No. 22-180

In The
Supreme Court of the United States

MATTHEW STANEK
SANDRA STANEK
BOGDAN STANEK,
Petitioners

v.

ST. CHARLES COMMUNITY UNIT
SCHOOL DISTRICT NO. 303, et al.,

Respondents.

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

PETITION FOR REHEARING

MATTHEW STANEK
SANDRA STANEK
BOGDAN STANEK
4115 Prairie Crossing Dr.
St. Charles, IL 60175
(630) 400-0071
castlerentals@comcast.net

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND OTHER AUTHORITIES

PETITION FOR REHEARING

Petitioners Matthew Stanek, Sandra Stanek, and Bogdan Stanek petition for rehearing of this Court's October 31, 2022 Order denying their petition for a writ of certiorari. Pursuant to Supreme Court Rule 44.2, this petition for rehearing is filed within 25 days of this Court's decision in this case.

REASONS FOR GRANTING REHEARING

This Court's Rule 44.2 authorizes a petition for rehearing based on "other substantial grounds not previously presented." R. 44.2.

This case involves two fundamental issues: The constitutional right of America's disabled to effective communication and equal access to federal courts, and the significant First Amendment issue, a substantial matter that was not previously presented but provides an additional and independent justification for this Court's review.

I. THE SEVENTH CIRCUIT'S DECISION PROMOTES A CAMPAIGN TO RESTRICT FREE SPEECH RIGHTS THAT WILL DISPROPORTIONATELY LIMIT THE RIGHTS OF CIVIL RIGHT ACTIVISTS

We live in times of uncertainty where civil rights advocates can be deprived of their property

rights forever without due process and sanctioned in federal court based solely on their pure speech. Petitioners, Matthew, Sandra, and Bogdan Stanek are disability rights advocates and members of a nonprofit organization called "Autism Movement" established in 2011 in the State of Illinois whose mission is to advance equality and the rights of people with a disability. Their mission statement in part states: "Autism Movement is dedicated to advocacy and support for individuals with autism and their families.... committed to ensuring their voices are heard and their rights are protected."

However, their voices cannot be heard, and their rights cannot be protected as long as Judges in the Seventh Circuit use sanctions under Rule 37 as a device for the suppression of speech and communication of ideas. This remarkable use of a novel liability theory to target and chill political speech led to truly unusual proceedings below, in which the court of appeals affirmed sanctions with dismissal of their causes of action against Sandra and Bogdan Stanek (Parents), holding them vicariously liable for their adult son's Matthew alleged disobedience of the Magistrate's order.

A. Immediate Review Is Necessary to Prevent A Gravely Wrong Decision From Chilling The Free Exercise Of Core Political Speech.

This Court's intervention is needed now for

several reasons. First, the Seventh Circuit's opinion imposes the vicarious liability for peaceful activists, and in doing so, curtails and chills the exercise of free speech. Its rule—that even a bare unproved allegation of inciting an unlawful act is sufficient to remove speech from the protection of the First Amendment—will have far-reaching consequences if not immediately reviewed. Indeed, the premise of the Seventh Circuit's opinion—that citizens and courts alike should assume that unlawful conduct is a likely result if political speech is expressed in the presence of the court—is antithetical to fundamental First Amendment values. It is the form of speech that ordinarily rests "on the highest rung of the hierarchy of First Amendment values." *Naacp v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982)

B. The Seventh Circuit's Vicarious Liability Theory Violates the First Amendment Under Claiborne.

Second, the Seventh Circuit's unconstitutional liability rule could not be more wrong. Even if Parents could be liable under any law for inciting Matthew, such a claim would be foreclosed—squarely—by controlling precedent of this Court in Claiborne—a decision recognized to be among this Court's "most significant" First Amendment precedents. Cloer v. Gynecology Clinic, Inc., 528 U.S. 1099, 1099 (2000) (Scalia, J., dissenting from denial of cert.). And the ruling below is likewise

