**Nos. 24-1865, 24-1866, 24-1867 & 24-1868**

# In the United States Court of Appeals for the Seventh Circuit

IN RE: PARAQUAT PRODUCTS LIABILITY LITIGATION

FREDERICK L. RICHTER, et al.,

*Plaintiffs-Appellants,*

v.

SYNGENTA CROP PROTECTION, LLC, et al.,

*Defendants-Appellees.*

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Appeals from the United States District Court
for the Southern District of Illinois, Nos. 3:21-md-03004-NJR, 3:21-pq-01218-NJR,
3:21-pq-00571-NJR, 3:21-pq-01560-NJR and 3:21-pq-00836-NJR.
The Honorable Nancy J. Rosenstengel, Chief District Judge Presiding.

## *AMICUS CURIAE* BRIEF OF THE ATLANTIC LEGAL FOUNDATION IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE

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# APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: Nos. 24-1865, 24-1866, 24-1867, 24-1868

Short Caption: In re Paraquat Prod. Liab. Litig. -- Richter v.Syngenta Crop Protection, LLC

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Attorney's Signature: /s/ Lawrence S. Ebner Date: Oct. 2, 2024

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**APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT**

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N/A

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Attorney's Printed Name: Eric G. Lasker

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**APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT**

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Attorney's Printed Name: Elyse A. Shimada

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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## INTEREST OF THE *AMICUS CURIAE* [1]

Established in 1977, the Atlantic Legal Foundation (ALF) is a national, nonprofit, public interest law firm. Its mission is to advance the rule of law and civil justice by advocating for individual liberty, free enterprise, property rights, limited and responsible government, sound science in judicial and regulatory proceedings, and effective education, including parental rights and school choice. With the benefit of guidance from the distinguished legal scholars, corporate legal officers, private practitioners, business executives, and prominent scientists who serve on its Board of Directors and Advisory Council, ALF pursues its mission by participating as *amicus curiae* in carefully selected appeals before the Supreme Court, federal courts of appeals, and state appellate courts. *See* atlanticlegal.org.

[1] Appellants and Appellees have consented to the filing of this brief. In accordance with Federal Rule of Appellate Procedure 29(a)(4)(E), undersigned counsel hereby state that no party's counsel authored this brief in whole or part, and no party or party's counsel, and no person other than the *amicus curiae*, its supporters, or its counsel, contributed money that was intended to fund preparing or submitting the brief.

ALF long has been one of the nation's foremost advocates for ensuring that federal district courts fulfill their gatekeeping role under Federal Rule of Evidence 702 by admitting into evidence, or otherwise considering, only expert testimony that is reliable.

For example, on behalf of esteemed scientists such as Nicholaas Bloembergen (a Nobel laureate in physics) and Bruce Ames (one of the world's most frequently cited biochemists), ALF submitted amicus briefs in each of the "*Daubert* trilogy" of cases—*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *General Electric Co. v. Joiner*, 522 U.S. 136 (1997); and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999)—concerning admissibility of expert testimony under Federal Rule of Evidence 702. In *Daubert*, 509 U.S. at 590, the Supreme Court quoted ALF's brief on the meaning of "scientific . . . knowledge" as used in Federal Rule of Evidence 702(a).

More recently, ALF submitted to the U.S. Judicial Conference's Committee on Rules of Practice and Procedure (commonly known as the "Standing Committee") written comments supporting Rule 702 amendments that reinforce a federal district court's duty to serve as an

expert testimony gatekeeper. These clarifying amendments became effective on December 1, 2023.

## INTRODUCTION

The overarching issue in this appeal is whether the district court properly exercised its gatekeeping role under Federal Rule of Evidence 702 by excluding the testimony of Appellants' general-causation expert, Dr. Martin Wells, in the *Paraquat Products Liability* multidistrict litigation. Chief Judge Nancy Rosenstengel's 97-page Memorandum and Order—the court's "*Daubert* Order"—is a model for how district courts should assess the reliability of proffered expert testimony "on the critical issue general causation"—here, testimony "offering an opinion that occupational exposure to paraquat," an extensively studied, U.S. EPA-regulated herbicide, "can cause Parkinson's disease." A.2.[2]

As Judge Rosenstengel's meticulous admissibility analysis demonstrates, the district court was fully "[m]indful of its role as the witness stand's 'vigorous gatekeeper' . . . closely scrutiniz[ing] the reliability of proferred expert testimony." A.9 n.9 (quoting *Robinson v. Davol, Inc.*, 913 F.3d 690, 696 (7th Cir. 2019)). The court fulfilled this

[2] References are to the Short Appendix accompanying Appellants' brief.

