No. _____

In the Supreme Court of the United States

JOANN HAYSBERT, AND NAZARETH HAYSBERT,

Petitioners,

v.

OUTBACK STEAKHOUSE OF FLORIDA, LLC,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Can a litigant's former counsel appeal an order revoking his *pro hac vice* admission despite not having been a named party before the trial court?

2. Does a litigant have third-party standing to argue that her former counsel's due process rights were violated by the revocation of his *pro hac vice* admission without the requisite notice and opportunity to be heard?

3. Does deference to the trial court's credibility finding at *Batson*'s third step excuse a reviewing court from considering whether the proffered race-neutral explanations for a peremptory strike are unreasonable, improbable, or lacking any basis in accepted trial strategy?

PARTIES TO THE PROCEEDINGS

Petitioners are JoAnn Haysbert (Dr. Haysbert) and Nazareth Haysbert (Mr. Haysbert). Dr. Haysbert was the plaintiff in the district court and appellant at the Fourth Circuit. Mr. Haysbert was counsel for Dr. Haysbert during part of the district court proceedings. Mr. Haysbert filed a joint notice of appeal with Dr. Haysbert in the district court and moved to intervene as an appellant at the Fourth Circuit.

Respondent is Outback Steakhouse of Florida, LLC (Outback). Respondent was a defendant in the district court and the appellee before the Fourth Circuit.

RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Haysbert* v. *Outback Steakhouse of Florida, LLC*, No. 25–1332, Unite States Court of Appeals for the Fourth Circuit. Judgment entered on August 10, 2026.
- *Haysbert* v. *Outback Steakhouse of Florida, LLC* [*Haysbert II*], No. 4:24–cv–87, United States District Court for the Eastern District of Virginia. Judgment entered on February 28, 2025.
- *Haysbert* v. *Bloomin' Brands, Inc. and Outback Steakhouse of Florida, LLC* [*Haysbert I*], No. 4:20–cv–121, United States District Court for the Eastern District of Virginia. Order granting motion for voluntary dismissal entered on January 11, 2024, and modified on reconsideration on April 19, 2024.

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OPINIONS BELOW

The opinion of the Fourth Circuit is reported at 184 F. 4th 699. The orders of the Fourth Circuit denying petitioners' motion to amend the caption and Mr. Haysbert's motion to intervene are unreported and respectively reproduced in the Appendix at App. 25 and 24. The judgment of the Eastern District of Virginia in *Haysbert II* is unreported and reproduced in the Appendix at App. 26. The order of the Eastern District of Virginia in *Haysbert I* voluntarily dismissing the case is unreported and reproduced in the Appendix at App. 27–29.

JURISDICTION

The Fourth Circuit's judgment was entered on August 10, 2026. No petition for rehearing was filed. This Court has jurisdiction under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Rule of Appellate Procedure 3 provides in relevant part:

> (a) Filing the Notice of Appeal.
> (1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).
> . . .
> (b) Joint or Consolidated Appeals.

> (1) When two or more parties are entitled to appeal from a district-court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

28 U. S. C. §1291 provides in relevant part:

> The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

STATEMENT OF THE CASE

1. Dr. Haysbert—at the time, the vice president and provost of Hampton University—was injured when she slipped and fell inside an Outback Steakhouse restaurant in Chesapeake, Virginia. She filed suit, alleging that her injuries were caused by Outback's negligence. The district court admitted Mr. Haysbert, a member in good standing of the State Bar of California (and Dr. Haysbert's son), *pro hac vice* as counsel for Dr. Haysbert.

Following five highly contentious days of trial, the district court granted Outback's motions for a mistrial and to revoke Mr. Haysbert's *pro hac vice* admission

based on supposedly unprofessional and inappropriate conduct by Mr. Haysbert.[1]

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[1] In its opinion, the Fourth Circuit uncritically repeats the trial court's disputed findings from its order revoking Mr. Haysbert's *pro hac vice* admission, which Mr. Haysbert attempted to contest on appeal. Importantly, when Mr. Haysbert finally had a meaningful opportunity to address the allegations against him in response to Outback's motion for sanctions, the new district court judge overwhelmingly found that Mr. Haysbert's actions did *not* rise to the level of sanctionable misconduct.

For example, the Fourth Circuit stated that Mr. Haysbert "repeatedly referenced the issue of insurance in questioning witnesses," in violation of the trial court's instructions. App. 5. This is inaccurate. In reality, the first instance of Mr. Haysbert supposedly raising the issue of insurance merely involved the use of the term "ensure" (not "insure") in asking an Outback employee about her safety-related job responsibilities. In the other instance, it was the same witness who first mentioned insurance, and Mr. Haysbert simply repeated the trial court's admonition to the witness not to discuss insurance in response to his question about Outback's procedures following a slip-and-fall incident.

The Fourth Circuit also referred to an alleged "outburst" where "the presiding judge became so alarmed by Attorney Haysbert's behavior that the judge almost pressed the panic button to summon the United States Marshal Service into the courtroom." App. 4. But this over-the-top reaction to Mr. Haysbert allegedly slamming a piece of paper and shouting "no further questions," as well as the trial court's use of racial stereotypes to describe Mr. Haysbert's supposedly "intimidating presence," strongly suggests the influence of unconscious bias on the trial court's experience or recollection. See, *e. g.*, *Batson* v. *Kentucky*, 476 U. S. 79, 106 (1986) (Marshall, J., concurring) (explaining that unconscious bias can cause a person to view the same action by people of different races differently); *Miller-El* v. *Dretke*, 545 U. S. 231, 267–268 (2005) (Breyer, J., concurring) (noting that a person may not even be aware of how their biases affect their judgments).

Dr. Haysbert thereafter requested a new trial date, and the case was reassigned to a different district court judge.

Approximately two and a half months before the second trial, Dr. Haysbert moved to voluntarily dismiss the case to allow her time to obtain new counsel. The district court granted Dr. Haysbert's motion and dismissed the case, subject to certain conditions, including that, if Dr. Haysbert were to refile her lawsuit, the parties would not be permitted to engage in any additional discovery, any discovery taken in *Haysbert I* could be used in the refiled case, and "all existing pretrial determinations [from *Haysbert I*] will be maintained."[2] "In other words," the district court explained, "if the case is refiled, it will be procedurally in the same position as the instant case."

A few months later, Dr. Haysbert refiled her lawsuit.[3]

2. The trial in *Haysbert II* began with jury *voir dire* and jury selection. Fourteen potential jurors, only two of whom were Black, were selected at random from the initial jury pool. One of the Black potential jurors had attended Hampton University and knew Dr. Haysbert by reputation; following an unsuccessful challenge for cause, she was peremptorily struck by Outback.

Outback used its third and final peremptory strike to remove the other Black potential juror, Juror No.

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[2] On reconsideration, the district court withdrew a condition requiring that any designated expert witnesses who were previously withdrawn remain withdrawn.

[3] The district court had jurisdiction under 28 U.S.C. §1332(a).

32, who was approximately 25 years old and worked at the shipyard. Dr. Haysbert raised a *Batson* challenge, alleging that Outback improperly struck Juror No. 32 because of his race.

In response, Outback explained that it had struck Juror No. 32 for three reasons: his silence during *voir dire*, his relatively young age, and his employment at the shipyard. Dr. Haysbert argued in reply that other potential jurors shared the same race-neutral characteristics and that Outback's proffered reasons "bore little connection to the case itself."

In ruling on Dr. Haysbert's *Batson* challenge, the district court concluded that Dr. Haysbert had met her initial burden to present a prima facie case of discrimination and that Outback had met its burden to articulate a race-neutral reason for striking Juror No. 32. The district court concluded, however, that Dr. Haysbert had not proved that Outback's proffered reasons were pretextual and that race was a motivating factor in its decision to strike Juror No. 32.

Following a four-day trial, the jury found for Outback, and the district court entered judgment in its favor.

3. On March 28, 2025, Dr. Haysbert and Mr. Haysbert filed a joint notice of appeal from the final judgment.

While Federal Rule of Appellate Procedure 3 provides that the notice of appeal must "specify the party or parties taking the appeal by naming each one in the caption or body of the notice," and that "[w]hen two or more parties are entitled to appeal from a district-court judgment or order, and their interests make joinder practicable, they may file a joint notice of

appeal," Fed. R. App. P. 3(b)(1) and (c)(1)(A), the court of appeals docketed the case with Dr. Haysbert as the sole appellant.

Petitioners thereafter moved the court of appeals to correct the caption of the case to identify both Dr. Haysbert and Mr. Haysbert as appellants, and the court denied the motion without explanation.

Mr. Haysbert subsequently moved to intervene as an appellant. In addition to explaining why he was entitled to intervene, Mr. Haysbert also noted that the court could moot his motion by recognizing that he already had the status of an appellant. And, despite Mr. Haysbert's notifying the Clerk that he intended to file a reply and requesting that the court not act on the motion until his reply was received pursuant to Local Rule 27(d)(2) (4th Cir.), the court denied Mr. Haysbert's motion to intervene without explanation before he could file his reply brief.

Around the same time, Dr. Haysbert also filed a motion with the district court to supplement the record on appeal in *Haysbert II* with the entire record from *Haysbert I*. The district court granted Dr. Haysbert's motion based on the condition imposed in connection with the voluntary dismissal of *Haysbert I* that any refiled case would be "procedurally in the same position as the instant case," and because the fact that "the [district] Court considered the *Haysbert I* docket during the pendency of *Haysbert II*" made supplementing the record necessary to disclose "what occurred in the district court," Fed. R. App. P. 10(e)(1).

