

No. A—

In the Supreme Court of the United States

Dr. Marcus Turner, Sr.,
Russell Moore, Jr., and
Beulah Community Improvement Corp.,

Applicants,

v.

Alva C. Hines, et al.,

Respondents.

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORIARI

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the District of Columbia Circuit:

Under Supreme Court Rules 13.5, 22, and 30.3, Petitioners Dr. Marcus Taylor, Russell Moore, and Beulah Community Improvement Corporation (Applicants) respectfully request a 30-day extension to submit their petition for a writ of certiorari to review the judgment of the District of Columbia Court of Appeals. In support of this motion, Applicants state as follows:

1. **Timeliness.** This is a timely application under Rule 13.5, which requires this application to be filed at least 10 days before the deadline for filing the petition for a writ of certiorari. This application was filed on May 31, 2019. The current deadline for filing the petition is June 10, 2019. If this application is granted, the new deadline for filing the petition would be July 10, 2019.

2. **Judgment Below.** On January 16, 2019, the District of Columbia Court of Appeals released its opinion in the captioned case. Exhibit A. Petitioners submitted a timely petition for a rehearing or rehearing *en banc*. On March 12, 2019, the court denied the petition for rehearing or rehearing *en banc*. Exhibit B.

3. **Jurisdiction.** This Court has jurisdiction to grant a petition for a writ of certiorari under 28 U.S.C. § 1257(a). This case involves important First Amendment rights that may be lost if this Court waits until after trial and judgment is entered in the case below. Under these circumstances, this Court has jurisdiction to issue a writ of certiorari even though the case is still pending below. *National Socialist Party of Am. v. Village of Skokie*, 432 U.S. 43, 44 (1977).

4. Respondents (plaintiffs below) purport to be members of a Baptist church who are suing the church's pastor, an elder of the church, and a community development corporation established to advance the church's mission, for violating fiduciary duties allegedly owed to the church and its members. As this Court has repeatedly held, the First Amendment guarantees churches the right "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North Am.*, 344 U.S. 94, 116 (1952). See also *Hosanna-Tabor Evangelical Lutheran Church v. EEOC*, 565 U.S. 171, 186 (2012); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 722 (1976). This First Amendment right, frequently called the "ecclesiastical abstention doctrine" or the "church autonomy doctrine," requires courts to refrain from entertaining any claims that rest on religious doctrine or implicate questions of church governance. *E.g., Serbian Eastern Orthodox Diocese*, 426 U.S. at 708-09. As a consequence, the First Amendment severely restricts the role that civil courts may play in resolving church disputes. *Id.* at 709. See also *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969).

5. Where a lower court erroneously permits a case involving a church to proceed, the trial itself offends the First Amendment and deprives the church and its leaders of a valuable constitutional right. *E.g., see, Swanson v. Roman Catholic Bishop of Portland*, 1997 ME 63, ¶ 6; 692 A. 2d 441, 443 (1997) (interlocutory appeal allowed because if the First Amendment bars claims against religious institutions, “the church is entitled to protection from the very process of litigation itself”); *Harris v. Matthews*, 361 N.C. 265, 269–71, 643 S.E.2d 566 (N.C. 2007) (First Amendment ecclesiastical abstention doctrine is a substantial right and an order erroneously denying motion to dismiss would work an irreparable injury if not corrected before final judgment; citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality)); *St. Joseph Catholic Orphan Society v. Edwards*, 449 S.W.3d 727, 737 n. 36 (Ky. 2014) (denial of ecclesiastical abstention is entitled to prompt appellate review because it is a substantial claim of right that would be rendered moot by litigation and is not subject to meaningful post-judgment review); *United Methodist Church v. White*, 571 A.2d 790, 792 (D.C. 1990) (First Amendment protects church from judicial inquiry under certain circumstances and church is therefore entitled to collateral order doctrine appeal). This Court has jurisdiction to grant certiorari to prevent or remediate the deprivation of the First Amendment right. See *National Socialist Party, supra*.

6. This church’s First Amendment right to decide for itself, free from state interference, matters of ecclesiastical doctrine and governance is a right separable from and collateral to the merits. Cf. *Id.* (applying this rule to the First Amendment right at issue in that case). The appellate court decision below is thus a final judgment on the First Amendment issue over which this Court has jurisdiction under 28 U.S.C. § 1257. *Id.* (citing *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541, 546 (1949)). See also *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 482–83 (1975) (acknowledging this Court’s jurisdiction under § 1257 to review pending cases

where (1) reversal of the state court would preclude any further litigation and (2) failure immediately to review the state court decision might seriously erode federal policy).

7. Just as this Court has § 1257 jurisdiction over double-jeopardy cases to prevent the loss of a fundamental constitutional right that would otherwise be forfeited or seriously damaged, this Court also has jurisdiction under § 1257 to grant certiorari in this case to prevent the evanescence of the church’s First Amendment rights. Compare *Harris v. Washington*, 404 U.S. 55 (1971) (recognizing this Court’s jurisdiction under § 1257 over double jeopardy cases) and *Abney v. United States*, 431 U.S. 651, 660 (citing *Harris* and reaffirming this Court’s § 1257 jurisdiction over double-jeopardy cases) with *National Socialist Party, supra* (citing *Abney, supra*, and *Cox, supra*, in support of this Court’s jurisdiction over a pending case involving a dispositive First Amendment matter).

8. **Bases for Request.** In the proceedings below, Applicants have been represented by Joseph G. Cosby. Since March 12, 2019, Mr. Cosby has been required to meet pressing deadlines in multiple lawsuits, to provide clients with advice on time-sensitive matters concerning compliance with U.S. trade sanctions on Iran and Russia, and to provide clients with advice on other urgent transactional matters. Such matters have included, among other things:

- a. preparing a brief opposing a motion to dismiss and jury instructions in a complex patent infringement case;
- b. preparing two briefs in an insurance coverage dispute;
- c. advising clients and preparing filings in multiple class action lawsuits;
- d. preparing discovery responses in a separate matter;
- e. assisting in preparing a client’s application for an exemption from U.S. tariffs on imports from China;

- f. researching and preparing a potential lawsuit to vindicate a client whose property was wrongfully blocked for having purportedly violated U.S. trade sanctions against Iran; and
- g. advising multiple clients about the impact of U.S. trade sanctions on Iran and Russia on various international transactions.

9. As a result, Petitioners need an additional 30 days to complete and file their petition for writ of certiorari.

10. Mr. Cosby is not yet admitted to this Court. This motion has therefore been signed by Joseph E. Richotte, a member of the bar of this Court who is one Mr. Cosby's colleagues and knows Mr. Cosby. Mr. Richotte is currently listed as lead counsel, but Mr. Cosby will be designated as lead counsel once he is admitted to this Court.

11. This is Petitioners' first request for an extension in the time to file a petition for a writ of certiorari.

12. Granting this motion will not result in any delay in this Court's consideration of the petition for a writ of certiorari, nor will it result in any delay of the matter should the writ be granted.

13. **Corporate Disclosure.** There is no parent or publicly held company owning 10% or more of Beulah Community Improvement Corporation's stock.

For these reasons, the Applicants respectfully request that the time within which they may file a petition for a writ of certiorari be extended to and including July 10, 2019.

Respectfully submitted,



Joseph E. Richotte

Counsel of Record

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May 31, 2019