"critical gatekeeping duty," A.69, by excluding the testimony of Dr. Wells.

*Amicus curiae* Atlantic Legal Foundation leaves it to Appellees to delve into the details of the district court's analysis. Instead, this amicus brief endeavors to enhance this Court's perspective on Rule 702 by providing additional background on the genesis, purpose, and adoption of the Rule 702 Amendments that took effect on December 1, 2023,[3] and by discussing the relationship between unreliable scientific testimony and due process.

## ARGUMENT

### As Recently Amended, Federal Rule of Evidence 702 Is An Essential Bulwark Against Admission of Unreliable Expert Testimony

#### A. Recent amendments to Rule 702 reinforce district courts' expert testimony gatekeeping role

On December 1, 2023, Federal Rule of Evidence 702 was amended in response to the determination of the Standing Committee's Advisory Committee on Evidence Rules ("Advisory Committee") that many courts

[3] The amended text of Rule 702 is available at https://tinyurl.com/2azkurv5.

were applying the Rule incorrectly.[4] Specifically, the Reporter to the Advisory Committee, Daniel J. Capra, identified a pervasive problem of "wayward caselaw" in which federal courts had been "far more lenient about admitting expert testimony than any reasonable reading of the Rule would allow."[5] Professor Capra went on to conclude that "courts have *defied* the Rule's requirements," and he lamented that the Evidence Rules were being "disregarded by courts."[6]

The Advisory Committee conducted its own review and reached a similar conclusion, bemoaning that in a "number of federal cases . . . judges did not apply the preponderance standard of admissibility to [Rule 702's] requirements of sufficiency of basis and reliable application of principles and methods, instead holding that such issues were ones of

[4] The Advisory Committee's rule-revision effort was triggered by a 2015 law review article co-authored by one of the signatories to this brief. *See* D. Bernstein & E. Lasker, *Defending Daubert*: *It's Time to Amend Federal Rule of Evidence* 702, 57 Wm. & Mary L. Rev. 1 (2015), available at https://tinyurl.com/3znahmfn.

[5] Daniel J. Capra, Reporter, Mem. To: Advisory Comm. on Evid. Rules Re: Pub. comment suggesting an amendment to Rule 702 (Oct. 1, 2016) in Advisory Comm. on Rules of Evid. Agenda Book 259, 262 (Oct. 21, 2016), available at https://tinyurl.com/9x9jk6ff.

[6] *Id.* at 268, 271.

weight for the jury."[7] In response to these issues, the Advisory Committee proposed amendments to Rule 702 to clarify two important aspects of the Rule.

*First*, the Committee sought "to clarify and emphasize that expert testimony may not be admitted unless the proponent demonstrates to the court that it is more likely than not that the proffered testimony meets the admissibility requirements set forth in the rule." Fed. R. Evid. 702 Advisory Comm.'s Notes to 2023 Amendments ("2023 Notes").[8]

*Second*, the Amendments clarified "that each expert opinion must stay within the bounds of what can be concluded from a reliable application of the expert's basis and methodology" under Rule 702(d). *Id.*

These clarifications to Rule 702—which ultimately were adopted—were the product of eight years of extensive analysis by the Advisory Committee. Their purpose is reflected both in the Advisory Committee's

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[7] Advisory Comm. on Evid. Rules, *Minutes of the Meeting of Nov. 13, 2020* in Advisory Comm. on Evid. Rules, Agenda Book 15, 17 (Apr. 30, 2021), available at https://tinyurl.com/ycxvurnv.

[8] Available at https://tinyurl.com/2azkurv5.

Notes accompanying the newly amended Rule and in the Advisory Committee's working papers and publications.