irreconcilable with closely related landmark decisions restricting liability for incitement and guilt by association. "Recognizing that guilt by association is a philosophy alien to the traditions of a free society and the First Amendment itself". *Claiborne Hardware Co.*, 458 U.S. 886, 932 (1982) The review is needed here for the same reasons it was in Claiborne: because the speech and associational rights at issue are both so integral to self-government and so "fragile." 458 U.S. at 931. Just as the speech in Claiborne largely dealt with a matter of public concern—racial discrimination—the instant case deals with equally important public issue of disability discrimination and thus merited heightened First Amendment protection." Id at 915. The courts below do not allege that Parents are the "party" who failed to attend their own depositions or obey any court's order, or to provide or permit discovery under Rule 37. Rather Parents were held in fault for Matthew's alleged wrongful act. The Seventh Circuit wrote in its opinion that "Matthew violated the order—**with his parents' encouragement**" and "[t]his was sufficient grounds for sanctions under Rule 37(b)(2)" against both Parents. Pet.App.7a

However, the Claiborne Court explained that the boycott there at issue among others included "*encouragement of others* to join their cause." *Id.* at

907. The Court concluded that "Each of these elements of the boycott is a form of speech or conduct that is ordinarily entitled to protection under the First and [Fifth] Amendments" Id. The Seventh Circuit failed to state any federal law grounds or identify any action that Parents undertook that would justify vicarious liability claims against the Parents, and to deprive them of their own causes of action. There is no evidence that the Parents advocated an imminent unlawful act, "authorized, directed, or ratified" to do anything unlawful just the Court's bald, conclusory assertion that they encouraged Matthew to disobey the order. Id at 927. Nor does the Seventh Circuit assert that the Parents's speech falls into an unprotected category of expression, such as speech that "incite violence" or "specifically authorize the use of violence." *Id at* 886, 887.

The Seventh Circuit held Parents "deeply involved" "in Matthew's failure to attend his deposition" because they "*participated* every step of the way, filing motions, sending emails... This Court held that "liability may not be imposed on Evers for his presence at NAACP meetings *or his active participation* in the boycott itself." Id at 926. Thus, the only allegation of incitement in the instant case comes from expressing ideas through petitions, motions, emails, speaking in an open court, in other

words petitioning government for redress of grievances. These nonviolent elements of the petitioners' activities are entitled to the protection of the First Amendment. Id at 886. "Petitioners "use courts to advocate their causes and points of view" "[t]hrough exercise of their First Amendment rights of speech, assembly, association, and petition, rather than through riot or revolution, petitioners sought to bring about political, social, and economic change." *BEK CONSTR. CO. v. NLRB*, 536 U.S. 516, 525 (2002)

"[O]ne of the foundations of our society is the right of individuals to combine with other persons in pursuit of a common goal by lawful means" Id at 933. Like in Claiborne, Petitioners have "banded together" to express, collectively, their dissatisfaction with a social structure that had denied [Matthew and the disabled] rights to equal treatment and respect and to influence governmental action." Id.

Thus, their speech and conduct is protected for the same reason as the boycotters' conduct in *Claiborne* was protected. The Court, explained: "the First Amendment restricts the ability of the [Government] to impose liability on an individual solely because of his association with another." *Id at* 886, 918-19. Government "may not employ `means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." Id at 920. Here, government regulation (Rul 37) is not

sufficiently justified, and it does not further an important or substantial governmental interest because the interest is related to the suppression of free expression; and the incidental restriction on alleged First Amendment freedoms is greater than is essential to the furtherance of that interest. See *Id at* 913 n.47. This Court acknowledged that while Government has a broad power to regulate court activity, it does not find a comparable right to prohibit peaceful political activity such as that found in this case. See Id at 913..

The Court found Petitioners' motions to be burdensome because they proposed their views and ideas on public issues that did not align with their beliefs, but this Court "have said time and again that 'the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.' Matal v. Tam , — – U.S. ——, 137 S.Ct. 1744, 1763, 198 L.Ed.2d 366 (2017). It "recognized that "by collective effort individuals can make their views known, when, individually, their voices would be faint or lost." *Id.*

It follows that if the Seventh Circuit's ruling stands, party seeking to undermine a political movement will be able to force an activist out of the court based on nothing more than generic and conclusory allegations of lawbreaking conduct. The power to bar or open the courthouse door is one of

the most consequential in our federal judicial system. This case concerns the proper scope of that power.

