No. 25-919

IN THE

Supreme Court of the United States

UNION CARBIDE CORPORATION, ET AL.,

Petitioners,

v.

LEE ANN SOMMERVILLE,

Respondent.

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

BRIEF OF ATLANTIC LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

LAWRENCE S. EBNER
Counsel of Record
ATLANTIC LEGAL FOUNDATION
1701 Pennsylvania Ave., NW
Washington, DC 20006
(202) 729-6337
lawrence.ebner@atlanticlegal.org

ROBERT E. JOHNSTON
ALEKSANDRA RYBICKI
ALEXA D. HALKIAS
HOLLINGSWORTH LLP
1350 I Street, NW
Washington, DC 20005
(202) 898-5800
rjohnston@hollingsworthllp.com
arybicki@hollingsworthllp.com
ahalkias@hollingsworthllp.com

Counsel for Amicus Curiae

120927

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Other Authorities

INTEREST OF THE *AMICUS CURIAE* [1]

Established in 1977, the Atlantic Legal Foundation (ALF) is a national, nonprofit, nonpartisan, public interest law firm. ALF's mission for the past five decades has been 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 supreme courts. *See* atlanticlegal.org.

* * *

The Court should grant certiorari to prevent the widespread judicial chaos that the Fourth Circuit's ruling in this case, unless reversed, will engender. Doing so will ensure that all federal courts properly apply Federal Rule of Evidence 702, as amended in December 2023, especially adherence to the rule's

---

[1] Petitioners' and Respondent's counsel were provided timely notice of this brief in accordance with Supreme Court Rule 37.2. No counsel for a party authored this brief in whole or part, and no party, counsel for a party, or person other than the *amicus curiae* and its counsel made a monetary contribution intended to fund preparation or submission of this brief.

expert testimony admissibility standards as set forth in the amended rule's text and accompanying advisory committee notes. The Court needs to grant review to rein in courts (like the Fourth Circuit here) that refuse to grapple with the clarifying amendments and instead rely on outdated and inapplicable case law.

Uniformity in lower courts' application of amended Rule 702 is needed to ensure that all litigants operate on the same playing field regardless of the federal circuit in which their cases are heard. Reversing the Fourth Circuit's erroneous interpretation of amended Rule 702 will do just that by ensuring consistency in courts' application of the rule's expert admissibility standards: specifically, that challenges to the factual basis of an expert witness's testimony go to weight *only if* a district judge first finds it more likely than not that an expert has a sufficient basis to support the testimony.

The origin, purpose, and intended impact of amended Rule 702 all underscore the need for the Court's review. A ruling by this Court that the Fourth Circuit applied an archaic admissibility standard that directly contradicts the amended rule will create essential coherence in the federal courts and prevent circuit splits that existed under the prior version of the rule.

SUMMARY OF ARGUMENT

The Fourth Circuit's holding in *Sommerville* that an expert's selection of data input into the expert's methodology is a question "affect[ing] the weight and credibility of the witness' assessment, not its

admissibility," contravenes amended Rule 702 and the advisory committee's notes that this Court approved and Congress allowed to take effect. Pet. App. 20a-22a. As explicitly explained in the advisory committee's notes adopted alongside the 2023 amendments, decisions regarding an expert's methodology based on "questions of weight and not admissibility . . . are an incorrect application of Rules 702 and 104(a)." Fed. R. Evid. 702 advisory committee's notes to 2023 amendments.

As adopted, the 2023 amendments clarify that: (1) the court, not jury, must apply a preponderance-of-the-evidence standard to each of the reliability requirements of Rule 702 at the admissibility stage; and (2) the court, as gatekeeper, must find that an expert's methodology, and the application thereof, is reliable by a preponderance-of-the-evidence. Fed. R. Evid. 702. It follows that the judge must determine whether an expert's "testimony is based on sufficient facts or data," among the other reliability requirements, per Rule 702(b). *Id.* Once amended Rule 702 went into effect on December 1, 2023, any case law in conflict has "no further force or effect." 28 U.S.C. § 2072(b).

The Fourth Circuit ignored the 2023 amendments cited in petitioners' merits brief, Pet. at 30, and instead relied on *Bresler v. Wilmington Trust*, 855 F.3d 178, 195 (4th Cir. 2017) as precedent for the admissibility standard in that circuit. But in promulgating the 2023 amendments, the advisory committee members criticized cases like *Bresler* for misstating the admissibility standard. In fact, as

discussed *infra* section B, Judge Thomas Schroeder, Chair of the Subcommittee that drafted the 2023 amendments, specifically called out *Bresler* for being inconsistent with the standards set forth in the rule.

