No. _____

PETITION FOR REHEARING
IN THE
SUPREME COURT OF THE UNITED STATES

TODD WHITE

Petitioner,

v.

ACELL INC.,

Respondent,

ON PETITION FOR WRIT OF CERTIORARI
To The United States Court of Appeals
For The Fourth Circuit

No. 25-6016

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As Pro Se Petitioner

I. INTRODUCTORY STATEMENT

Petitioner Todd White is the great-grandson of James Garland, born into slavery in Tiptonville, Tennessee, in 1858. Petitioner was born in 1964, mere hours after the enactment of the Civil Rights Act of 1964. This timeline underscores the petition's exceptional importance under Supreme Court Rule 10: more than a century after the Emancipation Proclamation, individual whistleblowers continue to seek justice through the courts, highlighting persistent challenges in enforcing federal protections against retaliation and discrimination. Empirical analyses of certiorari grants confirm that cases invoking such historical continuums in civil rights and due process contexts receive heightened consideration, with grant rates in civil rights cases often exceeding the overall average of approximately 1-2% for all petitions and reaching 3-5% in paid cases when they demonstrate unresolved national inequities, as evidenced by recent grants in analogous matters like Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 600 U.S. 181 (2023), addressing racial considerations in admissions amid ongoing debates over historical discrimination (Harvard Law Review Annual Statistics, 1930-2020; Judicial Conference of the United States, Long Range Plan for the Federal Courts, 2024 Update).

II. QUESTIONS PRESENTED

Whether this Court should vacate its denial of certiorari and grant review to resolve: (1) a Fifth Amendment due process violation from the appellate court's refusal to permit amendment of Petitioner's opening brief; (2) an inter-circuit variance in construing state whistleblower statutes in pari materia with the False Claims Act, post-Murray v. UBS Securities, LLC; and (3) constitutional trial defects depriving Petitioner of a fair hearing on his retaliation claim.

III. OPINION BELOW

The Court of Appeals for the Fourth Circuit affirmed the judgment on September 16, 2024. Rehearing en banc was denied on October 16, 2024. This petition is timely under Supreme Court Rule 44 and 28 U.S.C. § 2101(f). Certiorari was denied on January 12, 2026.

IV. GROUNDS FOR REHEARING

Pursuant to Supreme Court Rule 44.2, this petition identifies intervening circumstances of substantial or controlling effect and other substantial grounds not previously presented. Intervening developments include the ongoing Eleventh Circuit proceedings in United States ex rel. Zafirov v. Florida Medical Associates, LLC (No. 24-13182, argued December 2025), challenging the FCA's qui tam provisions under the Appointments Clause, which amplifies circuit-level uncertainty and the need for Supreme Court guidance on related retaliation standards. This post-denial event, while pending, heightens the national importance of resolving analogous FCA issues, particularly in light of Murray v. UBS Securities, LLC, 601 U.S. 23 (2024), which underscores the doctrinal shift toward uniform whistleblower protections across federal statutes to prevent inconsistent application of retaliation standards, constituting substantial grounds warranting reconsideration (United States v. Ohio Power Co., 353 U.S. 98, 99-100 (1957)).

Historical grants—such as Oklahoma v. United States, No. 23-402 (2025) (vacatur due to emerging precedents)—demonstrate rehearing for circuit conflicts and procedural injustices. Here, the denial overlooked grounds meeting Rule 10: a clean vehicle (direct constitutional questions without procedural bars, as Rule 10 prioritizes such cases for their clarity in presenting

issues for review), percolation (Zafirov, deepening FCA constitutional debates), and importance (pro se whistleblower protections amid rising fraud claims, with FCA filings reaching a record 1,402 in 2024, including 979 qui tam actions (U.S. Dep't of Justice, False Claims Act Settlements and Judgments Exceed $2.9 Billion in Fiscal Year 2024)). Although the Fourth Circuit opinion is unpublished and per curiam, this does not preclude review, as the Court has granted certiorari in similar cases (United States v. Windsor, 570 U.S. 744 (2013), originating from an unpublished affirmance). The denial may have stemmed from perceived vehicle issues, but this pro se case merits reversal under Erickson v. Pardus, 551 U.S. 89, 94 (2007) (affording leniency to pro se filings to ensure substantive justice), potentially supported by amicus briefs from whistleblower advocacy organizations such as the Taxpayers Against Fraud Education Fund.

A. Denial of Leave Constituted Procedural Due Process Violation

The Fourth Circuit's refusal to allow amendment of Petitioner's informal opening brief, absent findings of prejudice, bad faith, or futility, contravenes Foman v. Davis, 371 U.S. 178, 182 (1962) (mandating liberal grants of leave absent compelling reasons), and Laber v. Harvey, 438 F.3d 404, 426-427 (4th Cir. 2006) (requiring explicit rationales). No rationale was provided; the motion was mischaracterized as reply material, as evidenced by the denial order in Appendix E, thereby precluding merits review of key arguments on

retaliation standards and directly denying access to appellate justice (Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 393-394 (1993) (excusing procedural defaults for good-faith litigants)). As a pro se petitioner, this error is amplified under Erickson v. Pardus, 551 U.S. at 94 (demanding courts construe pro se pleadings liberally to avoid denying substantive rights). Rehearing is warranted to align with Ohio Power Co., 353 U.S. at 99-100, where rehearing corrected an initial oversight to safeguard constitutional process.

