

No. 18-8284

ORIGINAL

Supreme Court, U.S.  
FILED

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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Matthew Winters – Petitioner,

*vs.*

West Jordan City and Utah State  
Records Committee – Respondents.

On Petition for a Writ of Certiorari to  
the Utah Court of Appeals

**PETITION FOR WRIT OF CERTIORARI**

Matthew Winters  
8084 Partridge Run Way  
West Jordan, UT 84088  
801-432-0080  
matt.winters@live.com

*Petitioner, Pro Se*

### **Questions Presented**

1. Does it violate the Equal Protection and Due Process clauses of the 14<sup>th</sup> Amendment for pro se parties to have less time and more restrictions to file appeals?
2. Do jurisdiction-limiting rules not based on statute violate standing opinions of this Court (such as in *Hamer*, 2017) in light of the foregoing?

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## OPINIONS BELOW

The Utah Court of Appeals issued an unpublished Order of Summary Dismissal. That order, the unpublished trial court order, and the denial of certiorari review by the Utah Supreme Court are included in the Appendix.

## JURISDICTION

The Utah Court of Appeals filed its opinion on June 20, 2018. The Utah Supreme Court denied certiorari on October 2, 2018. On January 2, 2019, Justice Sotomayer granted an extension for filing the petition through March 1, 2019 (*Application No. 18A687*). This Court has jurisdiction per 28 U.S.C. § 1257(a).

## PROVISIONS INVOLVED

From the Utah Rule of Appellate Procedure 3, in relevant parts :

*“(a)...An appeal may be taken...by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4...(e)(1) The trial court...may extend the time for filing a notice of appeal upon motion filed before the expiration of the time prescribed by paragraphs (a) and (b) of this rule... [or (e)(2)]...upon motion filed not later than 30 days after the expiration of the time prescribed by paragraphs (a) and (b) of this rule”.*

From the Utah Rule of Appellate Procedure 4, in relevant parts:

*“(a)...the notice of appeal...shall be filed...within 30 days after the date of entry of the judgment or order appealed from...”*

From the Utah Rule of Appellate Procedure 22, in relevant part:

*"...(d) Additional time after service by mail. Whenever a party is required or permitted to do an act within a prescribed period after service of a paper and the paper is served by mail, 3 days shall be added to the prescribed period".*

From Article I, Section 7 of the Utah Constitution:

*"No person shall be deprived of life, liberty or property, without due process of law."*

From Article I, Section 11 of the Utah Constitution, in relevant part:

*"All courts shall be open, and every person...shall have remedy by due course of law..."*

From Article I, Section 24 of the Utah Constitution:

*"All laws of a general nature shall have uniform operation."*

The Due Process clause of the 14th Amendment, in relevant part:

*".... nor shall any State deprive any person of life, liberty, or property, without due process of law..."*

The Equal Protection clause of the 14th Amendment, in relevant part:

*"No State shall...deny to any person within its jurisdiction the equal protection of the laws."*

### **Statement of the Case**

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 an appeal, pro se parties often have far less time than 30 days and represented parties. 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 filing by mail is based on receipt and processing by the court rather than based on a postmark date.

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. Mailing an appeal is problematic since time has to be deducted for mailing and processing by the court.

Effectively then, while represented parties have 30 days to appeal as a matter of right, pro se parties may have 19 days or fewer.<sup>1</sup> This is not inconsequential.<sup>2</sup> It is also not hypothetical. It was not feasible for the Petitioner to mail or file his appeal in person any sooner than he did. The effect of these procedural differences are substantive in nature or have substantive ramifications in most or all instances.

The order appealed is the Utah Court of Appeals denial (“*state appellate denial*”; attached) of Petitioner's appeal of a dismissal by trial court. The nature of the case is the appeal the Utah Court of Appeals dismissed an appeal on June 20, 2018, stating that a notice of appeal filed on April 25, 2018 was not timely filed and that it lacked jurisdiction. The Utah Supreme Court denied certiorari review on October 2, 2018 (“*state certiorari*”).

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1 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.

2 The most likely reason a party is appearing pro se is impecuniosity. Besides the need to trying to navigate law and procedure to defend legal rights, an impecunious pro se party has more to prepare to appeal – motion, affidavit, and proposed order, etc. for a fee waiver – along with having to consider ramifications, requirements, and means to pursue an appeal.



*denial*"; attached). The Appellant is in the midst of a bankruptcy case (*chapter 7*).

