

No. 22A462

ORIGINAL

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

FILED
JAN 17 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

J.H., PETITIONER

v.

WEST VIRGINIA BOARD OF MEDICINE, RESPONDENT

ON APPEAL FROM
THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA
(21-0540)

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

J.H.
PMB 132
1712 11TH STREET
PORTSMOUTH, OH 45662-4528
FOR THE PETITIONER-An Incapacitated Adult

RECEIVED
JAN 24 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

RULE 29.6 STATEMENT

1. Petitioner, J.H., is an individual, and not a corporation.
2. Respondent, West Virginia Board of Medicine, is a state agency of the state of West Virginia, and is not a publicly traded company.

To the Honorable John Roberts Jr., Chief Justice of the Supreme Court of the United States and Circuit Justice for the Fourth Circuit:

Pursuant to Supreme Court Rules 13.5, 22, and 30, Petitioner respectfully requests a 60-day extension of time, up to and including March 17, 2023, to file a petition for a writ of certiorari to review a decision of the Supreme Court of Appeals of West Virginia (“West Virginia Supreme Court”) and that court’s decision in *J.H. v. West Virginia Board of Medicine* (21-0540), attached as Exhibit A.

BRIEF SUMMARY OF THE CASE

In the case below, the West Virginia Supreme Court avoided the issues entirely, and simply alleged that the Respondent Board *did not have to conduct a hearing*. Yet in the final order of the Respondent Board, the Respondent Board clearly did conduct a hearing on the Medical Board Licensing Complaint at issue, during a board meeting on March 10, 2013, with no notice given to Petitioner that the matter was to be heard by the Board on that date, nor that a decision was subsequently entered by the Board following that hearing. (Appealed Agency Order of the West Virginia Board of Medicine, attached as Exhibit B, *see* P.2 ¶7, ¶3) This is a clear violation of the Due Process requirements of both the West Virginia Constitution and the United States Constitution. As a key initial concern of this Court, an issue of federal constitutional concern—due process—was unquestionably raised repeatedly in the record below by Petitioner, and is evidenced by the crafty attempt by the West Virginia Supreme Court to shoehorn all assignments of error into a footnote, and otherwise ignore

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addressing them.¹ Other more serious due process issues include that the Respondent Board clearly did not address the conflicts in the evidence adduced, and in total failed to present reasoned and articulated findings of fact and conclusions of law sufficient for both the public, and Petitioner to understand what occurred in the Medical Board Licensing Complaint, which is clearly arbitrary and capricious behavior.² As was addressed before the lower state courts, across the country, state medical boards in nearly every state are engaging in arbitrary and capricious due process violations of the members of the public who bring complaints before them. And while this case is about a state medical board, the clearly unconstitutional due process issues that happened here, apply to numerous administrative bodies, both in the states and the federal government. Concerns of addressing the unconstitutional out of control behavior by the administrative state, has been a concern repeatedly raised by the Justices of this Court—this case brings the more serious concerns, sufficiently preserved, for this Court to restore the required checks and balances required, on executive branch encroachment into matters of judicial concern.

TIMELINE AND REASONS AN EXTENSION SHOULD BE GRANTED

The jurisdiction of this Court will be invoked under 28 U.S.C. § 1257(a). The West Virginia Supreme Court issued its judgment in this matter on October 17, 2022, (Exhibit A) which requires a Petition for Writ be filed within 90 days by mailing,

¹ See exhibit A, P. 2, n.3, “Petitioner further claims that both the Board and the circuit court (6) denied him procedural due process, * * *”

² The subject medical board licensing complaint at issue in this case, is one of 12 total others filed by different individuals, where in each, the Respondent Board failed to reason and articulate findings of fact and conclusions of law. The information available, also indicates that the Respondent Board never notified those individuals of hearings in their matters, either.

by no later than January 17, 2023. (Supreme Court Rule 29.2) Petition for Rehearing would have been a fruitless effort, as will be addressed just below. Supreme Court Rule 13.5 sets forth that for extensions, “[t]he application must be filed with the Clerk at least 10 days before the date the petition is due, except in extraordinary circumstances.” Extraordinary circumstances clearly exist here, because Petitioner is an incapacitated adult that requires substantial assistance in accessing the courts, and though clearly requesting appointment of an appropriate spokesperson and other services/aides in both levels of the state proceedings, no part of the West Virginia Unified Judiciary ever provided necessary and requested accommodations for Petitioner to access the court system. As recently pointed out by the Fifth Circuit,

“Luke also alleges that he was denied the benefit of ‘meaningful access’ to public services. See *Alexander v. Choate*, 469 U.S. 287, 301, 105 S.Ct. 712, 83 L.Ed.2d 661 (1985) ; see also *Cadena v. El Paso County*, 946 F.3d 717, 725 (5th Cir. 2020). He says that he was not able to understand his legal rights or effectively communicate throughout his proceedings. Not being able to understand a court hearing or meeting with a probation officer is, by definition, a lack of meaningful access to those public services. Indeed, a core purpose of Title II is for public entities to ‘accommodate persons with disabilities in the administration of justice.’ See *Tennessee v. Lane*, 541 U.S. 509, 533, 124 S.Ct. 1978, 158 L.Ed.2d 820 (2004).”

Luke v. Texas, 46 F.4th 301, 305-6 (5th Cir. 2022)

Fundamentally, Petitioner neither effectively participated in, nor could access, West Virginia Unified Judiciary programs, activities, and services. Petitioner presents to this Court, as extraordinary circumstances, that crystal clear black and white notice of need to accommodate a profoundly disabled individual was provided

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to the West Virginia Unified Judiciary. (*see* Exhibit C, Civil Case Information Sheet)³ Neither the Circuit Court of Kanawha County, nor the West Virginia Supreme Court took any action to either accommodate, nor provide any reasonable alternatives, to address the multitude of communications issues, both on the record and off the record, that occurred. Petitioner is likewise still recovering from a suicide attempt as a result of this absolute communication disaster, and to both, Supreme Court R.13.5 extraordinary circumstances should indeed be found here, to find this request for extension timely, when it has been filed with the Clerk, in accordance with Supreme Court Rule 29.2, despite not being made 10 days in advance. Respectfully requested, the maximum amount of time available for extension should be provided, however hopefully filing will not need to take that long.

CONCLUSION

Accordingly, Petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for 60 days, up to and including March 17, 2023.

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³ On Appeal to the West Virginia Supreme Court, this document is contained in the Appendix Record at P. 001-003. The West Virginia Supreme Court's attention was squarely drawn to look at this document, on page 12 of Petitioners Opening Brief, "[t]he circuit court clearly knew Petitioner had noticed the court of disability and reasonable auxiliary aids necessary to access the court. (APPX. P. 002 in the box 'Do you or any of your clients or witnesses in this case require special accommodations?')." And again, the West Virginia Supreme Court was firmly reminded Petitioner is developmentally disabled, in the closing reply at P. 19, n. 26, "[p]etitioner would like to make one final point and clarification of their Petitioner's Brief, as this reply closes. *Wedges it in here.* A formal definition for 'developmentally disabled individual', found at P.B. P. 37. It means an individual, adjudicated by a responsible state agency (in Ohio, that would be the Ohio Department of Developmental Disabilities) to qualify as being 'developmentally disabled' under the definition found at 42 U.S. Code § 15002(8)(A)." On top of the federal definition provided, Petitioner would also like to supplement here, to assure no confusion, that same definition is found at Ohio Revised Code 5123.01 (Q), which is the relevant adjudication made by the State of Ohio, pursuant to federal law.

Dated: January 17, 2023

Respectfully submitted,

J. H.

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