

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

DO NO HARM

PLAINTIFF

V.

CIVIL ACTION NO. 3:24-CV-11-CWR-LGI

**NATIONAL ASSOCIATION OF
EMERGENCY MEDICAL TECHNICIANS**

DEFENDANT

**DEFENDANT’S RESPONSE IN OPPOSITION TO PLAINTIFF’S
NOTICE OF SUPPLEMENTAL AUTHORITY**

COMES NOW NAEMT and submits this Response in Opposition to Plaintiff’s Notice of Supplemental Authority. [Doc. 28].

Fearless Fund doesn’t get DNH any closer to establishing injury in fact, and therefore, standing, here. The Eleventh Circuit’s standing analysis turned on starkly different facts:

“Importantly for our purposes, the contest is open, **by its own terms, only to “black females** ... More particularly, to qualify for the competition, a business must be at least “51% black woman owned.”

2024 WL 2812981 *1 (emphasis added). The majority there repeats that the facts there involve “individuals who were *excluded from the opportunity to compete in Fearless’s contract* solely on account of the color of their skin.” *Id.* at *6 (emphasis added). This fact is paramount throughout the court’s analysis: “[b]y its terms, the contest is open *only* to ‘black females’—and thus categorically bars non-black applicants” (*id.* at *7) (emphasis in original); “the contest erects an ‘absolute bar’ to non-black applicants” (*id.* at *8); “[t]he fact remains, though, that Fearless simply—and flatly—refuses to entertain applications from business owners who aren’t ‘black females’” (*id.* at *9). DNH can’t use *Fearless Fund*’s majority opinion to polish the fatal flaw in this case: there is no and was never any racial requirement to apply for NAEMT’s scholarship. *See* Am. Comp. at ¶17; Def’s Mot. at p. 12.

Nor does *Fearless Fund* stand any taller than *Do No Harm v. Pfizer Inc.*, 2024 WL 949506 (2d Cir. Mar. 6, 2024) which has been discussed by the parties (and *Fearless Fund*) already. In fact, though DNH’s notice ignores it, Judge Rosenbaum embraces the Second Circuit’s conclusion based on the controlling precedent of *Carney v. Adams*, 592 U.S. 53 (2020) (which NAEMT has also cited) throughout her well-articulated nine-page dissent from the majority panel finding standing. *See* 2024 WL 2812981 at *10-19 (Rosenbaum, J., dissenting). Members A and B from *DNH v. Pfizer* there, like Member A in *DNH v. NAEMT* here, “did not indicate that they [or she] had previously applied for a [scholarship] of any kind. They [and she] are unlike the plaintiffs in *Adarand Constructors*¹ and *Northeastern Florida Chapter*², who supported their statements of intent by showing that they had historically and regularly applied for the same kinds of bids as the ones at issue.” *Id.* at *17 (emphasis added). Member A’s hollow “ready and able” assertions and the Amended Complaint carry no weight for the reasons already briefed, but also for the reasons highlighted in *Fearless Fund*: unlike their contest, NAEMT’s scholarship contain no “race-exclusionary rules.” *Id.* at *5. DNH cannot establish the requirements for Article III standing, nor does its allegations state a claim for relief. *Fearless Fund* doesn’t change that.

Respectfully submitted, this the 25th day of June 2024

**NATIONAL ASSOCIATION OF
EMERGENCY MEDICAL TECHNICIANS**

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¹ 515 U.S. 200 (1995).

² 508 U.S. 656 (1993).

CERTIFICATE OF SERVICE

I do hereby certify that I have this day electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record.

THIS the 25th day of June, 2024.

/s/ Mary Clark Joyner