No. 22-974

In The

Supreme Court of the United States

CHARLES WEISS,

Petitioner,

v.

USA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Internal Revenue Code ("IRC") section providing for the suspension of levy actions and the running of any period of limitations "for the period during which a [collection due process] hearing, and appeals therein, are pending," 26 U.S.C. §6330(e)(1), was intended by Congress to apply to petitions for a writ of certiorari?

PARTIES TO THE PROCEEDING

Petitioner was the defendant in the District Court proceedings and the appellant in the Court of Appeals proceedings. Respondent was the plaintiff in the District Court proceedings and appellee in the Court of Appeals proceedings.

RELATED CASES

United States District Court for the Eastern District of Pennsylvania; No. 19-502, *U.S.A. v. Charles J. Weiss*. Judgment entered Feb. 1, 2021.

United States Court of Appeals for the Third Circuit; No. 21-1592, *U.S.A. v. Charles J. Weiss*. Judgment entered Nov. 2, 2022; Petition for Rehearing denied Jan. 5, 2023.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner requests a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The Third Circuit's Opinion is reproduced at App. 1-18. The Third Circuit's denial of Petitioner's Petition for Panel and en banc Rehearing is reproduced at App. 64-65. The Opinions of the District Court for the Eastern District of Pennsylvania are reproduced at App. 19-63.

JURISDICTION

The Court of Appeals entered judgment on November 2, 2022. App. 1-18. The Court denied a timely Petition for Panel and en banc Rehearing on January 5, 2023. App. 64-65. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves interpretation of the IRC, 26 U.S.C. §6330(e)(1). This case does not involve interpretation of any constitutional provisions.

STATEMENT OF PROCEDURAL HISTORY OF CASE

Prior to filing the within civil action for judgment, the IRS commenced a collection effort against Petitioner by issuing a required notice of intent to levy under 26 U.S.C. §6330. As allowed by §6330, Petitioner timely requested a due process hearing to challenge the collection or to seek an alternative to enforced collection. This hearing concluded with the IRS' issuance of a Notice of Determination upholding the collectability of the taxes claimed, but providing no alternative to enforced collection. Petitioner timely appealed that Determination to the Tax Court. Following an adverse decision there, Petitioner then appealed to the D.C. Circuit Court of Appeals, which also ultimately ruled in favor of the IRS.[1] That Court's mandate terminating the appeal and rendering all appeals final was then issued, thus signaling the finality of the appeals process.[2] When Petitioner's subsequent timely petition for writ of certiorari was denied, IRS filed the underlying civil action for judgment in this case. There is no dispute that, upon the entry of the D.C. Circuit's mandate, 129 days remained on the collection statute of limitations.

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[1] Neither of these appeals involved the Question Presented herein, the answer to which is determinative of the timeliness or untimeliness of the within underlying civil action brought by IRS.

[2] An appeal terminates and becomes final when a court of appeals issues its mandate. *Finberg v. Sullivan*, 658 F.2d. 93, 96 n. 5 (3rd Cir. 1980) (en banc).

Thereafter, since the parties stipulated to the relevant facts and the above procedural history, the case turned solely on the question of law presented herein, a question the courts below decided in favor of IRS. Following affirmance of the judgment against Petitioner by the Third Circuit, the within petition was timely filed in this Court, questioning the timeliness of the underlying civil action based on the Question Presented herein.[3]

INTRODUCTION AND REASONS FOR GRANTING THE PETITION

The issue presented is a question of law of first impression under the IRC, 26 U.S.C. §6330(e)(1). The question is whether Congress intended that the word "appeals" in 26 U.S.C. §6330(e)(1) was intended to mean or include a petition for certiorari.[4] If yes, the

[3] There is no dispute that, if 26 U.S.C. §6330(e)(1) applies to certiorari petitions in addition to appeals, the underlying civil action was timely filed based on when the suspension of the period of limitations in §6330(e)(1) began and ended. On the other hand, if it is determined that §6330(e)(1) does not apply to certiorari petitions, then the underlying civil action was filed after the expiration of the collection statute of limitations and was thus untimely, also based on when the suspension of the period of limitations provided in §6330(e)(1) began and ended.

[4] Section 6330(e)(1) reads, in relevant part: "[T]he levy actions which are the subject of the requested [collection due process] hearing and the running of any period of limitations . . . shall be suspended for the period during which such hearing, **and appeals therein**, are pending." (emphasis added). In short, the suspensions under §6330(e)(1) begin with the request for an

courts below were correct in holding that the underlying civil action against Petitioner was timely. If no, Respondent's underlying civil action was untimely and the courts below erred in entering and then affirming summary judgment against Petitioner.

Several adjacent IRC provisions, referenced hereinafter (the relevant statutory context), are notable and important because, in each of them, Congress has specifically included petitions for certiorari along with appeal(s). But in §6330(e)(1), Congress is presumed to have purposely and intentionally omitted any reference to "petition" or "petition for certiorari" in limiting the appellate procedure that continues the suspensions of levy and the running of the collection statute of limitations to "appeals."

Moreover, in multiple other non-IRC statutes over the years (evidencing Congress' knowledge of the key technical distinctions between appeals and certiorari petitions and its longstanding legislative practice in light of same), Congress has made it clear that it will consistently specifically refer to **both** "appeal(s)" and "certiorari petition(s)" when both procedures are intended to apply. The courts below never once mentioned or considered either statutory context or Congress' historical legislative practice when referring to appeals and/or certiorari petitions and their significance in discerning Congress' intent under IRC §6330(e)(1) – even

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administrative due process hearing under §6330 and end when any appeals from the Determination at the hearing are final and thus no longer pending.

though this Court (and other courts) has consistently emphasized the importance of statutory context in interpreting statutory language because it is this context that gives meaning to that language.