The Fourth Circuit's recycling of its *Bresler* standard is irreconcilable with the text and purpose of amended Rule 702 and the standards adopted by the Fifth, Sixth, Eighth, Ninth, and Federal Circuits. *See* Pet. at 12-25. In holding that the factual underpinnings of an expert's opinion go to the weight jurors should give to that evidence, not to the threshold question of its admissibility, the Fourth Circuit took the same obdurate approach as the First Circuit, creating a circuit split that remains unchecked despite the amendments' clarification of the uniform standard. *Id*. (discussing the circuit split).

This Court has ruled that the admissibility of expert testimony is governed by Rule 702, not by case law. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 587 (1993). Because of the misapplication of amended Rule 702, the Court should emphasize that lower courts should take a fresh look at expert admissibility requirements in light of the 2023 amendments. This is needed to achieve consistency among trial courts, particularly since the rule change was precipitated by analyses demonstrating that many courts had been applying the rule incorrectly.

This Court should grant certiorari to correct the already-present downstream effects of the Fourth and First Circuit's misapplications of Rule 702, including those in circuits that have not yet grappled with the question presented (the Second, Third, Seventh,

Tenth, Eleventh, and District of Columbia Circuits). A ruling by this Court will provide clear guidance regarding the proper interpretation of Rule 702 and harmonize the standard on the admissibility of expert testimony across all circuits.

ARGUMENT

A. The drafting history and plain language of the 2023 amendments to Rule 702 reinforce district courts' gatekeeping role

On December 1, 2023, Rule 702 was amended with the approval of the Supreme Court and without any changes from Congress in response to the determination of the standing committee's advisory committee on evidence rules ("advisory committee") that many courts were applying the rule incorrectly, including by misstating, ignoring, or relaxing the admissibility standard.[2] *See* Fed. R. Evid. 702 advisory committee's notes to 2023 amendments; *see also* Nat'l Academies Scis., Eng'g, & Med. and Fed. Jud. Ctr., Reference Manual on Scientific Evidence ("Ref. Manual") 13 (4th ed. 2025) (recognizing that amended Rule 702 was "designed to correct misapplications of the rule").

---

[2] The amendments to Rule 702 automatically took effect on December 1, 2023, after Congress did not reject or modify the proposed amendments. *See generally* Letters from U.S. Sup. Ct. C.J. John G. Roberts, Jr. to Hon. Kevin McCarthy, Speaker, U.S. House of Reps., and Hon. Kamala Harris, President, U.S. Senate (Apr. 24, 2023), https://tinyurl.com/s82hzvnd (adopting and transmitting the proposed amendments to Rule 702 to Congress).

The issue of courts misapplying the standard was brought to the committee's attention after a law review article demonstrated that "many courts continue to resist the judiciary's proper gatekeeping role, either by ignoring Rule 702's mandate altogether or by aggressively reinterpreting the Rule's provisions." David E. Bernstein & Eric G. Lasker, *Defending Daubert: It's Time to Amend Federal Rule of Evidence 702*, 57 Wm. & Mary L. Rev. 1, 8-9, 48 (2015) (surveying cases and concluding that a number of courts were not following the 2000 amendments).[3]

The reporter to the advisory committee, Daniel J. Capra, specifically 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."[4] 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."[5]

---

[3] More recent analyses have identified that the problem persists. *See generally* Int'l Ass'n of Def. Couns., New Federal Rule of Evidence Rule 702: A Circuit-by-Circuit Guide to Overruled "Wayward Caselaw" (Eric Lasker & Joshua Leader eds., 2024), https://tinyurl.com/4n3cxax2 (listing cases misapplying Rule 702 in each circuit).

[4] Advisory Comm. on Evidence Rules, Memorandum from Daniel J. Capra, Rep., to Advisory Comm. on Evidence Rules, 262 (Oct. 21, 2016), https://tinyurl.com/9x9jk6ff.

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

The 2023 amendments to Rule 702 are the product of the committee's eight years of extensive analyses, which revealed 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 weight for the jury."[6] This finding applies to *Bresler*, upon which the Fourth Circuit relied here.

