No. 24-358

IN THE

Supreme Court of the United States

FARESHA SIMS,

Petitioner,

v.

UNIVERSITY OF MARYLAND MEDICAL SYSTEM CORPORATION; UNIVERSITY OF MARYLAND MEDICAL CENTER, LLC; LISA ROWEN; LINDA GOETZ,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

"Like the Federal Rules of Criminal Procedure, the Federal Rules of Civil Procedure are as binding as any statute duly enacted by Congress, and federal courts have no more discretion to disregard the Rules' mandate than they do to disregard constitutional or statutory provisions." *Chambers v. Nasco, Inc.*, 501 U.S. 32, 66 (1991) (Kennedy, J., dissenting).

Rule 56 is possibly the *most* consequential Rule because it can negate a constitutional right to a jury trial. The questions presented are:

1.a. Whether, under Federal Rule of Civil Procedure 56(a), a district court has discretion to grant summary judgment to a movant that *fails* to show there is no genuine dispute as to any material fact, as the Fourth Circuit held, or the district court lacks such discretion as the Second, Ninth, Eleventh, and D.C. Circuits held.

1.b. Whether, under Federal Rule of Civil Procedure 56(f)(2), a district court has discretion to grant summary judgment to a movant on grounds *not* raised by the movant *without* giving the nonmovant notice and a reasonable time to respond, as the Fourth Circuit held, or the district court lacks such discretion as the Seventh and Tenth Circuit held.

2. Whether a court of appeals has discretion to *not* perform a *de novo* review on appeal as of right before affirming summary judgment if a litigant will lose its constitutional right to a jury trial.

3. "In Suits at common law...the right of trial by jury *shall* be preserved." U.S. Const. amend. VII (emphasis added). Is summary judgment unconstitutional in a civil case *absent* proper showing of no genuine dispute as to any material fact?

PARTIES TO THE PROCEEDINGS

Petitioner is Faresha Sims and was the *pro se* plaintiff-appellant in the Fourth Circuit.

Respondents are University of Maryland Medical System Corporation; University of Maryland Medical Center; Lisa Rowen, individual and official capacity as Senior Vice President of Patient Care Services & Chief Nursing Officer; and Linda Goetz, individual and official capacity as Director of Nurse Anesthetists. All Respondents were the defendants-appellees in the Fourth Circuit.

RELATED PROCEEDINGS

United States District Court (D. Md.):

Sims v. University of Maryland Medical System Corporation et al., No. 1:19-cv-00295-CCB (judgment entered June 23, 2022)

United States Court of Appeals (4th Cir.):

Sims v. University of Maryland Medical System Corporation et al., No. 22-1884 (judgment entered December 15, 2023)

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INTRODUCTION

Almost a decade ago, this Court granted certiorari, No. 13-10400, to Bobby Chen—an unrepresented litigant—after the Fourth Circuit summarily affirmed despite the district court's failure to follow a Federal Rule of Civil Procedure causing the demise of his case. His writ of certiorari was dismissed due to his inadvertent failure to timely respond or be reached after his home was destroyed.

Here, again, the Fourth Circuit summarily affirmed despite the same district court failing to follow Rule 56. The district court *never* stated no genuine dispute as to any material fact as a reason for granting summary judgment to Respondents. And unfairly stated grounds *not* raised by Respondents as reasons for granting summary judgment absent providing notice or an opportunity to respond to Petitioner violating Rule 56(f)(2). The Fourth Circuit affirmed breaches of Rule 56 and the Constitution stating nothing more than "[w]e have reviewed the record and find no reversible error." That is not *de novo* review, yet it was required. Petitioner informed the courts below that Respondents *never* showed there was no genuine dispute as to any *material* fact. No court *ever* determined that raised issue despite Rule 56(a)'s mandate.

The courts below defied Rule 56, and this Court's precedent unjustly depriving Petitioner of a jury trial. "Federal courts have no more discretion to disregard the Rule's mandate than they do to disregard constitutional or statutory provisions." *Bank of Nova Scotia v. United States*, 487 U.S. 250, 255 (1988). Any federal court disregarding Rule 56 to revoke a jury trial violates constitutional rights and that cannot "casually be overlooked 'because a court has elected to

analyze the question under the supervisory power.'" *Ibid.* (citation omitted). Denying review "accept[s] this use of the supervisory power" and "confer[s] on the judiciary discretionary power to disregard the considered limitations of the law it is charged with enforcing." *United States v. Payner*, 447 U.S. 727, 737 (1980).

The Second, Seventh, Nineth, Tenth, Eleventh, and D.C. Circuits reversed and remanded when district courts violated Rule 56, but the Fourth Circuit affirmed. A federal court ignoring Rules or this Court's precedent wrongly granting or affirming summary judgment gravely depriving jury trials violates the Seventh Amendment. "The right to trial by jury is 'of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right' has always been and 'should be scrutinized with the utmost care.'" *SEC v. Jarkesy*, 144 S. Ct. 2117, 2128 (2024) (quoting *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935)).

The Fifth Amendment guarantees "[n]o person shall...be deprived of life, liberty, or property, without due process of law." "As John Adams put it, the founders saw representative government and trial by jury as 'the heart and lungs' of liberty.'" *Erlinger v. United States*, 144 S. Ct 1840, 1848 (2024) (citation omitted). Federal courts' adherence to procedural law is required by the Constitution. No circuit court should be allowed to deny *certain* individuals or groups from the protection of laws or the Constitution. "History, I think, records that it was this willingness on the part of the courts of England to make 'short shrift' of unpopular and uncooperative groups that led, first, to the colonization of this country, later, to the war that won its independence, and, finally to the Bill of

Rights." *Cohen v. Hurley*, 366 U.S. 117, 139-140 (1961) (Black, J., dissenting) (recounting the history of the colonists' promotion of the right to jury trial).

This Court's review is necessary for constitutional and legal protection of *every* litigant because equal justice under law can only be served to all the people when Rule 56 and this Court's precedent cannot be selectively disobeyed by lower courts in *certain* cases designating winners and losers. "The principles which would have governed with $10,000 at stake should also govern when thousands have become billions. That is the essence of equal justice under law." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 27 (1987) (Marshall, J., concurring). Justice and jury trials should be preserved for all, not just a chosen few. This Court's review is pressingly warranted because federal courts longtime misuse or abuse of Rule 56, like below, renders it unconstitutional violating both the Fifth and Seventh Amendments—and contrary to this Court's precedent. This poses a direct threat to equal justice under law for "We the People" causing national mayhem and chaos across federal courts. U.S. Const. pmbl. Yet many are powerless to *properly* seek this Court's review. This Court should now rebalance the scales of justice for all the people and ensure fairness with the use of Rule 56.

