile event that has been televised and reported all over the world and continues to this day. Another lawsuit stemming from the same event has just finished resulting in the bankruptcy of a major gun manufacturer and the surrender of the company's entire insurance policy of $73,000,000. Other lawsuits concerning this same event are also receiving much media attention even the televising of the jury trial on damages against Alex Jones. The Pozner v. Fetzer "Sandy Hook" case is also a very high profile and publically important case publicized world wide even now.

THIS IS A LEGALLY IMPORTANT CASE

Mr. Dreeben, describes **legally important cases** as follows (**Exhibit B**):

> This category embraces legal issues that may be of great importance to specific fields of law, the conduct of litigation, or discrete industries, groups, or governments, but that tend to draw less public attention. They may involve technical areas of law, such as patent, copyright, securities, or ERISA, or may implicate questions of law about law: civil or criminal procedure or jurisdictional questions, for instance.

What could be of more legal importance than questions regarding the civil procedural practice

[1] https://www.whitehouse.gov/wp-content/uploads/2021/06/Dreeben-Statement-for-the-Presidential-Commission-on-the-Supreme-Court-6.25.2021.pdf

of summary judgment methodology and how it differs between states to the point that some deny basic constitutional rights of trial by jury while others protect them? What could be more legally important than the question of how the rights of United States citizens are denied equal protection under the law in some states and not in others using what all the states call "summary judgment?" The terms used in summary judgment procedures are technical and not defined sufficiently to avoid errors that violate the purpose of summary judgments and harm those subjected to them such as; "reasonable," "genuine," "admissible," "material," "relevant," "disputed," "inference," "indulge," "resolve," etc. Also, this case involves the legal question of where those terms apply in the summary judgment process, to the admissibility of evidence, or the inferences to be drawn from it, or the party to whom they should apply. This case is froth with legal questions begging for clarification and easy to determine which is something most irresistible to a judicious mind.

THIS CASE IMPLICATES LOWER-COURT CONFLICTS

Mr. Dreeben, describes **cases implicating lower-court conflicts** as follows (**Exhibit B**):

> These arguably compose the majority of the Court's workload. Ensuring uniformity in the interpretation of federal law is a critical part of the Court's function and perhaps the least controversial component of the certiorari docket—except to those who would like to see more grants to resolve conflicts.

Contrary to Mr. Pozner's assertion that *uniformity* between states concerning federal and constitutional law is of no interest to the United States Supreme Court. It is just the opposite. Mr. Dreeben says "ensuring uniformity" is a critical part of the Court's function and least controversial. The Fetzer Petition is also outstanding in this area showing clearly that Wisconsin and Texas have opposite approaches to summary judgment. Texas places the burden of proving there are no genuine issues of material fact in dispute on the movant, or the one who is not at risk of losing their rights to a trial by jury, while Wisconsin puts the same burden on the nonmovant,

or the one who is at risk of being denied their right to a trial by jury and its attending due process. Fetzer's Petition also shows that Texas requires the judge to take all relevant evidence favorable to the nonmovant as true and to indulge all inferences that can be reasonably drawn from that evidence and finally to resolve all questions in favor of the nonmovant.

THIS CASE IS AN ERROR-CORRECTION CASE

Mr. Dreeben, describes **error-correction cases** as follows (**Exhibit B**):

> This category covers both factual and legal errors. While members of the Court say from time to time that "we are not a court of error correction," the summary-reversal docket is largely just that. This class subsumes cases in which the Court ensures adherence to its own precedents and supervises the administration of justice in the federal courts. Generally, the Court resolves error-correction cases through summary reversals rather than plenary grants of review.

This area may contain more federal cases but it is hard to conceive of the Court being uninterested in establishing sound summary judgment methodology through out the states and federal courts and be unconcerned with the error correction in the Petition that brought it to the Court's attention. This is certainly not a *harmless error* case but one that can and should be reversed.

