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App. No. \_\_\_\_\_

In the  
Supreme Court of the United States

Elizabeth Haring Coomes,

Petitioner

v.

Thomas P. Gorman

Respondent

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PETITIONER'S APPLICATION TO EXTEND TIME TO FILE A PETITION FOR A WRIT  
OF CERTIORARI  
ADA REASONABLE ACCOMMODATION REQUEST

From the Judgment of the 4<sup>th</sup> Circuit Court of Appeals Case no. 19-1740

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To the Honorable John G. Roberts, Jr., as Circuit Justice for the United States 4<sup>th</sup> Circuit:

Petitioner Elizabeth Haring Coomes respectfully requests the time for Petitioner to file a Petition for a Writ of Certiorari in this matter be extended for sixty days. Good cause, excusable neglect, judicial economy, the ends of justice, equitable reasons, the ADA, and extraordinary circumstances exist to justify granting this relief.

**Summary of the Case**

This case is as unique as it is extraordinary. This case and its related cases raise issues of national importance, serious constitutional questions, and important unresolved questions of law with widespread application. Ms. Coomes is the first person in American history to be found in criminal contempt and hit with *sua sponte* criminal contempt sanctions without notice or a hearing because she filed and tried to perfect a by right direct appeal from the Bankruptcy Court to the US District Court.

This case presents the question of whether Federal Rules of Appellate Procedure 4(a)(1)(A), 4(a)(5), and 4(a)(6) placing time limits on an appeal of bankruptcy matters or other proceedings under Title 11 from district courts and bankruptcy appellate panels is a jurisdictional Rule or a non-jurisdictional “claim-processing” Rule, and if it is a non-jurisdictional “claim-processing” Rule, whether it is mandatory or if equitable tolling is permitted. The underlying statute, *viz.* 28 USC 2107(d) expressly states that FRAP 4, including 4(a)(1)(A), 4(a)(5), and 4(a)(6), “shall not apply to bankruptcy matters or other proceedings under Title 11.” Moreover, 28 USC 158(d)(1) which confers jurisdiction to courts of appeals over final decisions, judgments, and Orders of District Courts, does not have a timeliness requirement.

This case also raises the question of whether FRAP 4 and FRAP 6 are invalid to the extent FRAP 4 and FRAP 6 conflict with acts of Congress, namely the Rules Enabling Act, 28 USC 2107(d) and 28 USC 158(d)(1), conflict with the intent and purpose of the FRAP and the Bankruptcy code, and abridge the substantive rights of Ms. Coomes. Furthermore, it raises the question of whether the Court must accept an allegedly untimely filed appeal in the absence of an objection from the opposing party. The case also raises the important question of whether the unique circumstances doctrine is applicable to non-jurisdictional claim-processing rules. There is no authority on these questions of national importance. This Court left open the latter questions.

This case raises the important question of whether the 4<sup>th</sup> Circuit’s *Pro Se* Procedures deferring motions for the appointment of counsel and deferring IFP applications pending review on the merits is unconstitutional, contrary to the Rules Enabling Act, the CJA, substantive Virginia law, this Court’s binding legal authority, the Federal Rules of Appellate Procedure, and therefore invalid because an indigent person whose life, liberty, property, and basic human needs are implicated, or whose case can only be fairly represented by counsel is entitled to the

assistance of counsel at all stages of their first appeal and to prepare a Supreme Court certiorari petition. This case also raises the question of whether the District Court retains jurisdiction over the subject matter of a Bankruptcy appeal pending at a Court of Appeals. Furthermore, this case raises the question of what is “frivolous.” Frivolity is undefined in Federal law, the Bankruptcy code, and this Court’s opinions. The District Court deemed Ms. Coomes’ appeal on the basis she was deprived of the expressly required notice and reasonable opportunity for hearing “frivolous.”

It is also an ideal vehicle for this Court to decide the question of civil *Gideon*, decide whether a Bankruptcy Court may dismiss a case with prejudice *sua sponte* pursuant to 11 USC 1307(c) without notice and reasonable opportunity for hearing, whether the standing chapter 13 Bankruptcy trustee is a party in interest within the meaning of 11 USC 1307(c) and has standing to request dismissal with prejudice pursuant to 11 USC 1307(c), and whether the standing requirements of the Bankruptcy Code and traditional Article III Constitutional standing are co-extensive.