Over a *decade* ago, the Honorable Mark W. Bennett stated:

> The time has come to recognize that summary judgment has become...too likely to unfairly deprive parties—usually plaintiffs—of their constitutional and statutory rights to trial by jury. I am willing to throw out the baby with the bathwater because the culture of unjustly granting summary judgment is

> *far too ingrained* in the federal judiciary to reverse course.

Essay: From the "No Spittin, No Cussin' and No Summary Judgment" Days of Employment Litigation to the "Defendant's Summary Judgment Affirmed Without Comment" Days: One Judge's Four-Decade Perspective, 57 N.Y.L. SCH. L. Rev. 685, 686 (2012-2013) (emphasis added). *So* much damage to the *entire* judicial system and litigants—even if they are unrepresented or indigent—has been done because of misuse or abuse of Rule 56. Petitioner prays this Court settles this now and restores faith and trust in equal treatment by the law. Where can all the *wrongly* deprived litigants go to get their life, liberty, property, or jury trial back? This Court should care deeply about this, guard "jealously," and review for the benefit of *every* litigant. *Jacob v. New York City*, 315 U.S. 752, 752 (1942). "Our Constitution is color-blind....[A]ll citizens are equal before the law." *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting).

PETITION FOR WRIT OF CERTIORARI

Petitioner Faresha Sims respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The opinion of the Fourth Circuit is unreported, but available at 2023 WL 8666002 and reproduced at Pet. App. 1a-2a. The opinion of the district court is unreported, but available at 2022 WL 2275891 and reproduced at Pet. App. 4a-54a.

JURISDICTION

The Fourth Circuit entered judgment on December 15, 2023, and denied rehearing on April 29, 2024. Chief Justice Roberts, on June 21, 2024, extended the time within which to file a petition for a writ of certiorari to and including September 26, 2024. *See* No. 23A1134. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOVLED

The Fifth Amendment to the U.S. Constitution provides, in relevant part: "No person shall...be deprived of life, liberty, or property, without due process of law...."

The Seventh Amendment to the U.S. Constitution provides, in relevant part: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...."

28 U.S.C. § 2072 provides, in relevant part:

"The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals."

STATEMENT

A. Statutory Background

In 1934, Congress enacted the Rules Enabling Act, 28 U.S.C. § 2072, authorizing this Court to "prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts...and courts of appeals." The Federal Rules of

Civil Procedure began under the legal authority of the Rules Enabling Act of 1934 to "govern the procedure in all civil actions and proceedings in the United States district courts," and have the force and effect of law. Fed. R. Civ. P. 1. Summary judgment is governed by Rule 56, and can abrogate the right to a jury trial.

B. Facts[1]

1. Petitioner Faresha Sims, Black female, was employed as a certified registered nurse anesthetist ("CRNA") at the University of Maryland Medical Center ("UMMC"). She has always been recognized nationally and locally for clinical excellence in patient care even starting as a student nurse. ECF 171-0—171-5. Her colleagues consider her the best, bar none.

> Faresha Sims is one of only 1%-3% of certified registered nurse anesthetists in the U.S. who are Black. She is meticulous and thoughtful when caring for patients entrusted to her before and during their procedures. She is empathetic, and is not unaware of the impact and comfort her presence brings to those in the community who may have concerns about their care. Faresha continues to set high standards for herself, prioritizes patient care and encourages others on her team to do so as well....She is hands down, the best! [2]

She is most known for compassionate care and exceptional work ethic. ECF 171-1; ECF 171-2.

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[1] Citations refer to the district court's record. The district court granted summary judgment for Respondents, so this Court "must assume the facts to be as alleged by [P]etitioner." *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 76 (1998).

[2] JHH Department of Neurosurgery, Instagram, https://www.instagram.com/hopkinsneurosurg/p/CZsxWv5MjzF/?img_index=1 (last visited Sept. 23, 2024).

2. On June 18, 2015, Sims was off duty and not required to work at UMMC. ECF 175-2, p. 1. She had an approved vacation. *Id.* Her supervisor, Linda Goetz, White female, called Sims's personal cellular phone on this day and demanded Sims immediately report to Goetz's office refusing explanation. ECF 175-3, p. 2; ECF 180-6, p. 18, 236:8-237:6.

When Sims arrived to Goetz's office on June 18, Goetz informed that Sims was required to immediately submit to drug testing or be terminated, continuing to refuse explanation. *Id.* Goetz escorted Sims to Employee Health Services ("EHS") for a Fitness for Duty ("FFD") which is a medical examination and drug testing. UMMC's Medical Director and nurse were appalled Sims was *not* on-duty since UMMC policy requires the employee be on-duty (or reporting to duty) and supervisor to explain the reasons to the employee before a reasonable-suspicion FFD or drug testing is performed. ECF 174, p 2. But no one provided reasons then for the FFD with drug and alcohol testing. Sims was forced to be *observed* pulling down her underwear and urinating on her hand to collect urine in a cup without explanation. ECF 174-2.

Sims pleaded for the reasons for the FFD and drug testing, but no one would respond. ECF 180-6, 236:6-19. Sims went to Goetz's supervisor office, Lisa Rowen, White female, complaining the FFD and drug testing were because of her race—Black. Rowen immediately emailed Goetz directing Goetz to create documentation against Sims since Sims was complaining of race discrimination and Rowen now anticipating Sims filing a race discrimination complaint with "external agencies." ECF 176-9.

The results from the FFD with drug and alcohol testing showed Sims had consumed *no* drugs or alcohol, and had *no* mental or physical impairments. ECF 174-1; ECF 174-2. Sims had *never* taken any drugs in her life, and had only once consumed alcohol more than a decade prior to the FFD. ECF 174-1, p. 12. UMMC Medical Director deemed Sims fit for duty and determined no further evaluation or follow up needed after Sims underwent a series of medical and mental examinations. ECF 174-1, p. 13-14.