Primarily because of the impact and certain uncertainties regarding standing as related to the bankruptcy petitioner, the Appellant had to seek an extension to file a certiorari petition. Justice Sotomayer granted an extension through March 1, 2019. The Appellant finally concluded he has standing to appeal and the case is not property of the bankruptcy estate.<sup>3</sup>

The original case pertained to unresolved matters under Utah's Government Records Access Management Act ("*GRAMA*") after denial of public records by West Jordan City and later the Utah State Records Committee declined to address matters of law.<sup>4</sup> The Petitioner, especially believing the question was of importance for the public benefit, decided the question still needed to be answered. Dismissal occurred before trial court considered the matter. On March 23, 2018, trial court dismissed the case without notice for

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3 A significant reason why the Petitioner requested an extension of time was because of initial confusion about standing and property as related to bankruptcy made more complicated by the dearth of response, action, and administration from the assigned trustee. It seems the United States Bankruptcy Code ("*bankruptcy code*") may not be sufficiently clear about property as a whole. The bankruptcy code essentially defines legal claims, which become property of the bankruptcy estate, as those with the potential to generate liquid assets that can be distributed to creditors. The instant case being a matter only of declaratory judgment without a claim for damages/monies. Further, the Trustee filed a no-distribution report. The instant petition provides no benefit to the estate, and the Trustee has not objected. Under the bankruptcy code, there is no property of which the Debtor could seek abandonment.

4 Under Utah law, GRAMA issues that are not resolved through appeal to the Utah States Records Committee are then appeal to the local state district court ("*trial court*"). GRAMA is perhaps the state equivalent of the Freedom of Information Act. After lack of resolution and clarification by the Utah State Records Committee on outstanding questions pertaining to GRAMA and the denial of some records by West Jordan City, the Petitioner had appealed to trial court in accordance with Utah law.

lack of proof of service of a petition on file.<sup>5</sup> The questions presented for review become even more pertinent given that trial court's dismissal of the petition was manifest error under Utah law.<sup>6</sup>

The Petitioner had filed an appeal on the 33rd day after sudden, unexpected, dismissal by trial court and understood as being timely. Generally, Utah's procedural rules specify deadlines based on notice of a need to act. Unfortunately, tying together Utah R. App. P. 4 and 22(d), the deadline to appeal is not fixed by actual notice, and the 3 additional days typically added to service by mail appears to have not been applicable.

That particular small subset of Utah procedural rules do not give pro se parties 30 days to appeal --- and typically not even close to 30 days for parties who are more likely to need the full amount of time. While represented parties receive instant notification, pro se parties typically have to wait for notice, while the "clock is already ticking" on a deadline. The Petitioner was notified by mail (*and in this instance had to wait for mail forwarding*), making the time to file a notice of appeal far fewer than 30 days.

If the Petitioner had equal protection of the laws and equal access to the courts, his appeal would have been timely. Life circumstances did not permit the Petitioner to appeal within the technical deadline with far less than 30 days for appeal.<sup>7</sup>

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<sup>5</sup> In Utah, trial courts must give sua sponte notice before dismissing a case.

<sup>6</sup> Dismissal was error under Utah's procedural rules generally and the Utah Supreme Court's ruling in *Gardiner v. Taufer*, 2014 UT, 342 P.3d 269. The trial court dismissal ought to have been easily overturned if the Utah Court of Appeals had not dismissed the case. And a fair "reading between the lines" of the appellate court's decision suggests such an outcome if the Utah Court of Appeals did not feel bound otherwise.

The Petitioner has properly presented and preserved 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. While hypothetically, perhaps, the Petitioner might have raised some of the issues related to filing with every single paper in every single case in his life, without particular earlier awareness or specific injury, it is difficult to see why he would have pursued such a judicially taxing course. But very specific injury was caused with the terminus of a legitimate and necessary petition for clarification of Utah law serving the public interest when the Utah Court of Appeals felt compelled to deny the appeal. Upon such specific event, the Petitioner properly petitioned the state court of last resort.

Does it violate the Equal Protection and Due Process clauses of the 14<sup>th</sup> 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 and methods to act than parties without representation?

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7 Among the limiting life circumstances, the Petitioner was severely impecunious and using public transportation which often required significant time for travel. During this time (and now as well), the Petitioner had been trying to substitute teach within two public school districts as frequently as possible, "on call" and without guarantees of assignments. What might seem simple to some to file papers in court was not at all simple, needing to coordinate logistics of preparing, printing, and filing an appeal in person while not missing severely needed opportunities for minimal income.

### **Reasons for Granting the Writ**

The disparity between parties who come to court are naturally myriad. But when some parties are given more time to appeal than others; when pro se parties are prohibited from simpler, more timely methods of filing allowed attorneys; and when procedural rules creating deadlines not based on statutes are treated as jurisdiction-limiting and not allowed equitable exceptions, it becomes difficult to reconcile with fundamental notions of fairness. Constitutionally guaranteed open access to courts requires the uniform operation and equal protection of the law for there to be due process. Substantive due process begins with procedural due process.