The committee advanced to this Court the "clarifying amendment" to remedy concerns that "federal cases and comments from members of the public had revealed a pervasive problem with courts discussing expert admissibility requirements as matters of weight."[7] The minutes indicate that the drafters intended to reduce the likelihood that trial courts would "kick difficult Rule 702 questions to the jury."[8] The Committee Chair, Hon. Patrick J. Schiltz, stated that "Circuit court language at odds with the language of Rule 702 present[ed] a serious concern" that justified intervention despite initial "trepidation about sending an unusual amendment clarifying an existing rule to the Supreme Court."[9]

---

[6] Advisory Comm. on Evidence Rules, Minutes of the Meeting of Nov. 13, 2020, at 3, https://tinyurl.com/yc59b94b.

[7] *Id.* at 4.

[8] *Id.*

[9] *Id.* at 5.

The advisory committee found that the rule should require the "trial judge [to] make a finding by a preponderance of the evidence on the admissibility requirements before allowing the expert to testify, and that it would be error to permit the testimony if the judge is not satisfied that the expert's basis is sufficient" because "the admissibility requirements in Rule 702 are clearly governed by Rule 104(a) --- as also stated in *Daubert* itself."[10]

The amendment's purpose is reflected both in the advisory committee's notes accompanying the rule and in the advisory committee's working papers and publications. Advisory committee notes are afforded considerable weight because they provide the most succinct and readily accessible guide to the proper application of federal court rules.[11] Published

---

[10] Advisory Comm. on Evidence Rules, Minutes of the Meeting of April 26-27, 2018, at 11-12, https://tinyurl.com/5n7p9jdm (addressing hypothetical where an expert "rejects 7 of 10 seminal studies in an area and [relies] on the 2 or 3 minority studies in the field as the basis for his opinion" and concluding the opinion should be excluded).

[11] This Court has relied upon such notes to interpret the federal rules. *See, e.g.*, *Waetzig v. Halliburton Energy Servs.*, 604 U.S. 305, 312 (2025) (relying on "the Federal Rules Advisory Committee's Notes, which are a reliable source of insight into the meaning of a rule") (citation modified); *United States v. Vonn*, 535 U.S. 55, 64 n.6 (2002) ("[T]he Advisory Committee Notes provide a reliable source of insight into the meaning of a rule, especially when, as here, the rule was enacted precisely as the Advisory Committee proposed."); *Tome v. United States*, 513 U.S. 150, 160 (1995) (similar). Records reflecting the committee's deliberations

alongside the rules themselves, the 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, 188 n.2 (2018) (Alito, J., dissenting) ("Advisory Committee's Notes are adopted by the committee that drafts the rule; 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 . . . .").

1. Amended Rule 702 clarifies that the sufficiency of an expert's basis and the application of the expert's methodology are questions of admissibility for the judge to be established by the preponderance of the evidence

The 2023 amendment eliminates any doubt that Rule 104(a)'s preponderance standard applies to expert testimony in its totality by inserting language on the preponderance-of-the-evidence standard directly into Rule 702. *See* Fed. R. Evid. 702 advisory committee's notes to 2023 amendments ("[M]ore likely than not . . . is the preponderance of the evidence standard that applies to most of the admissibility requirements set forth in the evidence rules."). The amendment served "to clarify and emphasize that expert testimony may not be admitted unless the

---

have also been used to guide the Court's interpretations. *See, e.g.*, *Amchem Prods. v. Windsor*, 521 U.S. 591, 613-20 (1997) ("Courts are not free to amend a rule outside the process Congress ordered.").

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." *Id.*

The advisory committee note "clarifies 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," and further admonishes 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" as "an incorrect application of Rule 702 and 104(a)." *Id.*

The amendment also explicitly inserted "the court" directly into the text of the rule to emphasize that the court, and not the jury, determines whether reliability is met. *See* Fed. R. Evid. 702. The committee included this clarification to address "confusion about the respective roles of judge and jury in deciding the admissibility of expert testimony."[12]

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

---

[12] Advisory Comm. on Evidence Rules, Minutes of the Meeting of May 6, 2022, at 7, https://tinyurl.com/28k8j9fu.

methodology may reliably support." Fed. R. Evid. 702 advisory committee's notes to 2023 amendments.