3. Eleven days later, on June 29, Walter Brown, UMMC Security Investigator, coerced and demanded— falsely impersonating a police officer— Sims to have a conversation with him about her complaint of race discrimination. ECF 180-6, p. 20-21, 246:19-247:11, 248:25-249:11. Brown immediately forwarded all information regarding Sims's complaint of race discrimination or retaliation to Human Resources. ECF 179-6, 56:17-57:15, 62:12-15, 66:20-67:1, 67:12-68:12, 70:5-10. Brown communicated through email to UMMC's legal counsel asking if anything else was needed from him attaching his sham memo, ECF 173-1, dated June 30, falsely framing Sims as having a mental illness.

On the *same* day, June 30, as Brown's false memo against Sims, he immediately received a $50,000 lump sum fraudulently for purported retro-pay for a job he did not have, and a job promotion he never applied for resulting in at least a $64,000-increase to his salary from $46,000 to at least $110,000. ECF 173-2, p. 5; ECF 176-6, p. 31; ECF 179-6, 106:11-15, 109:8-15; ECF 179-8, 11:9-11. Brown ultimately became immediately entitled on June 30, same date as his retaliatory memorandum, to at least $114,000. As of today, Brown was entitled to at least a monetary *gain* of over

$625,000 from UMMC over time starting on June 30—*same day as his retaliatory memorandum against Sims.* UMMC sent Sims an email on June 30 informing she was not permitted to return to work because of Brown's June 30th memo. ECF 173-3, p. 1. Prior to, Brown had recently filed for bankruptcy and declared under penalty of perjury that he was not expecting any increase in income within a year. ECF 176-6, p. 32, 37.[3] His debt was discharged on November 18, 2014. *Id.* at p. 1. Maurice Davis—Brown's supervisor—said he did not hire or promote Brown to his new position. ECF 197-2, 29:17-19, 30:4-5, 40:6-8, 69:14-16. Davis was shocked to learn Brown had been promoted. ECF 197-2, 16:2-5, 27:11, 36:17-37:1, 38:16-20, 41:2-7.

4. Sims informed she would be utilizing the U.S. Equal Employment Opportunity Commission ("EEOC") to investigate her complaints of race discrimination and retaliation. ECF 173-5, p. 2. In less than forty-eight *hours* of this, Sims was placed on *unpaid* suspension from work and never allowed to work again at UMMC. *Id.* at p. 4. Under pretense, UMMC stated Brown's sham memo indicated Sims *might* be unsafe due to a mental illness purportedly causing UMMC to not allow Sims to return to work. *Id.* at p. 3-4. But seven days prior, a FFD by UMMC's own Medical Director concluded Sims had *no* impairments including *no* mental illness and was safe to perform all job duties. ECF 174-1, p. 13-14. UMMC admitted Sims *never* had any job performance problems or patient care concerns. ECF 173-9, p.6; 179-9, 85:18-86:1; 180, 285:6-10, 400:18-401:4. And UMMC *never*

[3] Brown committed perjury many times in his deposition, but the district court refused to consider credibility at the summary judgement stage and granted summary judgment to UMMC *despite* genuine credibility disputes.

stated any essential job duty Sims might could not perform because of a mental illness. Rowen and Goetz maliciously used Brown's retaliatory and sham memo to conceal their true reason—complaints of race discrimination and retaliation—for terminating Sims's employment within thirty-seven days of her informing of utilizing the EEOC. ECF 179-2, p. 4; ECF 180-1, 37:2-39:19. Although the involuntary termination was on August 19, 2015, UMMC suspended Sims from work less than forty-eight hours of notice of intent to utilize EEOC, and stalled termination for about a month to intentionally conceal an involuntary termination within *hours* of that EEOC notice.

Goetz repeatedly denied ever stating she suspected Sims was stealing drugs but failed to reconcile that with her written assertion of this exact falsehood. ECF 179-2, p. 1, 3. Goetz eventually confessed later that she *never* believed Sims was stealing her patients' controlled-substances nor diverting drugs for self-use—both *serious* federal crimes that Goetz reported in writing against Sims. ECF 180, 181:18-21, 182:6-9. Goetz simply made it up to harass Sims because of her race knowing the truth would never matter since Sims is Black. Wanda Walker-Hodges, a CRNA manager, warned Sims that her supervisor—Goetz, was after Sims because of race. ECF 180-6, p. 13, 183:22-184:6. UMMC falsely imprisoned Sims while she was off duty, unlawfully forced her under threat to remove her underwear and urinate on her hand with someone watching, unreasonably searched her body to harass her because she is a Black woman, then illegally paid over $114,000 to $625,000 for a cover up to unlawfully retaliate against Sims by intentionally and falsely framing her as having a mental illness to pretend she *might* be unable to perform her job duties because of a bogus mental illness to involuntarily terminate her

employment for complaining about race discrimination. Yet it was undisputed Sims had satisfactory job performance, and *no* mental, physical, or drug impairments as determined by UMMC's own Medical Director. Sims was a "rising star" at UMMC because of her clinical excellence and exceptional work ethic. 171-2, p. 3.

C. Procedural History

1. Administrative Agencies

The Baltimore City Community Relations Commission concluded its 2.5-year investigation with a 51-page Findings of Fact determining probable cause that UMMC discriminated and retaliated against Sims with malicious intent and paid for a cover up. ECF 1-2.

UMMC sought review by EEOC to overturn the probable-cause determination issued by Baltimore City. After months of review, EEOC then issued its own determination of probable cause that UMMC discriminated and retaliated against Sims. ECF 1-3, p. 2.

2. District Court

On June 23, 2022, the district court issued a final judgment granting summary judgment to UMMC and ordered case closed. Pet. App. 55a. The district court's memorandum opinion is *forty-four* pages of advocacy arguing on behalf of UMMC and resolving disputed facts in UMMC's favor. Pet. App. 4a-54a. The district court disregarded Rule 56 and *never* determined whether UMMC showed there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Rule 56(a) mandates district courts to determine this before granting

summary judgment. Moreover, the district court *never* mentioned Sims's list of supported, disputed material facts showing the "top 62 triable issues of material fact that preclude summary judgment." ECF 170, p. 14-20. Sims raised the issue in her opposition response to summary judgment that UMMC never showed there is no genuine dispute as to any material fact. ECF 170, p. 22-24. But the district court would never address this properly raised issue.

