

In the Supreme Court of the United States

Dr. Marcus Turner, Sr.,
Russell Moore, Jr., and
Beulah Community Improvement Corp.,

Applicants,

v.

Alva C. Hines, et al.,

Respondents.

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

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and
Circuit Justice for the District of Columbia Circuit:

Under Supreme Court Rules 13.5, 22, and 30.3, Petitioners Dr. Marcus Taylor, Russell Moore, and Beulah Community Improvement Corporation (Applicants) respectfully request an additional, 20-day extension to submit their petition for a writ of certiorari to review the judgment of the District of Columbia Court of Appeals. In support of this motion, Applicants state as follows:

1. **Timeliness.** This is a timely application under Rule 13.5, which requires this application to be filed at least 10 days before the deadline for filing the petition for a writ of certiorari. This application was filed on June 28, 2019. The current deadline for filing the petition is July 10, 2019. If this application is granted, the new deadline for filing the petition would be July 30, 2019.

2. **Judgment Below.** On January 16, 2019, the District of Columbia Court of Appeals released its opinion in the captioned case. Exhibit A. Petitioners submitted a timely petition for a rehearing or rehearing *en banc*. On March 12, 2019, the court denied the petition for rehearing or rehearing *en banc*. Exhibit B. On May 31, 2019, petitioners filed a timely request to extend the time to file a petition for a writ of certiorari, which this Court granted on June 28, 2019.

3. **Jurisdiction.** This Court has jurisdiction to grant a petition for a writ of certiorari under 28 U.S.C. § 1257(a). This case involves important First Amendment rights that may be lost if this Court waits until after trial and judgment is entered in the case below. Under these circumstances, this Court has jurisdiction to issue a writ of certiorari even though the case is still pending below. *National Socialist Party of Am. v. Village of Skokie*, 432 U.S. 43, 44 (1977).

4. Respondents (plaintiffs below) purport to be members of a Baptist church who are suing the church’s pastor, an elder of the church, and a community development corporation established to advance the church’s mission, for violating fiduciary duties allegedly owed to the church and its members. As this Court has repeatedly held, the First Amendment guarantees churches the right “to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North Am.*, 344 U.S. 94, 116 (1952). See also *Hosanna-Tabor Evangelical Lutheran Church v. EEOC*, 565 U.S. 171, 186 (2012); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 722 (1976). This First Amendment right, frequently called the “ecclesiastical abstention doctrine” or the “church autonomy doctrine,” requires courts to refrain from entertaining any claims that rest on religious doctrine or implicate questions of church governance. *E.g.*, *Serbian Eastern Orthodox Diocese*, 426 U.S. at 708–09. As a consequence, the First Amendment severely restricts the role that civil courts may play in resolving church

disputes. *Id.* at 709. *See also Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969).

5. Where a lower court erroneously permits a case involving a church to proceed, the trial itself offends the First Amendment and deprives the church and its leaders of a valuable constitutional right. *E.g., see, Swanson v. Roman Catholic Bishop of Portland*, 1997 ME 63, ¶ 6; 692 A. 2d 441, 443 (1997) (interlocutory appeal allowed because if the First Amendment bars claims against religious institutions, “the church is entitled to protection from the very process of litigation itself”); *Harris v. Matthews*, 361 N.C. 265, 269–71, 643 S.E.2d 566 (N.C. 2007) (First Amendment ecclesiastical abstention doctrine is a substantial right and an order erroneously denying motion to dismiss would work an irreparable injury if not corrected before final judgment; citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality)); *St. Joseph Catholic Orphan Society v. Edwards*, 449 S.W.3d 727, 737 n. 36 (Ky. 2014) (denial of ecclesiastical abstention is entitled to prompt appellate review because it is a substantial claim of right that would be rendered moot by litigation and is not subject to meaningful post-judgment review); *United Methodist Church v. White*, 571 A.2d 790, 792 (D.C. 1990) (First Amendment protects church from judicial inquiry under certain circumstances and church is therefore entitled to collateral order doctrine appeal). This Court has jurisdiction to grant certiorari to prevent or remediate the deprivation of the First Amendment right. *See National Socialist Party, supra.*

6. This church’s First Amendment right to decide for itself, free from state interference, matters of ecclesiastical doctrine and governance is a right separable from and collateral to the merits. *Cf. Id.* (applying this rule to the First Amendment right at issue in that case). The appellate court decision below is thus a final judgment on the First Amendment issue over which this Court has jurisdiction under 28 U.S.C. § 1257. *Id.* (citing *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541,

546 (1949)). See also *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 482–83 (1975) (acknowledging this Court’s jurisdiction under § 1257 to review pending cases where (1) reversal of the state court would preclude any further litigation and (2) failure immediately to review the state court decision might seriously erode federal policy).

