In The
Supreme Court of the United States

ROWLAND J. MARTIN, JR. *Petitioner*	)	
v.	)	Case No. 23 - _____
EDWARD BRAVENEC, et al, *Respondents*	)	
IN RE MARTIN	)	Case No. 23-_____

PETITIONER'S APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Pursuant to Supreme Court Rule 13.5, Petitioner Rowland J. Martin moves the Court for an extension of, and resetting of, the deadline for the filing of a petition for writ of certiorari in *In re Martin*, Case No. 51111 (5th Cir., order dismissing petition for writ of mandamus and in rem relief entered June 20, 2023).

STATEMENT OF THE CASE

By way of background, *In re Martin* is a related proceeding of which Respondent Bravenec is a respondent party which the Petitioner undertook as a proceeding *in rem* relief to address the fact that Bravenec has repeatedly defaulted on making appearances in the proceedings below. It also draws from a common nucleus of operative fact and law with the cases styled as *Martin v. County of Bexar* (cites omitted) and *Martin v. Bravenec* (cites omitted).

Since favorable relief against Respondent Bravenec in further proceeding in either of those cases would open the way for the vacatur of the order dismissing *In re Martin* by a court with competent jurisdiction, the need for a separate appeal to this Court is probably attenuated with not obviated by that fact. In other words, if the Court agrees with the showing that Petitioner has already made in *Martin v. County of Bexar*, or the showing he is proceeding to perfect in *Martin v. Bravenec* on terms permitted by the Court's July 13, 2023 letter, the conclusions of fact and law from those cases would substantially dispose of the controversy in *In re Martin*, leaving only the terms for in rem relief to be considered,

Under the circumstances, it aids the Court's jurisdiction and judicial promotes interests in economy for the Court to entertain a motion to consolidate the two existing cases, and to allow the filing of a petition for writ of certiorari at a later date; or alternatively, to allow filing of a petition for writ of mandamus in the consolidated proceeding. This way, the Court can address the remedial jurisdiction of the U.S. Court of Appeals for the Federal Circuit with an eye toward avoiding constitutional errors from various common issues of first impression relating to 28 USC 1443, 28 USC 1454, 35 USC 123, and 42 USC 1982 and 1985.

ARGUMENT

Rule 13.5 of the Supreme Court's rules states that "[f]or good cause, a Justice may extend the time to file a petition for writ of certiorari for a period not exceeding 60 days." The application must establish the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion … and set out specific reasons why an extension of time is justified. The Court has jurisdiction under 28 U.S.C. §1257, and also under 28 U.S.C. 1331, 1367 1631, and 1651, as the filing of the petition for *In re Martin*, Case No. 51111 falls within ninety days of the last decision in that case on June 20, 2023. The following arguments are presented to establish good cause based on circumstances functionally equivalent to those in which stay relief might ordinarily be considered.

There is a strong case for intervention by the Court to conform vafrious proceedings below to doctrine on judicial review in *Marbury v. Madison*, 5 U.S. 137 (1803), and to the corresponding rule of law that "subject-matter jurisdiction … involves a court's power to hear a case [and] can never be forfeited or waived," *United States v. Cotton*, 535 U.S. 625, 630 (2002). Both those teachings suggest clear error in the June 20, 2023 order of the U.S. Court of Appeals for the Fifth Circuit. "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite

and firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948).

Here, Martin's filing in *Martin v. County of Bexar*, Case No. 23-141 establishes a strong case for relief on the merits in the jurisdictional controversy, about whether the Federal Circuit or the Fifth Circuit had competent jurisdiction, based on his ownership of USPTO #13/026, 246, an abandoned but revivable patent application, and his subsequent ownership of USPTO #63/577,255, a pending patent application as of or about April 16, 2023. The controversy over Petitioner's patent related interest in quiet title relief will enable Martin to resume prosecution of the abandoned but revivable '246 application, and to proceed with the prosecution of the pending '255 application.

Irreparable harm will inevitably flow in the event relief from the Fifth Circuit order is denied. Cf., *Torres v. Texas Department of Public Safety*, 597 U.S. ___ (2022). Careful examination of the existing docket in *Martin v. County of Bexar*, Case No. 141 (S.Ct. 2023) will show that, from 2013 to the present in 2023, Respondent Bravenec harmed the undersigned Petitioner, in his capacity as a claimant in patent related proceedings, in federal appellate proceedings, and as a claimant of federal rights in state court proceedings removed to federal court. Consequently, the additional burden of prosecuting relief simultaneously from *In re Martin*, *Martin v. County of Bexar* and *Martin v. Bravenec*, is premature and

probably excessive, given the likelihood that a satisfactory resolution can be obtained through the appeals of which the Court already has notice.

