

App. No. _____

In the
Supreme Court of the United States

JOHN SCHICKEL, IN HIS PERSONAL AND OFFICIAL CAPACITIES; DAVID WATSON
Petitioners

v.

GEORGE C. TROUTMAN, IN HIS OFFICIAL CAPACITY AS CHAIRMAN AND MEMBER
OF THE KENTUCKY LEGISLATIVE ETHICS COMMISSION, ET AL., et. al.

Respondents

ON APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH
CIRCUIT

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

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July 12, 2019

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

Petitioners Hon. John Schickel, in his official and individual capacities, and David Watson respectfully request that the time to file a Petition for a Writ of Certiorari in this matter be extended for sixty days to, and including, December 9, 2019. The Court of Appeals for the Sixth Circuit issued its opinion on May 30, 2019. *See* App. A, *infra*. On July 11, 2019, the Court of Appeals issued an order in which it denied their petition for rehearing *en banc*. *See* App. B, *infra*. Absent an extension of time, the Petition would therefore be due on October 9, 2019. Petitioners are filing this Application at least ten days before that date. *See* S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. § 1254(1).

Background

The Commonwealth of Kentucky enacted legislative ethics provisions in the early 1990s following a scandal in which a couple members of the harness racing industry were involved with bribing legislators and other governmental officials.

In 2014, in the midst of a sexual harassment scandal, the Kentucky legislature substantially enacted more onerous ethics requirements in certain regards, while leaving open significant loopholes. Importantly, the legislature removed a \$100 exemption to its gift ban from lobbyists or their employers. They likewise banned legislative employers and all political action committees (“PACs”) (which is essentially any group of persons who register as a group) from donating to legislators. The provisions also prohibit legislators from having lobbyists as their campaign treasurers and, from a pure speech standpoint, prohibit lobbyists from soliciting others to donate to the campaigns of legislators and candidates.

The Court below held that State Senator John Schickel and candidate David Watson did not have standing to challenge provisions that prevented lobbyists or their employers from donating to their campaigns (but did have standing to challenge the other side of the coin – their acceptance of such donations), and did not have standing to challenge the pure speech restriction on lobbyists from soliciting donations to their campaigns. Substantively, the Court below upheld the restrictions on Senator Schickel’s acceptance of contributions from lobbyists (at any time), and in-session restrictions on Senator Schickel’s acceptance of contributions from employers of lobbyists or PACs.

The District Court found Senator Schickel and Mr. Watson (a candidate for office) had standing. It likewise found the year-round restriction on lobbyist contributions in any amount

unconstitutional; and it found the pure speech solicitation ban was unconstitutional. *See* App. C; District Court Opinion.

The Court of Appeals below applied “closely drawn” scrutiny in its substantive review of these provisions, but acknowledged that there was or could be questions about these issues. On the standing issue, the Court of Appeals ignored longstanding precedent that lessens a standing showing that must be made in a First Amendment context. *Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 392 (1988); *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973) (“Litigants, therefore, are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression.”); *Secretary of State v. Joseph H. Munson Co.*, 467 U.S. 947, 954-959 (1984).

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a Petition for a Writ of Certiorari should be extended for sixty days for these reasons:

1. Additional time is warranted to allow preparation of a Petition because seeking this Court’s review in any case is a serious decision, and the implications of this case are important, warranting careful preparation of the Petition.

2. This case presents extraordinarily important issues warranting a carefully prepared Petition. At stake are serious First Amendment issues that continue to percolate in the lower courts, and serious restrictions on free speech rights. The issues in this case raise simple yet incredibly important questions, including, without limitation, (a) the continuing viability of closely drawn scrutiny in *Buckley v. Valeo*, 424 U.S. 1, 25 (1976), (b) whether identity-based restrictions based on one’s profession that involves the regular assertion of federal

constitutionally right, (c) whether a legislature can prohibit groups of people, none of them having had any involvement in any scandals, from donating to a campaign in the middle of a legislative session that coincides with almost all of the primary election period in a state, while allowing individuals to do so under the First Amendment, (d) whether or not the state can punish a person who employs a lobbyist, a constitutionally protected right, to advance their interests by disallowing them from donating to a campaign while the legislature is in session, and (e) whether constitutional standing is met where: (i) a legislator challenges provisions that prohibit others from donating to his or her campaign; (ii) a legislator challenges provisions that prohibit others from giving him or her gifts; and (iii) a legislator challenges provisions that prohibit others from soliciting donations to his or her campaign?

3. There is, at a minimum, some prospect that this Court will grant certiorari, and a similar prospect of reversal. The opinion at issue conflicts with the decisions of other circuits, and, on the standing issue, recent decisions of this Court. *DOC v. New York*, 2019 U.S. LEXIS 4402 (June 27, 2019) at *24-*25 (standing met where third parties likely to react in ways that resolution of the case would provide redress); *Food Mktg. Inst. v. Argus Leader Media*, 2019 U.S. LEXIS 4200 (June 24. 2019) at *10-11.

4. Finally, there is no prejudice arising from the extension, and an additional 60 days to prepare the Petition is warranted.

CONCLUSION

For the foregoing reasons, the time to file a Petition for a Writ of Certiorari in this matter should be extended sixty days to, and including, December 9, 2019.

Respectfully submitted,

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Counsel for Petitioners

July 12, 2019

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing upon Counsel for the
Defendants/Respondents, this 12th day of July 2019 by ordinary U.S. mail.

/s/Robert A. Winter, Jr.
Robert A. Winter, Jr.