

No. 19-628

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IN THE
Supreme Court of the United States

TAMI L. MITCHELL,

Petitioner,

v.

THOMAS M. DILLAHUNT,

Respondent.

Application for Extension of Time to File a Petition for a Writ of
Certiorari to the Minnesota Court of Appeals

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SUPREME COURT, U.S.

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**Application for Extension of Time to File a Petition for a Writ of
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To the Honorable Neil M. Gorsuch, Circuit Justice for the United States Court of Appeals for the Second Circuit:

Pursuant to Supreme Court Rules 13.5, 22, and 30.2, the Petitioner, Tami L. Mitchell, respectfully requests a 60-day extension of time, to and including February 14, 2020, to file a Petition for a Writ of Certiorari. In support of this application, Petitioner states the following:

1. On September 10, 2018, the Hennepin County District Court entered an order dividing Petitioner's military retired pay to award the Respondent, Thomas M. Dillahunt, Petitioner's former spouse, 22.5% of the entirety of her monthly disposable military retired pay. On June 24, 2019, the Minnesota Court of Appeals

rendered a decision affirming the Hennepin County District Court's order.

Dillahunt v. Mitchell, 2019 Minn. App. Unpub. Lexis 590 (Minn. App. Jun. 24, 2019) (unpub. op.). On September 17, 2019, the Minnesota Supreme Court declined review of the case. *Dillahunt v. Mitchell*, 2019 Minn. Lexis 548 (Minn. Sep. 17, 2019). The time for petitioning this Court for a writ of certiorari expires on December 16, 2019. This application is being filed more than 10 days before that date.

2. Attached to this application are copies of the Minnesota Court of Appeal's decision and the Minnesota Supreme Court's denial of the petition for review.
3. This Honorable Court has jurisdiction under 28 U.S.C. § 1257(a).
4. This case presents an excellent opportunity for this Honorable Court to interpret the 2017 amendment to 10 U.S.C. § 1408, also known as the Uniformed Services Former Spouses Protection Act (USFSPA). This amendment limits the jurisdiction of state courts to divide military retired pay as property based on the hypothetical retired pay the servicemember would have been entitled to receive on the date of legal separation, dissolution, or annulment, which was August 24, 2006, as opposed to the date of retirement, which was September 30, 2016. There is disagreement among the states whether the 2017 amendment applies to only dissolutions occurring on or after December 23, 2016, or whether it also applies to court orders dividing a military pension after December 23, 2016.

5. This case also presents an excellent opportunity for this Honorable Court to provide another reminder to states that they are required to follow federal law in

calculating and dividing military retired pay. The USFSPA requires states to apply their state's rules as long as they do not conflict with the USFSPA. In this case, the Hennepin County District Court did not follow federal law, 10 U.S.C. §§ 1407 and 1409, in calculating the value of the divisible portion of Petitioner's military retired pay, and contrary to the USFSPA, applied an Illinois rule instead of Minn. Stat. § 518.003, Subd. 3b, to calculate that value as including the entirety of Petitioner's military retired pay instead of the value at the time of separation, August 24, 2006.

6. An additional question to be presented is whether the Hennepin County District Court violated Petitioner's constitutional due process right under the Fourteenth Amendment by failing to provide an evidentiary hearing to litigate the division of her military retired pay.

7. Petitioner bases her request for an extension of time on the following:

a. Petitioner is an attorney, and a member of this Honorable Court's bar, employed as the Chief, Appellate Litigation Division with the Law Offices of David P. Sheldon, PLLC. Petitioner represents 20-25 servicemembers in appealing their courts-martial convictions, including Lieutenant Colonel Humphrey Daniels III, whose case is before this Court on the Government's Petition for a Writ for Certiorari. *United States v. Briggs, et. al.*, No. 19-108, *pet. granted* November 15, 2019. Petitioner had three briefs due in October to this Court and the Army Court of Criminal Appeals; three briefs due in November to the Court of Appeals for the Armed Forces and the Navy-Marine Court of Criminal Appeals; has six briefs due in December to the Court of Appeals for the Armed Forces, Air Force Court of Criminal

Appeals, and the Navy-Marine Court of Criminal Appeals; two briefs due in January 2020 to the Air Force Court of Criminal Appeals; and a merits brief due to this Honorable Court in *Briggs* in February 2020. In balancing her clients' needs with her need to complete the petition in her own case, Petitioner needs additional time to complete the drafting of her Petition for a Writ of Certiorari, and to have it reviewed and printed in the appropriate format.

b. Petitioner has a 2011 combat-deployment knee injury that has recently and unexpectedly gotten worse. Petitioner received surgery for her knee on July 11, 2019. Recent imaging shows her knee cap is now dislocated and will likely require additional surgery. Petitioner is being reevaluated by the VA for this service-connected injury, as well as other service-connected injuries, which results in doctor appointments at least twice a week.

c. Petitioner's printing company is booked through December. More time is needed for the Petition to be printed in the appropriate format.

For the foregoing reasons, Petitioner respectfully requests that an order be entered extending her time to file a petition for a writ of certiorari to and including February 14, 2020.

Respectfully submitted,



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December 2, 2019

ATTACHMENT 1