

App. No. _____

In the
Supreme Court of the United States

JOHN AND MELISSA FRITZ,

Petitioners,

v.

WASHOE COUNTY, NEVADA,

Respondent.

ON APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI TO THE SUPREME COURT OF NEVADA

PETITIONER'S APPLICATION TO EXTEND TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI

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December 17, 2019.

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**PETITIONERS' APPLICATION TO EXTEND TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI**

**To the Honorable Elena Kagan, as Circuit Justice for the United States
Court of Appeals for the Ninth Circuit:**

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.3, Petitioners John and Melissa Fritz respectfully request that the time to file a petition for a writ of certiorari in this case be extended for thirty days to Monday March 23, 2020. Petitioner will ask this Court to review a judgment by the Supreme Court of the State of Nevada entered on May 31, 2019. *See* App. 1. Absent an extension of time, the petition would be due on February 20, 2020. Petitioners are filing this application at least ten days before that date. *See* Rule 13.5 of the Supreme Court Rules. This Court has jurisdiction under 28 U.S.C. § 1257 to review this case.

Background

The Nevada Supreme Court adopted a blanket rule that there is no taking unless super-inducement, diversion, and drainage of surface waters (in short, flooding) is coupled with “substantial injury.” In effect the court below authorized the physical invasion of private property for public use by surface water drainage simply and solely because it concluded there was no effect on the economic usefulness of the overall property or parcel, contrary to this Court’s holdings in *Kaiser Aetna v. United States*, 444 U.S. 164 (1979); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); and *Arkansas Game and Fish Comm’n v. United States*, 568 U.S. 23 (2012).

1. Petitioners John and Melissa Fritz brought suit against Washoe County, Nevada, in April 2013 for the taking of their property located at 14400 Bihiler Road, Reno, Nevada, for public use without just compensation in violation of the takings clause of the Fifth Amendment to the United States Constitution. During development of upstream properties, stormwater runoff from a highway and two subdivisions (Lancer Estates and Monte Rosa) was diverted into a creek that runs through the Fritzes’ property, where before development, the water flowed into the same creek below the Fritzes’ property. The superinduced water from the highway and the developments results in flooding on the Fritzes’ property.

2. Following a bench trial, the Second Judicial District Court in Washoe County, Nevada issued an Order on April 24, 2018, finding that despite the fact that water was superinduced, diverted, and drained through the Fritzes’ property, because the Fritzes’ property has been used for practical purposes other than a flood channel, that no taking had occurred. (See Exhibit 1)

3. The Fritzes appealed to the Nevada Supreme Court on April 25, 2018. On May 31, 2019, the Nevada Supreme Court issued an Order of Affirmance of the District Court’s Order finding that there was not taking of the Fritzes’ property because it had only flooded three times and that for substantial injury to exist, an

intermittent but inevitable physical invasion of surface drainage waters must effectually destroy or impair a property's usefulness. (See Exhibit 2)

4. The Fritzes sought rehearing, which was denied by the Nevada Supreme Court on August 29, 2019. (See Exhibit 3)

5. The Fritzes then filed a Petition for En Banc Reconsideration, which was denied by the Nevada Supreme Court on November 22, 2019. (See Exhibit 4)

Opinions Below

1. The Nevada Supreme Court issued the Order of Affirmance in the case on May 31, 2019.

2. The court denied Petitioner's Motion for Rehearing on August 29, 2019.

3. The Nevada Supreme Court denied Petitioner's Petition for En Banc Reconsideration on November 22, 2019.

Jurisdiction

This Court has jurisdiction under 28 U.S.C. § 1257.

Reasons for Granting an Extension of Time

The time to file a petition for a writ of certiorari should be extended for thirty days, to March 23, 2020 for several reasons:

1. The forthcoming petition will present an important federal constitutional question that this Court should consider:

Whether the physical invasion from the diversion and drainage of the public's surface waters through private property must be accompanied by an impairment or destruction of a properties' usefulness for a taking to occur.

2. Additional time is necessary and warranted for appellate counsel of record—retained only recently and after the Nevada Supreme Court's opinion—to review the record in the case, research case law and federal and state constitutional law, and prepare a clear and concise petition for certiorari for the Court's review

3. No prejudice to Respondent Washoe County would arise from the extension. Counsel for Washoe County was contacted and did not respond to an inquiry as to whether it opposes this request for an extension of time.

Conclusion

For the foregoing reasons, the time to file a petition for a writ of certiorari in this matter should be extended thirty days to and including March 23, 2020.

Respectfully submitted,



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