4. On appeal, Dr. Haysbert argued that the district court had erred by rejecting her *Batson* challenge at the third step, including because Outback's asserted

race-neutral explanations for striking Juror No. 32 had no bearing on any issue in the case or connection to a permissible trial strategy. The court of appeals, however, did not consider whether youth or shipyard employment were reasonable explanations for striking Juror No. 32. Instead, it deferred to the district court's finding that Outback's purported race-neutral reasons were credible, noting that "[t]he district court listened to the parties' arguments and observed the demeanor of counsel."

Dr. Haysbert also argued that the district court erred by revoking Mr. Haysbert's *pro hac vice* admission without the requisite notice and opportunity to be heard. The court of appeals, however, concluded that it lacked jurisdiction to consider this claim because Dr. Haysbert had allegedly not shown that the second and third elements of third-party standing were met.[4]

REASONS FOR GRANTING THE PETITION

I. The Court Should Grant Certiorari to Address Questions Concerning Appeals of Orders Revoking an Attorney's *Pro Hac Vice* Admission

The first two questions in this petition concern the ability to appeal the revocation of an attorney's *pro*

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[4] As the court of appeals explained, "[t]o establish such third-party standing, a plaintiff 'must demonstrate (1) an injury-in-fact; (2) a close relationship between [herself] and the person whose right [she] seeks to assert; and (3) a hindrance to the third party's ability to protect his or her own interests.'" App. 13 (quoting *Wikimedia Foundation* v. *National Security Agency/Central Security Service*, 14 F. 4th 276, 288 (4th Cir. 2021)) (alterations in original).

hac vice status, which petitioners were prevented from doing in the proceedings below. While Mr. Haysbert filed a notice of appeal from the district court's final judgment, the Fourth Circuit refused without explanation to recognize him as an appellant. When he moved to intervene, his motion was denied without explanation. And when Dr. Haysbert attempted to press the issue herself, the Fourth Circuit held that she lacked standing to do so.[5]

As explained below, these decisions conflict with this Court's precedents or depart from the accepted and usual course of judicial proceedings. The Court should therefore grant certiorari to clarify that a litigant's former counsel is permitted to appeal a disqualification order without being a named party and that a litigant has third-party standing to raise the due process rights of her former counsel in such circumstances.

A. The decision below not to recognize Mr. Haysbert's appellant status conflicts with this Court's precedents and departs from the accepted and usual course of judicial proceedings

While, as a general matter, "only parties to a lawsuit, or those that properly become parties, may appeal an adverse judgment," *Marino* v. *Ortiz*, 484 U. S.

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[5] Had petitioners been permitted to raise the issue, the court of appeals would in all likelihood have found that the district court erred in revoking Mr. Haysbert's *pro hac vice* status because it did so without providing him the advance notice and meaningful opportunity to be heard required under *Belue* v. *Leventhal*, 640 F. 3d 567, 577 (4th Cir. 2011).

301, 304 (1988) (*per curiam*), this Court has "never . . . restricted the right to appeal to *named* parties to the litigation." *Devlin* v. *Scardelletti*, 536 U. S. 1, 7 (2002) (emphasis added). Rather, it has recognized the right of nonnamed parties to appeal in circumstances where the putative appellant was "bound by the order from which they were seeking to appeal." See *id.*, at 8; see also *id.*, at 14 (describing 28 U. S. C. §1291 as providing "a statutory basis" for "the right to appeal from an action that finally disposes of one's rights"). Thus, for example, "[t]he right of a nonparty to appeal an adjudication of contempt cannot be questioned." *United States Catholic Conference* v. *Abortion Rights Mobilization*, *Inc.*, 487 U. S. 72, 76 (1988).

Although this Court has not articulated a precise test to determine when a nonnamed party may appeal from a judgment, the courts of appeals have by and large permitted persons who were not named parties before the district court to appeal where the putative appellant (1) participated in the proceedings below, and (2) has a personal stake in the outcome. See, *e. g.*, *Bloom* v. *FDIC*, 738 F. 3d 58, 62 (2d Cir. 2013) (permitting a nonnamed party to appeal "a judgment by which it is bound" or "if it has an interest affected by the judgment"); *Northview Motors*, *Inc.* v. *Chrysler Motors Corp.*, 186 F. 3d 346, 349 (3d Cir. 1999) ("[A] nonparty may bring an appeal when three conditions are met: (1) the nonparty has a stake in the outcome of the proceedings that is discernible from the record; (2) the nonparty has participated in the proceedings before the district court; and (3) the equities favor the appeal") (citation modified); *Doe* v. *Public Citizen*, 749 F. 3d 246, 259 (4th Cir. 2014) (permitting nonnamed

party appeals "when the appellant (1) possessed an interest in the cause litigated before the district court and (2) participated in the proceedings actively enough to make him privy to the record") (citation modified); *Sanchez* v. *R. G. L.*, 761 F. 3d 495, 502 (5th Cir. 2014) ("To determine whether a non-party has standing to appeal, we ask: (1) 'whether the non-party actually participated in the proceedings below'; (2) whether 'the equities weigh in favor of hearing the appeal'; and (3) whether 'the non-party has a personal stake in the outcome'"); *United States* v. *Kincaide*, 119 F. 4th 1074, 1077, n. 2 (6th Cir. 2024) ("When a non-party is aggrieved by a final order denying its motion before the district court, we have jurisdiction under 28 U. S. C. §1291 to hear an appeal by the non-party"); *SEC* v. *Enterprise Trust Co.*, 559 F. 3d 649, 651 (7th Cir. 2009) (recognizing that this Court has permitted nonnamed party appeals when the "judicial decision [at issue] concludes the rights of the affected person, who cannot litigate the issue in some other forum"); *Curtis* v. *City of Des Moines*, 995 F. 2d 125, 128 (8th Cir. 1993) (permitting appeals "where a person has an interest in the cause litigated and participated in the proceedings actively enough to make him privy to the record[,] even though he was not named in the complaint and did not intervene") (citation modified); *SEC* v. *Wencke*, 783 F. 2d 829, 834 (9th Cir. 1986) (permitting appeals by nonnamed parties "where: (1) they participated in the district court proceedings, and (2) the equities weigh in favor of hearing the appeal"); *Frank* v. *Crawley Petroleum Corp.*, 992 F. 3d 987, 993 (10th Cir. 2021) (permitting nonnamed party appeals "when a non-party possesses a unique interest in the

outcome of the case and actively participates in the proceedings relating to that interest") (citation modified); *Broidy Capital Management LLC* v. *Muzin*, 61 F. 4th 984, 991 (D.C. Cir. 2023) (permitting appeals by nonnamed parties "bound by an underlying order who participated in the trial court"); *Home Products International, Inc.* v. *United States*, 846 Fed. Appx. 890, 894 (Fed. Cir. 2021) (evaluating "(1) whether the nonparty participated in the proceedings below; (2) whether the nonparty has a personal stake in the outcome; (3) whether the equities favor hearing the appeal; and (4) whether the nonparty has an alternative path to appellate review of the decision"); see also 9 J. Moore et al., Moore's Federal Practice ¶203.06, p. 3–23 (2d ed. 1987) (noting that "it has been held that a person who had an interest in the cause litigated and participated in the proceedings actively enough to make him privy to the record may appeal despite the fact that he was not named in the complaint and did not intervene") (quoted in *Kenny* v. *Quigg*, 820 F. 2d 665, 668 (4th Cir. 1987)).

The courts of appeals have also consistently permitted attorneys to appeal orders revoking their *pro hac vice* status or other sanctions directed at the attorney without intervening to become a named party. See, *e. g.*, *Johnson* v. *Trueblood*, 629 F. 2d 302, 303 (3d Cir. 1980) ("An additional problem is whether an attorney, although technically not a party of record, may avail himself of §1291 to appeal [an order revoking his *pro hac vice* admission]. We conclude that he can"); *Walker* v. *City of Mesquite, Tex.*, 129 F. 3d 831, 832 (5th Cir. 1997) (recognizing a "general rule" that "an attorney must await the end of litigation in the

district court to appeal a sanction"); *Rogers* v. *National Union Fire Ins. Co.*, 864 F. 2d 557, 559–560 (7th Cir. 1988) (holding in a Rule 11 sanctions appeal that "the attorneys must appeal in their own names. A notice of appeal naming the party . . . as the appellant, not the attorneys, does not create jurisdiction over the attorneys' appeal"); *Fierro Cordero* v. *Stemilt AG Services*, *LLC*, 142 F. 4th 1201, 1206 (9th Cir. 2025) (rejecting application of the rule against nonparty appeals to bar an attorney's appeal of a protective order); *Riggs* v. *Scrivner*, *Inc.*, 927 F. 2d 1146, 1149 (10th Cir. 1991) ("Plaintiff's attorney, rather than plaintiff, was the party aggrieved by the district court's imposition of sanctions and, therefore, was the proper party to appeal from this decision."); *Kirkland* v. *National Mortgage Network*, *Inc.*, 884 F. 2d 1367, 1369–1370 (11th Cir. 1989) (finding that it had jurisdiction to hear an appeal by the defendant and its attorney of an order revoking the attorney's *pro hac vice* admission); see also *Leis* v. *Flynt*, 439 U. S. 438 (1979) (*per curiam*) (permitting, without comment, both a client and his attorneys to raise the rights of the attorneys relating to denial of *pro hac vice* status); *Young* v. *City of Providence ex rel. Napolitano*, 404 F. 3d 33 (1st Cir. 2005) (hearing attorneys' appeal of the revocation of their *pro hac vice* status); *MacDraw*, *Inc.* v. *CIT Group Equipment Financing*, *Inc.*, 138 F. 3d 33 (2d Cir. 1998) (same); *Belue* v. *Leventhal*, 640 F. 3d 567 (4th Cir. 2011) (same); *Trade Well International* v. *United Central Bank*, 778 F. 3d 620 (7th Cir. 2015) (same); *Security National Bank of Sioux City*, *Iowa* v. *Jones Day*, 800 F. 3d 936 (8th Cir. 2015) (hearing attorney's appeal of sanctions); see generally Steinman, Irregulars:

The Appellate Rights of Persons Who Are Not Full-Fledged Parties, 39 Ga. L. Rev. 411, 512 (2005) ("Attorneys have standing to appeal sanctions entered against them"). Indeed, this Court has even warned that "[t]he effective congruence of interests between clients and attorneys counsels against treating attorneys like other nonparties for purposes of appeal." *Cunningham* v. *Hamilton County*, *Ohio*, 527 U. S. 198, 207 (1999). Consequently, in the accepted and usual course of judicial proceedings, an attorney who represented a client in the underlying litigation is permitted to appeal an order revoking the attorney's *pro hac vice* status without becoming a named party to the litigation.