### **Jurisdiction**

The judgment of the Court of Appeals was entered on December 6, 2019. On December 20, 2019, Petitioner moved the 4<sup>th</sup> Circuit to extend suspend the case, appoint or assign counsel for her, extend the time file a petition for rehearing and rehearing *en banc*, and set a briefing schedule. On December 20, 2019, the Court issued an Order denying the motion. Later on December 20, 2019, Ms. Coomes filed objections and exceptions to the Court’s opinion and judgment in the case. On December 23, 2019, the Court construed the objections and exceptions as a petition for rehearing and issued an Order staying the mandate. On January 6, 2020, Ms. Coomes filed a motion to vacate its Order denying her motion to suspend this case, appoint or counsel for her, extend the time file a petition for rehearing and rehearing *en banc*, and set a briefing schedule. She also asked the Court to clarify and explain the basis of its decision. On

January 7, 2020, Ms. Coomes supplemented her motion to vacate. On February 5, 2020, the Court issued an Order denying the motion to vacate, denying rehearing of the case without any explanation or clarification, and issued the mandate. This Court has jurisdiction pursuant to the United States constitution and 28 U.S.C. § 1254(1).

### **Procedural History**

On July 10, 2018, the Alexandria division of the United States Bankruptcy Court for the Eastern District of Virginia dismissed Ms. Coomes' chapter 13 case no. 17-13497 with prejudice for 180 days. There was plain error. The Court "heard" and "granted" the standing chapter 13 Trustee's amended motion to dismiss pursuant to 11 USC 1307(c) (Docket no. 58) that was neither noticed for hearing nor before the Court on June 6, 2018. Ms. Coomes was not given prior notice of nearly all reasons that formed the basis of the dismissal, most of which were raised for the first time at the hearing. Many reasons for the dismissal were raised *sua sponte* by the Court in chambers after it took the matter under advisement. The Court deprived Ms. Coomes of her Plan Confirmation hearing scheduled for August 9, 2018, which she reasonably relied upon and is expressly required by the Bankruptcy code. Instead, the Court *sua sponte* ruled on Ms. Coomes' amended Plan by himself in chambers after the hearing, decided it suffered from intractable feasibility problems, revisited Ms. Coomes' prior cases and made bad faith findings about those cases too, and dismissed the case with prejudice for 180 days. The Court's ruling was both factually and legally erroneous. Ms. Coomes fully complied with the Bankruptcy code and did nothing that rose to the level of "bad faith." For example, the Court found Ms. Coomes had "bad faith" because of pre-petition conduct such as being unable to pay nearly \$700,000 to the mortgage companies after they accelerated both mortgages. The Court erroneously found Ms. Coomes had been in chapter 13 bankruptcy almost continuously for 6 years without a confirmed Plan. However, this same judge had confirmed two chapter 13 Plans

for Ms. Coomes in her first chapter 13 case commencing in September 2012. The Court also found Ms. Coomes had “bad faith” on account of post-petition conduct that included a brief several week delay listing her lots for sale upon her return from Mayo Clinic and the fact her personal injury case trial had not been re-scheduled due to a state Court Order staying it. The Bankruptcy Court erred when it failed to consider the totality of the circumstances as well as the best interests of creditors and the Bankruptcy estate. On July 17, 2018, Ms. Coomes lost counsel. She was unable to afford to retain new counsel.

On July 20, 2018, Ms. Coomes timely noted objections and exceptions to the dismissal Order and moved the Court to reconsider. On October 16, 2018, Ms. Coomes filed a motion for to vacate the dismissal Order and grant a new hearing since she was deprived of notice and reasonable opportunity for hearing before her case was dismissed in violation of 11 USC 1307(c), 11 USC § 1324(a), 11 USC 102, Rule 9014, Rule 2002, Due Process, and binding legal authority. The chapter 13 Trustee and Court conceded the notice issue, which alone is dispositive. On October 17, 2018, the Court denied the Motion for a New Hearing and issued an unprecedented ruling, without citation of any authority, that Ms. Coomes was not entitled to an actual “in-court” hearing. The Court misconstrued Ms. Coomes’ Motion for a New Hearing as a motion to continue the October 18, 2018 hearing on her motion to reconsider the Bankruptcy dismissal Order. If it were a motion for a continuance, it would be a procedural interlocutory Order instead of a final, appealable Order. However, the Motion for a New Hearing was obviously not a motion for a continuance – it did not ask for a continuance. It was a motion to vacate. Ms. Coomes made an actual motion for a continuance two days later on October 18, 2018. The Bankruptcy Court later issued two Orders inadvertently admitting the Motion for a

New Hearing was not a motion for a continuance. However, the 4<sup>th</sup> Circuit denied Ms. Coomes' motion to supplement the record with these relevant records.