The courts below also ignored and thus failed to apply established principles of statutory construction and, importantly, at least four required presumptions regarding Congress' knowledge of the law and its intent – any one of which would and should have compelled a different interpretation of §6330(e)(1) and, as a result, judgment in favor of Petitioner. Indeed, the courts below also just ignored key precedent from this Court (and the Third Circuit itself), and their decisions cannot in any reasonable way be reconciled with the decisions of this Court in *FEC v. NRA Political Victory Fund*, 513 U.S. 88, 94 (1994) and *Boechler, P.C. v. CIR*, ___ U.S. ___, 142 S.Ct. 1493 (2022).

In *FEC*, for example, this Court held that the word "appeals" in a statute does **not** include a certiorari petition where the adjacent statutory context indicates otherwise; and in *Boechler*, this Court held that, in interpreting another subsection of the same section of the IRC involved in the present case, specifically §6330(d)(1), proper interpretation should be based on the relevant adjacent statutory language that provides the relevant statutory context for interpretation of §6330(d)(1).

The decision of the courts below, devoid of all context, thus are directly inconsistent with the method of interpretation of IRC provisions specifically utilized by

this Court in *FEC* and *Boechler*. And since *Boechler* involved interpretation of the same section (§6330) of the IRC involved in the present case, albeit a different subsection, the courts below have left us with a split of authority between this Court and the Third Circuit when interpreting the subsections of §6330, meaning that statutory context must be considered for subsection (d)(1) per *Boechler*, but need not be considered at all when interpreting subsection (e)(1) per the Third Circuit.

As noted, the issue in this case is whether Congress' reference only to one appellate procedure, i.e., "appeals," in 26 U.S.C. §6330(e)(1) was intended by Congress to mean or include discretionary petitions for certiorari. The issue is significant and substantially important because §6330(e)(1) is a key part of the statutory framework governing all collection due process cases (and thus all IRS enforced collection cases commenced by §6330's required initial notice of intent to levy). These cases are in the many thousands every year because, for the first time, §6330 allows every taxpayer in the US to request a hearing prior to collection by IRS in order to raise defenses to collection or otherwise to seek an alternative to enforced collection.

Section 6330(e)(1) provides that, if a due process hearing is timely requested, as it was in the present case, both the IRS' right to levy and the collection statute of limitations are suspended until the Notice of Determination by the IRS is issued, which Determination concludes the due process hearing prior to any appeals therefrom, and the conclusion of any pending appeals

from the hearing Determination ends the suspensions of levy and the collection statute of limitations under §6330(e)(1).

Thus, the impact of §6330(e)(1) on the collection statute of limitations and on the timeliness or untimeliness of IRS collection efforts after the Determination of the hearing and any pending appeals from that Determination is extremely significant. As noted, since the due process hearing procedure under IRC §6330 must be made available to every taxpayer who is sent the required notice of intent to levy, §6330, particularly subsection (e)(1), will apply in every enforced collection action initiated by IRS when the taxpayer, like Petitioner, seeks relief available in a due process hearing under §6330.

It goes without saying, therefore, that the IRS, all taxpayers, and the courts need certainty with regard to the answer to the Question Presented herein once the IRS is again free to levy against taxpayers, in which case a determination must be made with certainty as to precisely when any suspension of the right to levy and the collection period of limitations has begun and ended. Any decision to pursue appeals from an IRS administrative Determination, and then, once appeals are final, to pursue relief in this Court by certiorari, must be made with knowledge of the effects on §6330(e)(1)'s suspensions of levy and the running of the collection statute of limitations and the effect of seeking certiorari or not seeking certiorari in this Court. In short, all parties must know with certainty what the law is regarding the effect of a petition for

certiorari and its impact on the IRS' right to levy and the collection statute of limitations. Absent certainty on the issue presented, the IRS and taxpayers remain in the dark regarding the impact of a petition for certiorari and its aftermath on each of the parties involved in the process.

Therefore, the Question Presented is quite significant since it is directly connected to determinations that must be made with certainty by all parties involved in the collection process, including ultimately the courts since the parties and courts must be able to determine whether or not the collection statute of limitations has expired and, if not, when it will expire. Thus, the question whether Congress intended that the suspensions of levy and the collection period of limitations under §6330(e)(1) end upon the conclusion of pending appeals (the Circuit Court mandate) or upon denial of a petition for certiorari is critical to the entire IRS collection process.

The issue in this case is important for other reasons as well. The decision of the courts below in fact constitutes a radical and unprecedented departure from the rule of law that has long been established for courts to rely upon when the issue concerns the meaning of statutory language. Specifically, the decision below is a radical departure from and a reordering of the case law developed by the courts to guide a court when attempting to interpret congressional intent. That is so because the plain fact is that the courts below simply ignored, with no explanation why, important principles of statutory construction, important

required presumptions applicable to a determination of Congress' intent, and important case precedent from this Court demonstrating how statutes, particularly sections of the IRC, are to be interpreted.

The plain fact is also that the courts below chose to ignore not just important precedent of this Court demonstrating how statutes are to be interpreted, but also Congress' historical legislative practice in its choice of language involving appeals and/or certiorari petitions. Cases holding that an appeal and certiorari petition are fundamentally discrete, i.e., separate and distinct procedures, and that "appeal(s)" standing alone does not mean or include a petition for certiorari, were ignored as well. Basically on this point then – the courts below inexplicably disregarded, inter alia, the required presumption that, when Congress uses the term "appeals" alone, with no reference to "petition" or "certiorari petition," that omission is presumed to be purposeful and intentional, and that in such case, the word "appeals" was intended by Congress to have its settled meaning as an appellate procedure separate and distinct from a petition for certiorari.