Here, Mr. Haysbert filed a timely notice of appeal, as required by Federal Rules of Appellate Procedure 3 and 4. Nevertheless, the Fourth Circuit repeatedly and without explanation failed to recognize his status as an appellant. First, it docketed the appeal without identifying Mr. Haysbert as an appellant. Second, it denied Mr. Haysbert's and Dr. Haysbert's motion to correct the caption to add Mr. Haysbert. And third, it declined Mr. Haysbert's invitation to deny his motion to intervene as moot on the grounds that he already had appellant status.

As a practical matter, the failure to recognize Mr. Haysbert as an appellant doomed an otherwise clear-cut claim of error that his *pro hac vice* status was revoked without the notice and opportunity to be heard required under *Belue*, 640 F. 3d, at 577, as the court

of appeals ultimately concluded that Dr. Haysbert lacked standing to assert such a claim.[6]

B. The decision below that Dr. Haysbert lacked third-party standing conflicts with this Court's precedents

"Ordinarily, a party 'must assert his own legal rights' and 'cannot rest his claim to relief on the legal rights . . . of third parties.'" *Sessions* v. *Morales-Santana*, 582 U. S. 47, 57 (2017) (quoting *Warth* v. *Seldin*, 422 U. S. 490, 499 (1975)). "But we recognize an exception where . . . 'the party asserting the right has a close relationship with the person who possesses the right [and] there is a hindrance to the possessor's ability to protect his own interests.'" *Morales-Santana*, 582 U. S., at 57 (quoting *Kowalski* v. *Tesmer*, 543 U. S. 125, 130 (2004)); see also *Powers* v. *Ohio*, 499 U. S. 400, 411 (1991) (noting that the "litigant must [also] have suffered an 'injury in fact,' thus giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute").

This Court's precedents make clear that a litigant possesses third-party standing to challenge an order disqualifying her counsel without the constitutionally required notice and opportunity to be heard.

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[6] That the order revoking Mr. Haysbert's *pro hac vice* status was formally entered in *Haysbert I* is immaterial because the conditions that "[i]f the case is refiled, all existing pretrial determinations will be maintained" and "it will be procedurally in the same position as the instant case" imposed in connection with the voluntary dismissal of *Haysbert I* automatically made orders in *Haysbert I* applicable in *Haysbert II*. See *LeBlang Motors, Ltd.* v. *Subaru of America, Inc.*, 148 F. 3d 680, 687 (7th Cir. 1998).

With respect to the three criteria for third-party standing, it can hardly be disputed that Dr. Haysbert suffered an injury in fact, having been denied her counsel of choice. Cf. *Richardson-Merrell*, *Inc.* v. *Koller*, 472 U. S. 424, 441 (1985) (Brennan, J., concurring) ("A fundamental premise of the adversary system is that individuals have the right to retain the attorney of their choice to represent their interests in judicial proceedings"). Nor can it reasonably be disputed that Mr. Haysbert was hindered in his ability to protect his own rights, as the court of appeals' decision not to recognize Mr. Haysbert as an appellant and its denial of his motion to intervene left him unable to raise his own claim of error on appeal. Thus, the question of third-party standing in this case boils down to whether there was a sufficiently close relationship between Dr. Haysbert and Mr. Haysbert.

Surely there was. As noted in *Kowalski*, this Court has twice "recognized an attorney-client relationship as sufficient to confer third-party standing." 543 U. S., at 130–131 (citing *Caplin & Drysdale*, *Chartered* v. *United States*, 491 U. S. 617, 624, n. 3 (1989); *Department of Labor* v. *Triplett*, 494 U. S. 715, 720–721 (1990)). This conclusion is further reinforced by *Richardson-Merrell*, which specifically concerned an appeal of an order disqualifying *pro hac vice* counsel in a civil case, holding that such an order is not immediately appealable under the collateral order doctrine. The Court explained, however, that this conclusion would not leave either the attorney or the client without a remedy because, among various options, "if the client obtains an unsatisfactory judgment with substitute counsel, the disqualification ruling may be

challenged on appeal of a final judgment." *Richardson-Merrell*, 472 U. S., at 435. Thus, the Court made clear that a client has standing to challenge the disqualification of her attorney, even in a civil case (where disqualification would not implicate the litigant's constitutional right to counsel).

C. These questions implicate recurring issues of fundamental importance to the federal court system and the legal profession

The first two questions presented are not of concern to Dr. Haysbert and Mr. Haysbert alone. Taken together, the decisions below placed an order revoking an attorney's *pro hac vice* admission beyond the reach of appellate review by either the attorney or the client. That result cannot be reconciled with the premise on which this Court's decisions concerning the appealability of such orders rest, and it threatens the ability of litigants throughout the federal system to be represented by the out-of-state counsel of their choice.

1. This Court has repeatedly declined to permit immediate appeals of orders directed at a party's counsel, and it has done so on the understanding that such orders could be reviewed after final judgment. In *Richardson-Merrell*, the Court held that an order disqualifying counsel in a civil case is not immediately appealable, explaining that "a rule precluding appeal pursuant to § 1291 would not necessarily leave the client or the disqualified attorney without a remedy," because, among other things, "if the client obtains an unsatisfactory judgment with substitute counsel, the disqualification ruling may be challenged on appeal of

a final judgment." 472 U. S., at 435. And in *Cunningham*, the Court held that a sanctions order against an attorney (who, like Mr. Haysbert, had also been disqualified) is not immediately appealable "even where, as here, the attorney no longer represents a party in the case." 527 U. S., at 200; see *id.*, at 201. The Court acknowledged that its holding "may require nonparticipating attorneys to monitor the progress of the litigation after their work has ended," but concluded that "the efficiency interests served by limiting immediate appeals far outweigh any nominal monitoring costs borne by attorneys." *Id.*, at 209.

The decision below forecloses that review. When, as here, a court of appeals refuses to recognize the attorney as an appellant and denies his motion to intervene, the attorney cannot obtain review of the order in his own name. And if, as the Fourth Circuit held, the client lacks standing to assert the attorney's rights, she cannot obtain review either.[7] An order revoking *pro hac vice* admission thus can be reviewed neither before final judgment nor after it. Such an order is, in the most literal sense, "effectively unreviewable on appeal from a final judgment," *Richardson-Merrell*, 472 U. S., at 431 (citation omitted)—the very condition this Court has assumed such orders do not satisfy, cf. *id.*, at 438 ("Absent a requirement of prejudice, the propriety of the trial court's disqualification order can be reviewed as effectively on appeal

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[7] The Fourth Circuit has itself previously reviewed, at the attorneys' behest, an order revoking their *pro hac vice* admission. See *Belue*, 640 F. 3d, at 577. The unexplained orders below thus leave attorneys in the Fourth Circuit with no way of knowing whether, or how, they may obtain review of such an order.

of a final judgment as on an interlocutory appeal"). The Fourth Circuit's approach therefore either upends the premise of *Richardson-Merrell* and *Cunningham* or leaves orders revoking *pro hac vice* admission subject to no appellate check at all.

The absence of any appellate check is particularly troubling given the nature of the power at issue. A federal court has "the power to control admission to its bar and to discipline attorneys who appear before it." *Chambers* v. *NASCO*, *Inc.*, 501 U. S. 32, 43 (1991). But "[b]ecause of their very potency, inherent powers must be exercised with restraint and discretion," *id.*, at 44, and a court invoking them "must comply with the mandates of due process," *id.*, at 50. A lawyer subject to discipline "is . . . entitled to procedural due process, which includes fair notice of the charge," *In re Ruffalo*, 390 U. S. 544, 550 (1968), and sanctions "should not be assessed lightly or without fair notice and an opportunity for a hearing on the record," *Roadway Express*, *Inc.* v. *Piper*, 447 U. S. 752, 767 (1980). Appellate review is the means by which those guarantees are enforced. If neither the attorney nor the client may obtain it, the guarantees are only as strong as the forbearance of the district court that entered the order.

2. These questions are also important to the legal profession and to the litigants it serves. Federal practice is increasingly national: "There is a growing body of specialized federal law and a more mobile federal bar, accompanied by an increased demand for specialized legal services regardless of state boundaries." *Frazier* v. *Heebe*, 482 U. S. 641, 647, n. 7 (1987). For lawyers who are not members of the bar of a

particular district court, *pro hac vice* admission is the means by which they appear there, and they "often must move for admission *pro hac vice* in each case in which they wish to appear." A. Morrison et al., Proposal to Adopt a Rule for Unified Bar Admission to All Federal District Courts 6 (Feb. 23, 2023) (Advisory Comm. on Civil Rules Suggestion No. 23–CV–E).

For litigants, the ability to retain such counsel is often a practical necessity. As this Court has recognized, "[o]ut-of-state lawyers may—and often do—represent persons who raise unpopular federal claims. In some cases, representation by nonresident counsel may be the only means available for the vindication of federal rights." *Supreme Court of New Hampshire* v. *Piper*, 470 U. S. 274, 281 (1985). More generally, "[a] client may have a number of excellent reasons to select a nonlocal lawyer," including that "a nonresident lawyer may practice a specialty not available locally" or that the client "may be involved in an unpopular cause with which local lawyers are reluctant to be associated." *Frazier*, 482 U. S., at 650, n. 12.