The district court stated it granted UMMC's summary judgment motion on all counts for reasons in its 44-page memorandum opinion. Pet. App. 5a. But *none* of those reasons included because UMMC shows there is no genuine dispute as to any material fact. And *none* of the grounds for granting summary judgment in the memorandum opinion were included in UMMC's summary judgment motion.[4] The district court never provided notice and an opportunity for Sims to respond to its *sua sponte* grounds. Those were two fatal dispositive issues raised repeatedly by Sims but never addressed by *any* court.

None of the district court's facts are identified as *material* facts in the memorandum opinion. And the district court's facts are inaccurate based on the evidence. For example, UMMC argues Sims's "voluntarily resigned" (to conceal a retaliatory termination.) ECF 159-1, p. 20. But the district court concluded Sims was "fired" for a reason that both UMMC and Sims heavily dispute. Pet. App. 48a. Sims's evidence shows she was involuntarily terminated about two months after complaining of race discrimination and about one month after notice of EEOC even though she

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[4] Reference to UMMC's summary judgment motion in this petition includes its accompanying memorandum.

was removed from work within *hours* of protected activity. The district court ignores that to attribute the involuntary termination to a "mistaken[]" reason *supposedly* according to Sims. Pet. App. 49a. But Sims never alleged the involuntary termination was for a mistaken reason, and the district court never cites to where she does. The district court discussed mostly factual disputes in its 44-page memorandum opinion. But "trial by jury has always been, and still is, generally regarded as the normal and preferable mode of disposing of issues of fact in civil cases." *Dimick v. Schiedt*, 293 U.S. 474, 485-486 (1935). Although factual disputes were impermissibly and inaccurately resolved in the memorandum opinion in UMMC's favor, the district court *never* identified any *material* facts. And the evidence was misrepresented in the memorandum opinion. For example, the memorandum opinion states Sims misconstrued the evidence because it shows Sims's "willingness to accept extra scheduled shifts, not staying *beyond* her planned shifts." Pet. App. 34a, Footnote 17 (original emphasis). But the evidence shows the exact *opposite* of the memorandum opinion:

> Briefly describe this CRNAs strengths: Consistently volunteers to stay *beyond* her shift to help out. Great work ethic. Keep up the good work.

ECF 176-2, p. 3 (Annual Performance Evaluation) (emphasis added). The memorandum opinion was incessantly changing the facts contrary to the evidence throughout the entire 44-page memorandum opinion. Another example, the memorandum opinion stated UMMC had carried its burden to articulate a reason, but supposedly Sims failed because she did not show pretext. Pet. App. 21a. First, UMMC's ground for

summary judgment was *not* pretext. Second, the district court ignored that UMMC's reason was proffered for the *first* time in its reply brief, ECF 186, p. 11, even after Sims raised the issue. And the district court only cites to UMMC's reply brief attachment as the source of the reason proffered for the *first* time. *Id.* at 186-4 ("*See* ECF 186-4").

The district court refused to consider genuine disputes of credibility against UMMC even after Sims showed perjury evidence because "the court does not make credibility determinations at the summary judgment stage." Pet. App. 47a, Footnote 22. The district court overlooked that granting summary judgment is improper when the movant's credibility is genuinely disputed. The district court did acknowledge that if UMMC "work[ed] in unison" and "concocted an elaborate scheme" against Sims for complaining of race discrimination then this could "possibly violat[e] various criminal laws including fraud and perjury." Pet. App. 47a. But since the district court did not believe UMMC would do that then it concluded a reasonable jury cannot believe it despite credible evidence—"Dr. Sims submits evidence that Mr. Brown happened to receive a promotion on the same day he wrote the memorandum at issue." *Ibid.* The district court concluded that Brown's promotion "more than doubling his salary" plus an instant $50,000 lump sum payment was a "coincidence[]" not "causation" despite a *one day* temporal proximity showing causation along with a host of other reasons including Brown never applying for the position although required by policy, UMMC not knowing the reason Brown was promoted, and his supervisor being shocked by Brown's promotion and never made the decision to promote Brown. The district court glossed over UMMC's potential criminal acts after discussing credible evidence show-

ing it possible. The district court seized the function of a jury by resolving factual disputes, viewed the evidence in the light most favorable to UMMC, the movant, and determined a coincidence after "articulating the factual context of the case" inaccurately and in UMMC's favor. *Tolan v. Cotton*, 134 S. Ct. 1861, 1863 (2014). In doing so, the district court "failed to adhere to the axiom" of summary judgment that "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *Ibid.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)).

Sims filed a timely Rule 59(e) motion for reconsideration of the final judgment and raised issues including the district court's failure to apply Rule 56(a) and 56(f)(2), and to determine whether UMMC is entitled to summary judgment as a matter of law. ECF 195. Sims showed the district court that its memorandum opinion was inconsistent with Rule 56, this Court's precedent, and opposite the evidence. Sims further showed the district court its cited evidence was irreconcilable with its supposed facts. About four hours—ECF 197-1—after Sims's motion for reconsideration was docketed, the district court *immediately* denied it with a summary order stating a plaintiff cannot have a "second bite at the apple." Pet. App. 57a (citation omitted). But Sims never got *any* fair opportunity since the district court granted summary judgment to UMMC on grounds not in UMMC's motion, and neither UMMC or the district court identified *material* facts. The district court still would not determine dispositive or critical issues despite the motion for reconsideration showing in its leading six arguments, among others, the district court disregarded Rule 56, this Court's precedent, and ignored Sims's top sixty-two issues of material fact

that precluded summary judgment. ECF 195-1, p. 5-28. Neither UMMC[5] or the district court identified *material* facts, but Sims did and the district court never mentioned those material facts that precluded summary judgment prior to granting summary judgment to UMMC.

3. Fourth Circuit

On August 19, 2022, Sims timely filed a notice of appeal as of right to the Fourth Circuit. ECF 204. UMMC never responded or filed anything except counsel's notices related to representation, Doc. 10, and later a withdrawal, Doc 27.

On December 15, 2023, the Fourth Circuit issued a judgment order affirming summary judgment for UMMC. Pet. App. 3a. The Opinion states its *sole* reason for affirming is because the panel "reviewed the record and find no reversible error." Pet. App. 1a-2a. The Fourth Circuit never mentions any facts or law pertaining to the case, and never states its standard of review was *de novo*. It cannot be concluded that a *proper* review ever occurred even though an appeal as of right.

