

The Supreme Court Update - March 10, 2025

by Ian Blodger, Jessica M. Leano, and Brock Huebner

Today, the Supreme Court of the United States granted certiorari in two cases:

Berk v. Choi, No. 24-440: Many states, including Delaware in this case, have “affidavit of merit” statutes that require certain types of lawsuits, like medical malpractice claims, be filed with an affidavit signed by an expert and/or the plaintiff’s attorney declaring that the claim has merit. Under Supreme Court precedent, when state law cases are filed in or removed to federal court under diversity jurisdiction, the federal court applies state substantive law and federal procedural law. However, U.S. Courts of Appeals are split on how to treat affidavit of merit statutes. While most federal courts refuse to enforce these requirements because they conflict with federal rules of procedure, the Third Circuit and Tenth Circuit enforce the state laws in federal court. The question presented is: Whether a state law providing that a complaint must be dismissed unless it is accompanied by an expert affidavit may be applied in federal court.

Chiles v. Salazar, No. 24-539: This case presents a First Amendment challenge to a Colorado statute that prohibits counselors from providing treatment that seeks to change a minor patient’s sexual orientation or gender identity. The question presented is: Whether a law that censors certain conversations between counselors and their clients based on the viewpoints expressed regulates conduct or violates the Free Speech Clause.

Related People

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