No. _____

In the Supreme Court of the United States

LABOR AND INDUSTRY REVIEW COMMISSION OF THE STATE OF WISCONSIN, PETITIONER,

v.

TRACEY COLEMAN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a magistrate judge has the authority to dismiss a pro se plaintiff's frivolous or meritless lawsuit when the plaintiff has consented to the magistrate's authority under 28 U.S.C. § 636(c)(1), but the defendant has not yet been served.

PARTIES TO THE PROCEEDING

The petitioner is the Labor and Industry Review Commission of the State of Wisconsin, which was the defendant at the district court and the appellee at the Seventh Circuit Court of Appeals.

The respondent is Tracey Coleman, who was the plaintiff at the district court and the appellant at the Seventh Circuit Court of Appeals.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Whenever a plaintiff files a pro se lawsuit and seeks in forma pauperis (IFP) status, the district court must conduct an initial screening. *See* 28 U.S.C. § 1915(e)(2); *infra* p. 4. If the court finds that the asserted claims are "frivolous" or otherwise fatally flawed, the court "shall" dismiss the case. 28 U.S.C. § 1915(e)(2). In many of these meritless cases, the plaintiff promptly consents to a magistrate judge conducting "any or all proceedings." 28 U.S.C. § 636(c)(1). When the plaintiff files such a consent at the outset of the case, the magistrate judge conducts the mandatory screening, often leading to a dismissal before the defendant is served. *See* Margo Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. 1555, 1630 (2003) ("Dismissal may be (and often is) without motion, notice to the plaintiff, or opportunity to respond.").

This case is about whether magistrate judges can continue to dispose promptly of meritless lawsuits filed by pro se litigants who have consented to the magistrate's authority, in cases where the defendant has not yet been served. This important and recurring question has created a conflict among the federal courts of appeals, which both the panel majority and the dissent from denial of rehearing en banc below acknowledged. *See* App. 6a ("[t]he circuits have come to different conclusions about this question"); *accord* App. 34a (Easterbrook, J., dissenting from denial of rehearing en banc). This Petition provides an ideal

vehicle for resolving this important, recurring issue, including because unlike in the vast majority of meritless pro se lawsuits, the plaintiff in this case is represented on appeal by experienced, court-appointed counsel.

This Court should grant the Petition.

OPINIONS BELOW

The opinion of the Seventh Circuit, Appendix A, is reported as *Coleman v. Labor and Industry Review Commission of Wisconsin*, 860 F.3d 461 (7th Cir. 2017). The Decision and Order of the Eastern District of Wisconsin is unreported, but is reproduced as Appendix B.

JURISDICTION

The Seventh Circuit entered its judgment on June 16, 2017. Appendix A; R. 35.[1] Justice Kagan extended the time within which to file a petition for a writ of certiorari in this case up to and including October 30, 2017. This Court has jurisdiction under 28 U.S.C. § 1254(1).

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[1] Citations to the Seventh Circuit's docket appear as "R. [ECF Number]:[page number]." Citations to the district court's docket appear as "Dkt. [ECF Number]:[page number]."

STATUTORY PROVISIONS INVOLVED

This case involves two federal statutes, the Federal Magistrate Act and the Prison Litigation Reform Act (PLRA).

The pertinent language of the Federal Magistrate Act, 28 U.S.C. § 636(c)(1), provides:

> (c) Notwithstanding any provision of law to the contrary—
>
> > (1) Upon the consent of the parties, a full-time United States magistrate judge . . . may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves.

The relevant portion of the PLRA, 28 U.S.C. § 1915(e)(2), provides:

> (2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—
>
> > (A) the allegation of poverty is untrue; or
> >
> > (B) the action or appeal—
> >
> > > (i) is frivolous or malicious;

> (ii) fails to state a claim on which relief may be granted; or
>
> (iii) seeks monetary relief against a defendant who is immune from such relief.