Advisory Committee's Notes provide the most succinct and readily accessible guide to the proper application of federal court rules. Published alongside the rules themselves, Advisory Committee's Notes are subject to the same rule-making process, public notice and comment, and Supreme Court and congressional review and approval as the rules themselves. *See Class v. United States*, 583 U.S. 174, 187-88 n.2 (2018) ("Advisory Committee's Notes are adopted by the committee that drafts the rules; they are considered by the Judicial Conference when it recommends promulgation of the rule; they are before this Court when we prescribe the rule under the Rules Enabling Act . . . ."). As such, "[a]lthough not binding, the interpretations in the Advisory Committee Notes are nearly universally accorded great weight in interpreting federal rules." *Horenkamp v. Van Winkle & Corp.*, 402 F.3d 1129, 1132 (11th Cir. 2005) (internal quotation marks omitted); *see, e.g.*, *Tome v. United States*, 513 U.S. 150, 160 (1995) ("We have relied on [the] well-considered [Advisory Committee's] Notes [to the Federal Rules of

Evidence] as a useful guide in ascertaining the meaning of the Rules.") (citations omitted).

As with Advisory Committee's Notes, there is a solid body of judicial authority holding that Advisory Committee deliberations provide important guidance in the interpretation of federal rules. In *Mississippi Publishing Corp. v. Murphree*, 326 U.S. 438, 444 (1946), for example, the Supreme Court looked to statements from the Advisory Committee's spokesperson when construing the meaning of Fed. R. Civ. P. 4(f). Later, in *Amchem Products v. Windsor*, 521 U.S. 591, 613-19 (1997), the Supreme Court relied upon public statements by the Advisory Committee reporter to assist in determining the meaning of Fed. R. Civ. P. Rule 23(b)(3). *See also United States v. Petri*, 731 F.3d 833, 839-40 (9th Cir. 2013); *Whalen v. Ford Motor Credit Co.*, 684 F.2d 272 (4th Cir. 1982) (en banc).

### 1. The Rule 702 Amendments make it clear that the preponderance-of-evidence standard applies to every subpart of the Rule

The Advisory Committee's Notes to the 2023 Rule 702 Amendments make it abundantly clear that the courts that previously disregarded Rule 702's preponderance standard (or applied it only to some of the Rule)

were incorrect. The Notes admonish the "many courts [that] have held that the critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology, are questions of weight and not admissibility," and expressly state that those rulings are "an incorrect application of Rule 702 and 104(a)." 2023 Notes, *supra*. The Advisory Committee's Notes specify that the 2023 Amendments "clarif[y] that the preponderance standard applies to the three reliability-based requirements . . . that many courts have incorrectly determined to be governed by the more permissive Rule 104(b) standard." *Id.*

While this preponderance-of-evidence standard was already implicit in Rule 702—and in *Daubert*—the Advisory Committee recognized that many courts were ignoring this standard. By proposing to insert the preponderance-of-evidence standard directly into the text of Rule 702, the Advisory Committee sought to emphasize that a court must determine that it is more likely than not, that an expert's opinion is not only reliable, but also reflects a reliable application of the principles and methodology to the facts of the case—exactly what Judge Rosenstengel did here.

The Advisory Committee did not stop there in critiquing the courts that ignored the preponderance-of-evidence standard. It expressed great concern that "many courts have held that the critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology, are questions of weight and not admissibility." 2023 Notes, *supra*. "These rulings are an *incorrect* application of Rule 702 and 104(a)." *Id.* (emphasis added); *see also* Advisory Committee, *Minutes of the Meeting of Nov. 13, 2020*, *supra* at 18 ("[F]ederal cases . . . revealed a pervasive problem with courts discussing expert admissibility requirements as matters of weight.").

The Chair of the Advisory Committee's Subcommittee on Rule 702, District Judge Thomas Schroeder, specifically called attention to one of the primary cases that Appellants rely on here—*Milward v. Acuity Specialty Products Group, Inc.*, 639 F.3d 11 (1st Cir. 2011)—"as a prime example of the problem" that courts were ignoring their gatekeeping role. Thomas D. Schroeder, *Toward a More Apparent Approach to Considering the Admission of Expert Testimony*, 95 Notre Dame L. Rev. 2039, 2044 (2020). Judge Schroeder critiqued *Milward*, explaining that

> [t]he problem with the court's analysis is that it appears to require a preponderance standard for application of

> Rule 702(c) (reliable method) but not for Rule 702(b) (sufficiency of basis). This, even though the trial judge had found that the expert's assumptions were "plausible" but not "based on sufficient facts and data to be accepted as a reliable scientific conclusion"—a Rule 104(a) determination.

