No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Matthew Winters, Petitioner

vs.

West Jordan City and Utah State Records Committee, Respondents

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI TO THE UTAH ~~SUPREME COURT~~ Court of Appeals

To the Honorable Justice Sotomayer:

Petitioner, Matthew Winters, requests an extension to file his Petition of Certiorari until March 1, 2019 (*60 days from the original due date of December 31, 2018*). The Utah Supreme Court denied certiorari review on October 2, 2018 (*"state certiorari denial"*; attached). This request is being filed 10 days prior to the due date. The order appealed is the Utah Court of Appeals denial (*"state appellate denial"*; attached) of Petitioner's appeal of a dismissal by trial court. This Court has jurisdiction per 28 U.S.C. § 1257(a).

Substantial Issues for Certiorari Review

While the particular case may represent particular events and issues in Utah, the ramifications and questions involved are far larger in scope. In Utah, pro se parties have less time and more hurdles to appeal a trial court

case than parties with legal representation. While Utah appellate procedures give parties 30 days to file appeal as a matter of right, pro se parties usually have fewer than 30 days – frequently, much fewer. Further, represented parties are actually given more time to file every single paper in Utah trial courts – the deadline to file electronically (*required of represented parties*) is after the deadline for pro se parties (*prohibited from filing electronically*). And unlike this Court, the deadline for pro se parties who mail a filing is not by the postmark date but by processing by the court after receipt.

Pro se parties have two choices to file an appeal – file it in person or mail the appeal. Filing in person is not necessarily as simple as it may seem – impecuniosity, distance from a courthouse, or other conditions may make filing in person unrealistic. Effectively then, while represented parties have 30 days to appeal as a matter of right, pro se parties may have 19 days or fewer. For example, if an appealable notice is received 5 days later (*as the Petitioner has experienced*) and a party had to mail an appeal 6 days in advance to ensure processing.

Having 19 days to appeal vs. 30 days, as an easily likely example, is not inconsequential, especially for pro se parties trying to navigate law and procedure to defend legal rights. And an impecunious pro se party has more to prepare to appeal – motion, affidavit, and proposed order, etc. for a fee waiver. The effect of these procedural differences are substantive in nature or have substantive ramifications in most or all instances.

Two classes have been created. But the class of unrepresented parties and class of represented parties are not legitimately created under the law to justify different access to the courts and unequal protection of laws. The procedural issues become substantive due process issues. And this is perfectly illustrated in the Petitioner's case.

The Petitioner appealed a trial court case as a matter of right under Utah law. It should have --- and otherwise likely would have --- been summarily reversed as manifest error under Utah law. In Utah, trial courts violate vertical stare decisis if they dismiss a case for lack of proof of service without first giving notice such as a sua sponte motion for dismissal.

Unfortunately, while Utah procedure gave the Petitioner 30 days to appeal, he did not have 30 days since he was served with the unexpected notice of trial court's dismissal by mail. And then, the Petitioner being used to Utah civil procedures which added 3 days to most deadlines for matters noticed by mail, thought the same applied for filing the appeal. The Utah Court of Appeals found that under Utah appellate procedures, 3 days could not be added to the deadline. But it is inherently dangerous when deadlines to act to preserve legal rights are not based on notice of a need to act. In fact, the most basic concept of due process involves notice.

Does it violate the Equal Protection and Due Process clauses of the 14th Amendment to the U.S. Constitution for deadlines in procedural rules to be tied to an event rather than notice of the event; for deadlines in procedural

rules not-based on statute to not be allowed equitable exceptions; and for pro se parties to be prohibited from filing electronically (*or alternatively not given equitable alternatives*)? Does it violate Constitutional rights and basic notions of fair play when parties with representation have more time to act than parties without representation?

Further, this Court made a distinction between rules based on statutes and procedural rules not based on statutes on the issue of whether jurisdiction could be limited by deadlines or equitable exceptions considered. Roughly a year ago, in *Hamer v. Neighborhood Housing Services of Chicago*, US, No. 16-658, Nov. 8, 2017, this Court addressed and summarized some issues pertaining to court procedures and procedural due process including: deadlines per statute as jurisdictional vs. court-made rules as non-jurisdictional (*Bowles v. Russell*, 551 U. S. 205, 210-213 (2007) and *Reed Elsevier, Inc. v. Muchnick*, 559 U. S. 154, 161 (2010)); mandatory claim-processing rules vs. jurisdictional limitations (*Henderson v. Shinseki*, 562 U. S. 428, 435 (2011) and *Sibbach v. Wilson & Co.*, 312 U. S. 1, 10 (1941) ; and historical "less than meticulous" usage of jurisdiction terms by some courts (*including this Court*) (*Kontrick v. Ryan*, 540 U. S. 443, 454 (2004)). So, in light of *Hamer* and other opinions of this Court, should Utah and any other jurisdiction, where applicable, cease making deadlines for appeal set out in procedural rules, where such deadlines are not set by statute, a jurisdictional issue where equitable exceptions cannot be considered?