Expert evidence "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) (quoting *State v. O'Key*, 899 P.2d 663, 678 n.20 (Or. 1995)). Allowing expert testimony based on insufficient facts or data to go before the jury creates the risk that the jury may nonetheless find it sufficient simply because it is offered by an expert rather than a lay person. *See* Peter Huber, *Junk Science and the Jury*, 1990 U. Chi. Legal F. 273, 276-277 (1990). That is impermissible under Rule 702.

2. Amended Rule 702 clarifies that the application of an expert's methodology, as well as the methodology itself, must be reliable

Rule 702's amendments in 2000 required courts to determine whether an expert had "unjustifiably extrapolated from an accepted premise to an unfounded conclusion." Fed. R. Evid. 702 advisory committee's notes to 2000 amendments.[13] In 2023, the

---

[13] The 2000 amendments were enacted in response to *Daubert* and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), to "affirm[] the trial court's role as gatekeeper[,] . . . provide[] some general standards that the trial court must use to assess the

amended portion of Rule 702(d) resolved any lingering confusion on these issues by explicitly empowering the court to evaluate the reliability of the conclusions that the expert has drawn from her methodology by a preponderance-of-the-evidence.

The 2023 amendments to Rule 702 make clear that it is not enough for an expert to have a reliable methodology to pass muster under Rule 702—the court also must analyze and determine that the expert's opinions support a reliable application of a reliable methodology "to the facts of the case," by a preponderance-of-the-evidence. Fed. R. Evid. 702(d). Specifically, the amendments instruct the court to analyze the reliability of both aspects of the methodology on which the expert's opinion is based to safeguard "against overstated conclusions by directing judges to ensure that experts' opinions result from reliable methodologies that are reliably applied."[14]

The Standing Committee further stressed the importance of reliable application of an expert's methodology under Rule 702(d):

> The language of the amendment more clearly empowers the court to pass judgment on the conclusion that the

---

reliability and helpfulness of proffered expert testimony," and recognize that "the admissibility of all expert testimony is governed by the principles of Rule 104(a)." Fed. R. Evid. 702 advisory committee's notes to 2000 amendments.

[14] Colleen Cochran, *The Process, Progression, and Potential Ramifications of the Rule 702 Amendment*, A.B.A. (Sep. 5, 2022), https://tinyurl.com/2rack4tx.

> 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.[15]

The advisory committee's note elaborated that Rule 702(d) was amended "to emphasize 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." Fed. R. Evid. 702 advisory committee's notes to 2023 amendments.

B. The standard applied by the Fourth Circuit is directly at odds with amended Rule 702

The Fourth Circuit in *Sommerville* solely relied on pre-amendment case law, specifically *Bresler*, 855 F.3d at 195, which directly conflicts with amended Rule 702. The Chairman of the subcommittee on Rule 702 has expressly identified *Bresler* as a case that the revisions were intended to change because it "effectively vitiated the application of [the preponderance requirement in] Rule 104(a) to Rule 702(b)." Thomas D. Schroeder, *Toward a More Apparent Approach to Considering the Admission of*

---

[15] Hon. Patrick J. Schiltz, *Report of the Advisory Comm. on Evid. Rules*, at 6 (May 15, 2022), https://tinyurl.com/yu6f299b.

Expert Testimony, 95 Notre Dame L. Rev. 2039, 2043-44, 2049-50 (2020) (critiquing *Bresler* among "a sampling of illustrative cases that have been identified to the Advisory Committee" that "misstate and/or misapply" the preponderance standard).

There is no doubt that the drafters of Rule 702 and the advisory committee notes intended to preclude further application of *Bresler* and other cases that include the same erroneous analysis. *See* Ref. Manual at 13 ("Judges and litigants should exercise caution in relying on pre-amendment cases . . . because the 2023 amendment was designed to correct misapplications of the rule . . . .").

The district court below used its gatekeeping discretion and properly excluded the testimony of respondent's expert witness, Dr. Ranajit Sahu, finding it was not grounded in reliable facts and data. *See* Pet. App. 42a-88a. Using an air model, Dr. Sahu calculated respondent's potential cumulative exposure to ethylene oxide from petitioners' facilities during the relevant time period. The district court identified several substantive issues with Dr. Sahu's selected inputs for his model—including source data, receptor data, and meteorological data—and aptly found that his application of the data to the facts "was methodologically flawed, full of unsubstantiated assumptions, and not scientifically sound." Pet. App. 88a.