#### **A. It Seems the Issues of Unequal Access to Court, Unequal Protection, and Due Process Barriers to Substantial Justice Have Not Been Considered**

Access to courts is a fundamental and essential part of liberty guaranteed as part of the Declaration of Rights under the Utah Constitution (Article 1, Section 11) and “judicial procedures that [should be] based on fairness and equality” (*Berry v. Beech Aircraft Corp.*, 1985 UT, 717 P.2d 670, 674 ~ 675). Procedural due process is an essential party of due process as a whole. “Most due process cases concern *procedural* requirements...[, and the] general test for the validity of such rules, the test of *procedural* due process, is fairness.” (*Wells v. Children’s Aid Society of Utah*, 1984 UT, 681 P.2d 199, 204). Constitutional access to courts and due process are tied together. “...the open courts provision is an extension of the due process clause” (*Berry* at 679) and “...[i]f the precept of equal protection of the laws is not honored, arbitrariness and oppression will prevail. ‘Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation.’

[*Railway Express Agency Inc. v. New York*], 336 U.S. at 113, 69 S.Ct. at 467." (*Malan v. Lewis*, 1984 UT, 693 P.2d 661, 670).

This Court has already ruled in the past on some matters related to equal protection, due process, and equal access to courts, such as where fees are made a barrier for impecunious persons to try to achieve justice. 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. 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.

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. The Petitioner is unaware of any justifiable basis for represented and pro se parties to have different amounts of time to appeal. If an unrepresented party can't effectively file in person (*for example, due to a work schedule*), then the need to mail a notice of appeal far

ahead of a deadline along with notice by mail of a need to act by mail substantially infringes on the timing and means to appeal, not inconsequentially unequal to the time available to parties with means to secure legal representation.<sup>8</sup>

A deadline that is not tied to notice of a potential need to act is difficult to reconcile with notions of fair play. Requiring more of pro se parties to file an appeal is difficult to understand as is not allowing them to file electronically (*not allowing is different from requiring them as are attorneys, a state-regulated profession*). Allowing attorneys more time to file than pro se parties is difficult to reconcile.

These issues of days and even hours are hardly inconsequential when they become linked to denial of jurisdiction over an appeal.<sup>9</sup> Two classes have been created.

**B. It Appears Our Courts Are Sometimes Operating With Two Classes Which Cannot be Sustained Under the Constitution**

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

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<sup>8</sup> The relative simplicity of what is required with a notice of appeal compared to many papers that might be filed in courts is not relevant. Any particular party may be needing to review grounds for appeal, prepare documents for a fee waiver, be sufficiently prepared to be able to file additional papers in a short time (such as a docketing statement), and a myriad of other things that go into proceeding with an appeal.

<sup>9</sup> Whether procedural rules and timing should become “jurisdiction-binding” is another type of question. In regards to filing notices of appeal, the “set in stone” jurisdiction aspect is somewhat compromised by the procedural allowance to request an extension of time. In the Petitioner’s case, an extension wasn’t requested before the deadline because he thought he was meeting the deadline. Errors in processing at the courthouse precluded requesting an extension within 30 days after the deadline. But more generally, if rules allow courts to extend time to appeal without causing loss of appellate jurisdiction, disallowing later consideration of an equitable basis for retaining appellate jurisdiction seems to already be compromised.

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.<sup>10</sup> Placed in a separate class of persons and complicated by circumstances, the Petitioner was unable to proceed. Such is not uniform operation of law:

"Article I, section 24 of the Utah Constitution states: 'All laws of a general nature shall have uniform operation.' Utah Const. art. I, § 24. The essence of this constitutional provision is 'the settled concern of the law that the legislature be restrained from the fundamentally unfair practice' of classifying persons in such a manner that those who are similarly situated with respect to the purpose of the law are treated differently by that law, to the detriment of some of those so classified.' *Blue Cross & Blue Shield of Utah v. State*, 779 P.2d 634, 637 (Utah 1989) (quoting *Mountain Fuel Supply Co.*, 752 P.2d at 888)." (*Gallivan v. Walker*, 2002 UT 89, 54 P.3d 1069 at 36).

"The principles and concepts embodied in the federal equal protection clause and the state uniform operation of the laws provision are substantially similar" (*Blue Cross and Blue Shield of Utah v. State of Utah*, 1989 UT, 779 P.2d 634, 637). Further:

"The Fourteenth Amendment of the United States Constitution prohibits the states from enacting laws that deny 'any person within its jurisdiction equal protection of the laws.' Although their language is dissimilar, these provisions embody the same general principle: persons similarly situated should be treated similarly, and persons in different circumstances should not be treated as if their circumstances were the same." (*Malan v. Lewis*, 1984 UT, 693 P.2d 661, 669).