DEFENDANT'S PETITION DOES NOT FALL IN ANY REJECTION CATEGORY

Still further, Dr. Fetzer can show that his Petition not only invokes the Court's jurisdiction under Rule 10(b) and is outstanding in all known criteria for the selection of cases but does not fall into any rejection category of the Court, such as: 1) cases that are bound in fact disputes under well developed law; and 2) cases that the high court will have continual opportunities to address after like cases in state courts "percolate" further to clarify the issues.

THIS IS NOT A FACT BOUND CASE

It is clear that the Fetzer Petition before the Court is not a question of a fact dispute about "Sandy Hook," whether it happened or not, or whether a "death certificate" is real or not. Fetzer's

Petition has to do with judicial procedures that are clearly inadequate to protect the citizens of Wisconsin from being deprived of their right to a trial by jury and the due process and equal protection that attends it while the state of Texas protects their citizens from same in the same judicial procedures.

THIS IS NOT A CONTINUAL PERCOLATION CASE

The Supreme Court of the United States will reject cases that might come up often with opportunities to review them later after the same issues have "percolated" in the lower courts which can clarify the issues making it easier to write an accurate and coherent legal precedent. Even though summary judgment abuse will continue constantly in Wisconsin, these cases will not likely come to the U.S. Supreme Court as the attention by other states will not be present in most to reveal the differences between summary judgment methodologies. This will be the last chance for a long time for the U.S. Supreme Court to incorporate the 7th Amendment and correct unsound summary judgment methodology through out the nation.

CONCLUSION

Mr. Pozner, has failed to show that Dr. Fetzer does not have a superior chance of obtaining a writ of certiorari or that Dr. Fetzer does not have an excellent chance of prevailing on the merits. Therefore, Dr. Fetzer's asks this Circuit Court to grant his Motion to Stay Pozner's "Taking Order" and to stay any and all actions by the Plaintiff to take property until Dr. Fetzer's Petition for Writ of Certiorari is ruled upon.

Respectfully Submitted,

James H. Fetzer, Ph.D.

James H. Fetzer, Ph.D.
Pro Se

NOTICE OF SERVICE

On this 8th day of August 2022, I hereby certify that a copy of **DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO STAY** has been emailed and forwarded by first-class mail (postage paid) to Plaintiff's Counsel, Emily M. Feinstein, Attorney, Quarles & Brady LLP, 33 East Main Street, Suite 900, Madison, WI 53703; and emily.feinstein@quarles.com

James H. Fetzer, PhD.

James H. Fetzer
Pro Se

800 Violet Lane
Oregon, WI 53575
jfetzer@d.umn.edu

Exhibit A

Exhibit A

Search documents in this case: Search

No. 21-7916

Title:	**James Fetzer, Petitioner** **v.** **Leonard Pozner**
Docketed:	May 19, 2022
Lower Ct:	Court of Appeals of Wisconsin, District IV
Case Numbers:	(2020AP121, 2020AP1570)
Decision Date:	March 18, 2021
Discretionary Court Decision Date:	February 16, 2022

DATE	PROCEEDINGS AND ORDERS
May 16 2022	Petition for a writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due June 21, 2022) **Motion for Leave to Proceed in Forma Pauperis** **Petition** **Proof of Service** **Appendix**
Jun 08 2022	Brief amicus curiae of World Peace Through Education Foundation, Inc. filed. **Main Document** **Certificate of Word Count** **Proof of Service**
Jul 07 2022	DISTRIBUTED for Conference of 9/28/2022.

NAME	ADDRESS	PHONE
Attorneys for Petitioner		
James H. Fetzer Party name: James Fetzer	800 Violet Lane Oregon, WI 53575	608-835-2707
Other		
William Sumner Scott Counsel of Record	511 S. Orange Avenue, #2088 Newark, NJ 07103 04wmscott@comcast.net	(908) 294-5363
Party name: World Peace Through Education Foundation, Inc.		