No court applied Rule 56 before summary judgment for UMMC was affirmed. On December 29, 2023, Sims timely filed a petition for rehearing en banc, Doc. 22, but denied on April 29, 2024, Pet. App. 56a.

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[5] UMMC attempted identifying its material facts in its reply brief, ECF 186, p. 6-7, after Sims's opposition response raised the fatal issue that summary judgment was impermissible because UMMC *never* identified material facts in its summary judgment motion.

REASONS FOR GRANTING THE PETITION

I. The Decision Below is a *Threat* to Equal Justice Under Law

This court "granted certiorari" when a lower decision was a "threat to the goal of uniformity of federal procedure," and reversed. *Hanna v. Plumer*, 380 U.S. 460, 463 (1965) ("Because of the threat to the goal of uniformity of federal procedure posed by the decision below, we granted certiorari."). This Court granted certiorari about a decade ago in No. 13-10400 to an unrepresented litigant, Bobby Chen, on the issue of the *exact* courts below disregarding a Rule's mandate. His response was untimely so dismissed, but the issue remains unsettled. This Court should grant certiorari here too because federal courts disregarding Rule 56's mandates denigrates equal justice under law and can thwart access to justice especially for unrepresented and under-resourced litigants.

It is almost an impossible feat for poor or unrepresented litigants to properly petition this Court for review due to lack of finances or skill. Movants and federal courts know this. Rule 56—summary judgment—was never meant to be a threat to equal justice under law, yet it is. "But the Constitution recognizes higher values than speed and efficiency.... [T]he Bill of Rights in general, and the Due Process Clause in particular...were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy." *Stanley v. Illinois*, 405 U.S. 645, 656 (1972). Rule 56's mandates "must be read in light of the provisions of the Fifth Amendment that no person shall be deprived of property without due process of law, and more particularly against the opinions of this Court." *Societe Internationale Pour Participations Industrielles et*

Commerciales, S.A. v. Rogers, 357 U.S. 197, 209 (1958).

Almost seventy years ago, this Court held that "[a] fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison*, 349 U.S. 133, 136 (1955). "It makes no difference how old I am or what color I am or what church I belong too (sic) if any. The question is I did not get a fair trial. The question is very simple." That is an excerpt of Clarence Earl Gideon's reply to respondent's response to his petition for a writ of certiorari that was granted, and judgment reversed by this Court. "To continue a rule which is honored by this Court only with lip service is not a healthy thing and in the long run will do disservice to the federal system." *Gideon v. Wainwright*, 372 U.S. 355, 351 (1963) (Harlan, J., concurring). The constitutional guarantees of due process and a jury trial are no more sacred and necessary in criminal cases than in civil. The Framers intended for life, liberty, and property to be valued the same for *all* the people—especially jury trials. The American Revolution and Seventh Amendment are proof of that. No Rule should be allowed to encroach upon the right to jury trials, even in civil cases. "The right of jury trial in civil cases at common law is a basic and fundamental feature of our system of federal jurisprudence which is protected by the Seventh Amendment." *Jacob*, 315 U.S. at 752.

This Court should review here for the sake of *every* litigant. This Court can restore fairness and conformity in the federal judiciary by now upholding equal justice under law for *every* litigant through this case. Federal courts using discretion to circumvent Rule 56 and this Court's precedent to deprive any litigant of a jury trial can do the same to *every* litigant. This case sought equal justice under law to eliminate

race discrimination in the workplace. "The law regards man as man, and takes no account of his surroundings or his color when his civil rights as guaranteed by the supreme law of the land are involved." *Plessy*, 163 U.S. at 559. (Harlan, J., dissenting). Federal courts can nullify *any* Rule or law, including the Civil Rights Act of 1964, by refusing to adhere to Rule 56's mandates to wrongly grant and affirm summary judgment rendering the authority of Congress and this Court's precedent voided law. "A group of scholars has argued that judges overuse summary judgment, especially in civil rights cases." Suja A. Thomas, *Why Summary Judgment is Unconstitutional*, 93 Va. L. Rev. 139, 141 (2007). Race discrimination in the workplace will continue as it has for many *more* decades if federal courts continue outmaneuvering Rule 56's safeguards and guardrails ensuring unjust outcomes. Honorable Mark W. Bennett's dissent to an affirming of summary judgment in an Eight Circuit case states:

> The federal courts' daily ritual of trial court grants and appellate court affirmances of summary judgment in employment discrimination cases across the land is increasingly troubling to me. I worry that the expanding use of summary judgment, particularly in federal employment discrimination litigation, raises the ominous specter of serious erosion of the "fundamental and sacred" right of trial by jury.

Kampouris v. St. Louis Symphony Soc'y, 210 F.3d 845, 850 (8th Cir. 2000) (Bennett, J., sitting by designation, dissenting) (quoting *Jacob*, 315 U.S. at 752). Rule 56 should not be perverted to protect race discrimination in the workplace, yet it was in the decision below. But

"[e]liminating racial discrimination means eliminating all of it," *including in the workplace*. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 143 S. Ct. 2114, 2150 (2023). Tolerance to racial discrimination in the workplace must end too if it "is invidious in all contexts." *Id.* at 2166 (quoting *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 619 (1991)). This case here sought no favor for race, only that employers stop unlawfully discriminating because of it. And then involuntarily terminating for lawful complaints about that and covering it all up. Rule 56 can bar a jury trial guaranteed by the Seventh Amendment. But this Rule is being easily manipulated to wrongly strip litigants of a jury trial.

> Too many courts in this circuit, both district and appellate, are utilizing summary judgment in cases where issues of fact remain ...."*[T]he purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try.*"

Melvin v. Car-Freshener Corp., 453 F.3d 1000, 1003-04 (8th Cir. 2006) (Lay, J., dissenting) (quoting *Poller v. Columbia Broad. Sys., Inc.*, 368 U.S. 464, 467 (1962)) (original emphasis).

> Summary judgment abuse and overuse occurs in all types of cases, but is especially magnified in employment discrimination cases. This problem is exacerbated by the daily ritual of appellate courts affirming summary judgment grants to employers, often without comment, at a rate that far exceeds any other substantive area of federal law.