On appeal, the Fourth Circuit incorrectly determined that because the air model itself is a reliable methodology, the jury, and not the judge, should then be responsible for issues related to the

data variables that Dr. Sahu input into the air model. This is exactly the type of argument that the advisory committee rejected during its consideration of the 2023 amendments. The committee made clear that the court must pass judgment on the validity of the methodology applied to generate the conclusion that the expert reached—indeed, this is the Court's job as gatekeeper under Rule 702.[16] But in *de novo* fashion, the Fourth Circuit rejected the district court's findings and substituted its own analysis without engaging in any way with the plain text or notes of Amended Rule 702. The Supreme Court could reverse the Fourth Circuit's decision on this basis alone. *See, e.g., Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 141-43 (1997) (reversing expert admissibility decision that "failed to give the trial court the deference that is the hallmark of abuse-of-discretion review").

The Fourth Circuit held that challenges to the "factual underpinnings" of an expert's testimony will always be a question for the jury to resolve. Pet. App. 20a-21a. This directly contradicts Rule 702 as the 2023 amendments sought to "clarify and emphasize that expert testimony *may not be admitted*" unless its proponent can show, by a preponderance of the evidence, that it satisfies *each* of the rule's admissibility requirements. Fed. R. Evid. 702 advisory committee's notes to 2023 amendments (emphasis added). The committee recognized that *sometimes* such questions could go to the weight of evidence—but

---

[16] *See* Hon. Patrick J. Schiltz, *Report of the Advisory Comm. on Evid. Rules*, at 6 (May 15, 2022), https://tinyurl.com/yu6f299b.

they could do so *only* "once the court has found it more likely than not that the admissibility requirement has been met." *Id.*[17]

To comply with amended Rule 702, the district court below was required to assess the reliability of the methodology (i.e., the air model) and Dr. Sahu's application of the underlying facts and data to the methodology (i.e., whether Dr. Sahu reliably selected data inputs for the model). The district court did just that. Pet. App. 42a-88a.

C. This Court's intervention is needed to correct and end the already-present trickle-down effect of the Fourth Circuit's misapplication of Rule 702

Courts cannot simply choose which rules to follow and which to ignore. The Fourth Circuit's decision to ignore the 2023 amendments cannot be allowed to stand. All courts should be aligned with the application of Rule 702 and the accompanying advisory committee notes approved by this Court and allowed to become active by Congress. *See* Pet. at 12-25. District courts frequently face challenges to expert testimony and any misapplication of the admissibility standard results in serious consequences that can impact the disposition of the case. Such consequences are ever present where, as here, the circuit court

---

[17] As Chief Judge Albert Diaz dissented, "an expert who constructs a model based on faulty assumptions and irrelevant data shouldn't be handed a 'get-out-of-*Daubert*-free card' simply because he uses an otherwise reliable modeling system." Pet. App. 35a.

creates binding authority that can misguide lower courts' application of an incorrect standard while simultaneously diluting the discretion afforded to the district court judge on appeal.

As the commentary to Rule 702 continues to be ignored by the First and Fourth Circuits, this Court must step in and provide the guidance necessary to instill consistent application of Rule 702 across circuits and district courts, and to prevent further courts from mistakenly admitting unreliable expert testimony. *See* Mark A. Behrens & Andrew J. Trask, *Federal Rule of Evidence 702: A History and Guide to the 2023 Amendments Governing Expert Evidence*, 12 Tex. A&M L. Rev. 43, 75 (2024) (recognizing that the Court must step in if circuit courts do not follow the law).

Absent Supreme Court intervention, "litigants in cases involving complex scientific issues . . . may face expert testimony which does not meet the standard set out by Rule 702." *Federal Rules of Evidence—Expert Testimony—Judicial Conference Amends Rule 702—Federal Rule of Evidence 702*, 138 Harv. L. Rev. 899, 906 (2025) ("*Judicial Conference Amends Rule 702*") (explaining that "more than twenty years after *Daubert*, the Supreme Court will need to take up the issue directly if it wishes for lower courts to coalesce around one approach").