*Id.* at 2045 (quoting *Milward*, 639 F.3d at 22).

Along the same lines, Judge Schroeder criticized another of Appellants' principal authorities, *Kuhn v. Wyeth, Inc.*, 686 F.3d 618 (8th Cir. 2012). *See* Schroeder, *supra* at 2048-49 ("the district court properly exercised its gatekeeping function by concluding that the proffered opinion simply lacked sufficient, reliable basis," and the court of appeals opinion reversing the district court "seems to be an abdication of the gatekeeping function").

**2. A reliable methodology is not enough to satisfy Rule 702**

The 2023 Amendments also make clear that it is not enough for an expert to have a reliable methodology to pass muster under Rule 702. The Advisory Committee emphasized that the judicial gatekeeping responsibility "is essential because just as jurors may be unable, due to lack of specialized knowledge, to evaluate meaningfully the reliability of scientific and other methods underlying expert opinion, jurors may also

lack the specialized knowledge to determine whether the conclusions of an expert go beyond what the expert's basis and methodology may reliably support." 2023 Notes, *supra*.

The importance of a court's gatekeeping role was further explained in the Advisory Committee's Report to the Standing Committee:

> The language of the amendment more clearly empowers the court to pass judgment on the conclusion that the expert has drawn from the methodology. Thus the amendment is consistent with *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), in which the Court declared that a trial court must consider not only the expert's methodology but also the expert's conclusion; that is because the methodology must not only be reliable, it must be reliably applied.

Report to the Standing Committee, Advisory Committee on Evidence Rules, at 6 (May 15, 2022) ("2022 Advisory Committee Report").[9]

Appellants' chief argument rests on the fact that meta-analyses and the Bradford Hill criteria are reliable methodologies for establishing causation. *See* Appellants' Br. at 22, 43. They claim that any issues with the application of those methodologies are "fodder for cross examination." *See id.* at 37-38. But this is the exact argument that the Advisory

[9] Available at https://tinyurl.com/4vmtdkhx.

Committee rejected during its consideration of the 2023 Amendments. The Committee made clear that the court must pass judgment on the conclusion that the expert reached using those methodologies—indeed, this is the court's crucial task as gatekeeper under Rule 702. *See* 2022 Advisory Committee Report at 6. Judge Rosenstengel correctly determined that Dr. Wells had not applied his meta-analysis or Bradford Hill analysis in a reliable manner. *See* A.79-82.

### B. Junk science deprives defendants of due process and a fair trial

Due process requires a fair trial. "While the Constitution certainly protects other values as well, the [due process] rights protected by the Fifth Amendment . . . can be understood as largely focused on establishing mechanisms for guarding against unreliable evidence." Keith A. Findley, *Judicial Gatekeeping of Suspect Evidence: Due Process and Evidentiary Rules in the Age of Innocence*, 47 Ga. L. Rev. 723, 725 (2013). Unlike here, when trial judges fail to fulfill their "critical gatekeeping duty," A.69, and admit unreliable scientific testimony, defendants are deprived of a fair trial and due process.

Junk science is "'the science of things that aren't so.'" Peter Huber, *Junk Science and the Jury*, 1990 U. Chi. Legal F. 273, 276 (1990) (quoting

Irving Langmuir, *Pathological Science* (1953)). It can be defined as "scientific testimony based on idiosyncratic, invalid, or unreliable science, in which the methodologies used are not generally accepted by the relevant scientific community." Thomas G. Gutheil, M.D. & Harold J. Bursztajn, M.D., *Attorney Abuses of Daubert Hearings: Junk Science, Junk Law, or Just Plain Obstruction?*, 33 J. Am. Acad. Psychiatry L. 150, 150 (2005). "Referred to as science without evidence, junk science typically employs questionable methodology to reach unsupported conclusions" based on "grossly fallacious interpretations of scientific data or opinions." Debra L. Worthington, et al., *Hindsight Bias, Daubert, and the Silicone Breast Implant Litigation: Making the Case for Court-Appointed Experts in Complex Medical and Scientific Litigation,* 8 Psych., Pub. Pol'y, & L. 154, 158 (2002) (internal quotation marks and citations omitted).