As long as courts continue to sanction litigants who are associated with those with unpopular views, American people will be put "into goose-stepping brigades" which are not compatible with the First Amendment." *Lathrop v. Donohue*, 367 U.S. 820, 884 (1961)

Seventh Circuit's order is a "First Amendment anomaly" and should be overruled. *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2484 (2018).

This should had been a deeply American free-speech success story. But if the Seventh Circuit can replace Claiborne with a regime of "vicarious liability" and "guilt by association" in 2022, under which an activist with a message should fear liability for the unlawful actions of others, this case will be a warning to American citizens that our democracy is in a dire jeopardy.

C. Petitioners Were Denied Due Process and Equal Protections of Law

Under the principles of Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1982) this Court has long said that Petitioners' "legal claims are a constitutionally protected form of property" entitled to protection of the Fifth Amendment "as any other property against arbitrary interference and "it is not

competent for the legislature to take it away." Id at 428. The Seventh Circuit stated that Parents forfeited their property rights by not defending them prior to the district court's ruling on sanctions, but in order to defend a party has to be told what they are charged with prior to the ruling. Defendants' motion for sanction does not provide a reasonable notice because it does not allege that the parents are personally failing to comply with any discovery or court order or encouraging Matthew to do any unlawful act. It asks to impose sanction with a dismissal against all three petitioners ***for Matthew's disobedience*** of a court's order. Parents simply stated they could not force Matthew to attend his deposition because he is a competent adult.. The Magistrate "expressly warned that the Court would be justified under Federal Rule of Civil Procedure 37(b)(2)(A)(v) in **dismissing *Matthew's claims*** with prejudice based on ***his failure to appear*** for his scheduled deposition as ordered by this Court." [Docket 422 at 2]. Petitioners learned about the allegation of "encouragement" in the appellate court ruling in violation of a due process. Parents had no reason to believe that their own causes of action would be dismissed if Matthew failed to appear for his deposition.

However, it is not only denial of a procedural due process in a question here. It is that limit put on Petitioners' ability to assert their statutorily created cause of action which violates the strictures

of due process. As such, this case is guided by the principles articulated by the Court in Logan ,455 U.S. 422, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982). Petitioners were denied "constitutionally adequate notice and hearing procedures" "appropriate to the nature of the case" *prior* to the district court's ruling as required by Logan in violation of the Fifth Amendment.. Id., at 313. District Court denied them even few extra pages in a single joint brief to respond to Defendants motion for sanctions. This Court has held numerous times that a post deprivation hearing would be constitutionally inadequate in cases like this. Id citing cases. What the Fifth Amendment does require, however, "is `an opportunity . . . granted at a meaningful time and in a meaningful manner" Id. "Terminating potentially meritorious claims in a random manner obviously cannot serve to redress instances of discrimination" Id at 439. Petitioners were also denied equal protections of law. " [G]iving preference to a discrete class "merely to accomplish the elimination of hearings on the merits, is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause . . . ." Id at 442.

D. The Decision Below Conflicts with Another Supreme Court's "Phantom" Precedent

The doctrine of *stare decisis* gets rough treatment in the Seventh Circuit in this case. Petitioners in their petition for certiorari wrote in detail about the tension between *PGA Tour, Inc. v.*

Martin, 121 S. Ct. 1879, 1889 (2001) and the Seventh Circuit decision in Shott v. Vedder Price, P.C., No. 13-1732, 2 (7th Cir. Aug. 16, 2013) , which is hard to miss, yet the courts below simply ignored it. Perhaps Circuit Judge Wood in the Stanek Panel wanted to preserve her prior ruling in Shott and Circuit Judge Kanne wanted to preserve his reasoning in *Olinger v. United States Golf Association*, 205 F.3d 1001(7th Cir. 2000). It would be proper if Olinger was not overruled by this Court in Martin over twenty years ago.