STATEMENT OF THE CASE

A. The PLRA expanded the grounds upon which courts could dispose of IFP requests and accompanying lawsuits. *See* 28 U.S.C. § 1915(a)(1); Prison Litigation Reform Act of 1995, Pub. L. 104–134 § 804, 110 Stat. 1321 (1996); *Jones v. Bock*, 549 U.S. 199, 214 (2007). Congress was "[c]oncerned with the ballooning number of IFP requests, particularly though not exclusively from prisoners." App 9a. Under the PLRA, a district court "shall" dismiss an IFP suit "at any time" if: (1) the allegation of poverty is untrue; (2) the action or appeal is frivolous or malicious; (3) the action fails to state a claim on which relief may be granted; or (4) the action seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

For prisoner lawsuits, the PLRA requires district courts to "[s]creen[ ]" meritless cases "before docketing, if feasible or, in any event, as soon as practicable after docketing." 28 U.S.C. § 1915A. Non-prisoner IFP cases that are meritless must also be dismissed "at any time," 28 U.S.C. § 1915(e)(2), and lower courts have understood Section 1915(e)(2) to require "screen[ing] [of] all complaints filed with requests to proceed IFP," App. 5a (citation omitted). This

"screening" often "takes place before the defendants are served." App. 5a.

In many IFP cases, the pro se plaintiff promptly consents to a magistrate judge handling "any or all proceedings," which necessarily includes the initial "screening" under the PLRA. This consent occurs pursuant to 28 U.S.C. § 636(c)(1), which provides that, "[u]pon the consent of the parties," magistrates are authorized "[to] conduct any or all proceedings in a jury or nonjury civil matter," including "order[ing] the entry of judgment." "A judgment entered by 'a magistrate judge designated to exercise civil jurisdiction under [§ 636(c)(1)]' is to be treated as a final judgment of the district court, appealable 'in the same manner as an appeal from any other judgment of a district court.'" *Roell v. Withrow*, 538 U.S. 580, 585 (2003) (quoting 28 U.S.C. § 636(c)(3)).

B. In February 2014, ABM Industries hired Respondent Tracey Coleman and assigned him to work at Carmen High School. App. 2a. Less than three weeks later, ABM fired Respondent after concluding that he had sexually harassed a school employee. App. 2a. Respondent filed a pro se complaint in the United States District Court for the Eastern District of Wisconsin against ABM and Carmen High School, arguing that his termination was pretextual and that the real reason for his termination was racial discrimination. App. 2a–3a. The parties stipulated to dismissal of that suit. App. 3a.

Respondent also sought relief from the Labor and Industry Review Commission of the State of Wisconsin ("the Commission"). App. 3a. An administrative law judge dismissed Respondent's case after he failed to meet state-law deadlines. App. 3a.

On August 18, 2015, Respondent filed another pro se complaint in the Eastern District of Wisconsin and moved to proceed IFP, this time arguing that the Commission denied him due process. App. 3a. The hand-written, single-paragraph complaint alleged that the Respondent "did not rec[eive]" a particular letter, "did not miss a deadline," and "did not have a fair tr[ial]." Dkt. 1:3. On September 21, 2015, Respondent filed a signed consent form "to proceed before a magistrate judge" and checked a box consenting to the magistrate judge's authority to conduct "all proceedings in this case," including the entering of a final judgment. Dkt. 4; App 2a.

The next day, a magistrate judge screened Respondent's case and concluded that Respondent's initial complaint was deficient because he "d[id] not offer any details that could plausibly present a federal cause of action." App. 50a–51a. The magistrate gave Respondent the opportunity to amend the complaint to attempt to address the deficiency. App. 50a. Respondent filed an amended complaint on October 2, 2015, Dkt. 6, but that amended complaint suffered from the same deficiencies. Accordingly, the magis-

trate judge directed the clerk to enter judgment dismissing the case under 28 U.S.C. § 1915. App. 41a–44a.

Respondent appealed to the United States Court of Appeals for the Seventh Circuit, and the Commission first learned about the dismissed suit at that time. R. 2. The Seventh Circuit then appointed counsel for Respondent and ordered briefing on the issue of whether the magistrate judge had authority to dismiss Respondent's complaint, given that the Commission had not explicitly consented to the magistrate judge adjudicating the case. R. 11.