On October 23, 2018, Ms. Coomes timely noted an appeal to the District Court. On October 24, 2018, the Leesburg, Virginia house which had been Ms. Coomes' home for the better part of over 12 years went to a foreclosure auction as a result of the Bankruptcy dismissal. On October 26, 2018, the District Court *sua sponte* dismissed her appeal and issued an Order affirming the Bankruptcy Court's unprecedeted ruling, without citation of any authority, that Ms. Coomes was not entitled to an actual "in-court" hearing prior to dismissal with prejudice and ruled her appeal was, "frivolous."

On November 6, 2018, Ms. Coomes filed a motion to alter or amend, a motion for summary reversal, and a motion to extend time to file the transcripts and designation. On November 8, 2018, the District Court issued an Order *sua sponte* finding Ms. Coomes had committed contempt and sanctioned her with a criminal contempt sanction in the form of an unprecedeted, unconstitutional, permanent, absolute filing bar Order applicable to her pending case. Not only did the Court issue the Order without any notice or opportunity for hearing, Ms. Coomes was forever barred from seeking to vacate or modify the Order or file any other pleadings due to the District Court's injunctive Order. On November 9, 2018, prior to receiving the District Court's November 8, 2018 Order, Ms. Coomes filed a motion to reconsider the District Court's October 26, 2018 Order. The District Court effectively denied it by not ruling on it promptly.

On November 23, 2018, Ms. Coomes timely noted an appeal of the District Court's October 26, 2018 and November 8, 2018 Orders to the 4<sup>th</sup> Circuit Court of Appeals. Ms. Coomes timely filed her informal opening brief in the 4<sup>th</sup> Circuit on April 9, 2019. Two days

later, the Bankruptcy Court issued a Rule to Show Cause why Ms. Coomes should not be barred from further permissible filings in her pending case. On May 8 and 29, 2019, the Bankruptcy Court exceeded its authority, and issued unprecedented, overbroad, patently unconstitutional, transparently unlawful Orders barring Ms. Coomes from filing expressly allowed filings and any further motions in her own pending case. The filing Bar Orders are criminal contempt sanctions, despite the fact Ms. Coomes never violated any Court Orders or laws, her intentions were good, and all her conduct was lawful. The filing Bar Orders permanently deprived Ms. Coomes of meaningful access to the Court in violation of her 1<sup>st</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> amendment rights, and the intent and purpose of the ADA. Among other things, Ms. Coomes could not even file objections and exceptions to the filing Bar Orders, prejudicing her appeals. On May 28, 2019, the District Court issued an Order denying Ms. Coomes' November 9, 2018 motion to reconsider, and again exceeded its authority by enjoining Ms. Coomes from filing any further pleadings. On June 17, 2019, Ms. Coomes' rental house also went to a foreclosure auction.

In late June 2019, Ms. Coomes first learned about the May 28, 2019 District Court Order. On June 27, 2019, Ms. Coomes filed an amended notice of appeal to the 4<sup>th</sup> Circuit, adding the District Court's May 28, 2019 Order. Since she could not get to the District Court or 4<sup>th</sup> Circuit before close of business on June 27, 2019, she filed her amended notice of appeal at the US Supreme Court (a "court of appeals"). In an abundance of caution, Ms. Coomes filed a motion to deem her amended appeal timely filed or extend time to file it. Since she was barred from filing in the District Court, she filed the motion in the 4<sup>th</sup> Circuit. She later filed a copy of her amended notice of appeal at the 4<sup>th</sup> Circuit on July 3, 2019. Instead of amending the existing case no. 18-2421 and issuing a new briefing Order, the 4<sup>th</sup> Circuit established a new case no. 19-1740 and charged Ms. Coomes another docketing fee. On July 25, 2019, the chapter 13 Trustee