Therefore, review by this Court is also important because the decision of the courts below is inconsistent and in conflict with the decisions of this Court on bedrock principles of statutory interpretation and important required presumptions regarding Congress' intent. This conflict is evident from a comparison of the statutory interpretation requirements and method of analysis set forth in *FEC* and *Boechler*, including *FEC's* rejection of dictionary definitions when

statutory context dictates a different definition of statutory terms, bringing into serious question the Third Circuit's reliance on a dictionary definition of "appeals" in §6330(e)(1) and disregard of important statutory context in the process.

Finally as to the importance of review: 26 U.S.C. §6330 was adopted in 1998, not long after the reordering of this Court's jurisdiction over appeals by Congress in 1988, a reordering that resulted from the need to ease this Court's workload, and, thus, limit the number of cases brought to this Court requiring review. But the decision in this case by the Courts below will only incentivize litigants who seek to extend the suspension on IRS' right to levy to pursue petitions for certiorari regardless of their merit.

The Third Circuit relied upon an analysis that led it to conclude that the word "therein" in §6330(e)(1) extended the administrative "hearing" (to which the word "therein" relates) up to and through the certiorari process. However, this conclusion was based upon that court's reliance solely on a dictionary definition of "appeals" that is overbroad and inconsistent with important contrary statutory context. If the answer to the Question Presented is that "appeals" in §6330(e)(1) does not mean or include certiorari petitions and that, therefore, the administrative "hearing" under §6330 ended upon entry of the D.C. Circuit's mandate, not when the subsequent certiorari petition was denied, then the Third Circuit's interpretation of "appeals" was itself overbroad and incorrect. In such case, the rationale for the Third Circuit's opinion – extending the

administrative "hearing" to the entire period after the D.C. Circuit mandate up to the denial of certiorari – is inapplicable and invalid since the Court's decision is totally dependent on its extension of the "hearing," and thus continuation of the suspension of levy and period of limitations, after the mandate up to the denial of certiorari. It is this conclusion of the Third Circuit and its method of interpretation of "appeals" in §6330(e)(1), devoid of all statutory context and otherwise inconsistent with key principles of interpretation, required presumptions, and precedent of this Court, that distorts the meaning of "appeals" under §6330(e)(1) as a procedure separate and distinct from a petition for certiorari. And given the importance of that section to the tax collection process, this conclusion and method of interpretation makes this case ripe, important, and proper for review by this Court.

THE COURTS BELOW IMPROPERLY RELIED ON DICTIONARY DEFINITIONS WHILE IGNORING THE MORE IMPORTANT STATUTORY CONTEXT FOR DETERMINING THE MEANING OF THE LANGUAGE AT ISSUE UNDER 26 U.S.C. §6330(e)(1), WHILE AT THE SAME TIME DISREGARDING IMPORTANT APPLICABLE PRINCIPLES OF STATUTORY CONSTRUCTION AND AT LEAST FOUR MANDATORY PRESUMPTIONS REGARDING CONGRESS' INTENT

The core problem inherent in the analysis of the Third Circuit is its over-reliance on a dictionary

definition of "appeals" while ignoring the more important statutory context relevant to interpreting §6330(e)(1), and that Court's resulting conclusion that, since a dictionary definition of "appeals" includes, in the Court's view, the entire period from the Circuit mandate up to and through the entire certiorari petition process, the administrative "hearing" in this case did not end until the denial of certiorari. However, if, instead, "appeals" in §6330(e)(1) is properly interpreted in context and pursuant to the applicable principles of statutory interpretation and required presumptions of Congress' intent, as precedent of this Court requires, then the interpretation of "appeals" by the Third Circuit cannot stand and in that case, the "hearing" ended upon entry of the D.C. Circuit's mandate, in which case there is no dispute that the commencement of the underlying civil action was untimely.

Because Congress never used the words "petition" or "certiorari petition" in §6330(e)(1), the interpretation by the courts below is inconsistent with the required interpretation of "appeals" when standing alone with no corresponding reference to any other type of appellate procedure. Indeed, each applicable principle of statutory construction and required presumptions would in themselves require an interpretation of "appeals" in §6330(e)(1) that decidedly does not mean or include "petition" or "petition for certiorari." In accord is this Court's case precedent on the importance of statutory context vis a vis dictionary definitions and, more specifically, this Court's decisions based on a

statutory context method of statutory interpretation of IRC language in *FEC* and *Boechler*.

Given this Court's case precedent to the effect that dictionary definitions may sometimes help but must give way to more important contrary statutory context, this Court's case law holding that statutory language, plain or not, only has meaning in context is extremely significant because that context in this case requires rejection of the Third Circuit's reliance on a dictionary definition of "appeals" in §6330(e)(1). That is precisely what this Court held in its analysis and interpretation of the statutory language at issue in *FEC*. Statutory context is also the interpretation method relied upon by this Court in its interpretation of §6330(d)(1) in *Boechler*. The fact that this Court has long held that statutory language only has meaning in context in itself compels a conclusion that the Third Circuit's method of interpretation of "appeals," elevating a dictionary definition over contrary statutory context, was insufficient and inconsistent with the decisions of this Court.[5]

The relevant statutory context ignored by the court below includes several adjacent statutory

[5] 26 U.S.C. §6330(e)(1) refers only to "appeals" as the one procedure, after the conclusion of the due process hearing, chosen by Congress to continue the suspension of the right to levy and collection period of limitations; there is no mention in §6330(e)(1) of "petition," "certiorari," or "petition for certiorari." Nor is any other language or provision of any other IRC section incorporated into §6330(e)(1) that could otherwise support an intent by Congress to include a petition for certiorari within "appeals" under §6330(e)(1).

provisions in the IRC, wherein Congress has clearly demonstrated that, if it intended petitions for certiorari to apply under §6330(e)(1) along with "appeals," its practice is to specifically and expressly refer to "petitions for certiorari," or simply "certiorari," in addition to "appeals." These adjacent statutory provisions, wherein Congress specifically references a petition for certiorari or certiorari, include: 26 U.S.C. §§ 9010(d), 9040(d), 7481(a)(2)(A) and (B), 7482(a)(1), and 3310(c). It is these statutory provisions that provide the important statutory context most relevant to the meaning of "appeals," standing alone in §6330(e)(1) with no corresponding reference anywhere to alternative or additional procedures such as "petition" or "petition for certiorari."