A divided panel, in an opinion written by Chief Judge Wood, found that the magistrate judge lacked authority to dismiss and vacated the district court's decision. App. 1a–28a. The panel first noted that "[t]he circuits . . . have come to different conclusions about" whether an unserved defendant is a "part[y]" for purposes of 28 U.S.C. § 636(c)(1), such that the defendant's consent is statutorily required for the magistrate to adjudicate the case. App. 6a (citing, *inter alia*, *Neals v. Norwood*, 59 F.3d 530, 532 (5th Cir. 1995), and *Henry v. Tri-Services, Inc.*, 33 F.3d 931, 933 (8th Cir. 1994)). The panel majority sided with the Eighth Circuit and against the Fifth Circuit, holding that the term "parties" under Section 636(c)(1) includes every party named in the complaint. App. 17a–24a. The majority relied primarily on Section 636(c)(1)'s use of the plural "parties," App. 17a–18a,

22a–24a, and on its view that its reading was necessary to avoid "the constitutional problem that would arise if . . . the consent of one party alone was enough to permit an Article I judge to resolve the case on the merits," App. 4a–5a, 24a.

Judge Posner dissented from the panel majority, App. 29a–33a, concluding that the defendant's consent should be presumed "because the adjudication end[s] the litigation against the defendant," and "[no] defendant [would] ever refuse to consent to the dismissal of a suit against him," App. 31a, 33a. It would be an immense "waste of time" to require district judges to "sign off" on every dismissal of a meritless case where the plaintiff consented to a magistrate and the defendant had "no possible reason" to object. App. 31a–32a.

Judge Easterbrook, joined by Judge Sykes, dissented from the denial of rehearing en banc. App. 34a–40a. Judge Easterbrook explained that "an unserved defendant is not among the 'parties' for the purpose of 28 U.S.C. § 636(c)," consistent with the Fifth Circuit's decision in *Neals v. Norwood*, 59 F.3d 530, 532 (5th Cir. 1995), and this Court's decision in *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999). App. 34a–36a.

On July 17, 2017, the Seventh Circuit issued an order staying the mandate pending the disposition of the present Petition. R. 38.

REASONS FOR GRANTING THE PETITION

I. The Seventh Circuit's Decision Deepens An Acknowledged Circuit Split Over Magistrate Judges' Authority To Dispose Of Frivolous Or Meritless Cases

A. The Federal Magistrate Act provides that "[u]pon the *consent of the parties*, a full-time United States magistrate judge . . . may conduct any or all proceedings . . . and order the entry of judgment in the case." 28 U.S.C. § 636(c)(1) (emphasis added). The issue here is whether a magistrate judge can dismiss a frivolous or meritless lawsuit where the plaintiff has consented to the magistrate's resolution of the case under Section 636(c)(1), but the defendant has not yet been served. If the magistrate judge lacks such authority, the ultimate screening decision under the PLRA must be made by a district judge. *See* App. 7a. This issue, which turns on the application of Section 636(c)(1) to the commonly recurring situation where the magistrate judge's dismissal occurs before the defendant has been served, has divided the federal courts of appeals, in an acknowledged circuit split. *See* App. 6a–7a; App. 34a (Easterbrook, J., dissenting from denial of rehearing en banc).

The Fifth and Ninth Circuits have held that a magistrate judge has the authority to dismiss a frivolous or meritless lawsuit when the pro se plaintiff has consented to the magistrate's authority, even before the defendant has been served. In *Neals v. Norwood*,

59 F.3d 530 (5th Cir. 1995), an inmate brought a civil rights case under 42 U.S.C. § 1983, while consenting to a magistrate judge's authority under Section 636(c)(1). *Id.* at 532. The magistrate judge dismissed the case at the screening stage. *Id.* The Fifth Circuit held that the lack of written consent from the defendants did not deprive the magistrate judge of authority to dismiss because the defendants had not been served and thus were not "parties" to the action under Section 636(c)(1). *Id.* Numerous magistrate and district judges have reached the same conclusion, based upon the same reading of the term "parties" as not applying to unserved defendants, often directly citing the Fifth Circuit's decision in *Neals*. *See e.g.*, *Bean v. McFarland*, No. CIV.A. 15-228, 2015 WL 1431124, at *1 (W.D. Pa. Mar. 27, 2015); *U.S. ex rel. Asphalt Roads & Materials Co., Inc. v. W. Ins. Co.*, Nos. 2:11CV491, 2:11CV485, 2012 WL 2930693, at *2–3 (E.D. Va. July 18, 2012); *Gaddy v. McDonald*, No. CV 11-08271 SS, 2011 WL 5515505, at *1 n.2 (C.D. Cal. Nov. 9, 2011). The Ninth Circuit has also held that a magistrate judge has jurisdiction to dismiss a case where the pro se plaintiff consented and the defendant has not yet been served, although without discussing whether an unserved defendant is a "part[y]" under Section 636(c). *See Wilhelm v. Rotman*, 680 F.3d 1113, 1118–21 & n.3 (9th Cir. 2012).

