

In The
Supreme Court of the United States

HAROLD WADE AND LORRAINE WADE,
Petitioners,

v.

KREISLER LAW, P.C.,
Respondent.

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

REPLY BRIEF OF PETITIONERS

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INTRODUCTION

In the opposition brief, Respondent does not seriously contest the reality that the Seventh Circuit's opinion deepens a split that is confusing litigants and courts struggling to apply the functional equivalence doctrine to petitions for permission to appeal coherently. *See Kennedy v. Bowser*, 843 F.3d 529, 535 (D.C. Cir. 2016). ("Some have 'strictly construed the requirement' [and] 'the latter courts have held or at least suggested that they do not require strict compliance if a 'functional equivalent' serves as the application.>"). Indeed, Respondent cites to no circuit court other than the Seventh Circuit. Nor does Respondent disagree that this case presents an ideal vehicle for this Court's intervention.

Instead, Respondent focuses on defending the Seventh Circuit opinion as correct. But, as demonstrated in the Petition and summarized again below, the Seventh Circuit opinion is contrary to this Court's precedent in *Torres v. Oakland Scavenger Co.*, 487 U.S. 312 (1988), and *Smith v. Barry*, 502 U.S. 244 (1992). Respondent does not dispute the viability of *Torres* and *Smith* but instead attempts to avoid conflict with them by advancing two premises: (1) the functional equivalence doctrine is an equitable exception and (2) *Hamer* and *Nutraceutical* forbid applying equitable exceptions to mandatory claims processing rules. Both premises are wrong. The functional equivalence doctrine is not an equitable exception to an unsatisfied rule; rather, it is a doctrine of construction that renders the rule *satisfied*. And *Hamer* and *Nutraceutical* say nothing

about either the functional equivalence doctrine or equitable exceptions.

Accordingly, the Seventh Circuit's opinion is inconsistent with this Court's established precedent, the circuits are irreconcilably divided on the issue, and this Court should therefore grant the petition.

I. The Seventh Circuit Opinion is Contrary to this Court's Precedent

Respondent fails to explain how the Seventh Circuit's decision can be reconciled with this Court's longstanding functional equivalence doctrine. The functional equivalence doctrine requires only that the substitute filing is timely, that the content is sufficient to meet the rule or statute, and that notice is sufficient to the other side. *Smith*, 502 U.S. at 248-49. Respondent and the Seventh Circuit do not dispute that all of those conditions were met here. Instead, Respondent and the Seventh Circuit contend that the functional equivalence doctrine does not apply to mandatory claims process rules. But this Court has twice applied the functional equivalence doctrine to filings under Federal Rule of Appellate Procedure 3, and nothing turned on the characterization of Fed. R. App. P. 3 in either case. *See Torres*, 487 U.S. at 318; *Smith*, 502 U.S. at 248-9.

Further, *Torres* and *Smith* remain good law. As Petitioners demonstrated in their Petition, *Manrique*, *Hamer*, and *Nutraceutical* did not overrule *Torres* and *Smith* because none of those cases confronted an appellant seeking to use the doctrine of functional equivalence. Pet. at 14, 16-17,

19-20. Accordingly, *Torres* and *Smith* are contrary to the Seventh Circuit's opinion.

II. The Functional Equivalence Doctrine is Not an Equitable Exception, and *Hamer* and *Nutraceutical* are Inapposite.

Respondent and the Seventh Circuit characterize the functional equivalence doctrine as an equitable exception. Op. at 11; App. 9. But functional equivalence is not an equitable exception. It cannot be an equitable exception because it applies to jurisdictional rules, and this Court has clearly held equitable exceptions inapplicable to jurisdictional rules. *Bowles v. Russell*, 551 U.S. 205, 214 (2007) (“[T]his Court has no authority to create equitable exceptions to jurisdictional requirements[.]”). Additionally, in *Torres* and *Smith*, even though the rule at issue was considered jurisdictional, this Court did not bar functional equivalence. See *Torres*, 487 U.S. at 318; *Smith*, 502 U.S. at 248. Instead, the functional equivalence doctrine is a “principle of liberal construction” of the rules. *Smith*, 487 U.S. at 248. The functional equivalence doctrine enables a court to conclude that the rule is actually *satisfied* under the circumstances. No exceptions or excuses are necessary.

Respondent and the Seventh Circuit also interpret *Hamer* and *Nutraceutical* as holding that mandatory claims processing rules do not admit equitable exceptions. Op. at 11; App. 9 That is a misinterpretation. *Hamer* and *Nutraceutical* did not address the applicability of equitable exceptions to mandatory rules. Indeed, in *Hamer* itself, this Court

explicitly stated that it “reserved whether mandatory claim-processing rules may be subject to equitable exceptions,” because the issue was “unaddressed” below. *Hamer v. Neighborhood Housing Services*, 138 S. Ct. 13, 18 n.3 (2017). And this Court’s post-*Nutraceutical* opinion *Fort Bend County* reaffirmed that whether mandatory rules are subject to equitable exceptions remains an open question. *Fort Bend Cty. v. Davis*, 139 S. Ct. 1843, 1849 n.5 (2019). Both Respondent and the Seventh Circuit are therefore wrong that this Court has prohibited the use of equitable exceptions with mandatory claim processing rules. Thus, even were the functional equivalence doctrine an equitable exception (it is not), the Seventh Circuit opinion would still be erroneous.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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