7. Just as this Court has § 1257 jurisdiction over double-jeopardy cases to prevent the loss of a fundamental constitutional right that would otherwise be forfeited or seriously damaged, this Court also has jurisdiction under § 1257 to grant certiorari in this case to prevent the evanescence of the church’s First Amendment rights. Compare *Harris v. Washington*, 404 U.S. 55 (1971) (recognizing this Court’s jurisdiction under § 1257 over double jeopardy cases) and *Abney v. United States*, 431 U.S. 651, 660 (citing *Harris* and reaffirming this Court’s § 1257 jurisdiction over double-jeopardy cases) with *National Socialist Party, supra* (citing *Abney, supra*, and *Cox, supra*, in support of this Court’s jurisdiction over a pending case involving a dispositive First Amendment matter).

8. **Bases for Second Request.** In the proceedings below, Applicants have been represented by Joseph G. Cosby. Since June 1, Mr. Cosby has been required to respond to three matters not described in the May 31, 2019 Application that required urgent, immediate attention:

a. Assisting in preparing an emergency temporary restraining order in a due process case involving an individual’s right to access critical medical care for treatment of her cancer;

b. Preparing an opinion letter for a foreign company with billions of dollars in annual revenue concerning the potential impact of a proposed securities offering. The company needed a letter prepared within 2-3 weeks to address the potential impact of U.S. trade sanctions, given that one of the potential beneficiaries of the offering is an Iranian shareholder (which owns 15% of the company) that

appears on U.S. trade sanctions lists.

c. A complex question, first raised in June and needing immediate attention, concerning a client's foreign investments involving Huawei, which the United States first sanctioned in mid-May.

9. None of these matters were included in the May 31 Application. As a result, Petitioners need an additional 20 days to complete and file their petition for writ of certiorari.

10. Mr. Cosby is not yet admitted to this Court. This motion has therefore been signed by Joseph E. Richotte, a member of the bar of this Court who is one Mr. Cosby's colleagues and knows Mr. Cosby. Mr. Richotte is currently listed as lead counsel, but Mr. Cosby will be designated as lead counsel once he is admitted to this Court.

11. This is Petitioners' second request for an extension in the time to file a petition for a writ of certiorari. The first request approved a 30-day extension of time. If this request is approved, the total extension granted would be 50 extra days. The maximum extension permitted is 60 days. Rule 13.5.

12. Granting this motion will not result in any delay in this Court's consideration of the petition for a writ of certiorari, nor will it result in any delay of the matter should the writ be granted.

13. **Corporate Disclosure.** There is no parent or publicly held company owning 10% or more of Beulah Community Improvement Corporation's stock.

For these reasons, the Applicants respectfully request that the time within which they may file a petition for a writ of certiorari be extended to and including July 30, 2019.

Respectfully submitted,



Joseph E. Richotte
Counsel of Record

Joseph G. Cosby
BUTZEL LONG, P.C.
1909 K Street, N.W.,
Suite 500
Washington, D.C. 20006
(202) 454-2800
cosby@butzel.com

BUTZEL LONG, P.C.
Stoneridge West
41000 Woodward Avenue
Bloomfield Hills, Michigan 48304
(248) 258-1616
richotte@butzel.com

Counsel for Applicants
Dr. Marcus Turner, Sr.,
Russell Moore, Jr., and
Beulah Community Improvement Corp.

June 28, 2019

No. 18A-1261

In the Supreme Court of the United States

Dr. Marcus Turner, Sr.,
Russell Moore, Jr., and
Beulah Community Improvement Corp.,

Applicants,

v.

Alva C. Hines, et al.,

Respondents.

CERTIFICATE OF SERVICE

I, Joseph E. Richotte, counsel for the Applicants in the above-captioned action, certify that, on this 28th day of June, 2019, I caused a copy of the Applicants' Application for Extension of Time to File a Petition for a Writ of Certiorari to be served by overnight delivery on each of the following attorneys who serve as counsel to the Respondents in the courts below:

Seth A. Rosenthal
Calvin R. Nelson
VENABLE LLP
600 Massachusetts Ave., N.W.
Washington, D.C. 20001
(202) 344-4000
sarosenthal@venable.com
crnelson@venable.com

Joshua Counts Cumby
ADAMS & REESE, LLP
20 F Street, N.W.
Suite 500
Washington, D.C. 20001
(202) 737-3234
joshua.cumby@arlaw.com

[SERVICE LIST CONTINUED ON NEXT PAGE]

Bradford S. Bernstein
James A. Sullivan, Jr.
MILES & STOCKBRIDGE
11 N. Washington St.
Suite 700
Rockville, MD 20850
(301) 762-1600
bbernstein@milesstockbridge.com
jsullivan@milesstockbridge.com

I further certify that all parties required to be served have been served.

Respectfully submitted,



Joseph E. Richotte
Counsel of Record

Joseph G. Cosby
BUTZEL LONG, P.C.
1909 K Street, N.W.,
Suite 500
Washington, D.C. 20006
(202) 454-2800
cosby@butzel.com

BUTZEL LONG, P.C.
Stoneridge West
41000 Woodward Avenue
Bloomfield Hills, Michigan 48304
(248) 258-1616
richotte@butzel.com

Counsel for Applicants
Dr. Marcus Turner, Sr.,
Russell Moore, Jr., and
Beulah Community Improvement Corp.

June 28, 2019