It cannot be denied that this Court has consistently and repeatedly held that the words used in Congress' enactments **must** be interpreted in the broader context of the statute as a whole because it is this context that gives meaning to the words Congress uses to express its intent. This important principle applies to all statutes including, of course, the IRC. *King v. St. Vincent's Hosp.*, 502 US 215, 221 (1991 – the meaning of statutory language, **plain or not**, depends on context") (emphasis added; citations omitted); *Ali v. Fed. Bureau of Prisons*, 552 US 214, 234 (2008); *Massachusetts v. Morash*, 490 US 107, 115 (1989); *Dolan v. Postal Service*, 546 US 481, 487 (2006); *Robinson v. Shell Oil Co.*, 519 US 337, 341 (1997); *U.S. v. Husmann*, 765 F.3d. 169, 173 (3rd Cir. 2014 – stating that words **must** be

defined by reference to their statutory context) (emphasis added).

And when it comes to reliance on dictionaries, in *FEC*, this Court rejected definition(s) from Black's Dictionary that was/were overbroad and inconsistent in comparison to the interpretation of the language at issue provided by relevant statutory context. Also, this Court has held that, although dictionaries sometime help in defining statutory terms, it is **more important** to look to law which over the years has given certain terms a legal meaning to which the court would normally **presume** Congress meant to refer. See *Varity Corp. v. Howe*, 516 US 489, 502 (1995).

Therefore, both this Court and the Third Circuit itself have made it clear that, in interpreting words in a statute, it is more important to look to the settled legal meaning of words and statutory context than dictionary definitions. Herein, certainly, the meaning of the word "appeal(s)," standing alone, has long been settled as meaning an appellate procedure discrete from, i.e., separate and distinct from, petitions for certiorari. This evolution has been accurately summarized by the court in *A-1 Autobody and Paint Shop, LLC v. McQuiggan*, 418 S.W.3d. 403, 409 (Tex. App. – Huston – 1st Dist. 2015), wherein the court stated: "We presume that the legislature was familiar with the distinction long made by Texas courts between appeal and certiorari when it enacted former §28.052(b)." As a result, the Texas court concluded that the certiorari procedure is not within "appeal" under the statute at issue.

The Third Circuit herein was led astray by its resort to dictionary definitions while, at the same time, it chose to disregard important adjacent statutory context, inserted the word "petition" and then petition for certiorari into the statute (words never used by Congress), and ignored important principles of statutory construction and presumptions required by law.

CONGRESS HAS HISTORICALLY FOLLOWED A CONSISTENT PATTERN OF DISTINGUISHING BETWEEN APPEALS AND CERTIORARI PETITIONS, SHOWING THAT IT HAS LONG BEEN AWARE OF THE KEY DISTINCTION BETWEEN THE TWO AND THUS HAS BEEN CAREFUL TO SPECIFICALLY REFER TO BOTH PROCEDURES WHEN THE INTENT IS THAT BOTH APPLY

In addition to ignoring the more important test of Congress' intent represented by statutory context – and the presumptions required by law in view of that context – the courts below missed an equally important point directly relevant to Congress' intent to limit §6330(e)(1)'s suspension of the right to levy and the collection period of limitations to the time when there are no longer any pending appeals (not to the point where a petition for certiorari could be filed or has been filed): the fact that Congress has a long history under the IRC and otherwise of specifically distinguishing appeals from certiorari petitions and expressly referring to both procedures if in fact both are intended to apply.

As noted, there are several examples of this practice in the IRC itself, where Congress specifically refers to both appeal(s) and certiorari petition(s) or certiorari – all of which are part of the statutory context relevant to an interpretation of "appeals" in IRC §6330(e)(1). The sections forming the statutory context relevant to "appeals" in §6330(e)(1) have already been cited herein. However, in addition to the IRC, multiple statutes outside the IRC have been adopted over the years (wherein Congress has demonstrated its knowledge that appeals and certiorari petitions have long been known to be discrete procedures,[6] i.e., separate and distinct from each other, and, therefore, that a reference to only one procedure does not mean or include the other) – thus requiring that Congress follow a consistent practice were they will expressly refer to both appeals and certiorari petitions if indeed that is what is intended.[7] There are multiple examples of this throughout congressional legislative history. Due

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[6] A fact recognized by the Third Circuit itself in *People of the Virgin Islands v. John*, 654 F.3d. 412, 417 (3rd Cir. 2011).