Hon. Mark W. Bennett, *Essay: From the "No Spittin, No Cussin' and No Summary Judgment" Days of Employment Discrimination Litigation to the "Defendant's Summary Judgment Affirmed Without Comment" Days: One Judge's Four-Decade Perspective,* 57 N.Y.L. SCH. L. Rev. 685, 686 (2012-2013). The right to a jury trial is "so fundamental and sacred to the citizen" that it "should be jealously guarded by the courts." *Jacob*, 315 U.S. at 752-753. Any territory on American land should be reviewed if disregarding the guardrails of Rule 56. All circuits can follow this despite the right to a jury trial being "embedded" in the Constitution by the Framers to protect "against the passing demands of expediency or convenience." *Jarkesy*, 144 S. Ct. 2117, 2128.

Now is the time for this Court's review. It is almost ten years after the most recent unrepresented litigant, Bobby Chen, made it to but not through this Court's review to address federal courts disregarding a Rule. "[T]he court has been instructed to apply the Federal Rule, and can refuse to do so only if the Advisory Committee, this Court, and Congress erred in their prima facie judgment that the Rule in question transgresses neither the terms of the Enabling Act nor constitutional restrictions." *Hanna,* 380 U.S. at 471. Federal courts disregarding Rules have persisted almost *sixty* years after being recognized by this Court as a "threat" to equal justice under law. *Hanna*, 380 U.S. at 463. *Seventy-five* years ago, this Court stated: "We would ill serve the stated purposes of the Rules of Civil Procedure were we to perpetuate" that "which the rules expressly disavow." *City of Morgantown v. Royal Ins. Co.*, 337 U.S. 254, 258 (1949). All federal courts should be applying Rule 56's mandates to preserve jury trials, but are not. Equal application of Rule 56 by federal courts is paramount to ensuring

equal justice under law. This Court should grant review here to rebuke unconstitutional granting and affirming of summary judgment. "As the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law."[6]

II. The Decision Below Conflicts with at Least Six Other Circuits

"The Supreme Court shall have the power to prescribe general rules of practice and procedures...for cases in the United States district courts...and courts of appeals." 28 U.S.C. § 2072. The Federal Rules of Civil Procedure are binding law. Intercircuit splits arise when federal law is not applied uniformly across federal courts. The Fourth Circuit affirmed below when the district court disregarded Rule 56. This decision caused intercircuit splits with at least six other circuit courts when it affirmed summary judgment contrary to Rule 56. The Second, Seventh, Nineth, Tenth, Eleventh, and D.C. Circuits rendered an opposite decision reversing and remanding when district courts disregarded Rule 56. If this case had been appealed forty-one miles or an hour away in the D.C. Circuit instead of from Baltimore in the Fourth Circuit then the outcome would be opposite. The granting of summary judgment should be consistent across all federal courts and not arbitrarily arranged based on location.

A. 56(a)

The plain language of Rule 56(a) makes clear the movant must show "that there is no genuine dispute as to any material fact and the movant is entitled to

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[6] https://www.supremecourt.gov/about/about.aspx (last visited Sept. 23, 2024)

judgment as a matter of law" before a court can grant summary judgment. Fed. R. Civ. P. 56(a). Consistent with Rule 56, this Court requires that "[a] party seeking summary judgment *always* bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)) (emphasis added).

UMMC *never* identified any material facts nor showed there is no genuine dispute as to any material fact in its summary judgment motion. To be certain, when Sims raised this dispositive issue in her opposition response to summary judgment, UMMC—in its *reply* brief—identified its five so-called material facts for the *first* time. ECF 186, p. 6-7. And UMMC rarely, if ever, relied on these purported material facts—identified for the *first* time in reply—in its summary judgment motion argument. UMMC or the district court *never* identified *material* facts. Sims's opposition response identified at least *sixty-two* material facts that precluded summary judgment. (ECF 170, p. 14-20, "Top 62 Triable Issues of Material Fact that Preclude Summary Judgment"). The district court never mentioned Sims's material facts. Without ever determining whether UMMC met its initial burden or Rule 56's mandate, the district court rendered a 44-page memorandum opinion granting summary judgment on all claims in favor of UMMC. None of the district court's reasons included because UMMC showed there is no genuine dispute as to any material fact. "But the movant *must* discharge the burden the Rules place upon him: It is not enough to move for

summary judgment without supporting the motion in any way or with a conclusory assertion that the plaintiff has no evidence to prove his case." *Celotex,* 477 U.S. at 328 (White, J., concurring) (emphasis added).

It is understood that if all the material facts are genuinely disputed a movant might avoid identifying material facts, despite deceptive, to thwart opposition. Rule 56(a) and Rule 56(c) do not permit judicial discretion to reward that. To make matters worse, for UMMC, it filed a reply brief attaching new exhibits including Exhibit 70—a 50-page *written* response *disputing* Sims's top sixty-two material facts. ECF 186, p. 6, Footnote 2; ECF 186-3. UMMC disputing *sixty-two* material facts identified by Sims showed there were so many genuine disputes of material facts, but UMMC evaded identifying material facts to avoid showing this. The district court responded that "Faresha Sims's inaccurate and unfounded motion to strike the defendants' reply" is denied. ECF 190. The district court knowingly disregarded Rules 56(a) and 56(c) and improperly granted summary judgment to UMMC.

No discussion is necessary to show UMMC could not fulfil Rule 56(c)'s mandate of supporting its assertion that a fact cannot be genuinely disputed since UMMC never fulfilled Rule 56(a)'s mandate of showing no genuine dispute as to any material fact. Lack of either precludes summary judgment as a matter of law. The Fourth Circuit affirmed summary judgment for UMMC stating no reversible error absent *de novo* review. But the Second, Nineth, Eleventh, and D.C. Circuits reversed and remanded after *de novo* review holding summary judgment cannot be granted to a

movant that does not meet its initial burden or the mandate of Rule 56(a) or 56(c).

Second Circuit. The Second Circuit reversed summary judgment and held that "entry of judgment on the basis of a facially deficient summary judgment motion is not warranted. We see no reason why such a motion should not be subject to a motion to dismiss by reason of facial inadequacy, or simply denial....In this regard, the motion was facially inadequate." *Nick's Garage, Inc. v. Progressive Cas. Ins. Co.*, 875 F.3d 107, 116-117 (2d Cir. 2017).