An order revoking *pro hac vice* admission strikes at both sets of interests at once: it disciplines the attorney, and it deprives the client of "the attorney of their choice." *Richardson-Merrell*, 472 U. S., at 441 (Brennan, J., concurring). Yet under the decision below, once the court of appeals declines to recognize the attorney as an appellant, neither the attorney nor the client may ask it to decide whether the order was entered in accordance with due process. Out-of-state attorneys will be left to wonder whether a revocation entered without notice or an opportunity to be heard

can ever be corrected, and the litigants who depend on them will bear the cost.

This case illustrates the problem. Dr. Haysbert chose Mr. Haysbert to represent her. After the district court revoked his *pro hac vice* admission, she voluntarily dismissed her case to obtain new counsel, refiled it, and suffered an adverse judgment—precisely the circumstance in which this Court has said that "the disqualification ruling may be challenged on appeal of a final judgment." *Richardson-Merrell*, 472 U. S., at 435. Dr. Haysbert and Mr. Haysbert filed a joint notice of appeal. Yet no appellate court has ever considered whether Mr. Haysbert's admission was revoked without the notice and opportunity to be heard that due process requires. The Court should grant certiorari to make clear that the postjudgment review on which *Richardson-Merrell* and *Cunningham* depend is real, and not illusory.

II. The Court Should Grant Certiorari to Consider the Deference Owed to a Trial Court's Credibility Determination at *Batson*'s Third Step

In the proceedings below, Outback struck both Black members of the jury pool. In justifying its strike of Juror No. 32, Outback pointed to his silence during *voir dire*, his relative youth, and his employment at the shipyard. But youth and shipyard employment have no connection to the issues in this slip-and-fall case and, as Outback admitted, silence during *voir dire* did not distinguish Juror No. 32 from other non-Black members of the jury pool who were not struck.

On appeal, however, the Fourth Circuit did not address whether Outback's proffered race-neutral explanations were unreasonable, improbable, or unrelated to accepted trial strategy, electing instead to simply defer to the district court's unexplained denial of Dr. Haysbert's *Batson* challenge. While the Fourth Circuit explained this choice by saying that "the district court listened to the parties' arguments and observed the demeanor of counsel," App. 22, this Court's precedents do not permit reliance on the demeanor of counsel to trump consideration of all other relevant evidence of discrimination. The Court should therefore grant certiorari to clarify that the deference owed to a trial court's credibility finding at *Batson*'s third step does not excuse the reviewing court from evaluating whether the explanations given are objectively reasonable, probable, and connected to an accepted trial strategy.

A. The decision below to defer to the trial court's credibility determination, instead of evaluating whether the proffered race-neutral explanations were unreasonable, improbable, or unrelated to accepted trial strategy, conflicts with this Court's precedents or presents an important question of federal law that should be settled by this Court

To analyze claims of racial discrimination in jury selection under *Batson* v. *Kentucky*, 476 U. S. 79 (1986), or its civil counterpart, *Edmonson* v. *Leesville Concrete Co.*, 500 U. S. 614 (1991), courts apply a

three-step burden-shifting framework. After the party challenging the strikes establishes a prima facie case of discrimination on the basis of race, the burden shifts to the party exercising the strikes to provide a racially neutral explanation for removing the jurors in question. Once a neutral explanation is presented, the complaining party must prove purposeful discrimination. *Batson*, 476 U. S., at 96–98. The key issue at the third step is the persuasiveness of the justification given for the peremptory strike. *Miller-El* v. *Cockrell*, 537 U. S. 322, 338–339 (2003) (citing *Purkett* v. *Elem*, 514 U. S. 765, 768 (1995) (*per curiam*)).

In an appeal of a decision at *Batson*'s third step, the Court has directed reviewing courts to defer to the trial court's evaluation of credibility. *Cockrell*, 537 U. S., at 339–340. As the Court has explained, this makes sense when the persuasiveness of the proffered race-neutral reasons boils down to factors such as demeanor:

> In the typical peremptory challenge inquiry, the decisive question will be whether counsel's race-neutral explanation for a peremptory challenge should be believed. There will seldom be much evidence bearing on that issue, and the best evidence often will be the demeanor of the attorney who exercises the challenge. As with the state of mind of a juror, evaluation of the prosecutor's state of mind based on demeanor and credibility lies 'peculiarly within a trial judge's province.'

Hernandez v. *New York*, 500 U. S. 352, 365 (1991) (plurality opinion) (citations omitted) (quoted with approval in *Cockrell*, 537 U. S., at 339).

Beyond demeanor, however, the Court has also recognized that the credibility of the race-neutral explanations provided can be measured "by how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy." *Cockrell*, 537 U. S., at 339. "[I]mplausible or fantastic justifications may (and probably will) be found to be pretexts for purposeful discrimination." *Cockrell*, 537 U. S., at 339 (citing *Purkett*, 514 U. S., at 768). Above all, the Court has made clear that "in reviewing a ruling claimed to be *Batson* error, *all of the circumstances that bear upon the issue of racial animosity must be consulted*." *Snyder* v. *Louisiana*, 552 U. S. 472, 478 (2008) (emphasis added) (citing *Miller-El* v. *Dretke*, 545 U. S. 231, 239 (2005)).

The logic of these decisions indicates that the degree and nature of the deference owed by a reviewing court to the trial court's credibility finding depends on the parties' arguments and the trial court's reasoning. When the parties' third-step arguments are focused on attorney demeanor, as this Court has recognized, deference is more appropriate because the trial court is in the best position to assess demeanor, having the benefit of firsthand observation. A trial court, however, has no advantage over a reviewing court in its ability to assess more objective forms of evidence, or to consider whether the explanations given were reasonable or if the "proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve." *Dretke*, 545 U. S., at 241. In those circumstances, the rationale for deference to the trial court evaporates. A reviewing

court, even if limited to "analyz[ing] only the transcripts from *voir dire*," *Cockrell*, 537 U. S., at 339, is no less capable of determining whether a proffered explanation is implausible, fantastic, or wholly unrelated to accepted trial strategy.

In this case, Dr. Haysbert argued before the Fourth Circuit that the race-neutral reasons for striking Juror No. 32 offered by Outback were pretextual, as evidenced by the lack of a connection to any issues in the case, and by their failure to distinguish Juror No. 32 from similar non-Black members of the jury pool who were not struck. The Fourth Circuit, however, instead of evaluating the reasonableness of Outback's asserted explanations in light of the evidence presented, deferred to the trial court's finding in a conclusory manner, stating that:

> Ultimately, we are not left with 'the definite and firm conviction' that the district court erred when it rejected Dr. Haysbert's *Batson* challenge. . . . Here, the district court listened to the parties' arguments and observed the demeanor of counsel. The district court found Outback's purported race-neutral reasons credible and concluded that Dr. Haysbert failed to meet her burden on intentional discrimination. Providing deference to the credibility determinations of the district court and considering the relevant facts and circumstances, we discern no clear error and affirm the district court's ruling on Dr. Haysbert's *Batson* challenge.

App. 22–23.

A comparison to this Court's decision in *Snyder* v. *Louisiana* illustrates the problem. In *Snyder*, the prosecutor explained that he peremptorily struck a Black member of the jury pool because the potential juror had exhibited a nervous demeanor during *voir dire* and because the potential juror's student teaching obligations might cause him to support a verdict of guilty on a lesser charge than murder in order to avoid the need for a penalty phase. 552 U. S., at 478–479. The Court concluded that it could not "presume that the trial judge credited the prosecutor's assertion that [the potential juror] was nervous" because of the lack of explicit trial-court findings about the potential juror's demeanor. *Id.*, at 479. The Court also concluded that the second proffered explanation was "highly speculative" and "implausib[le]" under the circumstances. *Id.*, at 482–483.

Here, as in *Snyder*, the trial court did not identify which of Outback's explanations it relied upon in denying Dr. Haysbert's *Batson* challenge or explain why any of the explanations were credible. Because the reviewing court could not presume that the trial court found any particular explanation credible, it was not in a position to accept the trial court's conclusion. Rather, it should have evaluated the reasonableness and plausibility of Outback's supposed race-neutral explanations, just as this Court did in *Snyder*.[8]

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[8] Indeed, Outback's admission before the Fourth Circuit that Juror No. 32's silence during *voir dire* did not distinguish him from other non-Black members of the jury pool who were not struck should have been sufficient to establish the pretextual nature of that explanation, which "naturally gives rise to an

Taking into account both the reasons given by the Court in support of deferential review *and* its directive to consider all circumstances bearing on the question of racial discrimination, the Court's *Batson* jurisprudence is best understood as directing a reviewing court to respect a trial court's institutional advantage at making certain findings, such as those related to observed demeanor, while still accounting for other evidence pointing to discriminatory intent. On that understanding, the Fourth Circuit's decision below conflicts with the Court's precedents because it used deference to the trial court to avoid the necessity of considering other evidence of discrimination, such as the use of implausible or fantastic explanations. The Court should therefore grant certiorari to clarify that deference to the trial court's credibility finding does not end a reviewing court's obligation to consider other evidence of discrimination.

B. This question implicates a recurring issue of fundamental importance to the federal court system

Concerns about the *Batson* framework's ability to detect the racially discriminatory use of peremptory strikes are as old as *Batson* itself. As Justice Marshall noted in his concurring opinion in *Batson*, "assessing prosecutors' motives" presents trial courts with a "difficult burden." *Batson*, 476 U. S., at 105 (Marshall, J., concurring).

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inference of discriminatory intent." See *Snyder* v. *Louisiana*, 552 U. S. 472, 485 (2008) (citing *Dretke*, 545 U. S., at 252 (noting the "pretextual significance" of a "stated reason [that] does not hold up")).