[7] A bedrock principle of statutory construction – *expressio unius est exclusio alterius* – requires that courts take into account when interpreting statutory language that the expression of one thing (herein "appeals") implies the exclusion of others (herein petitions for certiorari). Antonin Scalia and Bryan A. Gamer, *Reading Law: The Interpretation of Legal Text* 107 (2012). This principle, nowhere to be found in any of the opinions of the courts below, requires an interpretation of "appeals" in §6330(e)(1) directly contrary to the interpretation of "appeals" by the courts below, and fully supports Congress' long history of specifically referring to appeals and petitions for certiorari when both are intended to apply.

to the word limitations, Petitioner will refer to only some of these statutes, as follows:

15 U.S.C. §56(a)(3)(A)(ii)(a) (" . . . refuses to *appeal or file a petition for writ of certiorari* with respect to such civil action. . . .") (emphasis added); 18 U.S.C. §3006A(d)(7) ("If a person for whom counsel is appointed under this section *appeals to an appellate court or petitions for a writ of certiorari*, he may do so without. . . .") (emphasis added); 28 U.S.C. §2101(c) ("*Any other appeal or any writ of certiorari* intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review. . . .") (emphasis added); 28 U.S.C. §2244(c) ("In a habeas corpus proceeding brought in behalf of a person in custody pursuant to the judgment of a State court, a prior judgment of the Supreme Court of the United States *on an appeal or review by a writ of certiorari* at the instance of the prisoner. . . .") (emphasis added).

Also: 5 U.S.C. §705 ("When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken *on appeal from or on application for certiorari* or other writ to a reviewing court, may issue all necessary and appropriate process. . . .") (emphasis added); 18 U.S.C. §3146(b)(1)(A) ("The punishment for an offense under this section [failure to appear] is . . . if the person was released in connection with a charge of, or while awaiting sentence, surrender for service of sentence, or

appeal or certiorari after conviction. . . .") (emphasis added); 18 U.S.C. §3599(e) ("Unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, each attorney so appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, *appeals, applications for writ of certiorari to the Supreme Court of the United States*, and all available post-conviction process. . . .") (emphasis added); 28 U.S.C. § 1917 ("Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, *an appeal or of a writ of certiorari* $5 shall be paid to the clerk of the district court, *by the appellant or petitioner*.") (emphasis added); 28 U.S.C. § 2111 ("On the hearing of *any appeal or writ of certiorari* in any case, the court shall give judgment after an examination of the record. . . .") (emphasis added); 48 U.S.C. § 864 ("The laws of the United States relating to *appeals, certiorari*, removal of causes, and other matters or proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings. . . .") (emphasis added); 48 U.S.C. § 1824(a) ("The relations between the courts established by the Constitution or laws of the United States and the courts of the Northern Mariana Islands with respect to *appeals, certiorari*, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States. . . .") (emphasis added).

Neither of the courts below paid attention to either important statutory context or the above historical legislative practice of Congress. Nor did either of the courts below address the question raised by Petitioner regarding why Congress would choose in §6330(e)(1) to only mention "appeals" and thus to deviate, for the first time, from its historical and consistent legislative pattern of distinguishing between appeals and certiorari petitions and expressly referring to both procedures when both are intended? It is entirely illogical and unreasonable that the courts below concluded that Congress decided, without explanation or comment in its legislative history or elsewhere, for the first time, to refer only to "appeals" in §6330(e)(1), yet still, despite this limitation, according to the unsupportable analysis of the courts below, intended both appeals and certiorari petitions to apply – even though, at the same time in all other instances under the IRC it clearly has demonstrated in multiple other provisions of the IRC that, when the intent has been to include a certiorari petition, it will refer to both appeals and certiorari petitions, never just "appeals."

IN VIEW OF THE FOREGOING, THIS CASE IS CONTROLLED BY *FEC v. NRA POLITICAL VICTORY FUND*, 513 U.S. 88, 94 (1994) AND *BOECHLER, P.C. v. COMMISSIONER OF INTERNAL REVENUE*, ___ U.S. ___, 142 S.Ct. 1493 (2022)

In *FEC*, this Court addressed whether the word "appeal," standing alone in a statute, included a

petition for certiorari, and it concluded it did not, relying in substantial part on the surrounding statutory context that demonstrated, as in the present case: (1) Congress' practice of specifically referring to both "appeal" and "certiorari petition" when both are intended, and (2) unlike the courts below herein, the need to reject dictionary definitions from Black's that lead to a different conclusion as to the meaning of the statutory words at issue. The decision of the courts below in the present case is inconsistent and cannot be reconciled with this Court's decision in *FEC*. In fact, *FEC* precludes the lower courts' interpretation of "appeals" and points to the insufficiency of their analysis, especially their refusal to interpret "appeals" in context as required by multiple decisions of this Court, the Third Circuit (and other courts as well).

FEC was the outgrowth of enforcement action under 2 U.S.C. §437d(a)(6).[8] As this Court explained, this provision authorized the Federal Election Commission ("the Commission") to "initiate, defend . . . or appeal any civil action . . . to enforce the provisions of [the FECA] and Chapters 95 and 96 of title 26." 513 U.S. at 91 (quoting 2 U.S.C. §437d(a)(6)) (alteration by the Court). The Commission also enjoyed independent authority to litigate issues under Chapters 95 and 96 of the IRC, but the language of those statutes differed from §437d(a)(6).

Specifically, §9010 of the IRC authorized the Commission to litigate matters under the Presidential

[8] This section was later reclassified as 52 U.S.C. §30107(a)(6).

Election Campaign Act; it gave it the power to appear in and defend actions. 26 U.S.C. §9010(a). In addition to granting the Commission the power to appeal, §9010(d) expressly authorized it to file a petition for certiorari 26 U.S.C. §9010(d) ("The Commission is authorized on behalf of the United States . . . to petition the Supreme Court for certiorari, to review judgments or decrees."). Similarly, §9040 of the IRC gave the Commission the authority to appear in and defend actions under the Presidential Primary Matching Payment Account Act, and it also gave the Commission the specific right to file a petition for certiorari in addition to a right to appeal. 26 U.S.C. §9040(a), (d).

