

**In the Supreme Court
of the United States**

JASON EDWARD RHEINSTEIN,
Petitioner,

v.

**ATTORNEY GRIEVANCE COMMISSION
OF MARYLAND,**
Respondent.

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

**MOTION TO FILE
PETITION FOR REHEARING
OUT OF TIME**

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October 30, 2020

Petitioner, Jason Edward Rheinstein, hereby respectfully files this Motion to File Petition for Rehearing Out of Time, and in support thereof, respectfully states as follows:

1. Petitioner incorporates by reference, as if fully restated herein, the Petitioner's proposed Petition for Rehearing, which is filed contemporaneously herewith.
2. On October 2, 2020, since its denial of the Petition for Writ of Certiorari for which Petitioner seeks rehearing, this Court granted certiorari in another case raising the exact same legal question. *B.P., p.l.c. v. Mayor and City Council of Baltimore*, -- S.Ct. ---, 2020 WL 5847132 (Mem) (Oct. 2, 2020). Indeed, not only did the Petitioner present the exact same legal question as the petitioners in *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 19-1189 (hereinafter, sometimes referred to as the "Plenary Case"), he presented the same arguments as to why the petition for writ of certiorari should be granted, a fact noted by respondent Mayor and City Council of Baltimore in its brief in opposition filed in the Plenary Case. Specifically, in its Brief in Opposition, the respondent in the Plenary Case noted in relevant part:

Less than one year ago, this Court denied certiorari in another Fourth Circuit case raising the identical question presented. *Rheinstein v. Att'y Grievance Comm'n of Md.*, 140 S. Ct. 226 (2019) (Mem). The issue in Rheinstein, as here, was whether on appeal from an order remanding a case to state court for lack of subject-matter jurisdiction, Section 1447(d) authorizes appellate courts to review any jurisdictional grounds for removal rejected in the remand order other than federal-officer jurisdiction. Petition for Writ of Certiorari, *Rheinstein v. Att'y Grievance Comm'n of Md.*, 140 S. Ct. 226 (2019) (No. 19-140), 2019 WL 3496290. The Petition in this case raises the

same arguments as the petition in *Rheinstein*.

Brief of Respondent Mayor and City Council of Baltimore in Opposition, filed June 29, 2020, *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 11-1189, Supr. Ct. U.S., at p.2, available at, <https://www.supremecourt.gov/DocketPDF/19/19-1189/146560/20200629150334951> 2020-06-29%20Baltimore%20Cert.%20Opp..pdfa.pdf (emphasis added).¹

3. A major reason for granting rehearing is to ensure that the same rule applies to all litigants who are similarly situated. *See Gondeck v. Pan American World Airways, Inc.*, 382 U.S. 25, 26 (1965) (Granting petition for rehearing three years after denial of certiorari because, based upon intervening circumstances, it was in the interests of justice to do so because it ensured the same rule applied to similarly-situated litigants); *United States v. Ohio Power Company*, 353 U.S. 98 (1957) (vacating, *sua sponte*, its earlier orders denying certiorari and a petition for rehearing so that the case could be disposed of consistently with two other cases raising the same issue in which certiorari had been granted).²

¹ The petitioners in the Plenary Case also acknowledged that this case and the Plenary Case presented the exact same question. *See Reply Brief of the Petitioners*, filed July 15, 2020, *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 11-1189, Supr. Ct. U.S., at p. 11 n. 2 (“[R]espodent correctly notes (Br. In Opp. 2) that this Court denied review on the question presented in *Rheinstein v. Attorney Grievance Commission*, 140 S. Ct. 226 (2019) (No. 19-140)...”).

² Case outcomes should not turn on purely arbitrary matters such as, for example, timing and whether two cases proceeded through the judicial system at the same rate. *See e.g., Straight*, 476 U.S. at 1135 (Brennan, Marshall and Blackmun, JJ., dissenting); *United States v. Johnson*, 457 U.S. 537, 555-56 (1982).

4. The Petitioner in this case and the petitioners in *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 11-1189 are similarly (if not identically-) situated. *See* Petition for Rehearing at ¶4.

5. The litigation giving rise to the petition for writ of certiorari was still pending as of the time this Court entered its decision to grant certiorari in *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 11-1189, and the Petition for Rehearing is filed within 25 days after the litigation giving rise to the Petition for Writ of Certiorari was completed. *See e.g. Braniff Airways, Inc. v. Curtiss-Wright Corp.*, 424 F.2d 427, 428-30 (2d Cir. 1970) (granting rehearing out of time and after the denial of certiorari-where a change in law had occurred before the case became final); *United States v. Skandier*, 125 F.3d 178, 182-83 (3d Cir. 1997) (recalling the mandate and granting rehearing based on a Supreme Court decision issued approximately one month after the prior ruling of the court of appeals).

CONCLUSION

WHEREFORE, for the reasons set forth herein, Petitioner respectfully requests that this Honorable Court enter an Order:

- a. Granting Petitioner leave to file a Petition for Rehearing Out of Time; and
- b. Granting such other and further relief as this Court deems just and proper.

Dated: October 30, 2020

Respectfully submitted,



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