No. 20-976

In The

Supreme Court of the United States

DAVID H. PENNY,

Petitioner,

v.

LINCOLN'S CHALLENGE ACADEMY,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Rule 44.2 and based on intervening circumstances of a substantial or controlling effect, Petitioner David H. Penny respectfully petitions for rehearing of the Court's order denying certiorari in this case.

GROUNDS FOR REHEARING

The questions of the petition for writ of certiorari are simple but nonetheless nationally influential to all pro se litigants and the questions about summary judgment are also impactful to all litigants looking to exercise their Constitutional right to a jury trial. Questions 1-3 are summed up as such: Pro Se are allowed latitude when filing complaints to more than one opportunity to get it right due to their inexperience at the law; the writ asks the court to expand that latitude to technical and procedural errors made in submission of briefs, and if possible, give more guidance to courts on resources for pro se such as what constitutes good cause for making a mistake, as I did, other than it was an honest mistake. The District judge granted summary judgement against me because of a technical error in procedure and not on merit. I am asking the Court to clarify between different circuit court rulings for equitable treatment of all pro se by expanding the scope of their ruling on complaints to include writing briefs – allow pro se to rewrite a brief at least once for

a technical or procedural error in the interest of pursuing justice on merit, not injustice because of an error.

In *Marshall v. Knight, et al.*, 445 F.3d 965 (7th Cir. 2006), there is a "special responsibility to construe pro se complaints liberally and to allow ample opportunity for amending the complaint." Furthermore, *Marshall* continues saying the importance of adjudicating "pro se claims on the merits, rather than to order their dismissal on technical grounds." What is the point of giving pro se latitude and opportunity to file a competent complaint only to later disregard their brief on a technicality or procedural error? In *Merila v. Johnson*, 52 F.3d 338 (10th Cir. 1995), a pro se was not advised his affidavit did not conform to requirements of Fed R. Civ. P. 56(e), and he was given the opportunity to resubmit. Pro Se should have similar latitude and get a chance to resubmit a correction to a brief.

In *Maty v. Grasselli Chemical Co.*, 303 U.S. 197, 58 S. Ct. 507, 82 L. Ed. 745 (1938), the Court found "Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers that prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness to accomplish the end of a just judgment." In *Lewis*, the Seventh Circuit found that because prisoners usually do not have legal training, specific notice should have been given concerning his situation and the summary judgment he faced. In the local rules of the District court and the Seventh Cir., pro se are treated differently than prisoners or Social security litigants, but in

the District rules this was not always so. What is the difference if all are equally untrained in the law and make unintentional mistakes and/or get more latitude in meeting briefing requirements? I mistakenly referenced an older set of rules and followed them not knowing of the updated set. If the Court rules in my favor and the favor of all pro se litigants nationwide, I will rewrite and submit my brief to be dealt with on merit not by procedural or technical error.

In Questions 4-6 the Court either agrees with the presented new interpretation of laws and case law presented or it does not. The alternate is in 2018 the Eleventh Circuit in *Jefferson v. Sewon America, Inc.*, 891 F.3d 911 relying on *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979), which relies on *Fidelity & Deposit Co. v. United States*, 187 U.S. 315 (1902), which relies on *Smoot v. Rittenhouse*, decided January 10, 1878, erroneously ruled summary judgment is Constitutional. The Eleventh Circuit errored in relying on *Parklane* citing *Fidelity* citing *Smoot*. There is no logical trail to Rule 56 written after the Rules Enabling Act of 1934, which is after *Fidelity* and *Smoot*. If the Court considers the trail logical then their opinion would be the final interpretation and settle the summary judgment issue. If not, then the summary judgment granted against me is void as is all summary judgements current or post such a ruling. Ignoring this case would continue to allow discrimination against all pro se who make a procedural or technical error and or leave the continuing issue of summary judgement unanswered.

CONCLUSION

For the foregoing reasons, the Court should grant this petition for rehearing of the writ of certiorari.

Respectfully submitted,

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March 23, 2021

CERTIFICATE OF GOOD FAITH

The undersigned hereby certifies that this Petition for Rehearing is restricted to the grounds specified in Rule 44.2 of the Rules of the Supreme Court and is presented in good faith and not for delay.

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