Exhibit B

Exhibit B

CASE SELECTION AND REVIEW AT THE SUPREME COURT

STATEMENT FOR THE PRESIDENTIAL COMMISSION ON THE SUPREME COURT OF THE UNITED STATES
JUNE 25, 2021

Michael R. Dreeben
Partner, O'Melveny & Myers LLP

Thank you for inviting me to address the Presidential Commission on the Supreme Court of the United States on the topic of case selection and review. This is a broad and complex subject, encompassing the Supreme Court's processes for deciding what to hear, when to hear it, and what procedures to employ in making its decisions. I will focus on the Court's exercise of its power to grant discretionary review through certiorari, considering its strengths, its arguable weaknesses, and proposals for reform.

I will begin by describing a typology of cases in which the Court grants review—(1) publicly important cases; (2) legally important cases; (3) cases implicating lower-court conflicts; and (4) error-correction cases. Next, I will offer impressions about the Court's performance in selecting cases to hear in these four categories. Finally, I will comment on some suggestions to address perceived deficiencies in the Court's case-selection process. While the process may not be perfect, none of the more ambitious proposals—such as creating a "certiorari division" composed of court of appeals judges to select cases for review, or restoring categories of mandatory jurisdiction—has sufficient benefit

docket.[4] And the Court hears and resolves only about 70 cases a term. What motivates four (or more) Justices to grant review, and why, is left to their own private judgment.

Nevertheless, the Rule 10 standards, the occasional concurrences or dissents at the certiorari stage, and most importantly, the types of cases that the Court votes to grant suggest that four types of cases tend to find a place on the Court's docket:

(1) **Publicly important cases**. These are the high-profile cases that generate national news and garner intense interest from the public. They may raise profound social, cultural, or political issues that grab headlines and have broad ramifications in society. These are often constitutional cases. But they also may involve interpretation of sweeping statutory provisions such as the Affordable Care Act, Title VII, or the Voting Rights Act.

(2) **Legally important issues**. This category embraces legal issues that may be of great importance to specific fields of law, the conduct of litigation, or discrete industries, groups, or governments, but that tend to draw less public attention. They may involve technical areas of law, such as patent, copyright, securities, or ERISA, or may

[4] *See* Kathryn A. Watts, *Constraining Certiorari Using Administrative Law Principles*, 160 U. Penn. L. Rev. 1, 3 n.3 (2011). The rate is higher for paid petitions than in forma pauperis petitions, but it is low for both. *Id.*

implicate questions of law about law: civil or criminal procedure or jurisdictional questions, for instance.

(3) **Conflicts**. These arguably compose the majority of the Court's workload. Ensuring uniformity in the interpretation of federal law is a critical part of the Court's function and perhaps the least controversial component of the certiorari docket—except to those who would like to see more grants to resolve conflicts.

(4) **Error correction**. This category covers both factual and legal errors. While members of the Court say from time to time that "we are not a court of error correction,"[5] the summary-reversal docket is largely just that. This class subsumes cases in which the Court ensures adherence to its own precedents and supervises the administration of justice in the federal courts. Generally, the Court resolves error-correction cases through summary reversals rather than plenary grants of review.

Of course, the Court's docket can be characterized in many different ways, aside from this typology. Cases could be classified as constitutional or statutory; state or federal; governmental or private; civil or criminal; and on and on. Even taking the categories sketched above, many cases fall into two or even three of these categories. Nevertheless, these categories offer one way of asking what the Court may be doing right or arguably wrong in granting certiorari.

---

[5] *Martin v. Blessing*, 571 U.S. 1040, 1045 (2013) (statement of Alito, J., respecting the denial of certiorari).

Finally, any Justice who wishes can file a statement respecting the denial of certiorari or a dissent. Justices may file such statements to make clear that they would encourage pursuit of the issue, just not in that case or in its particular procedural posture. And dissents from the denial of certiorari can send an even stronger message. Given this option of informing the public about the Court's inner workings at the certiorari stage, the benefits of routinely requiring the disclosure of certiorari votes would appear to be outweighed by its costs. At any rate, the Court has consistently made the judgment not to routinely disclose certiorari votes, and the case for displacing that conclusion has not been made.

–