

In the
Supreme Court of the United States

HAROLD R. BERK,

Petitioner,

v.

WILSON C. CHOY, MD, and
BEEBE MEDICAL CENTER, INC.,

Respondents.

**RESPONDENTS' UNOPPOSED JOINT MOTION
FOR DIVIDED ARGUMENT**

Respondents Wilson C. Choy, MD, and Beebe Medical Center, Inc., jointly move to divide oral argument for Respondents under Supreme Court Rules 21 and 28.4. Respondents request that time be divided evenly between them, with no enlargement of the overall time for argument. Respondents will each be filing separate merits briefs, and they believe that divided argument is essential to ensure that their individual interests are adequately and fairly represented, that their arguments are fully conveyed by separately retained counsel, and that the Court receives a complete understanding of the perspectives and arguments of each Respondent.

Respondents have conferred with counsel of record for Petitioner, who consents to this request for divided argument.

1. This case concerns whether federal courts sitting in diversity should apply state “affidavit of merit” statutes, which a majority of states have adopted to combat frivolous medical malpractice lawsuits. Although the particularities of the statutes vary, they generally require a plaintiff to obtain an affidavit from a medical expert affirming that the lawsuit has a reasonable basis. If the plaintiff cannot obtain such an affidavit, the case cannot proceed. Affidavit of merit statutes are a critical tool of tort reform: Frivolous lawsuits impose immense costs on doctors and healthcare providers in the form of claim payments and insurance premiums; force doctors to engage in defensive, litigation-focused medicine rather than providing optimal care; and compromise the overall ability of hospitals and other healthcare providers to deliver quality healthcare, particularly in rural areas. *E.g.*, U.S. Congress, Joint Economic Committee Study: Liability for Medical Malpractice: Issues and Evidence (May 2003), *available at* bit.ly/4ji4eiw.

2. Divided argument is appropriate here. Respondents have distinct interests and perspectives on the question presented. Doctors, like Respondent Dr. Wilson Choy, MD, and hospitals, like Respondent Beebe Medical Center, Inc., face different pressures from frivolous medical malpractice lawsuits, which affidavit of merit statutes are intended to prevent and manage. Doctors face significant personal consequences, including increased scrutiny (or possible rejection) during the hospital credentialing, re-credentialing, or privileging processes necessary for them to provide care; increased malpractice insurance premiums; potential investigations or adverse actions by state medical boards; and reputational harm.

Hospitals can be subject to ruinous potential liability based on the conduct of multiple individual healthcare providers. They may struggle to hire or retain qualified, experienced, and knowledgeable providers while defending against nuisance suits. And they may have to engage in costly and time-consuming discovery into years of hospital policies, procedures, or training materials—ultimately leading to a reduced capacity across the medical system. These concerns are particularly pronounced for non-profit community-owned health systems, which have significantly less net income and fewer assets than larger for-profit hospital systems.

3. The Court regularly grants motions for divided argument where two parties with unique interests and perspectives appear on the same side of the case, including cases dividing argument between two non-government parties. *E.g.*, *Okla. Charter Sch. Bd. v. Drummond*, No. 24-394, 2025 WL 1132003, at *1 (U.S. Apr. 17, 2025); *United States v. Palestine Liberation Org.*, No. 24-151, 2025 WL 877158, at *1 (U.S. Mar. 21, 2025); *Oklahoma v. Env’t Prot. Agency*, 145 S. Ct. 1163 (2025); *PacifiCorp v. Env’t Prot. Agency*, 145 S. Ct. 1164 (2025); *Robinson v. Callais*, 145 S. Ct. 1165 (2025); *Env’t Prot. Agency v. Calumet Shreveport Ref., L.L.C.*, 145 S. Ct. 1164 (2025); *CC/Devas (Mauritius) Ltd. v. Antrix Corp.*, 145 S. Ct. 1160 (2025); *Devas Multimedia Priv. Ltd. v. Antrix Corp.*, 145 S. Ct. 1161 (2025); *Firebaugh v. Garland*, 145 S. Ct. 1002, 220 L. Ed. 2d 373 (2024); *Truck Insurance Exchange v. Kaiser Gypsum Co.*, 144 S. Ct. 996 (2024); *Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 376 (2023); *Brown v. United States*, 144 S. Ct. 64 (2023).

4. Dr. Choy and Beebe Medical Center have been separately represented throughout this proceeding and the proceedings in the Third Circuit and District of Delaware, and they will continue to be separately represented before this Court.

5. Granting this motion would not require the Court to enlarge the overall time for argument. No non-party has sought argument time. Respondents have contacted the Office of the Solicitor General, but the Solicitor General has not indicated whether the United States intends to file an amicus brief and, if so, what position it will take or whether it will seek argument time.

Respectfully submitted,

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