

No. 23-7255

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IN THE  
**SUPREME COURT OF THE UNITED STATES**

ANDREW HORACE,

*Petitioner,*

v.

MD Now Medical Centers, Inc.

*Respondents*

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**On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
For the 11<sup>th</sup> Circuit**

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**PETITION FOR REHEARING**

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## **PETITION FOR REHEARING**

Petitioner Andrew Horace respectfully petitions for rehearing of this Courts June 10, 2024 Order denying his petition for Writ of Certiorari.

## **REASONS FOR GRANTING REHEARING**

Rule 44.2 authorizes a petition for rehearing based on "intervening circumstances of a substantial effect". Mr. Horace petition explained why this Courts review was warranted in the first instance namely the 11<sup>th</sup> circuit decision is conflicting with evidence ruling in the 1st Circuit. However, this court granted the Writ of Certiorari based on evidence in *FOMAN v. DAVIS*, Here, Horace presented; *Weather the 11<sup>th</sup> Circuit erred in affirming the District Court's motion to dismiss Horace medical battery claim in its pleading stage?* Mr. Horace plead medical battery (*which arise from medical negligence*) per pretrial scheduling order from lower court and it was clearly IGNORED, despite Horace and counsel Joint Agreement. See generally ,3 Moore, Federal Practice (2d ed.1948) 15.08,15.10 Rule 15 (a) declares that leave to amend "shall be freely given when justice so requires"; this mandate is to be heeded. If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. 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 of amendment, etc.-the leave sought should, as the rules require, be "freely given." Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to a pleading is abuse of power. It is entirely contrary to the spirit of the' Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities! "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by OCTOBER TERM, 1962. Opinion of the Court. 371 U. S. counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper' decision on the merits." *Conley v. Gibson*, 355 U.S. 41, 48. The Rules themselves provide that they are to be construed "to secure the

just, speedy, and inexpensive determination of every action." Rule 1. The Court of Appeals also erred in affirming the District Court's dismissal by narrowing to technicalities and omission of facts; *Jaylen Williams was terminated because he deviated the standard of care against Mr. Hoarce*. As appears from the record the facts could have been construed so that Mr. Horace would have full faith in the Justice System of holding Defendants accountable for their actions. Thus, the facts construed would have done no more than state an alternative theory for recovery. 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 of amendment, the leave sought should, as the rules require, be "freely given." Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules. As a further matter Appellee signed a waiver as a respond to the Petition which clearly shows, Appellee had no defense to the allegations of Horace medical Battery claim. Throughout this matter Defendant NEVER denied or refuted Horace was stabbed several times by former Employee Jaylen Williams, who was ultimately terminated due to his deviation in the standard of care against Horace. Thousands of Americans received nasal swabs during and after the COVID pandemic and not one person suffered the way I did. As a medical professional I can attest that what Jay Williams did unto me was cruel. Further, if Jaylen Williams did not do anything wrong, why Defendant terminated his employment? This question was never asked of the Defendant in the Federal court nor the 11<sup>th</sup> Circuit. However, in state court the case was scheduled for trial as honorable Judge Kerner evaluated this matter in its entirety. In State Court, Defendant asked for more time to mediate matter which was granted. As a bad faith attempt, Drew Levin (counsel) then used time given to move case to Federal Court. Rules and regulations should be applied to all.

*raised for the first time is abandoned. There was no issue raised for the first time. Medical battery was raised at the pleading stage at the district court level, which is why Horace appealed for that argument alone. The district court disallowance of expert witness statements. See, Reese vs Herbert which the 11<sup>th</sup> circuit AFFIRMED in part and REVERSED in part “on evidence” Next the 11<sup>th</sup> circuit stated, Horace forfeited his argument that the district court erred when not considering medical records and expert witness statements. Per Pretrial Scheduling Order, a joint agreement was filed on. Petition for medical battery along with communication with counsel. How does that constitute forfeiture? On appeal, Mr. Horace requested an oral argument, and it was not granted. Horace was denied due process and a fair trial when the federal court dismissed his case with prejudice despite his pleading of medical battery along with documentary evidence per Pretrial Scheduling Order. Despite a Pro Se litigants’ status, in the judicial system we deserve our cases heard even without the benefit of counsel.*

First, procedural due process involves the steps that must be taken before someone is deprived of an interest involving life, liberty, or property. These vary depending on the situation but typically include notice and an opportunity to be heard, as well as an unbiased decision-maker. Sometimes procedural due process also may entail a right to present evidence, a right to cross-examine opposing witnesses and among other protections.

Meanwhile, substantive due process involves certain fundamental rights that are deeply rooted in American history and tradition. Notable areas in which this doctrine has risen include reproductive rights LGBTQ+ rights and end of life decisions’ court usually applies strict scrutiny to the government that affect fundamental right, which means that the government must show that its action furthered a compelling interest and was narrowly tailored to achieve that interest.

**Government code section 68081** requires the Court of Appeals to request supplemental briefing if they plan to decide a case based on an issue not briefed by the parties and provide that rehearing shall be ordered upon timely petition if supplemental briefing has not been requested. The court shall afford parties an opportunity to present their views on a matter through supplemental briefing. If the court fails to afford that opportunity, a rehearing shall be ordered upon timely petition of any party. The supreme court is in a unique position to enforce uniformity by resolving. The conflict through a decision applicable to all of the courts below it

## **CONCLUSION**

For the forgoing reasons, and those stated in the petition for writ of certiorari, the court should grant rehearing and respectfully grant the petition.

**CERTIFICATE OF PETITIONER**

Pursuant to rule 44.2 I, Andrew Horace petitioner, hereby certify that the petition for rehearing is restricted to the grounds specified in Rule 44.2. I further certify that the petition for rehearing is presented in good faith and not for delay.

July 1, 2024

Andrew Horace