These constitutional guarantees are a fundamental part of justice and a free society (*Malan* and *Gallivan v. Walker*, 54 P.3d 1069 at 32). "In essence these provisions provide that similarly situated people will be dealt with in a similar manner and that people of different

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<sup>10</sup> 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

circumstances will not be treated as if their circumstances were the same." (*Baker v. Matheson*, 1979 UT, 607 P.2d 233, 243).

But the application of uniform operation and equal protection of law is contextual, not formulaic. The ability to categorize people does not mean they should be for purposes of how the law operates. Utah has an assessment articulated in case law (*Malan*, 693 P.2d at 670; *Blue Cross*, 779 P.2d at 637; and *State of Utah v. Mohi*, 1995 UT, 901 P.2d 991, 997).

Whether a party has legal representation has no bearing on fundamental, constitutional rights of access to courts, remedy under the law, and due process itself. In this most important regard, represented vs. unrepresented parties, while they can be easily classified, are not legitimately two separate classes of people.<sup>11</sup> Different operation of law cannot be based simply on a categorization that can be made, it must be based on a classification that needs to be made. (*Baker v. Matheson*, 1979 UT, 607 P.2d 233, 254 and *Utah Farm Bureau Insurance Company v. The Utah Insurance Guaranty Association*, 564 P.2d 751, 755-756 (1977).

Within the context of actual rights of access to courts and due process, pro se and represented parties are similarly situated. They should not be treated differently with regards to timing and means of filing an appeal. Other differences aside, strictly as a party before the courts, there is no difference between a represented and unrepresented party.

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<sup>11</sup> There are certainly implications to a party not being represented by counsel. Often parties do not have a choice in the matter due to circumstances. And there may be legitimately different expectations for counsel of represented parties (such as professional conduct standards), in the least given that it is a regulated profession.



(*Malan v. Lewis*, 1984 UT, 693 P.2d 661, 669, 671; *Lee v. Gaufin*, 867 P.2d 572, 577 (Utah 1993); and *State of Utah v. Mohi*, 1995 UT, 901 P.2d 991, 997).

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. Rules and procedures limiting timing and methods for appeal based on whether there is legal representation fail tests of fairness. It seems, then, that 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.

And the Petitioner is not aware that this particular issue in this particular context has been considered. And this Court is the final authority that can define the parameters supporting constitutional rights of represented and unrepresented persons with regards to procedural barriers to jurisdiction and substantial justice.

**C. There May Be Need to Further Clarify Constitutional Rights After This Court has Already Cautioned About Non-statutory Jurisdictional Bars**

The questions presented pertain to how these various factors work within various constitutional guarantees that support freedom and the rule of law. The Petitioner is still unaware of any basis in statute for the particular procedural rules that was made an unassailable jurisdictional barrier in this instance. This is difficult to reconcile when this Court has already indicated it is a very different matter for jurisdiction to be limited by legislation than a procedural rule. It is imperative that effective jurisdiction-limiting rules still ensure the due process required by constitutionally guaranteed equal protection and open access to courts.

The Petitioner's case demonstrates the effects potential constitutional issues with procedural due process and equal protection have when manifestly errant dismissal cannot be overturned by a state appellate court. In light of decisions of this Court and the constitutional issues raised herein, should further clarification be issued on whether procedural, non-statutory bars to jurisdiction can withstand constitutional guarantees of due process and equal protection as it affects pro se parties appealing as a matter of right?

This Court has 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. Little over 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 SCOTUS*) (*Kontrick v. Ryan*, 540 U. S. 443, 454 (2004)).

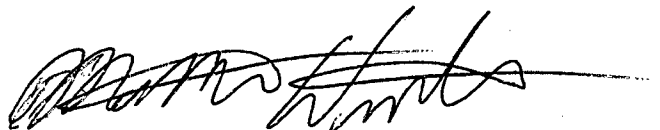
If the end goal is that substantial justice be done, it is best or most likely achieved when all parties have full opportunity to have their voices heard. While procedural rules may facilitate docket management and overall adjudication of claims, to the extent procedural rules deny full and real opportunity for voices to be heard, it is difficult to reconcile such with the end goal of substantial justice.

The Petitioner's voice was not heard when it should have been heard. Twice. Concern about procedure are concerns about due process which in turn are concerns about constitutional rights, substantial justice, and the rule of law.

Depending on the Court's clarification, it may be possible in the future for voices to be more fully heard and substantial justice done when compromising life circumstances such as impecuniosity already make substantial justice a potential challenge without pro se parties being treated as a separate class of persons and given even more barriers to achieve justice.

Respectfully Submitted,

Dated: March 1, 2019

  
Matthew Winters  
Petitioner, Pro Se