In *FEC*, the Commission filed a petition for certiorari to review a decision of the D.C. Circuit in an enforcement action under 2 U.S.C. §437d(a)(6). 513 U.S. at 90. Because the Commission filed a petition unilaterally, this Court issued an order inviting the United States to brief the question whether the Commission could litigate independently before the Supreme Court or must request the Solicitor General to file a petition on its behalf. *Id.*

The only question before this Court was the authority of the Commission to litigate before it, as §437d(a)(6) plainly authorized the Commission to file the initial enforcement action and the subsequent appeal. 513 U.S. at 92. As a consequence, this Court addressed the question whether the Commission's power to "appeal" under §437d(a)(6) included the power to file a petition for writ of certiorari, in which case the

normal requirement that the Solicitor General litigate the case would not apply. *Id.* at 93.

Relying upon Black's Law Dictionary,[9] the Commission argued [as the Third Circuit concluded in the present case] that the ordinary or natural meaning of the word "appeal" included a petition for certiorari. *Id.* at 93-94.

However, this Court rejected that argument, relying [as the Third Circuit should have in the present case] on adjacent statutory context, which led this Court to reason as follows:

> This argument might carry considerable weight if it were not for the cognate provision authorizing the FEC to enforce Chapters 95 and 96 of Title 26. There, Congress has explicitly provided that 'the [FEC] is authorized on behalf of the United States to appeal from and to petition the Supreme Court for certiorari to review,' judgments or decrees. 26 U.S.C. §§9010(d), 9040(d). It is difficult, if not impossible, to place these sections alongside one another without concluding that Congress intended to restrict the FEC's independent litigating authority in this Court to actions

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[9] As noted, the Third Circuit relied upon Black's in the present case to support its holding that the term "appeals" in §6330(e)(1) included a petition for certiorari. The rejection of Black's dictionary definition in *FEC* was premised on a statutory context rationale that equally applies to the present case and similarly requires rejection of the Third Circuit's error in relying on Black's overbroad, nontechnical definition of "appeals" in the present case.

> enforcing the provisions of the Presidential election funds under Chapters 95 and 96 of Title 26.

513 U.S. at 94

This analysis is precisely the type of statutory context analysis the courts below failed to conduct. Yet, in *FEC*, this Court relied on statutory context above all other factors, including dictionary definitions, specifically noting the importance surrounding statutory context has on a proper interpretation of particular words chosen by Congress. The surrounding statutory context in *FEC* is precisely the type of surrounding statutory context that exists in the present case under the IRC. In both cases, the surrounding statutory context clearly demonstrates that, when Congress intends that **both** appeal(s) and petition(s) for certiorari are intended to apply, it will not just refer to "appeals;" instead it will refer to **both** appeals and petitions for certiorari, which it did not do in §6330(e)(1).

Moreover, the disposition in *FEC* was simply a straight-forward application of a key, long established principle of statutory construction recognized in *FEC*, but ignored by the courts below, which also controls the outcome of this case in itself because it commands that: "[w]here Congress includes particular language in one section of a statute but omits it in another . . . , it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Id.* at 95 (citations omitted). Moreover, the use of different language by Congress triggers another important

presumption – that by the use of different language, Congress intended the different language to mean different things. *FEC*, *supra*; also, *Doe v. Mercy Catholic Med. Ctr.*, 850 F.3d. 545, 554 (3rd. Cir. 2017 – "Where Congress used specific language in one part of a statute but different language in another, we presume different meanings were intended.") (citations omitted).

The above presumptions are closely related to two other presumptions as well, which are based on another established principle of statutory construction holding that Congress is presumed to know the settled legal meaning of the terms it uses in enacting statutes and relevant judicial interpretations, and is presumed to use those terms in the settled sense (in short, it is presumed Congress intends the settled meaning of a word used by Congress to apply). *Nationwide Mutual Insurance Co. v. Darden*, 503 U.S. 318, 322 (1992); *Sekhar v. U.S.*, 570 U.S. 729, 732 (2013); *CIR v. Keystone Consolidated Industries, Inc.*, 508 U.S. 152, 159 (1993). These additional presumptions clearly apply to "appeals" in §6330(e)(1) given the long history of congressional legislation in distinguishing between "appeals" and certiorari petitions and the equally long history of judicial recognition that these two appellate procedures are separate and distinct.

Therefore, the law recognizes that there are at least two specific well-established principles of statutory construction giving rise to at least four presumptions regarding Congress' intent – all applicable to the present case but inexplicably never considered or applied by the courts below.

The presumptions of congressional purpose and intent utilized by this Court in *FEC* (and previously in cases decided by the Third Circuit) were, again, never mentioned or applied by the courts below. But it was this failure to even consider relevant and important statutory context or any presumptions at all in interpreting §6330(e)(1) that led the courts below astray in erroneously deciding upon an interpretation of §6330(e)(1) as **if** it read the same as other provisions of the IRC where Congress specifically referred to both appeals and certiorari petitions, which Congress decidedly did not do in §6330(e)(1). Quite obviously, therefore, had the courts below followed this Court's reasoning and interpretation method in *FEC* and applied applicable principles of interpretation and required presumptions based on the language differences between §6330(e)(1) and the surrounding statutory context, the decision below would and should have been consistent with the disposition by this Court in *FEC*. The problem then is that the courts below simply disregarded this Court's decision in *FEC* and other precedent as well, including its own.

