

No. _____

IN THE
Supreme Court of the United States

ANTHONÉE PATTERSON,
Respondent,

v.

KENNETH SHELTON

Applicant.

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

To the Honorable Samuel A. Alito, Jr.
Associate Justice of the Supreme Court of the United
States and Circuit Justice for the Third Circuit

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**To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of
the United States and Circuit Justice for the Third Circuit:**

Pursuant to Supreme Court Rule 13.5, applicant, Bishop Kenneth Shelton, respectfully requests an extension of time to file a petition for writ of certiorari. The earliest deadline for Bishop Shelton to file his petition is Monday, February 24, 2020, 90 days after Tuesday, November 26, 2019, the date when the Pennsylvania Supreme Court issued an order denying Bishop Shelton's Petition for Allowance of Appeal. Bishop Shelton's application to this Court is timely because it is filed more than 10 days before the current February 24, 2020 deadline. For good cause set forth herein, Bishop Shelton asks that this deadline be extended 60 days so that the new deadline would be Friday, April 24, 2020.

BACKGROUND

Since 1992, Bishop Shelton has served as the General Overseer of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc. (the "Church") and as President of the Board of the Trustees of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc. (the "Church Corporation"), both of which have been headquartered in Philadelphia for more than 70 years. As General Overseer, Bishop Shelton is the highest spiritual leader in the Church. Respondent Anthoneé Patterson is a former member of the Church who lives in Florida. Since 1995, Patterson has relentlessly pursued duplicative and abusive legal actions across the country in an ongoing attempt to oust Bishop Shelton and gain control of the Church, the Church Corporation, and its assets. No civil court has authority to

grant that relief, but the course of litigation has led to several inconsistent—and even unconstitutional—results.

In January 2006, Bishop Shelton’s constitutional objections to the action notwithstanding, the Court of Common Pleas for Philadelphia County was on a path to trial. At the final pretrial conference, the court suggested arbitration in lieu of trial to which Bishop Shelton and Patterson agreed; thereafter, the Court issued an Order sending the matter to arbitration. Bishop Shelton and Patterson were to arbitrate Patterson’s claims under Pennsylvania’s Nonprofit Corporation Law (“NCL”) only. From April 2006 to April 2007, the arbitrator issued a series of adjudications purporting to transfer control of the Church and Church Corporation to Patterson, a non-member of the Church. Bishop Shelton petitioned to vacate the arbitration adjudications on the grounds that, *inter alia*, they exceeded the scope of the arbitrator’s authority and the First Amendment deprived the Pennsylvania courts of subject matter jurisdiction over the dispute. In January 2008, the Commonwealth Court of Pennsylvania vacated the arbitration adjudications as *ultra vires* and remanded Patterson’s claims under the NCL for trial. *See Patterson v. Shelton*, Nos. 1967 C.D. 2006, 1968 C.D. 2006, 2008 WL 9401359, at *5–7 (Pa. Commw. Ct. Jan. 31, 2008) (the “2008 Opinion”). Patterson exhausted his appeals of the 2008 Opinion, unsuccessfully seeking its reversal. *See Patterson v. Shelton*, 963 A.2d 471 (Pa. Oct. 14, 2008) (denying Patterson’s petition for allowance of appeal of 2008 Opinion).

At the trial, Bishop Shelton moved to dismiss Patterson’s claims for lack of subject matter jurisdiction because Patterson’s claims impermissibly entangle the courts in ecclesiastical and doctrinal matters. The trial court granted Bishop Shelton’s motion to dismiss, and the Commonwealth Court affirmed that ruling in December 2015. *See Patterson v. Shelton*, No. 2147 C.D. 2014, 2015 WL 9260536, at *7–11 (Pa. Commw. Ct. Dec. 18, 2015) (the “2015 Opinion”). Patterson exhausted his appeals of the 2015 Opinion, effectively disposing of any and all remaining claims and fully and finally concluding the litigation. *See Patterson v. Shelton*, 137 S.Ct. 297 (Oct. 11, 2016) (denying Patterson’s petition for writ of certiorari of 2015 Opinion). The 2015 Opinion was upheld.

Nevertheless, in May 2016 Patterson filed a motion with the Court of Common Pleas—on the closed docket of a dismissed case, after trial, a dismissal in Bishop Shelton’s favor, and Patterson’s exhaustion of all appeals—seeking to strike the Commonwealth Court’s 2008 Opinion and order vacating the arbitration adjudications. Effectively, Patterson sought to unwind ten years of binding adjudications in the Pennsylvania courts so that he could pursue enforcement of purported adjudications by an arbitrator in 2006 and 2007 that the courts conclusively invalidated in 2008.

