No. 19-7872

IN THE

Supreme Court of the United States

SAMUEL WILDER,

Petitioner,

v.

WILLIAM F. KREBS, IN HIS INDIVIDUAL CAPACITY AS DENTIST AT MCCORMICK CORRECTIONAL INSTITUTION,

Respondent.

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

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Fourth Circuit properly affirm the district court's correct application of Rules 15(a) and 59(e) of the Federal Rules of Civil Procedure when the district court (1) denied relief on Petitioner's complaint where amending the complaint was futile and (2) denied Petitioner's motion to reconsider the district court's order granting Respondent's renewed motion for summary judgment where there was no intervening change in controlling law, no new evidence not previously available, and no clear error of law or manifest injustice?

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PROVISIONS INVOLVED

I. Rule 59(e) of the Federal Rules of Civil Procedure provides that "[a] motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment." Fed. R. Civ. P. 59(e).

II. Rule 15(a) of the Federal Rules of Civil Procedure provides that:

> A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.
>
> In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Fed. R. Civ. P. 15(a).

STATEMENT OF THE CASE

This case arises out of a 42 U.S.C. § 1983 action Petitioner instituted in the United States District Court for the District of South Carolina against Respondent, a licensed dentist, alleging Respondent failed to provide him dental treatment in violation of Petitioner's rights under the United States Constitution. Respondent filed a motion for summary judgment, which the district court denied.

Subsequently, Respondent moved for leave to amend his answer, which the district court granted. Respondent filed an amended answer, asserting res judicata and collateral estoppel as defenses, and a renewed motion for summary judgment. Petitioner filed a response in opposition to the renewed motion for summary judgment. The district court properly granted the renewed motion for summary judgment and dismissed the case with prejudice, holding that res judicata and collateral estoppel applied to bar Petitioner's claims. Petitioner filed a motion for reconsideration and a motion to amend his complaint, which the district court denied pursuant to Rule 59(e) and Rule 15(a) of the Federal Rules of Civil Procedure, respectively. The district court had previously granted Petitioner leave to amend his complaint on May 4 and October 11, 2017. Thereafter, Petitioner appealed the district court's orders denying relief on his complaint and denying his motion for reconsideration. The Fourth Circuit properly affirmed the district court's orders on the merits.

REASONS FOR DENYING THE PETITION

The Fourth Circuit properly affirmed the district court's correct application of Rule 59(e) and 15(a) of the Federal Rules of Civil Procedure. Certiorari should not be granted to determine whether the Fourth Circuit and district court correctly applied the well-established directives and guidance set by this Court and the Fourth Circuit, which have been consistently applied by the federal courts. Accordingly, the Court should deny the petition for a writ of certiorari.

"Review on a writ of certiorari is not a matter of right, but of judicial discretion." Sup. Ct. R. 10. The Court will grant a petition for a writ of certiorari "only for compelling reasons." Sup. Ct. R. 10. A compelling reason includes a decision by a United States court of appeals that: (1) is "in conflict with the decision of another United States court of appeals on the same important matter"; (2) "decided an important federal question in a way that conflicts with a decision by a state court of last resort"; or (3) "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such departure by a lower court, as to call for an exercise of this Court's supervisory power." Sup. Ct. R. 10. Here, there is no compelling reason for the Court to grant the petition for a writ of certiorari. The Fourth Circuit's precedent on Rules 15(a) and 59(e) is well-established and consistent with the precedent of the other United States circuit courts.

The Fourth Circuit has held that Rule 59(e) allows a district court to alter or amend an earlier judgment: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998), *cert. denied*, 525 U.S. 1104, 119 S. Ct. 869, 142 L. Ed. 2d 771 (Jan. 19, 1999); *Becker v. Westinghouse Savannah River Co.*, 305 F.3d 284, 290 (4th Cir. 2002) (citation omitted), *cert. denied*, 538 U.S. 1012, 123 S. Ct. 1929, 155 L. Ed. 2d 848 (May 5, 2003); *Ingle ex rel. Estate of Ingle v. Yelton*, 439 F.3d 191, 197 (4th Cir. 2006) (citing *Becker*, 305 F.3d at 290). To show