One of the dangers of the Fourth Circuit's decision in *Sommerville* is its immediate impact on the district

court decisions below.[18] Several district courts have already followed *Sommerville* and consequently have refused to consider the reliability and sufficiency of an expert's opinions at the admissibility stage. *See, e.g.*, *In re Camp Lejeune Water Litig.*, No. 7:23-CV-897, 2025 WL 3565850, at *23 (E.D.N.C. Dec. 12, 2025) (relying on *Sommerville*'s holding that questions regarding the factual basis of an expert's opinion go to weight rather than admissibility); *Michael's Fabrics, LLC v. Donegal Mut. Ins.*, No. 1:24-CV-01585-JRR, 2025 WL 2624280, at *4 (D. Md. Sep. 11, 2025) (first citing *Bresler*, 85 F.3d at 195; then citing *Sommerville*, 149 F.4th at 427) (similar); *Mincey v. Se. Farm Equip., Co.*, No. 4:23-CV-01050-JD, 2025 WL 2450913, at *10 (D.S.C. Aug. 26, 2025) (first quoting *Sommerville*, 149 F.4th at 423; then quoting *Bresler*, 855 F.3d at 195) (similar).

A prompt ruling from this Court is needed to counteract the immediate negative effects of the Fourth Circuit's decision on lower courts. Otherwise, litigants will continue to face uncertainty in how Rule 702 should be applied, admissibility standards that vary by circuit, and the same wayward decisions that necessitated the rule's amendments.

The Fourth Circuit's decision in *Sommerville* also applied a standard of appellate review that affords no

---

[18] *See* Lee Mickus, *Amended Rule 702 in 2025: Circuit Courts Embrace the Changed Standard*, Wash. Legal Found. (Oct. 8, 2025), https://tinyurl.com/mt9vf4pp (reporting the consequences of *Sommerville*'s immediate influence on district courts in the Fourth Circuit).

deference to district courts' gatekeeping decisions and contradicts the standard established by this Court.[19] The panel's decision signals to district courts deciding to properly apply amended Rule 702 that their deference will not survive appellate review.

District courts in the Fourth Circuit that have decided to follow amended Rule 702 are at risk of the same *de novo* review and reversal on appeal. *See, e.g., Williams v. Sig Sauer, Inc.*, 799 F. Supp. 3d 470, 483–84 (E.D.N.C. 2025) (applying the preponderance standard to "questions of the sufficiency of an expert's basis, and the application of the expert's methodology") (quoting Fed. R. Evid. 702 advisory committee's notes to 2023 amendments);[20] *Moore v. Barnes,* 802 F. Supp. 3d 792, 823 (E.D.N.C. 2025) (same); *Alford v. NFL Player Disability & Survivor Benefit Plan*, No. CV JRR-23-358, 2025 WL 3274428, at *18 (D. Md. Nov. 24, 2025) (finding expert's lack of a sufficient basis for his proffered opinions bore "directly on admissibility, not the weight of the

---

[19] *See Gen. Elec. Co.*, 522 U.S. at 143 (district courts' expert admissibility decisions must be given deference under the abuse of discretion standard); *Kumho Tire Co.*, 526 U.S. at 152 ("[T]he trial judge must have considerable leeway in deciding in a particular case how to go about determining whether particular expert testimony is reliable.").

[20] The district court's exclusion of two experts has already been appealed. *See* Brief of Appellant, *Williams v. Sig Sauer, Inc.*, No. 25-2196, 2026 WL 173025, at *7 (4th Cir. Jan. 21, 2026) (arguing that the district court erred because the "matters relied upon by the Court as its basis for excluding… pertain[ed] to the weight of the evidence and testimony, not its admissibility").

proffered evidence"). Such appeals are already before the Fourth Circuit.

Without Supreme Court intervention, the Fourth Circuit's misapplication of Rule 702 will continue to poison the well of the circuit's cases. The Fourth Circuit's continued refusal to adhere to amended Rule 702 demonstrates that "the Supreme Court will need to take up the issue directly if it wishes for lower courts to coalesce around one approach." *Judicial Conference Amends Rule 702*, 138 Harv. L. Rev. at 906.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

LAWRENCE S. EBNER
Counsel of Record
ATLANTIC LEGAL FOUNDATION
1701 Pennsylvania Ave., NW
Washington, DC 20006
(202) 729-6337
lawrence.ebner@atlanticlegal.org

ROBERT E. JOHNSTON
ALEKSANDRA RYBICKI
ALEXA D. HALKIAS
HOLLINGSWORTH LLP
1350 I Street, NW
Washington, DC 20005
(202) 898-5800
RJohnston@Hollingsworthllp.com
ARybicki@Hollingsworthllp.com
AHalkias@Hollingsworthllp.com

Counsel for Amicus Curiae

March 2026