The Court of Common Pleas denied Patterson’s motion, and Patterson appealed yet again to the Commonwealth Court. Remarkably, in November 2017, the Commonwealth Court reversed the trial court and struck its ten-year old order vacating the arbitration adjudications. The Commonwealth Court directed the trial

court to resolve all remaining issues with the case, despite the fact that the Pennsylvania courts do not have jurisdiction. *See Patterson v. Shelton*, 175 A.2d 442, 449–50 (Pa. Commw. Ct. 2017) (the “2017 Opinion”). Bishop Shelton unsuccessfully applied to the Pennsylvania Supreme Court and to this Court for review of the 2017 Opinion, but both applications were denied.

Following the Commonwealth Court’s direction to litigate the remaining issues in the trial court, in January 2018, Bishop Shelton moved the Court of Common Pleas to vacate any remaining orders for lack of subject matter jurisdiction under the First Amendment. As Bishop Shelton explained to the court, because no jurisdiction existed as a constitutional matter, all that remained was for the court to “announce the fact and dismiss[] the cause.” *Hughes v. Pennsylvania State Police*, 619 A.2d 390, 415 (Pa. Commw. Ct. 1992), *appeal denied*, 637 A.2d 293 (Pa. 1993).

In March 2018, recognizing that only an appellate court could grant Bishop Shelton’s requested relief, the trial court denied Bishop Shelton’s motion, and Bishop Shelton appealed that ruling to the Commonwealth Court, where again the Commonwealth Court trampled Bishop Shelton’s constitutional rights by reaffirming the 2017 Opinion. *See Patterson v. Shelton*, No. 439 CD 2018, WL 1591859, at *5–6 (Pa. Commw. Ct. Apr. 15, 2019) (the “2019 Opinion”).

The magnitude and complexity of the religious and constitutional issues at stake in this litigation warrant full consideration by this Court, and, with the press of counsels’ obligations in other matters, additional time is required in order to fully develop and adequately present Bishop Shelton’s petition. Nothing less than

control of the Church by its members is at stake here. Accordingly, good cause exists for granting an extension of time to file the petition.

OPINIONS BELOW

The April 15, 2019 Order and Opinion of the Pennsylvania Commonwealth Court is reproduced at Appendix A. The June 14, 2019 Order of the Pennsylvania Commonwealth Court denying reargument is reproduced at Appendix B. The November 26, 2019 Order of the Pennsylvania Supreme Court denying Bishop Shelton's Petition for Allowance of Appeal is reproduced at Appendix C.

JURISDICTION

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

REASONS WHY EXTENSION IS JUSTIFIED

Supreme Court Rule 13.5 provides in relevant part that “[a]n application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified.” Sup. Ct. R. 13.5. The specific reasons why an extension of time to file is justified are as follows:

1. This case ultimately is and always has been about having the civil courts replace one Church leader, someone duly elected according to the Church's processes, with someone who is neither clergy nor a member of the Church. No civil court has authority to do that.

2. According to Patterson, the Commonwealth Court's decisions permit him to displace Bishop Shelton as General Overseer of the Church and President of the Church Corporation, and transfer the assets of the Church Corporation to

nonmember Patterson's control. Patterson's proposed remedy—which appears to have been sanctioned by the Commonwealth Court—plainly violates the Free Exercise and Establishment Clauses of the First Amendment.


3. This case thus presents at least the following complex and novel issues: whether the First Amendment bars a civil court from removing a duly elected leader of a church; whether *Hosana-Tabor* limits the ability of courts to disregard core church autonomy principles in the adjudication of intra-church disputes; and crucially, whether the Court should revisit and clarify *Jones v. Wolf* given the ongoing doctrinal uncertainty reflected in its inconsistent application in state courts.

4. Accordingly, given the procedural complexity of this decades-long litigation and the additional complexity and magnitude of the fundamental religious questions at stake, along with the press of counsels' schedule, an extension of time under Supreme Court Rule 13.5 is justified and, indeed, necessary, to fully develop the petition and fairly present these important religious and constitutional issues to this Court.

CONCLUSION

For the foregoing reasons and good cause shown, Applicant Bishop Kenneth Shelton respectfully requests that this Court grant this application for an extension of time to file a petition for writ of certiorari.

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