Although "[j]udicial concern over junk science is at least [120] years old," Henry P. Sorett, *Junk Science in the States: The Battle Lines*, Atl. Legal Found., Science in the Courtroom Rev. 30 (Autumn 2000), the now common phrase "'junk science' seems to have emerged in the late 1980s and early 1990s" due to "the rising epidemic of toxic tort cases."

Jim Hilbert, *The Disappointing History of Science in the Courtroom: Frye, Daubert, and the Ongoing Crisis of "Junk Science" in Criminal Trials*, 71 Okla. L. Rev. 759, 774, 776 n.90 (2019). "[D]efendants and the defense bar complained about courts being hoodwinked by 'junk science' in mass tort cases. They accused plaintiffs' attorneys of manufacturing toxic tort cases by calling dubious scientific experts willing to testify to just about anything." Edward K. Cheng, *The Consensus Rule: A New Approach To Scientific Evidence*, 75 Vand. L. Rev. 407, 412 (2022).

"The expansion of products liability and punitive damages law has resulted in a windfall for contingency-fee lawyers who specialize in challenging deep-pocket corporate defendants, with the use of allegedly qualified 'experts' who, in truth, courts have often found to be less than reliable, if not purveyors of so-called 'junk science.'" *Jansen v. Packaging Corp. of Am.*, 123 F.3d 490, 541 (7th Cir. 1997) (Coffey, J., concurring in part and dissenting in part). In an article discussing trial lawyers' ethical responsibilities, former Attorney General Dick Thornburgh observed that "'junk science' in the courtroom emanates from testimony by expert witnesses hired not for their scientific expertise, but for their willingness, for a price, to say whatever is needed to make

the client's case." Dick Thornburgh, *Junk Science – The Lawyer's Ethical Responsibilities*, 25 Fordham Urb. L.J. 449, 449 (1998). In fact, "expert witness services now represent a billion-dollar industry." Judge Bradford H. Charles, *Rule 706: An Underutilized Tool To Be Used When Partisan Experts Become "Hired Guns,"* 60 Vill. L. Rev. 941, 946 (2015).

The Seventh Circuit long has recognized both the unfairness of junk science testimony and district courts' crucial role in keeping junk science away from juries. Three decades ago, for example, Judge Posner recognized the "firm control over the conduct of litigation" that district court judges "exercise . . . to prevent litigation . . . from being degraded by 'junk science.'" *Braun v. Lorillard, Inc.*, 84 F.3d 230, 233 (7th Cir. 1996); *see also Wilson v. City of Chicago*, 6 F.3d 1233, 1238 (7th Cir. 1993) (discussing a trial judge's "responsibility for keeping 'junk science' out of the court-room . . . a responsibility to be taken seriously") (citation omitted); *id.* at 1238-39 ("If the judge is not persuaded that a so-called expert has genuine knowledge that can be genuinely helpful to the jury, he should not let him testify."). As Judge Easterbrook explained, "[j]uries have a hard time distinguishing 'junk science' from the real thing." *Gacy v. Welborn*, 994 F.2d 305, 313 (7th Cir. 1993).

The concerns about the impact of unreliable science on a litigant's right to a fair trial animated the Supreme Court's holdings in the *Daubert* trilogy, *supra.* Emphasizing "the 'gatekeeper' role of the trial judge in screening [scientific] evidence" for reliability, *Joiner*, 522 U.S. at 142, "*Daubert* attempts to strike a balance between a liberal admissibility standard for relevant evidence on the one hand and the need to exclude misleading 'junk science' on the other." *United States v. Lavictor*, 848 F.3d 428, 441 (6th Cir. 2017); *see also McKiver v. Murphy-Brown LLC*, 980 F.3d 937, 1008 (4th Cir. 2020) (*Daubert* "attempted to ensure that courts screen out junk science") (internal quotation marks omitted); *United States v. Machado-Erazo*, 47 F.4th 721, 734 (D.C. Cir. 2018) (*Daubert* was "spawned by 'junk science' masquerading as science"). Concurring in *Kumho Tire*, Justice Scalia cautioned "that the discretion [the Court] endorses — trial-court discretion in choosing the manner of testing expert reliability — is not discretion to abandon the gatekeeping function . . . [or] to perform the function inadequately." 526 U.S. at 158-59 (Scalia, J., concurring). "Rather, it is discretion to choose among reasonable means of excluding expertise that is *fausse* and science that is junky." *Id.* at 159.