Nineth Circuit. The Nineth Circuit reversed summary judgement when a defendant "did not carry [its] initial burden of production." *Nissan Fire Marine Ins. Co. v. Fritz Co.*, 210 F.3d 1099, 1107 (9th Cir. 2000). The court of appeals held: "But at summary judgment, a nonmoving party plaintiff has no obligation to produce anything until the moving party defendant has carried its initial burden of production." *Ibid.*

Eleventh Circuit. "The district court never discussed whether [movant] met its burden as the moving party on summary judgment." *Clark v. Coats & Clark, Inc.*, 929 F. 2d 604, 608 (1991). The Eleventh Circuit reversed summary judgment and directed the district court to "first decide whether [movant] met its initial burden under Rule 56 to establish that no genuine issue of material fact exists." *Id.* at 610. And held it is "the movant's Rule 56 responsibility of searching the record and identifying material in support of its motion." *Id.* at 609.

D.C. Circuit. "We therefore reverse and remand the case to the District Court so that it may reconsider [defendant's] motion for summary judgment in adherence with the applicable Federal Rules of Civil

Procedure." *Winston & Strawn, LLP v. McLean*, 843 F.3d 503, 505 (D.C. Cir. 2016). "A court must *always* engage in the analysis required by Rule 56 before acting on a motion for summary judgment." *Id.* at 506 (emphasis added).

B. Rule 56(f)(2)

Rule 56(f)(2) states, in relevant parts, "[a]fter giving notice and a reasonable time to respond, the court may...grant the motion on grounds not raised by a party." Fed. R. Civ. P. 56(f)(2). The Seventh and Tenth Circuits reversed and remanded after *de novo* review when a district court granted summary judgment *sua sponte* to the movant on grounds never raised by the movant absent notice and a fair opportunity to respond to the nonmovant. But, below, the Fourth Circuit affirmed when the district court granted summary judgment on grounds never raised by UMMC without providing notice and an opportunity to respond to Sims. The decision below, under the same circumstances, would be opposite in the Seventh and Tenth Circuits.

Seventh Circuit. "When a party moves for summary judgment on ground A, his opponent is not required to respond to ground B—a ground the movant might have presented but did not." *Malhotra v. Cotter & Co.*, 885 F.2d 1305, 1310 (7th Cir. 1989). The Seventh Circuit reversed summary judgment.

Tenth Circuit. The Tenth Circuit reversed summary judgment when "the district court granted judgment on a basis that was not raised by [movant]" prejudicing the nonmovant. *Oldham v. OK Farms, Inc.*, 871 F.3d 1147, 1150 (10th Cir. 2017).

This Court held "district courts are widely acknowledged to possess the power to enter summary

judgments *sua sponte*, so long as the losing party was on notice that she had to come forward with *all* of her evidence." *Celotex*, 477 U.S. at 326. (emphasis added). The district court below granted summary judgment on grounds not raised by UMMC contrary to Rule 56(f)(2) and this Court's precedent, but the Fourth Circuit affirmed. The decision would be opposite in certain other geographical locations.

III. The Decision Below Conflicts with this Court's Precedent

Congress, the Advisory Committee, nor this Court ever intended for summary judgment to be granted without the procedural safeguards of Rule 56. Almost four decades ago, this Court held:

> Of course, a party seeking summary judgment *always* bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact.

Celotex, 477 U.S. at 323 (quoting Fed. R. Civ. P. 56(c)) (emphasis added).

UMMC never identified any material facts in its summary judgment motion. Thus, impossible for UMMC to support an assertion—no genuine issue as to any material fact—it never made. And it remains true, too, UMMC could not cite to particular parts of materials in the record or show the materials cited do not establish a genuine dispute to material facts because it *never* identified *material* facts in its summary judgment motion.

"[T]he *Adickes* Court said that 'both the commentary on and the background of the 1963 amendment conclusively show that it was not intended to modify the burden of the moving party...to show initially the absence of a genuine issue concerning any *material* fact.'" *Celotex,* 477 U.S. at 325 (quoting *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159 (1970)). UMMC did not fulfil this Court or Rule 56's initial burden, but the Fourth Circuit still affirmed summary judgment contrary to this Court's precedent without proper review.

IV. Fourth Circuit Failed to Review as Required

It is undisputed that circuit courts are required to review district courts' granting of summary judgment *de novo* on appeals as of right. But, below, the Fourth Circuit *never* stated a standard of review, facts, or law in its summary opinion. Summary judgment cannot be properly affirmed without *de novo* review. The standard of review is critical to the outcome of a case. See *Dickinson v. Zurko*, 527 U.S. 150, 162 (1999) ("The upshot in terms of judicial review is some practical difference in outcome depending upon which standard is used."). The Fourth Circuit's lack of proper review resulted in an unjustified decision depriving Sims of a jury trial.

> The Constitution guarantees to litigants in the federal courts the right to have their cases tried by juries, and Rule 38 of the Rules of Civil Procedure explicitly implements that guarantee. Denial of the right in a case where the demanding party is entitled to it is of course error. The rulings of the district courts granting or denying jury trials are subject to *the most exacting scrutiny on appeal.*

Morgantown, 337 U.S. at 258 (emphasis added).

V. The Decision Below Is Unconstitutional

"Know then that we claim all the benefits secured to the subject by the English Constitution, and particularly the inestimable right of trial by jury." John Jay, Address to the People of Great Britian (October 21, 1774). The infringement on the right to jury trials significantly influenced the American Revolution as evidenced by the colonists' list of grievances including "[f]or depriving us in many cases, of the benefits of Trial by Jury." Declaration of Independence ¶20 (July 4, 1776).

For over *two-hundred* years, since 1791, the Seventh Amendment has been guaranteeing a jury trial in civil suits. But summary judgment, "probably the single most important pretrial device used today," is vastly employed to make null and void a litigant's constitutional right to a jury trial. Suja A. Thomas, *Why Summary Judgment is Unconstitutional*, 93 Va. L. Rev. 139, 140 (2007) (citation omitted). The decisions below disregarded Rule 56's mandates and ran afoul of the Seventh Amendment and Rule 38's guarantee to a jury trial. No federal court should be unchecked when it outmaneuvers Rule 56 wrongly depriving a litigant of a jury trial. "The right of trial by jury is of ancient origin, characterized...as 'the glory of the English law' and 'the most transcendent privilege which any subject can enjoy.'" *Dimick v. Schiedt*, 293 U.S. 474, 485 (1935) (citations omitted). Yet the courts below granted and affirmed summary judgment contrary to Rule 56 and unjustly deprived Sims of a jury trial.