> Any prosecutor can easily assert facially neutral reasons for striking a juror, and trial courts are ill equipped to second-guess those reasons. How is the court to treat a prosecutor's statement that he struck a juror because the juror had a son about the same age as defendant, or seemed 'uncommunicative,' or 'never cracked a smile' and, therefore 'did not possess the sensitivities necessary to realistically look at the issues and decide the facts in this case'? If such easily generated explanations are sufficient to discharge the prosecutor's obligation to justify his strikes on nonracial grounds, then the protection erected by the Court today may be illusory.

Id., at 106 (citations omitted).

Sadly, Justice Marshall's prediction that "[m]erely allowing [litigants] the opportunity to challenge the racially discriminatory use of peremptory challenges in individual cases will not end the illegitimate use of the peremptory challenge," *id.*, at 105, has proved prescient.

The empirical evidence is sobering. A study of 173 capital trials in North Carolina found that prosecutors struck 52.6% of eligible Black venire members, compared to only 25.7% of all other eligible venire members—a disparity that persisted "[e]ven after controlling for other factors potentially relevant to jury selection." Grosso & O'Brien, A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-*Batson* North Carolina Capital Trials, 97 Iowa L. Rev. 1531, 1548, 1553 (2012). A study of 317 capital trials in Philadelphia between 1981 and 1997

found that prosecutors struck 51% of Black jurors and 26% of non-Black jurors, and that "race-based uses of prosecutorial peremptories declined by only 2% after *Batson*." *Dretke*, 545 U. S., at 268 (Breyer, J., concurring) (citing Baldus et al., The Use of Peremptory Challenges in Capital Murder Trials: A Legal and Empirical Analysis, 3 U. Pa. J. Const. L. 3, 52–53, 73, n. 197 (2001)). As Justice Breyer observed, "the use of race- and gender-based stereotypes in the jury-selection process seems better organized and more systematized than ever before." *Dretke*, 545 U. S., at 270.

Recognizing these shortcomings, a growing number of States have strengthened or abandoned the *Batson* framework in their own courts. Washington adopted a rule, applicable "in all jury trials," under which a peremptory challenge must be denied if "an objective observer could view race or ethnicity as a factor in the use of the peremptory challenge," without any need to "find purposeful discrimination." Wash. Gen. R. 37(b), (e). Connecticut and New Jersey have adopted similar rules. See Conn. Practice Book §5–12(d); N. J. Ct. R. 1:8–3A(e)–(f). California's legislature, finding that "the existing procedure for determining whether a peremptory challenge was exercised on the basis of a legally impermissible reason has failed to eliminate that discrimination," 2020 Cal. Stat. ch. 318, §1(b), enacted a statute that, among other things, requires appellate courts to review the denial of an objection to a peremptory challenge *de novo* and forbids them to "impute to the trial court any findings, including findings of a prospective juror's demeanor, that the trial court did not expressly state on the record." Cal. Civ. Proc. Code §231.7(j). And Arizona has

eliminated peremptory challenges entirely, in both civil and criminal trials. See Order Amending Rules 18.4 and 18.5 of the Rules of Criminal Procedure, and Rule 47(e) of the Rules of Civil Procedure, No. R–21–0020 (Ariz. Aug. 30, 2021).

These developments underscore why the question presented warrants this Court's review. Under *Purkett*, the second step of the *Batson* inquiry "does not demand an explanation that is persuasive, or even plausible," 514 U. S., at 767–768; "[w]hat it means by a 'legitimate reason' is not a reason that makes sense, but a reason that does not deny equal protection," *id.*, at 769. The Court tolerated such explanations at step two on the understanding that a trial judge could disbelieve a "silly or superstitious" reason at step three. *Id.*, at 768. But if a reviewing court must defer to the trial court's acceptance of such a reason whenever the trial judge "observed the demeanor of counsel," App. 22—without asking whether the reason is reasonable, probable, or grounded in any accepted trial strategy—then the only safeguard against pretextual explanations lies in the judgment of the very court whose ruling is challenged. "If any facially neutral reason sufficed to answer a *Batson* challenge, then *Batson* would not amount to much more than *Swain*." *Dretke*, 545 U. S., at 240. The rule in *Batson* "requires the judge to assess the plausibility of that reason in light of all evidence with a bearing on it," *id.*, at 251–252, and a party exercising a peremptory strike must "stand or fall on the plausibility of the reasons he gives," *id.*, at 252. Those requirements mean little if no appellate court will ask whether the reasons given were plausible at all.

The question is one of fundamental importance to the federal courts. The States' reforms do not reach the federal courts, where the framework for evaluating *Batson* challenges, and the standard for reviewing them on appeal, are set by this Court's decisions. And the question arises in civil cases no less than in criminal ones. "Race discrimination within the courtroom raises serious questions as to the fairness of the proceedings conducted there. Racial bias mars the integrity of the judicial system and prevents the idea of democratic government from becoming a reality." *Edmonson*, 500 U. S., at 628. The Court should grant certiorari to make clear that deference to a trial court's credibility finding does not relieve a reviewing court of its obligation to assess whether the proffered race-neutral explanations are reasonable, probable, and grounded in accepted trial strategy.

CONCLUSION

This Court should grant certiorari.

Respectfully submitted.

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NOVEMBER 2026

Attorney for Petitioners

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Appendix A

[Filed: Aug. 10, 2026]

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25–1332

JOANN WRIGHT HAYSBERT,

Plaintiff – Appellant,

v.

OUTBACK STEAKHOUSE OF FLORIDA, LLC,

Defendant – Appellee

and

BLOOMIN' BRANDS, INC.,

Defendant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Elizabeth W. Hanes, District Judge. (4:24–cv–00087–EWH–RJK)

Argued: May 8, 2026
Decided: August 10, 2026

Before KING, THACKER, and BERNER, Circuit Judges.

Appendix A

Affirmed by published opinion. Judge Berner wrote the opinion, in which Judge King and Judge Thacker joined.

ARGUED: Judah Jacob Ariel, ARIEL LAW, Washington, D.C., for Appellant. John D. McGavin, MCGAVIN, BOYCE, BARDOT, THORSEN & KATZ, P.C., Fairfax, Virginia, for Appellee. ON BRIEF: Emily K. Blake, William W. Miller, MCGAVIN, BOYCE, BARDOT, THORSEN & KATZ, P.C., Fairfax, Virginia, for Appellee.

BERNER, Circuit Judge:

Dr. Joann Wright Haysbert was injured after she slipped and fell inside an Outback Steakhouse restaurant in Virginia. She filed suit, asserting that her injuries were caused by Outback's negligence. The litigation became unusually contentious—so contentious that the district court eventually declared a mistrial. Sometime later the district court granted Dr. Haysbert's motion to dismiss her case without prejudice, though the district court ordered strict limits placed on discovery should the case be refiled in the future. When Dr. Haysbert refiled her lawsuit, further complications ensued. Following the close of the second trial, a jury ruled for Outback.

On appeal, Dr. Haysbert contends the district court violated the due process rights of her attorney

who represented her in the first trial by revoking his *pro hac vice* admission after it declared a mistrial. She also argues that the district court abused its discretion by precluding her expert witness from testifying in the second trial. Finally, she argues that the district court clearly erred in denying the challenge she made pursuant to *Batson* v. *Kentucky*, 476 U. S. 79 (1986), to Outback's use of a peremptory strike to eliminate a Black potential juror from the jury pool.

For the reasons that follow, we reject Dr. Haysbert's arguments and affirm the challenged rulings of the district court.

I. Background

Joann Wright Haysbert, Ed.D., slipped and fell while picking up a take-out order at an Outback Steakhouse restaurant in Chesapeake, Virginia. At the time of the fall, Dr. Haysbert was Vice President and Provost of Hampton University, a historically Black university in Hampton, Virginia. Dr. Haysbert alleges that she suffered a traumatic brain injury and sustained cognitive impairments as a result of the fall.

Dr. Haysbert filed an action for negligence against Outback and its parent company in Virginia state court.[1] Outback removed the case to federal court based on diversity jurisdiction. The district court granted Nazareth Haysbert (Attorney Haysbert), a member in good standing of the Bar of the State of California, authorization to represent Dr. Haysbert

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[1] Outback's parent company Bloomin' Brands, Inc. was subsequently dismissed and is not a party to this appeal.

pro hac vice in the district court. Attorney Haysbert is Dr. Haysbert's son.

A. *Haysbert I*

The first trial in this case began on August 8, 2023, and lasted for five days. We refer to this trial as *Haysbert I*. Dr. Haysbert testified at trial along with expert witnesses, including Dr. Aaron Filler. Dr. Filler had not examined Dr. Haysbert before testifying in *Haysbert I*, though he had ordered and reviewed medical imagery of her injuries. Dr. Filler also based his opinion upon the expert report of an expert witness who did not testify at trial. Because the expert who produced the underlying report did not testify, the district court precluded Dr. Filler from referencing or relying upon that expert's report.

Throughout *Haysbert I*, Attorney Haysbert engaged in unprofessional and inappropriate conduct. For example, Attorney Haysbert repeatedly disregarded the district court's instructions and violated pretrial rulings. He regularly provided inconsistent and misleading representations to the district court. He interrupted and spoke over the court and opposing counsel. Most troublingly, on two occasions Attorney Haysbert made outbursts in front of the jury. On one of these occasions, the presiding judge became so alarmed by Attorney Haysbert's behavior that the judge almost pressed the panic button to summon the United States Marshal Service into the courtroom. Furthermore, despite explicit instructions from the court not to mention Outback's liability insurance in front of the jury, Attorney Haysbert

also repeatedly referenced the issue of insurance in questioning witnesses. As a result of Attorney Haysbert's conduct, counsel for Outback moved for a mistrial and for the revocation of Attorney Haysbert's *pro hac vice* admission.