The sharp distinction that this Court drew between an "appeal" and petition for certiorari in *FEC* was consistent with its prior decisions, including, for example, *Sisseton and Wahpeton Bands of Sioux Indians v. United States*, 277 U.S. 424, 427 (1928 – distinguishing between an "appeal" and a petition for certiorari as two separate and distinct procedures (such that the word "appeal," standing alone, and absent any language to the contrary, simply does not mean or include and

cannot be equated with a petition for certiorari)); *Memphis Nat'l Gas Co. v. Beeler*, 315 U.S. 649, 651 (1942 – "The judicial code was intended to restrict our obligatory appellate jurisdiction to a narrow class of cases and to foreclose an appeal as of right whenever the prescribed conditions have not been rigorously fulfilled"); *Colgate v. United States*, 280 U.S. 43, 49 (1929 – "Unless a special reason in the Act providing for appellate review indicates that the review is to be by technical appeal rather than the ordinary method of certiorari, the latter method is the right one").

Based on the foregoing, it is abundantly clear that the courts below did not abide by this Court's informed decision on statutory interpretation in *FEC* which, as in the present case, was decided under the IRC. The interpretation of §6330(e)(1) cannot in any reasonable way be reconciled with this Court's decision in *FEC*. More specifically, *FEC* rejects the interpretation method of the courts below and their reliance on dictionary definitions when statutory context requires a contrary interpretation. As a result, *FEC* requires rejection of their interpretation of "appeals" in §6330(e)(1).

Moreover, this Court's elevation of statutory context over dictionary definitions, as in *FEC*, particularly when interpreting the IRC, was followed recently in a case also involving IRC §6330, but this time a different subsection, 26 U.S.C. §6330(d)(1). See *Boechler v. Commissioner*, ___ U.S. ___, 142 S.Ct. 1493 (2022). In *Boechler*, this Court interpreted subsection (d)(1) of §6330 by reference to surrounding statutory context,

thus once again reinforcing the principle with respect to the IRC that statutory language, plain or not, must be interpreted in reference to its surrounding statutory context. In *Boechler*, in order to construe subsection (d)(1) of §6330, this Court examined and relied upon the statutory context provided by other code sections at 26 U.S.C. §§6015(e)(1)(A) and 6404(g)(1).

However, while this Court has demonstrated the importance of statutory context, particularly when interpreting the IRC, the courts below erroneously gave great weight to dictionary definitions while ignoring more important statutory context.

THE COURTS BELOW WERE REQUIRED TO APPLY THE SETTLED TECHNICAL MEANING OF THE TERM "APPEALS" IN §6330(e)(1), NOT A BROADER DICTIONARY-BASED DEFINITION

Even if it had been correct for the courts below to ignore the surrounding statutory context relevant to interpretation of "appeals" in §6330(e)(1), the courts were required in any event to apply the long settled technical meaning of "appeals" as an appellate procedure technically distinct, and thus discrete, from a petition for certiorari. See, e.g., *Sisseton and Wahpeton Bands of Sioux Indians v. United States*, *supra* (1928 – as noted, distinguishing between an "appeal" and a petition for certiorari as two separate and distinct procedures); *United States v. Snyder*, 946 F.2d. 1125, 1127 n. 4 (5th Cir. 1991 – petition for certiorari is not an

appeal); *Crowley v. LL Bean, Inc.*, 361 F.3d. 22 (1st Cir. 2004 – the word "appeal" in the rule at issue does not mean or include a petition for certiorari); *People of the Virgin Islands v. John*, 654 F.3d. 412, 417 (3rd Cir. 2011 – "appeal" and "certiorari petition" are discrete forms of procedure); thus, by definition, appeals and certiorari petitions are separate and distinct from one another; *A-1 Autobody and Paint Shop, LLC v. McQuiggan, supra*; *Ballay v. Legg Mason Wood Walker, Inc.*, 925 F.2d. 682, 689 (3rd Cir. 1991 – "In the absence of any legislative intent to the contrary, or other overriding evidence of a different meaning, technical terms or terms of art used in a statute are presumed to have their technical meaning.")[10] (citations omitted); *Colgate v. U.S.*, supra (referring to "appeal" as "technical"). See also this Court's decision in *Varity Corp. v. Howe*, 516 U.S. 489, 502 (1995 – noting that dictionaries sometimes help, but it's more important for courts to look to the common law, which, over the years, has given a settled legal meaning to various terms to which it is normally presumed Congress meant to refer).

Thus, given the long settled distinction between "appeals" and certiorari petitions, two additional presumptions were/are required in the present case: (1) that Congress was aware of the long settled meaning of and distinction between an "appeal" vs. a certiorari petition when it adopted §6330(e)(1), and (2) absent specific language to the contrary, Congress intended that the settled meaning is to apply. These

[10] This is another presumption disregarded by the courts below.

presumptions, like the other ones ignored by the courts below, were disregarded as well.

Based on the above authorities and the fact that the main distinction between "appeal" and certiorari petition is clearly a technical one, there can be no doubt that "appeal," when used by Congress, is a technical term in those instances as well.