A. Fifth Amendment

> No person shall...be deprived of life, liberty, or property, without due process of law.

Federal Rules of Civil Procedure are law, and adherence is required. Mandatory procedural law must be obeyed to ensure due process of law and equal justice under law. "To make certain that these rights and freedoms would be accorded equally to everyone, it was also provided: "*No person* shall...be deprived of life, liberty, or property without due process of law." *Cohen v. Hurley*, 366 US 117, 141 (1961) (Black, J., dissenting) (original emphasis). The courts below were required to adhere to Rule 56—procedural law—prior to granting and affirming summary judgment depriving Sims of a jury trial. But both courts below ignored Rule 56 refusing to comply with procedural law despite the issue being raised twice in both courts.

B. Seventh Amendment

> In Suits at common law...the right of trial by jury *shall* be preserved.

(emphasis added). "The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate." Fed. R. Civ. P. 38(a). "The Federal Rules of Civil Procedure have for almost 50 years authorized motions for summary judgment upon *proper* showings of the lack of a genuine, triable issue of material fact." *Celotex*, 477 U.S. at 327 (emphasis added). Proper showings is key. Otherwise, summary judgment is undeniably unconstitutional because it robs a litigant of an entitled jury trial.

This Court should review the unconstitutional breach below by the Fourth Circuit affirming the

improper granting of summary judgment and wrongly depriving Sims of a jury trial. "Trial by jury is a vital and cherished right, integral in our judicial system." *Morgantown*, 337 U.S. at 258. Without jury trials, we "have no other fortification...against being ridden like horses, fleeced like sheep, worked like cattle, and fed and clothed like swine and hounds.'" *Erlinger v. United States*, 144 S. Ct. 1840, 1848 (2024) (quoting Letter from Clarendon to W. Pym (Jan. 27, 1766), *in* 1 Papers of John Adams 169 (R. Taylor ed. 1977)). Summary judgment was wrongly granted and affirmed in this case. That is wrong and unconstitutional.

VI. The Decision Below is Wrong and Manifest Injustice

Only this Court can remedy the perversion of Rule 56 when federal courts grant *and* affirm a fatally defective summary judgment motion "simply permit[ting] summary judgment procedure to be converted into a tool for harassment" to wrongly disinherit litigants' constitutional right to a jury trial. *Celotex*, 477 U.S. at 332 (Brennan, J., dissenting). The only way summary judgment *might* be constitutional is within the confines of Congress, Rule 56, and this Court's precedent. Summary judgment is certainly wrong afoul of that. Litigants will continue being unjustly stripped of their constitutional rights without this Court's supervisory power intervening to control federal courts use of inherent power to disregard Rule 56's mandates.

A. District Court[7]

The district court's decision granting summary judgment without UMMC showing no genuine issue as to any material fact is "palpably erroneous." *Celotex*, 477 U.S. at 339 (Stevens, J., dissenting). The district court's 44-page memorandum opinion *lacks* a determination whether UMMC shows no genuine dispute as to any material fact. Yet the memorandum opinion resolves factual disputes *never* identified by the district court or UMMC as material facts. The district court also raised grounds *sua sponte* absent notice and a fair opportunity to respond to Sims before granting summary judgment to UMMC.

Sims raised these issues in a motion for reconsideration, but the district court *immediately* denied the motion in a summary order within about four hours of docketing. The district court had ample opportunities to adhere to Rule 56's mandates and this Court's precedent, but refused to do so.

B. Fourth Circuit

The Fourth Circuit never stated a *de novo* review was performed before affirming summary judgment and endorsing violations of Rule 56 and this Court's precedent affirming wrongly that Sims was not entitled to a jury trial as guaranteed by the Seventh Amendment and Rule 38. An improper review is no review at all. A *de novo* review was required. The Fourth Circuit relied on its discretion and unjustly affirmed summary judgment depriving Sims of constitutional rights.

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[7] See, *supra*, starting on page 11 the District Court section under Procedural History for specific examples of more wrongs.

VII. The Questions Have Exceptional Importance

There is an overflow of exceptionally important and sacred reasons for this Court's review. Petitioner prays this Court restores her inherited guarantees of the Constitution and reinforce that federal courts must adhere to Rule 56 to ensure due process of law for *every* litigant, including the unrepresented and indigent, prior to granting and affirming summary judgment. It is immeasurably important to *every* litigant that federal courts do not use discretion to disregard Rule 56, likely the most significant Rule, to grant summary judgment depriving of a jury trial.

Lack of national uniformity with the use of Rule 56 across all federal courts is of extraordinary importance because affirming summary judgment wrongly is unconstitutional if the decision unfairly deprives a litigant of a guaranteed right to a jury trial. And it is open season on *every* litigant if a party can file a facially defective summary judgment motion and it be granted *and* affirmed contrary to Rule 56 or this Court's precedent. Indigent and unrepresented litigants will be preyed upon more than ever and suffer the most with little or no ability to preserve the issue and *properly* petition this Court. Federal courts will be flooded with frivolous summary judgment motions with the movant designated to be the *chosen* winner without ever identifying material facts or adequate grounds. This Court should review and stop the issue now. In doing so, this Court *regains* control of federal courts use or abuse of Rule 56. Congress never intended federal courts to use Rule 56 to *arbitrarily* grant and affirm summary judgment based on geographical location or to choose the winners and losers. This Court's review is needed *most* now because Rule

56 is continuously being used to *negate* a litigant's constitutional right to a jury trial.

VIII. Excellent Vehicle and Questions Squarely Presented

Sims repeatedly raised the issue twice in both courts below regarding the disregard of Rule 56's mandates, but *no* court ever addressed the dispositive issue. This case squarely presents pure questions of *law* including whether summary judgment can be granted *and* affirmed *without* the movant showing no genuine dispute as to any material fact.

* * *

> Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty or give me death!

William Wirt, *Sketches of the life and character of Patrick Henry* (1817).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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