The district court held a fulsome hearing on both motions. The district court granted Outback's motion for a mistrial, noting that, in almost forty years on the bench, it could not recall having declared a mistrial in a civil case. Though the district court initially declared the mistrial in an oral ruling, it later supplemented that ruling with a written order. The district court also granted Outback's motion to revoke Attorney Haysbert's *pro hac vice* admission, citing a long list of Attorney Haysbert's improper trial practices and unprofessional behavior. The district court ordered the case reassigned to a new judge and gave Dr. Haysbert twenty-one days to notify the court if she wished to set a new trial date.

Dr. Haysbert requested a date for a new trial. Dr. Haysbert's local counsel withdrew from representing her on October 12, 2023. Dr. Haysbert initially proceeded with the case representing herself without legal counsel. On October 30, 2023, the newly assigned district court judge entered a scheduling order providing for trial to begin on February 5, 2024. On December 18, 2023, however, less than two months before the second trial was set to begin, Dr. Haysbert moved to voluntarily dismiss her case without prejudice. In her motion, Dr. Haysbert represented that she had been unable to retain legal counsel and was unable to represent herself because of the traumatic

brain injury she allegedly sustained after she slipped and fell at the Outback restaurant.

Outback opposed Dr. Haysbert's motion, arguing that dismissing the case without prejudice to Dr. Haysbert's ability to refile in the future would unfairly prejudice Outback. Outback highlighted the significant costs and attorneys' fees it had incurred in litigating the case thus far. Outback also maintained that voluntary dismissal without prejudice was improper because Dr. Haysbert had unduly delayed seeking such relief. Finally, Outback argued that Dr. Haysbert's inability to secure legal counsel could not support granting a dismissal without prejudice.

On January 3, 2024, while Dr. Haysbert's motion for voluntary dismissal was pending, Dr. Haysbert met with Dr. Filler for a telehealth visit. Immediately following the visit, Dr. Filler prepared a report which he labeled "New Patient Evaluation Report" (the NPE Report). In the NPE Report, Dr. Filler summarized the history and symptoms relating to Dr. Haysbert's injury. He also reviewed new health information about Dr. Haysbert that he learned during the telehealth visit. Significantly, in the NPE Report, Dr. Filler offered his opinion about the cause of Dr. Haysbert's injuries and symptoms. Dr. Filler stated that it is his "impression to a reasonable degree of medical certainty that the fall [Dr. Haysbert] suffered on May 23, 2018, was due to extrinsic factors such as she describes a slipperiness on the floor and that it did cause sufficient impact to have pro-

duced post concussive symptoms." Parties' Joint Appendix (J.A.) 801.

The district court granted Dr. Haysbert's motion for voluntary dismissal without prejudice approximately two weeks later. In granting the motion, the district court imposed several conditions intended to mitigate any potential prejudice to Outback that could result from the dismissal without prejudice. The district court ordered that, if Dr. Haysbert were to refile her lawsuit, the parties would not be permitted to engage in any additional discovery, the parties could not supplement the expert designations or exhibits that had been disclosed in *Haysbert I*, and all pretrial determinations from *Haysbert I* would carry over in any new litigation. Taken together, these conditions were meant to ensure that a refiled case would commence in the same posture as if the dismissal had never been granted.

B. *Haysbert II*

The district court scheduled the second trial to commence on February 25, 2025. We refer to this trial as *Haysbert II*. The district court issued a scheduling order that reiterated the court's previous admonition against conducting additional discovery and clarified that the case was to go forward "procedurally in the same position" as *Haysbert I*. J.A. 1015. A final pretrial conference was scheduled for January 16, 2025. In preparation for that conference, the district court ordered the parties to submit exhibits and witness lists by January 9, 2025, one week before the trial was scheduled to begin.

Appendix A

Dr. Haysbert turned over Dr. Filler's NPE Report to Outback on January 10, 2025, one day after the court-imposed deadline for submission of exhibits and more than one year after Dr. Filler drafted it. Outback objected to the admission of the NPE Report, arguing that it included supplemental information that Dr. Haysbert intended to rely upon to fill gaps that Outback had pointed out during Dr. Filler's testimony in *Haysbert I*. Outback also asked the court to sanction Dr. Haysbert by precluding Dr. Filler from testifying in *Haysbert II*. Outback argued that Dr. Haysbert had violated the court's order prohibiting additional discovery. In addition, Outback contended that it would be greatly prejudiced if Dr. Filler were permitted to testify because Dr. Filler would be unable to cabin his testimony to information he had during *Haysbert I*.

The district court heard argument on Outback's motions to exclude the NPE Report and to preclude Dr. Filler from testifying. The district court excluded the NPE Report as an automatic sanction, under Federal Rule of Civil Procedure 37(c)(1), for failing to submit the report in a timely manner in violation of Federal Rule of Civil Procedure 26(e). The district court also granted Outback's motion to exclude Dr. Filler from testifying. The district court agreed with Outback that permitting Dr. Filler to testify would unfairly prejudice its defense and that such prejudice could not be alleviated by limiting Dr. Filler's testimony.

Dr. Haysbert moved for reconsideration of the district court's sanctions order. She argued that ex-

cluding Dr. Filler's testimony was an excessive sanction in light of the minimal Rule 26(e) violation. Dr. Haysbert contended that excluding Dr. Filler's testimony would be manifestly unjust and deprive her of "fundamental due process and her right to bring her claims to the Court and jury for adjudication on the merits." J.A. 1005. The district court disagreed, concluding that excluding Dr. Filler from testifying was an appropriate sanction, "particularly in light of the history of the case." *Id.* at 1017.

The *Haysbert II* trial commenced on February 25, 2025, beginning with jury *voir dire* and jury selection. The initial jury pool contained thirty-five potential jurors. This pool was then reduced to fourteen potential jurors, only two of whom were Black. One of the Black potential jurors, Juror Number 1, had attended Hampton University and knew of Dr. Haysbert by reputation from her tenure as Vice President and Provost. Outback used its first peremptory strike to remove Juror Number 1 from the jury pool, having previously argued unsuccessfully that she should be removed for cause because of her familiarity with Dr. Haysbert.

Outback later used its third and final peremptory strike to remove the other Black potential juror, Juror Number 32. Juror Number 32 was approximately twenty-five years old and worked in the shipyard. Dr. Haysbert raised a *Batson* challenge to Outback's use of a peremptory strike against Juror Number 32, alleging that Outback improperly struck the potential juror because of his race.

In response, Outback explained that it elected to strike Juror Number 32 for three reasons: because he was "one of the small minority of jurors who said nothing," because he was the youngest person in the jury pool, and because he works in the shipyard. J.A. 1100. Outback expressed concern, because of Juror Number 32's silence during *voir dire*, it could only "speculate" about Juror Number 32's knowledge and background. *Id.* Outback noted that other potential jurors in the jury pool had been "very thorough and responsive," *id.* while Juror Number 32, "didn't respon[d] to a single question." *Id.* Outback explained that "rather than take a chance and speculate on [Juror Number 32's] ability to be fair, [the company] elected to strike him." *Id.*

Dr. Haysbert argued that Outback's proffered reasons were not the true reasons for Outback's use of the peremptory. Dr. Haysbert attempted to show that other potential jurors shared at least one of the same race-neutral qualities listed by Outback. Dr. Haysbert further argued that Outback's proffered reasons were not "viable" or "appropriate" and "bore little connection to the case itself." *Id.* Dr. Haysbert pointed to the fact that Outback used two out of three of its peremptory strikes against Black potential jurors to suggest that Outback's true reason was the potential jurors' race. Dr. Haysbert urged the district court to find that, because Juror Number 32's race was "the only thing that distinguished him from the other potential jurors," race must have been Outback's reason for striking him. *Id.* at 1101.

After hearing from both sides, the district court made its ruling on the record. The district court determined that Dr. Haysbert met her burden to present a *prima facie* case under *Batson*. The district court next concluded that Outback satisfied its burden to articulate a race-neutral reason for striking Juror Number 32. The district court considered the parties' arguments and evidence. The district court expressed its view that Outback's reasons for thinking Juror Number 32 would not be favorable were "not wrong" and were "logical." *Id.* at 1103. The district court concluded that, on the record before it, Dr. Haysbert had not met her burden to show that race was a motivating factor in Outback's decision to strike Juror Number 32. The district court therefore denied the *Batson* motion.

Following a three-and-a-half-day trial, the jury found for Outback. The district court entered an order dismissing the case and ordering Dr. Haysbert to pay Outback's costs. Dr. Haysbert timely appealed.

II. Analysis

Dr. Haysbert argues that the district court erred in three ways: first, by revoking Attorney Haysbert's *pro hac vice* admission; second, by excluding Dr. Filler from testifying; and, third, by denying her *Batson* motion. We address each of these arguments in turn and affirm the rulings of the district court.

A. Attorney Haysbert's *Pro Hac Vice* Revocation

We first address Dr. Haysbert's appeal of the district court order revoking Attorney Haysbert's *pro*

hac vice admission. We conclude that Dr. Haysbert has not met her burden to establish that she has standing to bring this claim.

Dr. Haysbert asserts that the district court violated Attorney Haysbert's constitutional right to due process by failing to provide proper notice and an opportunity to be heard prior to revoking his *pro hac vice* admission.[2] In response, Outback argues that Dr. Haysbert lacks standing to raise an alleged violation of Attorney Haysbert's due process rights.

"[W]hen standing is questioned by . . . an opposing party, the litigant invoking the court's jurisdiction must . . . explain how the elements essential to standing are met." *Virginia House of Delegates* v. *Bethune-Hill*, 587 U. S. 658, 663 (2019). Dr. Haysbert provided no such explanation in her reply brief. When questioned during oral argument about Dr. Haysbert's standing to raise a claim based on an alleged violation of Attorney Haysbert's due process rights, counsel for Dr. Haysbert responded that his client possessed third-party standing.