If *PGA Tour v. Martin* was never a precedent, "it would mean that the entire legal profession was fooled for the past [21] years." *Ramos v. Louisiana*, 140 S. Ct. 1390, 1428 (2020). Even the Petitioners were fooled by believing that Martin provided some hope for equality to America's disabled. This Court recently said that we should not be easily fooled to believe that "the precedent, was a mirage." *Ramos v. Louisiana*, 140 S. Ct. 1390, 1429 (2020) According to Justice Kavanaugh, [t]he idea that [*Martin*] was a phantom precedent defies belief. And it certainly disserves important objectives that *stare decisis* exists to promote, including evenhandedness, predictability, and the protection of legitimate reliance." Id. If the "vertical stare decisis is absolute, as it must be in a hierarchical system with 'one supreme Court'" than why the precedents becoming "a mirage" in the Seventh Circuit? Id at 1416 n.5..

Perhaps, it is time to inform the rest of the sixty million disabled America's and their families that they were all equally fooled as Petitioners.

E. Matthew's Speech Was Also Protected By The First Amendment

The famous email cited over and over by the Defendants and the Courts below, one that Matthew wrote to the defense counsel in protest of violating his Fifth and the First Amendment right was an expression of an idea, and a pure speech. Pet. App.21-22a. "The emotionally charged rhetoric of [Matthew's] speeches did not transcend the bounds of protected speech set forth in" *Claiborne Hardware Co.*, 458 U.S. 886, 928 (1982) but it was the main reason why the district judge imposed the sanctions with dismissal without giving Matthew an opportunity to obey his order after he overruled his objections. The Defendants argued that that email was indication that he was planning to disobey district court's order and the district court agreed. However, in their motion to compel, Defendants asserted "Matthew stated that he would only be present for the deposition if th[e] Court denies his motion for a protective order." Docket 418 at 6. This shows that Matthew was never intending to disobey the district's court's order.

As this Court concluded in Claiborne, an "advocate must be free to stimulate his audience with spontaneous and emotional appeals for unity

and action in a common cause" because "debate on public issues should be uninhibited, robust, and wide-open." *Claiborne*, 458 U.S. 886, 928 (1982)

We can only praise leaders like Rosa Parks and Dr. King, two nationally recognized symbols of dignity and strength for inciting the civil right movement in the struggle to end racial segregation. Yet sixty-seven years later, the Courts below ostracize Matthew for protesting his unconstitutional deposition via pure speech and accuse his Parents for inciting his protest. What are we going to tell our grandchildren. That what Rosa Parks and Dr. King had done was politically correct, but what Matthew and his Parents did was wrong. Is that the message that the Court wants to send to American people?

In 1964, this Court in *Bell v. Maryland*, 378 U.S. 226, (1964) held that protests like Matthew's was his "affirmative right" under the statute and US Constitution, an act that cannot be punished by the government See Id.. The majority held that "the Constitution guarantees to all Americans the right to be treated as equal members of the community with respect to public accommodations." Id at 242. The dissent in Bell still argued "that the Constitution permits American citizens to be denied access to places of public accommodation solely because of their race or color." Id at 287. Perhaps one day someone will look back to 2022 and say, there was a case where a group of Judges in the

Seventh Circuit still believed "that the Constitution permits American citizens to be denied access to places of public accommodation solely because of their [disability]" Id. Unless this Court grants certiorari, America's disabled will have to face this "tragic reality." Id at 242. In order to ensure that sixty million Americans with disabilities are treated with dignity and respect, this Honorable Court needs to grant certiorari so that itself lives up to a core tenet behind the ADA and US Constitution – ensuring full and equal access to justice.

CONCLUSION

For the foregoing reasons, and those stated in the petition for a writ of certiorari, the Court should grant rehearing, grant the petition for writ of certiorari, and review the judgment below.

Respectfully submitted

MATTHEW STANEK
Pro Se
SANDRA STANEK
Pro Se
BOGDAN STANEK
Pro Se
4115 Prairie Cros. Dr
St. Charles, IL 60175
(630) 400-0071
castlerentals@comcast.net