The Seventh and Eighth Circuits have taken a contrary approach. The Seventh Circuit panel majority below disagreed with the Fifth Circuit's decision in *Neals*, *see* App. 6a, 22a–24a, and agreed with the

Eighth Circuit's decision in *Henry v. Tri-Services, Inc.*, 33 F.3d 931, 933 (8th Cir. 1994), holding that a magistrate judge cannot finally dispose of a case without the defendant's consent, *see* App. 6a–7a, 17a–18a. The panel majority held that an unserved defendant is a "part[y]" within the meaning of Section 636(c)(1) and that its consent is required, relying primarily on Section 636(c)(1)'s use of the plural "parties." App. 17a–18a, 22a–24a. Under the panel majority's holding, dismissal before the defendant is served can only be ordered by the district court, not a magistrate judge. *See* App. 7a.

Because this issue has divided the federal courts of appeals—as acknowledged by Seventh Circuit judges on both sides of the issue below—this Court should grant the Petition for a Writ of Certiorari and resolve the split. Sup. Ct. R. 10(a).

B. The panel majority's decision was wrong on the merits for two independently sufficient reasons: one provided by both the Fifth Circuit in *Neals* and Judge Easterbrook in his dissent from denial of rehearing en banc, and the other provided by Judge Posner in his dissenting opinion.

1. "Upon the consent of the *parties*, a full-time United States magistrate judge . . . may conduct any or all proceedings . . . and order the entry of judgment in the case." 28 U.S.C. § 636(c)(1) (emphasis added). As the Fifth Circuit in *Neals* and Judge Easterbrook below correctly concluded, the term "parties" is best

read as not covering an unserved defendant. Accordingly, where the defendant(s) has not been served, the plaintiff's consent to the magistrate judge permits the magistrate judge to dismiss the case because all "parties" have consented to the magistrate judge's authority over the case.

While "[t]he label 'party' does not indicate an absolute characteristic [and] . . . may differ based on context," *Devlin v. Scardelletti*, 536 U.S. 1, 10 (2002), the context here makes clear that an unserved defendant is not among the "parties" required to consent before a magistrate judge can dismiss a lawsuit. As Judge Easterbrook correctly explained, this Court's decision in *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999), stands for the general "presumption" that "someone named as a defendant does not become a party until served with process." App. 35a (Easterbrook, J., dissenting from denial of rehearing en banc). *Murphy Brothers* concerned a removal statute that set a deadline of 30 days from a defendant's receipt of a complaint "through service or otherwise." 28 U.S.C. § 1446(b). The plaintiff in that case faxed the defendant a "courtesy copy" of its complaint three days after filing, but did not actually serve the defendant until two weeks later. *Murphy Bros.*, 526 U.S. at 348. Thirty days after formal service, but 44 days after receiving the "courtesy copy," the defendant removed the case to federal district court. *Id.* This Court held that removal was timely because only parties are "required to take action" in litigation, and "one becomes a party

. . . only upon service." *Id.* at 350.[2] Like the defendant in *Murphy Brothers*, unserved defendants are not "parties" under Section 636(c)(1), and therefore magistrate judges can dismiss meritless cases when the plaintiff is the only party and has properly consented.