filed a motion to dismiss or consolidate. The 4<sup>th</sup> Circuit granted Ms. Coomes an extension of time until September 4, 2019 to file her opposition to it. On July 29, 2019, Ms. Coomes filed a second amended notice of appeal. The clerk improperly docketed it as a “letter.” Then the 4<sup>th</sup> Circuit *sua sponte* issued an Order on August 15, 2019 deciding part of the chapter 13 Trustee’s motion, inexplicably denying his request to consolidate before Ms. Coomes’ response was due. On August 19, 2019, Ms. Coomes filed a motion to appoint/assign counsel. Although Ms. Coomes was entitled to counsel, the 4<sup>th</sup> Circuit effectively denied the motion by deferring consideration of it pending review on the merits. Ms. Coomes moved the 4<sup>th</sup> Circuit to stay the District Court Orders, without success.

On December 6, 2019, the 4<sup>th</sup> Circuit issued a decision dismissing the appeal. The Court found the amended notice of appeal was untimely filed and that FRAP 4(a)(1)(A) was jurisdictional,

Parties are accorded 30 days after the entry of the district court’s final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5), or reopens the appeal period under Fed. R. App. P. 4(a)(6). “[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement.” *Bowles v. Russell*, 551 U.S. 205, 214 (2007).

Ms. Coomes objected on the basis her appeal was timely filed and that Federal Rules of Appellate Procedure 4(a)(1)(A), 4(a)(5), and 4(a)(6) are neither applicable nor mandatory in this case. These rules are not jurisdictional since they do not have a statutory basis. The plain language of the underlying statute, viz. 28 USC 2107(d) expressly states that FRAP 4, including 4(a)(1)(A), 4(a)(5), and 4(a)(6), “shall not apply to bankruptcy matters or other proceedings under Title 11.” Furthermore, 28 USC 158(d)(1) which confers jurisdiction to courts of appeals over final decisions, judgments, and Orders of District Courts, does not have a timeliness requirement. Assuming *arguendo* these Rules are applicable to a bankruptcy case, bankruptcy

matters or other proceedings under Title 11, Federal Rules of Appellate Procedure 4(a)(1)(A), 4(a)(5), and 4(a)(6) are invalid to the extent they abridge, and modify a substantive right, contravene acts of Congress, and the constitution. Assuming *arguendo* that 4(a)(1)(A), 4(a)(5), and 4(a)(6) are applicable but they are non-jurisdictional claim processing Rules, they are not mandatory. Ms. Coomes objected to the dismissal since the appellee did not object to the timeliness of the notice of appeal, the appellee waived or forfeited any objection to the timeliness of the notice of appeal. Assuming *arguendo* FRAP 4 and FRAP 6 are valid, the appeal deadline is not jurisdictional; it is instead a non-jurisdictional claim-processing rule. *Hamer*, 138 S.Ct. at 17-18. Equitable tolling and the unique circumstances doctrine ought to apply in this case since Ms. Coomes did not receive the May 28, 2019 Order within 21 days and she could not request an extension of time or reopening of the time to appeal from the District Court since it barred her from filing in her case.

#### **Good Cause, ADA Protected Disability, and Extraordinary Circumstances Exist**

Since Ms. Coomes is a lay person, she was denied her right to counsel, she is presently contending *pro se* with over 40 legal matters between the 4<sup>th</sup> Circuit, in five state Courts in Virginia and Pennsylvania, and three US District Courts, she is disabled within the meaning of the ADA, regarded as disabled within the meaning of the ADA, and has been seriously ill, she is unable to prepare and file a certiorari petition by the 90 day deadline. Ms. Coomes was hospitalized December 31, 2019 – January 1, 2020. She was diagnosed with gastrointestinal bleeding, a pre-cancerous condition, shortness of breath, and diverticulosis. Her condition worsened. In early January, she was diagnosed with influenza B, bronchitis, and pneumonia in both lungs. Her condition later worsened again and she also developed secondary infections. On January 27, 2020, Ms. Coomes began experiencing severe abdominal pain in addition to the

persistent intestinal bleeding. On January 31, 2020, she was also diagnosed with diverticulitis. It has not healed yet and the intestinal bleeding persists. On February 19, 2020, surgeon Dr. Brita Kriss prescribed another round of treatment. Ms. Coomes has a colonoscopy scheduled for March 12, 2020. Ms. Coomes may require major surgery. Ms. Coomes was advised to refrain from work since her December 2019 hospitalization until March 2, 2020. Ms. Coomes attaches true and accurate copies of her hospital and doctor work excuse letters dated January 2, 2020, January 7, 2020, January 10, 2020, January 17, 2020, January 30, 2020, February 5, 2020, and February 19, 2020.