Though generally a party may only assert her "own legal rights and interests, and cannot rest [her]

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[2] Significantly, Dr. Haysbert does not assert on appeal that the district court's revocation of Attorney Haysbert's *pro hac vice* admission violated *her own* due process or other constitutionally protected right. In response to questions during oral argument, counsel for Dr. Haysbert argued for the first time that his client had suffered a constitutional injury, namely her right to select the counsel of her choosing. This claim was not raised in Dr. Haysbert's brief on appeal and is therefore not properly before us. *See West Virginia CWP Fund* v. *Stacy*, 671 F.3d 378, 389 (4th Cir. 2011).

claim to relief on the legal rights or interest of third parties," *Warth* v. *Seldin*, 422 U. S. 490, 499 (1975), a third party may under certain circumstances establish "standing to assert the rights of another," *Maryland Shall Issue Inc.* v. *Hogan*, 971 F.3d 199, 214 (4th Cir. 2020) (quoting *Kowalski* v. *Tesmer*, 543 U. S. 125, 129–30 (2004)). To establish such third-party standing, a plaintiff "must demonstrate (1) an injury-in-fact; (2) a close relationship between [herself] and the person whose right [she] seeks to assert; and (3) a hindrance to the third party's ability to protect his or her own interests." *Wikimedia Found.* v. *Nat'l Sec. Agency/Cent. Sec. Serv.*, 14 F.4th 276, 288 (4th Cir. 2021) (quoting *Freilich* v. *Upper Chesapeake Health Inc.*, 313 F.3d 205, 215 (4th Cir. 2002)).

Even if we assume Dr. Haysbert met her burden to demonstrate injury-in-fact—in having been denied the counsel of her choosing—she has offered no explanation whatsoever for how she meets the second and third elements necessary to establish third-party standing. Because Dr. Haysbert failed to meet her burden on the threshold issue of standing, we lack jurisdiction to consider the merits of her claim that the district court violated Attorney Haysbert's due process rights when it revoked his *pro hac vice* admission. *See Steel Co.* v. *Citizens for a Better Env't*, 523 U. S. 83, 93–102 (1998) (holding that Article III jurisdiction, including standing, must be established before a federal court may reach the merits of a claim).

B. Exclusion of Evidence

Next, Dr. Haysbert challenges the district court ruling excluding Dr. Filler from testifying as an expert in *Haysbert II*. Although Dr. Haysbert concedes that Dr. Filler's NPE Report was not disclosed in a timely manner, she maintains nevertheless that the district court abused its discretion by precluding Dr. Filler from testifying as a sanction for this failure to disclose. Having reviewed the record, we discern no abuse of discretion in the district court's ruling.

There is no dispute that Dr. Haysbert violated Federal Rule of Civil Procedure 26, in addition to the court's pretrial disclosure orders, by failing to disclose Dr. Filler's report in a timely manner. Federal Rule of Civil Procedure 37(c)(1) provides an automatic sanction of exclusion when a party violates Rule 26, "unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). Rule 37(c)(1)(C) additionally permits a district court "on motion and after giving an opportunity to be heard" to "impose other appropriate sanctions[,]" for such violations. *Id.* The district court concluded that excluding Dr. Filler from testifying was an appropriate additional sanction under Rule 37.

In considering whether to impose a sanction beyond the automatic sanction in Rule 37(c)(1), district courts consider the four factors set forth in *Anderson* v. *Foundation for Advancement of American Indians*, 155 F.3d 500 (4th Cir. 1998).[3] These factors include:

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[3] Outback argues that the five factors considered in *Southern States Rack and Fixture, Inc.* v. *Sherwin-Williams Co.*, 318 F.3d

1) whether the non-complying party acted in bad faith; 2) the amount of prejudice caused by the noncompliance to the adversary; 3) the need for deterrence of that particular sort of noncompliance; and 4) whether less drastic sanctions would have been effective. *Id.* at 504 (citing *Wilson* v. *Volkswagen of Am., Inc.*, 56 F.2d 494, 505–06 (4th Cir. 1977)). The district court properly relied on this four-factor framework in determining whether to exclude Dr. Filler's testimony. We review the district court's application of each of the *Anderson* factors for an abuse of discretion. *Id.*

With respect to the first *Anderson* factor, bad faith, Dr. Haysbert argues that the district court abused its discretion by not making explicit its finding of bad faith. We disagree. The district court recounted, in great detail, a number of instances where Dr. Haysbert through actions of her counsel demonstrated bad faith over the course of the litigation. For example, the district court described how Dr. Haysbert waited for more than a year to disclose the NPE Report, ignored important discovery milestones, and failed to timely notify Outback and the district court that Dr. Filler prepared a supplemental report. The district court found that Dr. Haysbert acted in bad faith.

592, 597 (4th Cir. 2003), should govern this inquiry. We disagree. *Southern States* concerned the imposition of the automatic preclusion sanction under Federal Rule of Civil Procedure 37(c)(1), not the imposition of an additional sanction imposed under Rule 37(c)(1)(C).

With respect to the second *Anderson* factor, prejudice, the district court concluded that Outback would suffer prejudice were Dr. Filler permitted to testify during *Haysbert II*. Notably, the district court considered that Dr. Filler obtained new records, ordered testing, and drew new opinions related to Dr. Haysbert's injuries after the mistrial had been ordered in *Haysbert I*. The district court understood Dr. Haysbert's telehealth visit with Dr. Filler to have been, at least in part, in preparation for further litigation. The district court noted that Dr. Haysbert waited a year to notify Outback about Dr. Filler's newly acquired knowledge. Given the unique procedural history of this case, including the order in connection with the voluntary dismissal that limited further discovery, the district court's conclusion that Outback would be prejudiced by Dr. Filler's testimony was not an abuse of discretion.

On the third *Anderson* factor, the need for deterrence, the district court found that the many discovery disputes in *Haysbert I* supported a finding that the automatic sanction precluding the NPE Report from coming into evidence, with nothing more, would be insufficient to deter future noncompliance. The district court did not clearly err in finding that there was a strong need for deterrence given the conduct of Dr. Haysbert's legal counsel throughout the litigation.

Finally, on the fourth *Anderson* factor, the possibility of less drastic sanctions, the district court found that excluding Dr. Filler's testimony was an appropriate sanction because of risk of prejudice to Out-

back. The district court concluded that such potential could not be mitigated an order limiting Dr. Filler's testimony. District courts maintain great discretion in determining appropriate sanctions. *See Smith* v. *Devine*, 126 F.4th 331, 342 (4th Cir. 2025) ("Courts have broad discretion to manage discovery, including the authority to impose sanctions for discovery abuses as part of their case management responsibilities."). While the district court may have fashioned a different sanction, the sanction it chose to impose under the circumstances does not amount to an abuse of discretion.

In light of the protracted and contentious procedural history in this case, we cannot say that the district court abused its discretion in disallowing Dr. Filler's testimony.

C. *Batson* Challenge

Last we turn to Dr. Haysbert's challenge to Outback's use of a peremptory strike against a Black potential juror in *Haysbert II*. In *Batson* v. *Kentucky*, the Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment prohibited a prosecutor from striking potential jurors on account of race. 476 U. S. at 89. This prohibition has been extended to private litigants in civil cases. *Edmonson* v. *Leesville Concrete Co.*, 500 U. S. 614, 616 (1991) ("Recognizing the impropriety of racial bias in the courtroom, we hold the race-based exclusion violates the equal protection rights of the challenged jurors.").

Batson and its progeny set forth a three-step framework to determine whether a litigant has improperly employed a peremptory strike on the basis of race. *Pitchford* v. *Cain*, 146 S. Ct. 1345, 1349 (2026). The party bringing the *Batson* challenge must first make a *prima facie* showing that a peremptory strike was based on race. *Id.* If the moving party successfully makes such a showing, the party that struck the prospective juror is called upon to provide a race-neutral reason for the challenged strike. *Id.* At step three, the moving party bears the burden to prove that the proffered race-neutral reason is not, in fact, the true reason for the peremptory strike. *United States* v. *Parada*, 134 F.4th 188, 200–01 (4th Cir. 2025). The ultimate inquiry is whether the party that exercised the peremptory strike was "motivated in substantial part by discriminatory intent." *Flowers* v. *Mississippi*, 588 U. S. 284, 288 (2019) (quoting *Foster* v. *Chatman*, 578 U. S. 488, 513 (2016)). The burden of persuasion in this inquiry remains at all times with the moving party. *Purkett* v. *Elem*, 514 U. S. 765, 768 (1995) ("[T]he ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike.").

On appeal from the denial of a *Batson* challenge, we review the district court's determination on discriminatory intent for clear error, giving deference to the trial court's factual determinations. *Flowers*, 588 U. S. at 303. The trial court is in the best position to observe the demeanor of the party's counsel that exercised the peremptory strike and to assess

the reasonableness or improbability of the explanations provided. *Id.* "A finding is 'clearly erroneous' when 'the reviewing court . . . is left with the definite and firm conviction that a mistake has been committed.'" *United States* v. *Chaudhri*, 134 F.4th 166, 181 (4th Cir. 2025) (quoting *Anderson* v. *City of Bessemer City*, 470 U. S. 564, 573 (1985)). With these principles in mind, we analyze the district court's ruling on Dr. Haysbert's *Batson* challenge.

The parties agree that Dr. Haysbert established a *prima facie* showing under *Batson*. Before striking Juror Number 32, Outback had struck Juror Number 1, the only other Black person in the jury pool. Dr. Haysbert's counsel argued that Outback's subsequent strike of Juror Number 32 demonstrated that Outback struck jurors on the basis of race because "two out of the[ir] three strikes" were used to remove the only two Black potential jurors. J.A. 1098.