Of course, there are other reasons as well why Congress' use of "appeals" in §6330(e)(1) was intended to be technical. For example, the term "appeal" confers jurisdiction in a particular court and, therefore, is a jurisdictional term. In *Assoc. of Westinghouse Salaried Employees v. Westinghouse Electric Corp.* 340 U.S. 437, 453 (1955 – plurality opinion), this Court recognized that matters regarding federal jurisdiction are technical; see also *Memphis Nat'l Gas Co. v. Beeler, supra.*, 315 U.S. at 651. Also, the word "appeals" in §6330(e)(1) must also be presumed to have a technical meaning (as opposed to the ordinary dictionary meaning relied upon by the courts below) because it appears in the IRC, which the Third Circuit itself has held is indisputably complex and technical. *Swallows Holding, Ltd.*, 515 F.3d. 162, 172 (3rd Cir. 2008). See also *U.S. v.* Aversa, 984 F.2d. 493, 501 (1st Cir. 1993 – "The federal tax code is not only enormous, detailed and **technical**, but also interrelated and highly nuanced") (emphasis added), vacated on other grounds in *Donvan v. U.S.*, 510 U.S. 1069 (1994); *Blatt v. U.S.*, 830 F.Supp. 882, 888 (D.S.C. 1993 – "[t]he tax code and regulations are technical and must be interpreted accordingly. . . ."); *Ewing v. U.S.*, 914 F.2d. 499, 501 (4th Cir. 1990 – "We agree

with the well-established view that tax laws are technical and, for the most part, are to be accordingly interpreted"). The fact that the IRC is a highly technical statute reinforces the long settled technical meaning of the term "appeals" in §6330(e)(1) in view of its settled technical distinction from a certiorari petition.

Finally, this Court (and other courts) distinguishes between the two separate and distinct forms of review, i.e., "appeal" vs. "certiorari petition," for a very good reason, one that is contrary to the rationale and interpretation of "appeals" by the courts below: which is to say – Congress itself has a long history of distinguishing between an appeal and certiorari petition. As this Court knows, in addition to its original jurisdiction, Congress has passed legislation so that this Court currently hears "appeals" in only a narrow class of cases, which does not include cases like this one. See 28 U.S.C. §1253. Every other case this Court reviews comes before it pursuant to a Writ of Certiorari. 28 U.S.C. §§1254, 1258, 1259, 1260.

The current status of this Court's jurisdiction is, therefore, a product of a process in which Congress has periodically narrowed this Court's jurisdiction over "appeals" because they are mandatory and create burdens for the Court. *Memphis Nat'l Gas Co. v. Beeler*, 315 U.S. at 651; *Crowley v. LL Bean, Inc.*, 361 F.3d. at 26.

The most recent step in this historical process came with the passage of Public Law 100-352 on June 27, 1988. *See* Public Law 100-352, §2 (eliminating

appellate jurisdiction over cases in the Court of Appeals), 102 Stat. 662 (1988); *see also Id.*, §3 (eliminating appellate jurisdiction over final judgments of state courts), 102 Stat. at 662.

Given these historical efforts by Congress to limit the burdens on this Court from "appeals," the idea advanced by the government and accepted by the courts below – that Congress meant the word "appeals," standing alone in §6330(e)(1), in itself to mean or include a petition for certiorari, is not just inherently implausible, it's completely unrealistic, illogical, and contrary to Congress' awareness of the meaning of "appeal" and its technical distinction from a certiorari petition, as well as Congress' longstanding practice to refer to both "appeal" and certiorari petition if both are intended to apply. As made clear above, the surrounding statutory context reinforces this point. As already shown, several sections of the IRC outside of §6330 explicitly refer to a petition for certiorari and distinguish such petitions from an "appeal," including, for example, two of the IRC sections relied on by this Court for its statutory context analysis and application in *FEC*, namely IRC §§ 9010(d) and 9040(d).

Section 6330(e)(1) does not mention a petition for certiorari; nor does it contain any language at all that could support the argument that a certiorari petition was intended to apply. It is also significant that there are numerous other sections of the IRC incorporated into §6330, including into subsection (e)(1), but Congress did not incorporate or refer to any of the IRC sections where a petition for certiorari is expressly

included and thus clearly intended to apply. The language of §6330(e)(1) is far different from and specifically more limited than the language of all other IRC sections where a petition for certiorari is specifically referenced, and the different language is, under *FEC* and pursuant to longstanding principles of statutory construction, presumed to be intended to convey a different meaning. However, as noted, contrary to law, this presumption (and others) was simply disregarded and not applied.

CONCLUSION

Had the courts below followed case precedent from this Court (and its own court), applied traditional, established principles of statutory construction and required presumptions that follow from those principles, and complied with the correct method of interpretation performed by this Court in its statutory context decisions and, more specifically, in *FEC* and *Boechler*, the interpretation of "appeals" by those courts would necessarily have been consistent with Congress' historical practice of not intending certiorari petitions to apply in its enactments referring to "appeals" without specifically referring to both procedures. Moreover, the Third Circuit's extension of the administrative "hearing" by virtue of the word "therein" in §6330(e)(1) to the period after the D.C. Circuit mandate would necessarily have been limited to the finality of the D.C. Circuit appeal represented by that mandate.

At the time of that mandate – August 23, 2018 – as noted, there is no dispute that there were 129 days remaining on the collection statute of limitations. However, the underlying complaint was not filed until February 5, 2019, 166 days after that mandate. Upon proper interpretation of "appeals" in §6330(e)(1), it readily can be seen that the complaint in this case was not filed until after the collection statute of limitations expired, and that the courts below erred in deciding otherwise.

The importance of this case to tax collection proceedings and taxpayer rights under IRC §6330 cannot be overstated and has been explained in the foregoing discussion. Additionally, the decision below completely upends Congress' historical legislative practice of specifically referring to both "appeal(s)" and certiorari petition when certiorari petitions are intended to apply. There is nothing in §6330(e)(1) to reflect an intent that certiorari petitions are included in the statute, and it would be historical error to conclude, as the Courts below did, that Congress deviated from its established legislative practice in this regard but still intended that certiorari petitions apply.

Therefore, this Court should grant this Petition to review the decision and rationale for same by the courts below, specifically the Third Circuit. In the alternative, this Court should grant this Petition and remand the matter to the Third Circuit for further consideration in view of this Court's statutory context

decisions and, particularly, this Court's decisions in *FEC* and *Boechler*.

Respectfully submitted,

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