Additional "context," *Scardelletti*, 536 U.S. at 10, supports the Fifth Circuit's reading of Section 636(c)(1)'s "parties" requirement as not applying to unserved defendants. Congress adopted Section 636(c)(1)'s "consent" provision to ensure that no litigant can be bound by the judgment of a non-Article III judge without its consent. *See Roell*, 538 U.S. at 588. An unserved defendant who benefits from a dismissal by a magistrate cannot possibly be adversely impacted by that decision, let alone be adversely bound. *See McDonald v. Mabee*, 243 U.S. 90, 92 (1917); *Hansberry v. Lee*, 311 U.S. 32, 40 (1940); *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 110 (1969); *Omni Cap. Int'l, Ltd. v. Rudolph Wolff & Co.*, 484 U.S. 97, 104 (1987). Likewise, a primary goal of the Federal Magistrate Act is to "relieve the district courts' 'mounting queue of civil cases' and thereby 'improve access to the courts for all groups.'" *Roell*, 538 U.S. at 588 (quoting S. Rep. No. 96–74, at 4 (1979)). The panel majority's rule—that only a district court can screen out a case against an unserved

[2] Lower courts have applied *Murphy Brothers'* presumption in various contexts. *See, e.g.*, *Cambridge Holdings Grp., Inc. v. FDIC*, 489 F.3d 1356, 1360–61 & n.1 (D.C. Cir. 2007).

defendant—undermines magistrate judges' ability to ease district courts' burden.

This Court's decision in *Scardelletti* further supports the conclusion that unserved defendants are not "parties" under Section 636(c)(1). There, this Court considered the party status of a nonnamed member of a Rule 23 certified class. The Court outlined situations in which nonnamed class members are and are not considered "parties," *Scardelletti*, 536 U.S. at 7–10, and concluded that nonnamed class members *are* "parties" for purposes of appeal, primarily because they are "bound by the order from which they were seeking to appeal," *id.* at 8–9. If in *Scardelletti* the "most important" reason for concluding that "nonnamed class members are parties" for purposes of appeal is that they "[are] bound" by the judgment, *id.* at 10, the fact that unserved defendants cannot be bound, *e.g.*, *Zenith Radio Corp.*, 395 U.S. at 110; *Omni Cap. Int'l,* 484 U.S. at 104, strongly suggests that unserved defendants are not parties for purposes of Section 636(c)(1). This Court in *Scardelletti* also explained why nonnamed class members are not parties for purposes of diversity jurisdiction: "The rule that nonnamed class members cannot defeat complete diversity is [ ] justified by the goals of class action litigation," namely "[e]ase of administration." 536 U.S. at 10. The panel majority's rule here, on the other hand, significantly increases the burden on district judges by preventing magistrate judges from screening and dismissing meritless cases.

The panel majority relied primarily on the fact that Section 636(c)(1) "speaks [ ] of the consent of the 'parties,' *plural*." App. 17a–18a (emphasis added); App. 22a–24a. But the statute's "use of the plural" cannot carry the weight that the panel majority placed upon it. App. 17a. The Dictionary Act, for example, instructs that for "any Act of Congress . . . words importing the plural include the singular," "unless the context indicates otherwise." 1 U.S.C. § 1. Indeed, statutes often use a generic plural placeholder simply to mean "one or more." The panel majority reasoned that the "context . . . does indicate otherwise" because the Federal Magistrate Act elsewhere uses the phrase "any party," and Congress "used the plural when it meant all parties." App. 23a–24a. That is true, but irrelevant. Section 636(c)(1) uses the plural "parties" to communicate that "all parties" must consent, but that does not suggest that "parties" can never be fewer than two. It simply means that, no matter the number of parties—one, two, or ten—all must consent. Named, but unserved, defendants need not consent precisely because they are not parties at all.

The panel majority's further concern—that its holding was necessary to avoid "the constitutional problem that would arise if [it] were to hold that the consent of one party alone was enough to permit an Article I judge to resolve the case on the merits"—is similarly meritless. App. 24a. Before the defendant has been served, only the consenting plaintiff can be bound, and there is "no constitutional problem with binding consenting plaintiffs to adverse decisions by

magistrate judges." App. 35a (Easterbrook, J., dissenting from denial of rehearing en banc); *accord* App. 31a–32a (Posner, J. dissenting).[3]

2. Alternatively, even if an unserved defendant is one of the "parties" under Section 636(c)(1), its consent should be presumed when there is "no possible reason for the defendant to [withhold consent]." App. 31a (Posner, J., dissenting).