These same concerns are evident in the 2023 Amendments to Rule 702. As explained above, the Advisory Committee's Notes to the 2023 Amendments recognize that judicial gatekeeping "is essential" to ferret out junk science, acknowledging that "just as jurors may be unable, due to lack of specialized knowledge, to evaluate meaningfully the reliability of scientific and other methods underlying expert opinion, jurors may also lack the specialized knowledge to determine whether the conclusions of an expert go beyond what the expert's basis and methodology may reliably support." 2023 Notes, *supra*. The amendment to subpart (d) of Rule 702 was designed to address the problem of experts' overstating what can be reliably concluded from his or her methodology.

In a recent opinion informed by the then-pending Rule 702 Amendments, the Fourth Circuit explained that

> Federal Rule of Evidence 702 appoints trial judges as gatekeepers of expert testimony to protect the judicial process from the potential pitfalls of junk science. If a trial court abdicates that duty by opening the gate indiscriminately to any proffered expert witness—particularly one with whom it recognizes legitimate concerns—it risks exposing jurors to dubious scientific testimony that can ultimately sway their verdict[.] That risk is notably amplified in products liability cases, for expert witnesses necessarily may play a

> significant part in establishing or refuting liability.

*Sardis v. Overhead Door Corp.*, 10 F.4th 268, 275 (4th Cir. 2021) (internal citations and quotation marks omitted); *see also id.* at 283-84 (discussing the then-proposed Rule 702 Amendments).

At its core, due process requires that litigants subjected to potential deprivations of life, liberty, or property be provided a fair trial based on reliable evidence. The Supreme Court recognized in *Daubert* that "expert evidence can be both powerful and quite misleading." 509 U.S. at 595. The improper admission of such evidence accordingly poses a particular danger to due process rights and requires careful scrutiny. *See, e.g.*, *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976) (holding that where the risk of improper deprivation of rights is high, higher procedural protection is due). "Evidence that purports to be based on science beyond the common knowledge of the average person that does not meet the judicial standard for scientific validity can mislead, confuse, and mystify the jury." Victor E. Schwartz & Cary Silverman, *The Draining of Daubert and the Recidivism of Junk Science in Federal and State Courts*, 35 Hofstra L. Rev. 217, 220 (2006) (internal quotation marks omitted); *see also* Worthington, *supra* at 158 ("Jurors are often

impressed by scientific evidence because they believe it has greater accuracy, objectivity, and therefore greater credibility, than lay testimony.").

"While meticulous *Daubert* inquiries may bring judges under criticism for donning white coats and making determinations that are outside their field of expertise, the Supreme Court," as reflected in Rule 702, "has obviously deemed this less objectionable than dumping a barrage of questionable scientific evidence on a jury, who would likely be even less equipped than the judge to make reliability and relevance determinations and more likely than the judge to be awestruck by the expert's mystique." *Allison v. McGhan Med. Corp.*, 184 F.3d 1300, 1310 (11th Cir. 1999).

Excluding unreliable expert testimony from the courtroom fosters due process and judicial fairness because "[a]t its core" the battle against unreliable scientific testimony "is ultimately intended to prevent fraud on society and the legal system." Sorett, *supra* at 31. Allowing litigation to be "degraded by 'junk science,'" like other "justly reprobated abuses of the legal process," *Braun*, 84 F.3d at 233, deprives defendants of due process.

## CONCLUSION

The district court's Order excluding the expert testimony of Dr. Martin Wells should be affirmed.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 7th Cir. R. 29 because it contains 3,856 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and 7th Cir. R. 32 and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionately spaced typeface using Century Schoolbook 14-point font.

Dated: October 2, 2024

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## CERTIFICATE OF SERVICE

I certify that on October 2, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

*/s/ Lawrence S. Ebner*
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