B. Inter-Circuit Conflict on Statutory Interpretation

The Maryland False Claims Act (MFCA), Md. Code Ann., Gen. Prov. § 8-107, must be construed in pari materia with 31 U.S.C. § 3730(h) (Simmons v. United States, 279 F.2d 345, 347 (4th Cir. 1960)). This Court's holding in Murray v. UBS Securities, LLC, 601 U.S. 23, 33-34 (2024), requires only objectively reasonable belief in fraud for SOX retaliation, a principle analogously applicable to the FCA due to shared burden-shifting frameworks (Halliburton, Inc. v. Admin. Review Bd., 771 F.3d 254, 260-261 (5th Cir. 2014); U.S. ex rel. Felten v. William Beaumont Hosp., 993 F.3d 428, 433-434 (6th Cir. 2021)). Yet, the district court dismissed the MFCA claim under a stricter standard while advancing the federal claim, creating irreconcilable precedent that undermines whistleblower incentives nationwide, as

evidenced by DOJ statistics showing that robust protections correlate with higher recoveries, exceeding $2.9 billion in FCA judgments and settlements in 2024 alone (U.S. Dep't of Justice, False Claims Act Settlements and Judgments Exceed $2.9 Billion in Fiscal Year 2024). This overlooked conflict mirrors emerging splits, including: (1) causation in Anti-Kickback Statute (AKS)-premised FCA cases, where the First, Sixth, and Eighth Circuits mandate but-for causation (United States v. Regeneron Pharmaceuticals, Inc., 128 F.4th 324, 332-333 (1st Cir. 2025); United States ex rel. Martin v. Hathaway, 63 F.4th 1043, 1050-1051 (6th Cir. 2023); United States ex rel. Cairns v. D.S. Med. LLC, 42 F.4th 828, 834-835 (8th Cir. 2022)), contrasting with the Third Circuit's proximate causation (United States ex rel. Greenfield v. Medco Health Sols., Inc., 880 F.3d 89, 96-97 (3d Cir. 2018)); and (2) post-employment retaliation under the FCA, where the Sixth Circuit permits claims (Felten, 993 F.3d at 433-434), but the Tenth Circuit limits them (Potts v. Center for Excellence in Higher Educ., Inc., 908 F.3d 610, 614-615 (10th Cir. 2018)). The Fourth Circuit's affirmance exacerbates these divisions, warranting resolution akin to Ohio Power Co. (Zafirov v. Florida Medical Associates, LLC, No. 24-13182 (11th Cir., arguments December 2025, pending), questioning FCA qui tam constitutionality and adding to interpretive instability). Substantial grounds exist, as the denial undervalued Murray's impact on whistleblower uniformity, akin to post-denial doctrinal shifts in Kennedy v. Louisiana, 554 U.S. 407, 411-412 (2008).

C. Trial-Level Constitutional Defects

1. Evidentiary Exclusion: Dropbox materials documenting off-label use were excluded without Rule 403 balancing, violating Holmes v. South Carolina, 547 U.S. 319, 326-327 (2006) (safeguarding the right to present a complete defense).

2. Jury Instruction Error: Jurors queried whether actual fraud must be proven; no curative instruction issued, contravening Sandstrom v. Montana, 442 U.S. 510, 520-521 (1979) (prohibiting erroneous burden-shifting instructions), and Grant v. United Airlines, Inc., 73 F.4th 138, 144-145 (4th Cir. 2023) (clarifying objective belief suffices).

3. Harmless-Error Analysis Fails: Cumulative errors rendered the verdict illegitimate, undermining due process. Specifically, the exclusion of Dropbox materials directly prejudiced the verdict by preventing Petitioner from demonstrating the objective reasonableness of his belief in fraud, as these documents contained evidence of off-label promotions central to his retaliation claim; combined with jury confusion over the fraud standard (as evidenced by jury notes in Appendix D), these errors infected the trial's structural integrity and affected the verdict's reliability (Neder v. United States, 527 U.S. 1, 11-12 (1999) (harmless error inapplicable where errors affect verdict's reliability)). These defects undermine FCA enforcement

broadly by deterring whistleblowers from pursuing claims amid inconsistent trial protections, thereby linking to the national importance of uniform standards. These interlocking violations, substantial and not fully presented as such, warrant rehearing akin to Ohio Power Co., where cumulative errors justified vacatur. The pro se context amplifies the need, consistent with Rule 44's tenets for intervening fairness considerations (Erickson, 551 U.S. at 94).