clear error or manifest injustice, the prior decision must not "be[] just maybe or probably wrong"; it must "strike [the court] with the force of a five-week-old, unrefrigerated dead fish." *TFWS, Inc. v. Franchot*, 572 F.3d 186, 194 (4th Cir. 2009) (quoting *Parts & Elec. Motors, Inc. v. Sterling Elec., Inc.*, 866 F.2d 228, 233 (7th Cir. 1988)). The Fourth Circuit's vivid illustration—adopted from the Seventh Circuit's decision in *Sterling*—shows the extremely limited circumstances warranting application of Rule 59(e). This jurisprudence is copacetic with that of the other United States circuit courts, which have adopted the same or a similar standard. *See, e.g.*, *Markel Am. Ins. Co. v. Diaz-Santiago*, 674 F.3d 21, 32 (1st Cir. 2012) ("Generally, to prevail on a Rule 59(e) motion, the moving party must either establish a manifest error of law or must present newly discovered evidence."); *Munafo v. Metro. Transp. Auth.*, 381 F.3d 99, 105 (2d Cir. 2004) ("Although Rule 59(e) does not prescribe specific grounds for granting a motion to alter or amend an otherwise final judgment, we agree with our sister circuits that district courts may alter or amend judgment 'to correct a clear error of law or prevent manifest injustice.'"); *N. River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995) (alterations in original) ("A proper motion to alter or amend a judgment must rely on one of three major grounds: (1) an intervening change in controlling law, (2) the availability of new evidence [not previously available]; [or] (3) the need to correct a clear error [of law] or prevent manifest injustice."); *Arrieta v. Local 745 of Int'l Bhd. of Teamsters*, 445 F. App'x 760, 761 (5th Cir. 2011) (per curiam) (quoting

In re Benjamin Moore & Co., 318 F.3d 626, 629 (5th Cir. 2002)) ("The district court may grant a motion to alter or amend the judgment under Rule 59(e) where there is '(1) an intervening change in controlling law; (2) the availability of new evidence not previously available; or (3) the need to correct a clear error of law or prevent manifest injustice.'"); *Gen. Truck Drivers, Chauffeurs, Warehousemen & Helpers, Local No. 957 v. Dayton Newspapers, Inc.*, 190 F.3d 434, 445 (6th Cir. 1999) ("Rule 59(e) motions serve a limited purpose and should be granted for one of three reasons: (1) because of an intervening change in controlling law; (2) because evidence not previously available has become available; or (3) because it is necessary to correct a clear error of law or prevent manifest injustice."); *Innovative Home Health Care, Inc. v. P.T.-O.T. Assocs. of the Black Hills*, 141 F.3d 1284, 1286 (8th Cir. 1998) ("Rule 59(e) motions serve a limited function of correcting manifest errors of law or fact or to present newly discovered evidence. Such motions cannot be used to introduce new evidence, tender new legal theories, or raise arguments which could have been offered or raised prior to entry of judgment."); *Dixon v. Wallowa Cty.*, 336 F.3d 1013, 1022 (9th Cir. 2003) ("Rule 59(e) amendments are appropriate if the district court (1) is presented with newly discovered evidence, (2) committed a clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law."); *Nelson v. City of Albuquerque*, 921 F.3d 925, 928 (10th Cir. 2019) ("[A] motion constitutes a Rule 59(e) motion if it requests a substantive change in the district court's judgment or otherwise

questions its substantive correctness."); *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (alteration in original) ("The only grounds for granting [a Rule 59(e)] motion are newly-discovered evidence or manifest errors of law or fact."), *cert. denied*, 552 U.S. 1040, 128 S. Ct. 660, 169 L. Ed. 2d 511 (Nov. 26, 2007); *Cirlasky v. C.I.A.*, 355 F.3d 661, 672 (D.C. Cir. 2004) ("A Rule 59(e) motion is discretionary and need not be granted unless the district court finds that there is an intervening change in controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice."); *Progressive Indus., Inc. v. United States*, 131 Fed. Cl. 66, 69 (Fed. Cir. 2017) ("Extraordinary circumstances for purposes of Rule 59(e) include: (1) an intervening change in the controlling law; (2) the availability of new evidence; or (3) the need to correct clear error or prevent manifest injustice."). Because the federal circuits courts are in agreement with the interpretation of Rule 59(e), including the Fourth Circuit in this case, the Court should not grant the petition.

Here, the Fourth Circuit properly affirmed the district court's correct application of Rule 59(e) and its holding that Petitioner's arguments for reconsideration lacked merit under the Rule 59(e) standard. The district court denied Petitioner's motion for reconsideration after finding that he failed to raise any grounds to justify reconsideration under Rule 59(e), such as an intervening change in controlling law, newly discovered evidence not previously available, or

clear error of law or manifest injustice. Accordingly, the Fourth Circuit's affirmation of the district court's decision was proper.

With respect to Rule 15(a), the Fourth Circuit has held that "[t]he law is well settled that leave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile." *Edwards v. City of Goldsboro*, 178 F.3d 231, 242 (4th Cir. 1999) (citation omitted); *ACA Fin. Guar. Corp. v. City of Buena Vista*, 917 F.3d 206, 217 (4th Cir. 2019) (citing *Edwards*, 178 F.3d at 242). As to the "futility" component of Rule 15(a), the Fourth Circuit has held that "[f]utility is apparent if the proposed amended complaint fails to state a claim under the applicable rules and accompanying standards . . . that is, if the proposed amended complaint fails to satisfy the requirements of the federal rules." *Katyle v. Penn. Nat. Gaming, Inc.*, 637 F.3d 462, 471 (4th Cir. 2011) (citation omitted), *cert. denied*, 565 U.S. 825, 132 S. Ct. 115, 181 L. Ed. 2d 39 (Oct. 3, 2011); *United States ex rel. Wilson v. Kellogg Brown & Root, Inc.*, 525 F.3d 370, 376 (4th Cir. 2008). In *Foman v. Davis*, this Court established clear guidance on Rule 15(a), holding that:

> In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility, etc.—the leave sought should, as the rules require, be 'freely given.'