This Court has held that consent to a magistrate judge under Section 636(c)(1) can be implied, not just express. *See Roell*, 538 U.S. at 585–91. After all, Congress required consent to protect "a litigant's right to insist on trial before an Article III district judge," and explicit consent is not mandatory to protect this interest since implicit consent can serve the same interest just as well. *Id*. at 588.

In the circumstance of an unserved defendant that benefits from a magistrate judge's dismissal of a frivolous or meritless lawsuit, the defendant's consent should be implied even absent the defendant's appearance in the case. "Implied consent" can, for example, be "imputed as a result of circumstances that

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[3] The panel majority also drew support from Federal Rule of Civil Procedure 4, reasoning that this service provision refers to plaintiff and defendant in ways that "connote a party to a lawsuit." App. 22a–23a. But as this Court held in *Scardelletti*, litigants can be parties in one context and not parties in another. 536 U.S. at 10. And in the context of this case, an unserved defendant is not a party under Section 636(c)(1).

arise, as when a surgeon removing a gall bladder discovers and removes colon cancer." *Implied Consent*, *Black's Law Dictionary* (10th ed. 2014). When the defendant stands only to gain from dismissal of a frivolous or meritless lawsuit by a magistrate judge, there is no possible need to protect its "right to insist on trial before an Article III district judge," and thus its consent can be safely presumed. *Roell*, 538 U.S. at 588. Or, as Judge Posner put it, "[w]hoever heard of a defendant saying to a district judge or magistrate judge 'I know you've dismissed the plaintiff's case against me, but would you please reinstate it so that I can file a statement agreeing to the dismissal?'" App. 31a.

II. This Case Is An Ideal Vehicle For Resolving This Important, Recurring Question

A. The issue in this case implicates "important question[s]," Sup. Ct. R. 10(c), of judicial administration and economy, which recur frequently.

The panel majority's decision will burden district courts by slowing down the screening process under 28 U.S.C. § 1915, while needlessly crowding district-court dockets. Under the panel majority's approach, district courts will have to enter formal orders adopting magistrate judges' recommendations to dismiss frivolous or meritless cases where defendants have not been served, *see* App. 27a–28a, an obvious "waste of time" for busy federal courts, App. 32a (Posner, J., dissenting). District courts located in the Seventh Circuit have *already* begun to see a severe influx of

such wasteful processes in the short time that has elapsed since the panel majority's decision. *See, e.g.*, *Kirk v. Rose*, No. 16-CV-799-JPS, 2017 WL 4023137, at *1–2 (E.D. Wis. Sept. 12, 2017) (adopting magistrate judge's recommendation and dismissing complaint pursuant to 28 U.S.C. § 1915); *Lopez v. United States*, No. 17-C-527, 2017 WL 3484951, at *1 & n.1 (E.D. Wis. Aug. 14, 2017) (same); *Chapman v. Co Migala*, No. 17-CV-266-PP, 2017 WL 3197235, at *1 (E.D. Wis. July 27, 2017) (same); *Murray v. Mishlove*, No. 17-CV-46, 2017 WL 435806, at *1–2 (E.D. Wis. Jan. 31, 2017) (dismissing case under the pre-*Coleman* regime), *vacated and remanded*, No. 17-1479, 2017 WL 3975068 (7th Cir. July 7, 2017); *Rogers v. Bellile*, No. 17-CV-852, 2017 WL 3927497, at *2 (E.D. Wis. July 28, 2017) (recommending dismissal of case to the district court in light of *Coleman*), *report and recommendation adopted*, No. 17-C-0852, 2017 WL 3971903 (E.D. Wis. Sept. 7, 2017).

