No. 19A_____

IN THE SUPREME COURT OF THE UNITED STATES

THOMAS CHRISTOPHER RETZLAFF,
Petitioner

v.

JASON LEE VAN DYKE

APPLICATION FOR AN UNOPPOSED EXTENSION OF TIME IN WHICH TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable Samuel A. Alito, Jr., Associate Justice and Circuit Justice for the Fifth Circuit: Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.2 of this Court, Thomas Christopher Retzlaff respectfully requests a 30-day extension of time, to and including Friday, April 3, 2020, in which to file a petition for a writ of certiorari in this Court. The Court of Appeals for the Fifth Circuit entered judgment on October 22, 2019. See *Van Dyke v. Retzlaff*, 781 Fed. Appx. 368 (5th Cir. 2019). (A copy of the Fifth Circuit's opinion is attached as Exhibit 1.) It denied a timely filed petition for panel rehearing and rehearing en banc on December 5, 2019. (A copy of the Fifth Circuit's denial of rehearing is attached as Exhibit 2.) Mr. Retzlaff's time

to file a petition for certiorari in this Court will currently expire on March 4, 2020. This application is being filed more than 10 days before that date.

The case presents an important issue of federal civil procedure over which the courts of appeals have deeply split: Whether under the doctrine of *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938), state anti-SLAPP ("Strategic Litigation Against Public Participation") statutes apply in federal diversity cases. Many federal courts of appeals have expressly acknowledged the circuit split. See, *e.g.*, *Abbas* v. *Foreign Policy Grp., LLC*, 783 F.3d 1328, 1335 (D.C. Cir. 2015) (Kavanaugh, J.) ("[S]ome other courts[] have applied state anti-SLAPP acts' pretrial dismissal provisions[,] but we [disagree with] those decisions."); *Mitchell* v. *Hood*, 614 Fed. App'x. 137, 139 n.1 (5th Cir. 2015) ("[T]here is disagreement among courts of appeals as to whether state anti-SLAPP laws are applicable in federal court."); *Intercon Sols., Inc.* v. *Basel Action Network*, 791 F.3d 729, 731 n.1 (7th Cir. 2015) (Easterbrook, J.) (noting that the application of anti-SLAPP laws "has produced disagreement among appellate judges"); see also *Klocke* v. *Watson*, 936 F.3d 240, 245 (5th Cir. 2019) (recognizing circuit split with a *but see* citation); *Ernst* v. *Carrigan*, 814 F.3d 116, 119 n.1 (2d Cir. 2016) (same).

In particular, the First, Second, and Ninth Circuits have held that anti-SLAPP statutes apply in federal courts exercising jurisdiction over relevant state law claims. *Godin* v. *Schencks*, 629 F.3d 79, 81 (1st Cir. 2010) ("We hold the Maine anti-SLAPP statute must be applied."); *Adelson* v. *Harris*, 774 F.3d 803, 809 (2d Cir. 2014) ("[T]he

specific [Nevada] anti-SLAPP provisions applied by the district court—immunity from civil liability and mandatory fee shifting—seem to us unproblematic." (citations omitted)); *United States ex rel. Newsham* v. *Lockheed Missiles & Space Co. Inc.*, 190 F.3d 963, 973 (9th Cir. 1999) ("[W]e hold that the district court erred in finding that subsections (b) and (c) of California's Anti-SLAPP statute [providing for a special motion to dismiss and recovery of fees and costs] could not be applied."); see also *Makaeff* v. *Trump Univ.*, 736 F.3d 1180, 1181 (9th Cir. 2013) (joint opinion of Wardlaw and Callahan, JJ., concurring in denial of rehearing en banc) ("*Newsham* [was] correctly decided. * * * The Supreme Court's decision in *Shady Grove* does not change this reasoning." (citation omitted)).

The Fifth, Tenth, Eleventh, and D.C. Circuits have held, by contrast, that anti-SLAPP laws do not apply in federal court. See, *e.g.*, *Klocke*, 936 F.3d at 245 ("Because the [Texas anti-SLAPP law] burden-shifting framework imposes additional requirements * * * the state law cannot apply in federal court."); *Los Lobos Renewable Power, LLC* v. *Americulture, Inc.*, 885 F.3d 659, 673 (10th Cir. 2018) ("[T]he decision of the district court denying the application of the New Mexico anti-SLAPP statute in this federal diversity action is AFFIRMED."); *Carbone* v. *Cable News Network, Inc.*, 910 F.3d 1345, 1347 (11th Cir. 2018) ("[T]he special-dismissal provision of the Georgia anti-SLAPP statute does not apply in federal court."); *Abbas*, 783 F.3d at 1337 ("A federal court exercising diversity jurisdiction therefore must apply Federal Rules 12 and 56 instead of D.C. Anti-SLAPP Act's special motion to dismiss provision.").

The decision below deepens the confusion around an exceptionally important and recurring issue—the applicability of 32 states' anti-SLAPP statutes in the federal courts. The split is real and growing.

Petitioner has engaged the University of Virginia School of Law's Supreme Court Litigation Clinic to file a petition for certiorari in conjunction with the Hanszen Laporte law firm of Houston, Texas. The clinic is working diligently, but respectfully submits that the additional time requested is necessary to prepare Mr. Retzlaff's petition. Substantial work remains to master the full record of the case and to prepare the petition and appendix for filing.

In addition to this case, the clinic is handling several other cases before this Court. It has filed cert petitions in *Phoenix v. Region Bank*, No. 19-815, and *Hannah P v. Maguire*, No. 19-549 and is currently preparing a reply brief in the former and will start preparing a reply brief in the latter later this month; is currently preparing cert petitions in two other cases; and is preparing a brief in opposition in another.

Respondent does not oppose a 30-day extension.

Wherefore, Petitioner respectfully requests that an order be entered extending the time to file a petition for writ of certiorari up to and including April 3, 2020.

Respectfully submitted,

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