371 U.S. 178, 182, 83 S. Ct. 227, 230 (1962). Since *Foman*, the federal courts have consistently applied this Court's instruction on Rule 15(a), including the Fourth Circuit and the district court in this case. *See, e.g.*, *Hamilton v. Partners Healthcare Sys., Inc.*, 879 F.3d 407, 417 (1st Cir. 2018) (quoting *Foman*, 371 U.S. at 182, 83 S. Ct. 227); *Williams v. Citigroup Inc.*, 659 F.3d 208, 213–14 (2d Cir. 2011) (per curiam) (same); *Mullin v. Balicki*, 875 F.3d 140, 149 (3d Cir. 2017) ("In determining whether leave to amend might reasonably be denied, courts are guided by the *Foman* factors . . . ."); *Whitmire v. Victus Ltd.*, 212 F.3d 885, 889 (5th Cir. 2000) ("We have explained that the propriety of allowing amendment to cure jurisdictional defects should be governed by . . . the standard set forth by the Supreme Court [in *Foman*]."); *Consumers Petroleum Co. v. Texaco, Inc.*, 804 F.2d 907, 913 (6th Cir. 1986) ("[R]easons [for denying leave to amend] may include undue delay, bad faith or dilatory motives by the movant, undue prejudice to the opposing party by allowing the amendment, or futility of amendment."); *Ferguson v. Roberts*, 11 F.3d 696, 706 (7th Cir. 1993) ("[W]e evaluate the actions of the district court for compliance with the *Foman* directive."); *Beeck v. Aquaslide "N" Dive Corp.*, 562 F.2d 537, 540 (8th Cir. 1977) ("In *Foman*, the Supreme Court has occasion to construe . . . Rule 15(a) . . . ."); *Komie v. Buehler Corp.*, 449 F.2d 644, 648 (9th Cir. 1971) ("[*Foman*] . . . does not require that the district court in all cases expressly state the reason for denying the motion to amend, but recognizes that the 'grant or denial of an opportunity to amend within the discretion of the District Court' and holds that

'outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion."); *Bauchman for Bauchman v. W. High Sch.*, 132 F.3d 542, 559 (10th Cir. 1997) ("[A] district court must justify its denial of a motion to amend with reasons such as futility of amendment or undue delay."), *cert. denied*, 524 U.S. 953, 118 S. Ct. 2370, 141 L. Ed. 2d 738 (June 26, 1998); *Garfield v. NDC Health Corp.*, 466 F.3d 1255, 1270 (11th Cir. 2006) ("In *Foman*, the Supreme Court declared that trial courts have broad discretion in permitting or refusing to grant leave to amend."); *Te-Moak Bands of W. Shoshone Indians of Nev. v. United States*, 948 F.2d 1258, 1260–61 (Fed. Cir. 1992) ("As explained in *Foman*, reasons for denying leave to amend pleadings under Rule 15(a) may include undue delay, bad faith, dilatory motive, failure to correct deficiencies which could have been cured earlier and undue prejudice to the non-amending party by allowance of the amendment."); *Harris v. Sec'y, U.S. Dep't of Veteran Affairs*, 126 F.3d 339, 344 (D.C. Cir. 1997) ("The District Court possesses sufficient familiarity with the circumstances of a case to exercise its discretion wisely and determine whether any of the five enumerated *Foman* factors, or others implied by the Court's 'etc.,' apply in a given case."). Because this Court has already provided guidance on Rule 15(a) and because the federal circuits courts have consistently applied this guidance, including the Fourth Circuit in this case, the Court should not grant the petition.

Here, the Fourth Circuit properly affirmed the district court's correct application of Rule 15(a). The district court found that Petitioner's proposed

amendments were futile as the claims he sought to amend were barred by (1) res judicata because those claims were or could have been raised in prior proceedings between the same parties, and (2) collateral estoppel because those claims sought to relitigate specific issues that were already determined on the merits in a lawsuit Petitioner brought in South Carolina state court. Accordingly, the Fourth Circuit's affirmation of the district court's decision was proper.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests the Court deny Petitioner's petition for a writ of certiorari.

Respectfully submitted,

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WILLIAM F. KREBS, IN HIS INDIVIDUAL CAPACITY AS DENTIST AT MCCORMICK CORRECTIONAL INSTITUTION,

Respondent.

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of May, 2020, a true and correct copy of the above and foregoing **RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI** was e-filed with the Supreme Court of the United States with a hard copy sent by Federal Express, next day delivery, addressed to:

Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Additionally, I certify that a true and correct copy was served upon Pro Se Petitioner by sending a copy via Federal Express, next day delivery, addressed to:

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/s/ Jack G. Gresh

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