If the end goal is that substantial justice be done, it is best or most likely achieved when all parties have full opportunity to have their voices heard. While procedural rules may facilitate docket management and overall adjudication of claims, to the extent procedural rules deny full and real opportunity for voices to be heard, it is difficult to reconcile such with the end goal of substantial justice. A concern about procedure is a concern about due process which in turn is a concern about constitutional rights, substantial justice, and the rule of law.

Whether several more hours, a few days, or additional ways to file an appeal is critical in every case is not what is important. It does not matter if is not a significant factor to every party because it may make a complete difference to an individual pro se party. Circumstances vary from case-to-case and person-to-person. What is critical is that parties have the same protection of the laws whether or not they are represented. Access to the courts is part of due process and equal protection of the laws. And rules that limit jurisdiction can be judged on whether procedural due process has been met by examining if they are fair.

When there is no legitimate reason for two classes to have been created, it is unconstitutional. It is very difficult to reconcile giving represented parties more time and ways to file an appeal than pro se parties as fair. That what the Petitioner describes is expressly unfair can be seen in a hypothetical example. If any rules of procedure stated that appellants with

last names starting with a vowel have 30 days to appeal and appellants with last names starting with a consonant have 21 days to appeal, no one would call that fair. Or what if rules gave men 9 more days to file appeal than women? One would hope in 2018 that no one would call that fair!

Rules and procedures allowing parties represented by legal counsel more time to appeal than impecunious parties who cannot afford counsel is no more fair than the foregoing hypothetical examples. And so, rules and procedures limiting timing and methods for appeal based on whether there is legal representation fail tests of fairness. Two classes of people have been created within our court systems which cannot be sustained under constitutional rights of due process and equal protection of the laws.

Whether or not an extension leads to four or more Justices voting to grant certiorari, the Petitioner cannot say. But in advance, the Petitioner states he has not failed preserve issues for appeal or yet seen strong challenge to consideration of his anticipated questions to be presented. In a joint opposition to the Petitioner's certiorari petition to the Utah Supreme Court, the opposing parties do not appear to have argued against any pertinent fact or issue with the Petitioner's appeal. The opposition seems to have misunderstood critical facts; makes arguments opposing issues that are not the ones raised by the Petitioner; and does not raise argument against some of the arguments from the Petitioner. Further, the Petitioner did not lack to preserve issues for appeal. The Constitutional concerns, questions,

and arguments, raised in the petition to the Utah Supreme Court, did not need to be raised any earlier. The Petitioner bore no duty to hypothetically raise Constitutional issues that were not at issue earlier than the denial by the Utah Court of Appeals.

Cause for Extension to File Certiorari Petition

In October and November, after denial of certiorari review by the Utah Supreme Court, the Petitioner has been inundated with trying to stop an illegal foreclosure of his home. On November 14, 2018, the Petitioner had to file an emergency chapter 7 bankruptcy petition. Due to complexities of the case and circumstances, it was necessary to request an extension of time (*granted by the bankruptcy court*) to file the majority of the bankruptcy schedules. These were just recently filed on December 12, 2018. The Petitioner's meeting of creditors occurred just yesterday on December 20, 2018, and the deadline for a certiorari petition is on December 31, 2018.

In addition to the foregoing circumstantial factors and perhaps more significantly, the Petitioner has been the desire and need to do "the most correct thing". It had been the Petitioner's understanding that all pre-petition (*bankruptcy*) claims (*including appeals*) became property of the bankruptcy estate on November 14, 2018. Sadly, the Petitioner has also found that frequently, even allegedly notable or highly frequented websites contain inaccurate or misleading legal information.

More recent further reading of the United States Bankruptcy Code (*"bankruptcy code"*) suggests the grounds for a certiorari petition and initial claim in trial court is not a claim as defined in the Bankruptcy Code since the initial claim in trial court is for declaratory judgment about an issue of law without any claim for monies. Should it be that standing to petition for certiorari review belongs to the bankruptcy estate, it seemed unfair to the Petitioner to expect the Interim Trustee or Trustee for the estate to file a petition in a short period of time. Alternatively, the process for the estate to abandon the claim takes more time than is available. would potential considerable time for the estate representative to file or abandon the claim.

Therefore, the Petitioner believes circumstance are beyond his control to timely file a certiorari petition. Preparing a certiorari petition is not a simple and quick task. The Petitioner believes the constitutional questions are important for potentially a great many number of people. Therefore he believes it deserves the Petitioner spending considerable time rather than trying to rush to finish it.

Respectfully Submitted,

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Dated: December 21, 2018