This deluge of examples from the Seventh Circuit in only the few short months since the panel's decision is a reflection of the large volume of meritless IFP lawsuits that magistrate judges screen out on a regular basis. It is well known that magistrate judges "have assumed an increasing share of the federal court's work, and shoulder an even larger share of the pro se docket." Lois Bloom & Helen Hershkoff, *Federal Courts, Magistrate Judges, and the Pro Se Plaintiff*, 16 Notre Dame J.L. Ethics & Pub. Pol'y 475, 492 (2002). In 2016, for example, magistrate judges dis-

posed of over 16,500 civil cases based on consent, terminating virtually all of them without trial. *United States Courts*, U.S. District Courts – U.S. Magistrate Judges Judicial Business, Table S-17 (Sept. 30, 2016);[4] *id.* Table M-5.[5]

Forcing district courts to review magistrate judges' screening decisions dismissing frivolous or meritless cases will not benefit any litigants, including pro se plaintiffs. Pro se plaintiffs "should be [allowed] to advance their own interests by consenting to decision by a magistrate judge, who may be able to give the case immediate attention that a district judge cannot provide." App. 39a (Easterbrook, J., dissenting from denial of rehearing en banc). "Disposition time for civil cases or, more specifically, undue delay endures as a problem that hamstrings the administration of civil justice." Michael Heise, *Justice Delayed?: An Empirical Analysis of Civil Case Disposition Time*, 50 Case W. Res. L. Rev. 813, 818 (2000). Restricting magistrate judges' authority can lead only to more "congested civil dockets in federal courts," *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 56 (1993), causing harm to *all* litigants. The additional time that district courts will spend disposing of frivolous or meritless cases that magistrate judges can easily handle on their own will

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[4] Available at http://www.uscourts.gov/statistics/table/s-17/judicial-business/2016/09/30.

[5] Available at http://www.uscourts.gov/statistics/table/m-5/judicial-business/2016/09/30.

reduce the time that district courts can devote to meritorious lawsuits, including those filed by pro se plaintiffs. Brian J. Ostrom, Roger A. Hanson, & Fred L. Cheesman II, *Congress, Courts and Corrections: An Empirical Perspective on the Prison Litigation Reform Act*, 78 Notre Dame L. Rev. 1525, 1536 (2003) ("overabundance of lawsuits without merit can usurp the meritorious").

B. The present case is an ideal vehicle for resolving this important and recurring issue.

The parties are both represented and well-positioned to brief and argue the Question Presented before this Court, in a case where the issue has been fully vetted below. This confluence of factors is somewhat unusual given the circumstances in which this Section 636(c)(1) issue typically arises: a magistrate judge dismissing a pro se plaintiff's lawsuit, often because that lawsuit is frivolous, before the defendant has even been served. While such meritless cases arise frequently, attorneys are (understandably) not typically eager to devote their limited pro bono resources to taking such meritless cases on appeal, especially when all that could possibly be gained is a reversal on the Section 636(c)(1) issue, which will then be followed by a dismissal on the merits by the district court. Indeed, oftentimes no appeal from a dismissal by a magistrate judge will be taken, *see, e.g.*, *Louvouezo v. City of Honolulu*, No. 15-CV-4265-DMR, 2015 WL 7351402 (N.D. Cal. Nov. 20, 2015); *Bean*,

2015 WL 1431124; *U.S. ex rel. Asphalt Roads & Materials Co.*, 2012 WL 2930693; *Gaddy*, 2011 WL 5515505; *Rust v. City of Tucson*, No. CV 09-48-TUC-HCE, 2009 WL 1955614, at *7 n.3 (D. Ariz. July 6, 2009); *Quigley v. Geithner*, No. 1:09-CV-293-REB, 2010 WL 3613901 (D. Idaho Sept. 8, 2010), and even where the appeal is filed, the Section 636(c)(1) issue may not be briefed, *see, e.g.*, *Rotman*, 680 F.3d at 1118–21 & n.3. In this case, on the other hand, Respondent is represented by experienced, court-appointed counsel, who briefed the Section 636(c)(1) issue before the Seventh Circuit, upon its explicit instructions. R. 11.

This case also presents a mature conflict over a single, recurring legal issue, with an uncomplicated procedural history and factual background. *See* Stephen M. Shapiro, et al., *Supreme Court Practice* § 4.4 (10th ed. 2013). And no further percolation in the lower courts on this issue is necessary because the arguments are well developed, including in thoughtful opinions by Chief Judge Wood (for the panel majority), Judge Posner, and Judge Easterbrook below.

CONCLUSION

The Petition should be granted.

Respectfully submitted,

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