Ms. Coomes asked the District Court and 4<sup>th</sup> Circuit to suspend the other cases and extend time for briefing because she is seriously ill, and has been unable to work, but the Courts did not. The 4<sup>th</sup> Circuit issued multiple local Rule 45 notices and dismissed one of her pending appeals. The District Court dismissed appeal no. 1:19-cv-640. Ms. Coomes has 4<sup>th</sup> Circuit briefs due February 28, 2020 and March 6, 2020. Ms. Coomes has a pleading due in the Western District of Virginia District Court on February 26, 2020. Ms. Coomes has to prepare for and defend against Bank of NY Mellon's motion in Loudoun County, Virginia Circuit Court on March 6, 2020. Ms. Coomes also has to complete a certiorari petition for case 18-2421.

Due to the Bankruptcy dismissal, Ms. Coomes lost the majority of her income and became indigent. Had the Bankruptcy not been dismissed, Ms. Coomes would have approximately \$5,700 per month in rental income between the two houses, and a positive cashflow after expenses. The Bankruptcy dismissals also decimated Ms. Coomes' corporation Old Town Insurance & Financial Services, Inc. as well. Ms. Coomes lost her job on March 11, 2019. Ms. Coomes has incurred extraordinary opportunity cost. There is so much litigation Ms. Coomes has to contend with; it is more than a full-time job. Ms. Coomes cannot work at all in

the near future because of her condition. She cannot adequately represent her interest and needs counsel to prepare her petition. Appointment of counsel is also in the public interest.

The stakes are very high for Ms. Coomes. Her livelihood is on the line, as are two houses worth over \$8.9M in future rental income needed for her effective reorganization, her ability to survive financially, obtain her ongoing medical care, continue to have health insurance (both of which are needed to sustain her life), sustenance, keep a roof over her head, ability to retire, and have meaningful employment again. If not overturned, the bad faith findings, contempt findings and sanctions will preclude professional licensure, jeopardize Ms. Coomes' personal injury case, and implicate Ms. Coomes' liberty. The bad faith and contempt findings and sanctions, and Orders in this case, if not overturned, will have a preclusive effect on Ms. Coomes' other appeals. Ms. Coomes filed *lis pendens* prior to both foreclosures. The deeds are subject to the outcome of this case. If this application is not granted, the banks will be able to sell the houses to third parties if they prevail in state Court, that aspect of the appeals may become equitably moot, and Ms. Coomes will be irreparably harmed.

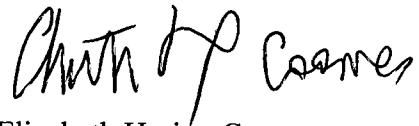
Ms. Coomes prays for this relief pursuant to this Court's Rules and as a reasonable accommodation pursuant to the ADA. Her ADA protected disability and serious illness precludes her from being able to prepare and file a certiorari petition by the deadline. Ms. Coomes incorporates by reference as if fully set forth herein her affidavit and documentation regarding her disability that is in the record of 4<sup>th</sup> Circuit case no. 19-1562. The relief sought is reasonable. It necessarily takes longer to prepare a petition in a complex case involving unprecedeted Orders and unresolved questions of law. It will benefit the Court, the petitioner, her creditors, and the Bankruptcy estate, as well as effectuate the intent and purpose of the ADA

and the Bankruptcy code. The relief sought herein is equitable. It will prevent manifest injustice. It will not prejudice the respondent, who prevailed below.

**Conclusion**

For the foregoing reasons, good cause, excusable neglect, ADA protected disability, serious illness, and extraordinary circumstances exist to justify extending the time to file a Petition for a Writ of Certiorari in this matter sixty days.

Respectfully submitted,



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Petitioner

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