At the second step of the *Batson* framework, Outback provided three allegedly race-neutral reasons for striking Juror Number 32. Outback contended that it struck Juror Number 32 because he was significantly younger than every other juror in the jury pool, because he did not speak during *voir dire*, and because he worked at the shipyard. The district court concluded that Outback met its burden to put forward a legitimate race-neutral reason for the strike.

At the third step, Dr. Haysbert attempted to demonstrate that Outback's reasons were pretextual and that race was the real reason for the strike. Dr. Haysbert argued that "youth is not a viable or ap-

propriate distinguishing feature," and that the jury pool skewed "considerably older than mid-20s and mid-30s", which she asserted, made "concerns because of his relative youth . . . inappropriate." *Id.* at 1100–01. She also claimed that age could be a benefit given the court's earlier concerns about a juror serving as a "mini expert." *Id.* at 1101. As to Juror Number 32's silence during *voir dire*, Dr. Haysbert noted that both parties had an opportunity to suggest additional questions to the district court's *voir dire* and that there were "quite a few jurors" who chose to say nothing. *Id.* She argued that non-responsiveness was not a distinguishing factor between jurors, but rather, race was. Earlier, Dr. Haysbert had also observed that Juror Number 32 was not the only potential juror who worked at the shipyard, though she put forward no argument that Outback's shipyard reason was pretextual.

The district court considered the arguments from both sides and concluded at the third step of the *Batson* framework that Dr. Haysbert had not met her burden to show that Outback was motivated in substantial part by discriminatory intent. Dr. Haysbert contends this ruling was clear error. We disagree.

Striking a juror because of age can be an acceptable trial strategy. *See Chaudhri*, 134 F.4th at 181. Outback explained it had been concerned that Juror Number 32's relative youth was significant because of the complicated medical evidence in the case. Dr. Haysbert argues on appeal that Outback's reasoning is undercut by Outback's failure to use a peremptory strike against Jury Number 26, who reported that he

suffered from memory loss. The district court considered this argument and concluded, based on Juror Number 26's testimony, that his memory loss would not so affect his ability to serve on the jury as to support a for-cause strike.

With respect to Juror Number 32's silence during *voir dire*, Dr. Haysbert observes that half of the potential jurors from which the final jury was selected remained silent during *voir dire* and nearly a third of those—none of whom are Black—were chosen to serve on the jury without objection from Outback. A party appealing the denial of a *Batson* challenge need not identify an identical, non-Black juror for a side-by-side comparison to show discriminatory intent. *Flowers*, 588 U. S. at 311–12; *see also Miller-El* v. *Dretke*, 545 U. S. 231, 247 n. 6 (2005) (rejecting a *per se* rule requiring identical jurors because "potential jurors are not products of a set of cookie cutters"). Outback argues the other potential jurors who did not speak during *voir dire* can be distinguished by additional factors including their age and place of employment. And Dr. Haysbert did not identify a comparable potential juror.

Finally, with respect to Outback's rationale that Juror Number 32 worked in the shipyard, Dr. Haysbert points out that Outback did not strike the two other potential jurors who worked at the shipyard, neither of whom is Black. "Comparing prospective jurors who were struck and not struck can be an important step in determining whether a *Batson* violation occurred." *Flowers*, 588 U. S. at 311. "When a [litigant's] 'proffered reason for striking a

[B]lack panelist applies just as well to an otherwise-similar non [B]lack panelist who is permitted to serve, that is evidence tending to prove purposeful discrimination.'" *Id.* (quoting *Foster*, 587 U. S. at 512). Dr. Haysbert's comparator argument is undermined, however, by the fact that the two other potential jurors who worked in the shipyard were struck by Dr. Haysbert herself—thus no longer in the potential jury pool—*before* Outback struck Juror Number 32. Based on this record, we discern no clear error in the district court's determination that Outback's concerns regarding Juror Number 32's place of work were not pretextual.

Ultimately, we are not left with "the definite and firm conviction" that the district court erred when it rejected Dr. Haysbert's *Batson* challenge. *Anderson*, 470 U. S. at 573 (quoting *United States* v. *United States Gypsum Co.*, 333 U. S. 364, 395 (1948)). The persuasiveness of a counsel's justification for a peremptory strike "comes down to whether the trial court finds the [counsel's] race-neutral explanations to be credible. Credibility can be measured by, among other factors, the [counsel's] demeanor; by how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy." *Miller-El* v. *Cockrell*, 537 U. S. 322, 339 (2003). Here, the district court listened to the parties' arguments and observed the demeanor of counsel. The district court found Outback's purported race-neutral reasons credible and concluded that Dr. Haysbert failed to meet her burden on intentional discrimination.

Providing deference to the credibility determinations of the district court and considering the relevant facts and circumstances, we discern no clear error and affirm the district court's ruling on Dr. Haysbert's *Batson* challenge.

III. Conclusion

For the foregoing reasons, we affirm the rulings of the district court.

AFFIRMED

Appendix B

[Filed: Jun. 26, 2025]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25–1332
(4:24–cv–00087–EWH–RJK)

JOANN WRIGHT HAYSBERT

Plaintiff – Appellant

v.

OUTBACK STEAKHOUSE OF FLORIDA, LLC

Defendant – Appellee

and

BLOOMIN' BRANDS, INC.
Defendant

O R D E R

Upon consideration of submissions relative to the motion of Nazareth M. Haysbert for leave to intervene as appellant, the court denies the motion.

For the Court
/s/Nwamaka Anowi, Clerk

Appendix C

[Filed: May 12, 2025]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25–1332
(4:24–cv–00087–EWH–RJK)

JOANN WRIGHT HAYSBERT

Plaintiff – Appellant

v.

OUTBACK STEAKHOUSE OF FLORIDA, LLC

Defendant – Appellee

and

BLOOMIN' BRANDS, INC.
Defendant

O R D E R

Upon consideration of submissions relative to the motion to amend the case caption, the court denies the motion.

For the Court—By Direction
/s/Nwamaka Anowi, Clerk

Appendix D

[Filed: Feb. 28, 2025]

United States District Court
Eastern District of Virginia
Newport News Division

Joann Wright Haysbert
Plaintiff(s)

v.

Outback Steakhouse of Florida, LLC
Defendant(s)

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 4:24cv87

X **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the plaintiff take nothing, that the action be DISMISSED on the merits, and that the defendant recover of the plaintiff its costs of action.

DATE: *February 28, 2025*

FERNANDO GALINDO, *Clerk*
/s/DB
(By) Deanne Brandt, Deputy Clerk

Appendix E

[Filed: Jan. 11, 2024]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

JOANN WRIGHT HAYSBERT,
Plaintiff,

v.

BLOOMIN' BRANDS, INC., *et al.*,
Defendant.

Civil Action No. 4:20–cv–121

ORDER

This matter is before the Court on Plaintiff's Motion for Voluntary Dismissal. ECF No. 349. On January 8, 2024, the Court held a hearing on the Motion, at which the *pro se* Plaintiff and counsel for Defendants were present. ECF No. 356. For the reasons stated on the record, the Plaintiff's Motion is GRANTED IN PART, and the Court will allow a dismissal without prejudice subject to the conditions stated below. *Id.* At the hearing, the Court provided Plaintiff the opportunity to accept the conditions for voluntary dismissal without prejudice or proceed to trial. *Id.* The Plaintiff accepted the conditions, and therefore this case is DISMISSED WITHOUT PREJUDICE subject to the below conditions. *Id.* Plaintiff is CAUTIONED that the statute of limitations continues to run.

Pursuant to Rule 41(a)(2), "an action may be dismissed at the plaintiff's request only by court order,

on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). "In considering a motion for voluntary dismissal, the district court must focus primarily on protecting the interests of the defendant." *Davis* v. *USX Corp.*, 819 F.2d 1270, 1273 (4th Cir. 1987). The Court may "impose conditions on voluntary dismissal to obviate any prejudice to the defendants which may otherwise result from dismissal without prejudice." *Id.* The Court determined that voluntary dismissal without prejudice is appropriate only subject to conditions to protect Defendants against prejudice due to the significant advancement of this case.

Accordingly, the case is hereby DISMISSED WITHOUT PREJUDICE subject to the following conditions:

1. If Plaintiff chooses to refile this case, she must refile it in the Eastern District of Virginia.
2. If Plaintiff chooses to refile this case, the parties may not engage in additional discovery, and any discovery taken in the instant case may be used in the refiled case. The parties are therefore limited, for example, to the expert designations, reports, and opinions; witnesses; and exhibits disclosed in the instant case.
3. If the case is refiled, all existing pretrial determinations will be maintained. In other words, if the case is refiled, it will be procedurally in the same position as the instant case.
4. Plaintiff may not file previously withdrawn claims for past or future medical specials, a life

care plan, or claims for lost earning capacity or future lost wages.

5. To the extent that any designated expert witnesses were previously withdrawn, those expert witnesses will remain withdrawn.

Plaintiff may appeal from this Dismissal Order by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. This written notice must be received by the Clerk within thirty days of the entry date of this Dismissal Order. If Plaintiff wishes to proceed *in forma pauperis* on appeal, the application to proceed *in forma pauperis* must be submitted to the Clerk of the United States Court of Appeals for the Fourth Circuit, 1100 East Main Street, Richmond, Virginia 23219.

Nothing in this Order shall be read to affect the outstanding Motion for Sanctions, ECF No. 326, which remains pending in this matter.

The Clerk is directed to send a copy of this Order to all counsel of record and mail a copy of this Order to *pro se* Plaintiff Dr. Haysbert at her address of record.

It is SO ORDERED.

/s/Elizabeth W. Hanes
Elizabeth W. Hanes
United States District Judge

Date: January 11, 2024
Newport News, Virginia