

**Supreme Court of The United States**

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**NORINE CAVE**

**Petitioner,**

**v.**

**DELTA DENTAL OF CALIFORNIA,**

**Respondent.**

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**On Petition for a Writ Of Certiorari to  
The United States Court Of Appeals  
For The Ninth Circuit**

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**PETITION TO REHEAR PETITION FOR WRIT OF CERTIORARI**

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Pro se

PETITION TO REHEAR PETITION FOR WRIT OF CERTIORARI

Pursuant to Rule 44 of this Court, Petitioner Norine Cave (“Cave”) respectfully petitions for a reconsideration of her writ of certiorari to review the judgment of the Ninth Circuit. This Court denied Petitioner’s petition for writ of certiorari on November 2, 2020 subsequently entering it into record on November 4, 2020.

This Court allows litigants to seek reconsideration of a decision based on the merits. Cave asserts that there are genuine issues remaining of significant importance as they relate to claimants’ rights to equally access of their personal health information/medical records. There are also remaining issues pertaining to claimants’ rights to protect their insurance benefits from unauthorized claims when a covered entity refuses to do so. Cave presents an intervening circumstance that would make rehearing her petition for writ of certiorari appropriate due to the reasons below.

1.

This case involves a matter of civil and fundamental rights that all claimants under provisions of ERISA are entitled, yet the judgment and opinions upheld by the lower courts does not reflect such protections. The equal right of access of medical records within 60 days maximum is provided under federal law for all and not some (45 CFR §164.526).

All claimants’ rights to equally and freely access requested medical records are protected under federal law. Historically, Blacks have been subjected to overt

displays of maltreatment with respect to healthcare in various forms. The notion of the necessity of litigation to access one's own medical records from an insurer, is a prime example of the disparages of the claimant's treatment. The denial of more than four years of requests of medical records, and the subsequent characterization of such denial by the district court as "an omission" further underscores the unfair and often overlooked concerns of the issues remaining in the court. These issues have severe consequences for the general public's right to access their medical records without unreasonable barriers.

## 2.

The appeals court's upholding of the district court's judgment is in error because the alleged authorized disbursement benefits for a fraudulent claim produced financial injuries to the plan and it's members, who contribute to the plans. The court of appeals relied upon, the decision in *Wise v. Verizon Communications Inc.* 600F. 3d 1180, 1189 (9th Cir. 2010) ("To allege a fiduciary breach under 1132(a)(2), [the plaintiff] must allege that the fiduciary injured the benefit plan or otherwise jeopardize[d] the entire plan or put at risk plan assets." (citation and internal quotation marks omitted, some alterations in original). Cave asserts, without a fair and full review, a correct assessment of the facts is nearly impossible to obtain. In this case, there was no reasonable opportunity or provision for a "full and fair review" of the claim and the adverse benefit determination, pursuant to 29 C.F.R. 2560.503-1(h)(2)(iii), that Cave and all claimants are entitled to under ERISA.

“The Department of Labor has issued extensive regulations setting forth the minimum requirements for reasonable claims procedures. 29 C.F.R. § 2560.503-1. Subsection (h), which is titled “Appeal of adverse benefit determinations,” provides, in pertinent part:

- (1) In general. Every employee benefit plan shall establish and maintain a procedure by which a claimant shall have a reasonable opportunity to appeal an adverse benefit determination to an appropriate named fiduciary of the plan, and under which there will be a full and fair review of the claim and the adverse benefit determination.
- (2) Full and fair review. ... [T]he claims procedures of a plan will not be deemed to provide a claimant with a reasonable opportunity for a full and fair review of a claim and adverse benefit determination unless the claims procedures—
  - (iii) Provide that a claimant shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant’s claim for benefits.”

A summary judgment (under FRCP 56) is improper where a full and fair review process is absent under provisions of ERISA.

### 3.

The Ninth Circuit’s panel opinion omits that the “documents” sought by Cave were actually her full medical records. Failure to release such records may require relief under 29 U.S.C. §1132(c)(1). At all times, Cave requested her full medical records from Delta Dental of California (“Delta Dental”) and, further, made no request of the plan (Entertainment Industry Flex Plan, “Flex Plan”) for such records or any document at all. In this case, there remains a deliberate withholding of valid unredacted x-rays from Delta Dental, whereas, other claimants have been

known receive upon request without unauthorized redactions, which constitutes a form of discrimination against Cave.

All claimants should reasonably expect to be treated the same, free of disparate treatment, because it is a matter of a civil rights issue and because all claimants contribute to the plan's assets. Any form of deprivation could serve as a pretext for discriminating intent.

4.

This case also reveals the importance of procedural prudence in which all claimants should expect from their insurers, regardless of race, sex or gender.

A denied writ of certiorari could separate and disqualify certain claimants from equal access of full medical records and further deny fair and full review processes under the provisions of ERISA that was intended to be available to all claimants. The lower courts' holdings reflect the contrary to these issues and is therefore erroneous and worthy of this Court's reconsideration on the matters that affect all claimants under the standards and guidelines under ERISA.

Finally, this case also reflects on a pro se litigant's right to stand and protect their rights in whatever area needed, particularly, pertaining to one's health. Because your life matters... then health ought to matter equally, since one infringes upon the other.

See Picking v. Pennsylvania Railway, 151 F. 2d. 240, Third Circuit Court of Appeals. "The plaintiffs civil rights pleading was 150 pages in described by a federal judge as "inept". Nevertheless, it was held where a plaintiff pleads pro se in a suit

for protection of civil rights, the court should endeavor to construe plaintiffs pleadings without regard to technicalities."

See also, Elmore v. McCammon (1986) 640 F. Supp. 905, which states impertinent part, "the right to file a lawsuit pro se is one of the most important rights under the constitution and laws."

5.

In this case, Delta Dental was informed, and knew of the fraudulent benefits claim and did not allow the provider of services an opportunity to challenge that determination in accordance with ERISA guidelines. Instead, it protected the provider of service, in lieu of protecting the plan's assets as required by a fiduciary. It further gave advance notice to the provider of service, that it would withhold Cave's medical records citing, and hereby, misapplying California law. These aforementioned issues, remain in lower courts, thus requiring intervention from this Court, not as to independently addressed these issues per se, but rather to preserve to intent of the protected provisions of ERISA, for all claimants and not some.

6.

#### CONCLUSION

This petition should also be granted because health is always very prevalent issue for everyone, particularly in the ongoing pandemic.

In conclusion, Cave requests that this Court exercises its discretion to consider the issues presented here on the merits and reconsider granting the petition for writ of certiorari.

DATED this 27th day of November, 2020,  
Respectfully Submitted



Norine Cave  
Petitioner, pro se

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the Rules of the United States Supreme Court.

Respectfully submitted this 27th Day of November, 2020,

A handwritten signature in black ink, appearing to read "Norine Cave", is written over a horizontal line.

Norine Cave, Petitioner

**Supreme Court of The United States**

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Petitioner,

v.

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Respondent.

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**CERTIFICATE OF PRO SE PETITIONER**

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I, Norine Cave, hereby certify that I hereby certify that this petition for rehearing is presented in good faith and not for delay, this 27<sup>th</sup> day of November 2020.



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Norine Cave  
Petitioner, Pro Se