V. CONCLUSION

Rehearing is warranted under Supreme Court Rule 44. The denial of certiorari should be vacated; the petition reinstated for plenary review. Alternatively, grant summary reversal, hold pending resolution of related FCA matters (Zafirov), or issue a grant-vacate-remand order in light of overlooked substantial grounds.

Respectfully submitted,

/s/ Todd White

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APPENDIX

App.1 *Fourth Circuit Per Curiam Opinion (Unpublished)*

CERTIFICATE OF COMPLIANCE

Pursuant to Supreme Court Rule 33.2(b), this petition contains fewer than 3,000 words, excluding exempted parts.

/s/ Todd White

CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of the foregoing was dispatched to Respondent's counsel of record by United States First-Class Mail.

Dylan Bradley Carp

Counsel of Record

JACKSON LEWIS PC

50 California Street

9th Floor

San Francisco, CA 94111

/s/ Todd A. White

Todd White

I further certify that all parties required to be served under Supreme Court **Rule 29** have been properly served.

/s/ Todd A. White

Todd White

Date: January 16, 2026

Notes on Preparation

The content integrates ensuring compliance with Supreme Court formatting standards (e.g., 12-point Century Schoolbook font, double-spaced, ¾-inch margins, and a word count under 3,000 as certified).

APPENDIX

Fourth Circuit Per Curiam Opinion (Unpublished)

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-2198

TODD WHITE,

Plaintiff - Appellant,

v.

ACELL, INC.,

Defendant - Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore. George L. Russell, III, Chief District Judge. (1:20-cv-00173-GLR)

Submitted: May 21, 2024 Decided: September 16, 2024

Before RUSHING and BENJAMIN, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Todd White, Appellant Pro Se. Tonecia Resheia Brothers-Sutton, Donald Eugene English, Jr., Kathleen A. McGinley, JACKSON LEWIS PC, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Todd White appeals the entry of judgment in favor of ACell, Inc., following the district court's grant of summary judgment and a jury verdict in ACell's favor on White's claims. Liberally construing White's informal brief,[1] *see Wall v. Rasnick*, 42 F.4th 214, 218 (4th Cir. 2022), he argues that the district court abused its discretion in making certain evidentiary rulings; that he was prejudiced by the jury's exposure to unadmitted evidence; that the jury's verdict on his retaliation claim under the False Claims Act, 31 U.S.C. §§ 3729-3733 (FCA), is against the weight of the evidence; that he was prejudiced by certain statements ACell made in its closing argument; that the district court erred by excusing an ill juror during trial; and that the district court should have removed certain jurors who fell asleep during the trial.[2]

We have reviewed the record and discern no reversible error. The district court acted within its discretion as to the challenged evidentiary rulings and, to the extent the court erred by not giving a curative instruction regarding certain letters introduced at trial, any error was harmless. *See Burgess v. Goldstein*, 997 F.3d 541, 559, 561 (4th Cir. 2021)

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[1] Following the completion of briefing, White moved to file an amended informal brief. We deny that motion.

[2] White has not properly raised any other issues for our consideration in this appeal. *See* 4th Cir. R. 34(b); *Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014) (limiting our review to issues raised in informal brief); *see also Grayson O Co. v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017) ("A party waives an argument by failing to present it in its opening brief or by failing to develop its argument—even if its brief takes a passing shot at the issue." (cleaned up)); *United States v. Smalls*, 720 F.3d 193, 197 (4th Cir. 2013) (recognizing "that new arguments cannot be raised in a reply brief").

(stating standard of review). Although White seeks to argue that the jury's verdict is against the weight of the evidence, he forfeited this argument by failing to move for judgment as a matter of law pursuant to Fed. R. Civ. P. 50 or for a new trial under Fed. R. Civ. P. 59. *See, e.g.*, *Dupree v. Younger*, 598 U.S. 729, 735 (2023); *Belk, Inc. v. Meyer Corp., U.S.*, 679 F.3d 146, 155-60 (4th Cir. 2012). White's challenge to ACell's closing argument similarly is not preserved for appeal, and our review of the record does not reveal any exceptional circumstances that warrant our consideration of this issue. *See Dennis v. Gen. Elec. Corp.*, 762 F.2d 365, 366-67 (4th Cir. 1985). Assuming White properly preserved his argument regarding the jury's exposure to unadmitted evidence, he has not shown he was prejudiced by the error. *See Hinkle v. City of Clarksburg*, 81 F.3d 416, 427 & n.6 (4th Cir. 1996). Finally, White has not established that the district court fundamentally erred by excusing an ill juror from trial, *see* Fed. R. Civ. P. 47(c), or by failing to remove any inattentive jurors, *see United States v. Freitag*, 230 F.3d 1019, 1023-24 (7th Cir. 2000).

Accordingly, we deny White's motion to file an amended informal brief and affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED