

In a Rare Display of Unanimity, the U.S. Supreme Court Rules That State Affidavit of Merit Requirements Do Not Apply in Federal Court

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This past October, we reported on the United States Supreme Court's decision to grant certiorari to resolve a long-standing dispute among federal circuit courts as to whether state affidavit of merit requirements apply to medical malpractice suits brought in federal court on the basis of diversity jurisdiction.

An affidavit of merit is merely a sworn statement, filed with the complaint, attesting to the fact that the plaintiff already has an expert who can support the merits of the claim. In its opinion in *Berk v. Choy*, the Supreme Court notes that more than half the states in the country have passed these laws in an effort to stem the tide of costly, and sometimes unnecessary, medical malpractice litigation that has dramatically increased the costs of healthcare delivery throughout the country. Nevertheless, despite the strong policy reasons articulated by the defense, the various *amici* throughout the country, and recognized by the Court itself, on January 20, 2026, the United States Supreme Court unanimously held that state affidavit of merit requirements do not apply to malpractice actions brought in federal court under diversity jurisdiction.

The Court's decision resolves a long-standing split among federal courts and overturns prior precedent in the Third Circuit and other circuits that had applied affidavit of merit statutes in federal diversity actions. While affidavit of merit requirements remain enforceable in state court proceedings, this ruling is expected to limit early procedural dismissals in federal cases, including actions initiated by *pro se* litigants, like *Berk*, where affidavit of merit issues frequently arise.

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