

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RIVKO KNOX

Petitioner,

vs.

MARK BRNOVICH,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

**APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

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APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI FROM APRIL 29, 2019 TO JUNE 28, 2019

To: Justice Elena Kagan, Circuit Justice for the United States Court of Appeals for the Ninth Circuit.

1. Pursuant 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.3, Applicant Rivko Knox (“Applicant”) respectfully requests an extension of sixty (60) days to file a petition for a writ of certiorari in this case. Applicant’s petition will challenge the decision of the Ninth Circuit in *Knox v. Brnovich*, 907 F.3d 1167 (9th Cir. 2018) (Attached as Exhibit A). In support of this application, Applicant states:

2. The Ninth Circuit issued its opinion on October 31, 2018, and denied Applicant’s timely petitions for rehearing and rehearing en banc in an order issued on January 29, 2019 (Attached as Exhibit B). Without an extension, Applicant’s petition for a writ of certiorari would be due on Monday, April 29, 2019. With the requested extension, the petition would be due on Friday, June 28, 2019. This Court’s jurisdiction will be based on 28 U.S.C. § 1254(1). In accordance with Supreme Court Rule 13.5, Applicant is filing this application at least ten days before the current due date.

3. This case presents significant questions that merit review in this Court. The Ninth Circuit’s holding contradicts several of this Court’s well-established federal preemption principles. First, the Ninth Circuit improperly rejected a long line of Supreme Court cases holding that a preemptive inference

attaches to federal statutes and regulations that exempt certain conduct from regulation. *See, e.g., Arizona v. United States*, 567 U.S. 387 (2012); *Puerto Rico Dep't of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495 (1988); *Arkansas Elec. Co-op. Corp. v. Arkansas Public Serv. Comm'n*, 461 U.S. 375 (1983). Second, the Ninth Circuit improperly applied the presumption against preemption to a state regulation of an area occupied by Congress since the earliest days of the Republic—postal laws. *Cf. United States v. Locke*, 529 U.S. 89, 108 (2000) (holding that “an ‘assumption’ of [non-preemption] is not triggered when the State regulates in an area where there has been a history of significant federal presence.”). Third, the Ninth Circuit improperly applied the presumption against preemption to a state election regulation. *Cf. Arizona v. ITCA*, 570 U.S. 1, 14–15 (2013) (holding that “the assumption that Congress is reluctant to pre-empt” is inapplicable to election regulations).

4. Moreover, the Ninth Circuit’s opinion also creates a circuit split regarding the application of the preemptive inference that attaches to federal statutes and regulations that exempt certain conduct from regulation. *Cf. Gracia v. Volvo Europa Truck, N.V.*, 112 F.3d 291, 297 (7th Cir. 1997).

5. This application for a 60-day extension is not filed for purposes of delay. Rather, Applicant seeks an extension to conserve party and Court resources. On January 2, 2019, the Ninth Circuit granted rehearing en banc in *DNC v. Hobbs*, No. 18-15845, and, on February 19, 2019, scheduled en banc oral argument to take place on Wednesday, March 27, 2019. *DNC v. Hobbs* concerns a challenge to the

same statute, but on different grounds. On this basis, the Ninth Circuit assigned Applicant's appeal to the same three-judge panel. Thus, a ruling in favor of the plaintiffs in *DNC v. Hobbs* would entirely moot Applicant's case.

For these reasons, Applicant respectfully requests the entry of an order extending her time to file her petition for a writ of certiorari until June 28, 2019.

Dated: March 22, 2019 Respectfully submitted,

By.: /s/ Spencer G. Scharff

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CERTIFICATE OF SERVICE

As required by Supreme Court Rule 29.5, I, Spencer G. Scharff, a member of the Supreme Court Bar, hereby certify that one copy of the attached Application was served on March 22, 2019 via electronic mail and mailed via United States Postal Service on:

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Dated: March 22, 2019

s/ Spencer G. Scharff

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