The Court's intervening decision in *Moore v. Harper,* Case No. 21-1271, 600 U.S. ___ (2023), constitutes persuasive authority that Respondent Bravenec and his successors in interest have no reasonable expectation of receiving an exemption from judicial review in the Federal Circuit forum that would be consistent with *Marbury v.. Madison*. The filing of a petition for certiorari for *Martin v. Bravenec* is imminent in which it will be shown that this is a proceeding that has been authorized by Congress using its legislative powers delegated under the Progress Clause to enact 28 USC 1454, and its legislative powers delegated under the Tribunals Clause to enact 28 USC 1443. Consequently, the purported remand of *Bravenec v. Martin* to the 285th District Court of Texas on the theory that the case was closed in contravention of 28 USC 1454 and 42 USC 1985(2) was wholly unwarranted according to the jurisdictional teachings of *Marbury v. Madison* due to an antecedent waiver of interests in state sovereignty. Cf., *Allen v. Cooper,* 140 S. Ct. 994 (2020).

Further, on application for an extension of time to file a petition for a writ in *In re Martin*, it serves the public interest for the Court to extend strict scrutiny as applied in *303 Creative LLC v. Elenis*, Case No. 21-476, 600 U.S. ___ (June 30, 2023) to inquire whether the remand was narrowly tailored to effectuate a

substantial governmental interest. In *Elenis*, the Court held that "[s]peech conveyed over the internet, like all other manner of speech, qualifies for the First Amendment's protections" including a case where the speaker is a website designer who elects to withhold services for diverging viewpoints. Id.

The argument can be made that the same free speech rationale protects the exercise in this case of the right to petition for a PTO examination of a specification for advancing the state of the art for internet communication, of the right to petition for ancillary quiet title relief to support patent related research and development, and the right to petition for anti-retaliation relief under the civil right laws. Compliance with the two prong standard followed in *Elenis* calls for (1) a showing that compelling speech or silence of a protected progress clause speaker would serve a compelling governmental interest, and (2) that no less restrictive alternative exists to secure that interest. Id. The district court's order of remand, especially as interpreted as a violation of the rule against advisory opinions, is facially incapable of withstanding review under Elenis.

Regarding the first prong, the remand proceeding fails to pass muster for two reasons. Regarding the first prong, the remand proceeding fails to pass muster for two reasons. First, the process of the district court was unrelated to the "consent of the governed," as reflected in the Rules of Decision Act, because the

removal arose under, is covered by, "the Constitution, treaties of the United States, [and] acts of Congress."[1]

Second, the outcome of the district court's process was unrelated to the "consent of the governed," as reflected by the statutory scheme in 28 USC 1447, because the docketing of the appeal by the Federal Circuit left that court without plenary judicial powers to act. See, *In re Federal Facilities Realty Trust*, 227 F.2d 651, 653-54 (7th Cir. 1955) (enforcing rule that a trial court has no power after notice of appeal to modify its judgment or take other action affecting the cause).

On the second prong, at least four distinct statutory schemes hold that the District Court had no administrative capacity to act on September 29, 2022: the Federal Courts Improvement Act,[2] the Full Faith And Credit Act,[3] and the Rules Enabling Act.[4] Under the circumstances, argument can be made that the district court wrongly assumed that it had jurisdiction to remand pursuant to 28 USC 1447 when in fact that course of proceeding operated in excess of all jurisdiction

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[1] See, 28 U.S. Code § 1652 ("The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.")

[2] See, 28 USC 1295(a). The District Court fails to pass muster under the first prong because a trial court has no power after the filing of a notice of appeal to modify its judgment or take other action affecting the cause. In re Federal Facilities Realty Trust, 227 F.2d 651, 653-54 (7th Cir. 1955).

[3] See, 28 U.S. Code § 1738. The Full Faith And Credit Act requires an authenticated state court record to substantiate an attribution of full faith and credit in a particular case, consequently reliance on the unsupported conclusion that the case "appeared to be closed" abrogated the Full Faith And Credit Act.

[4] See, 28 U.S.C. § 2071-2077. It will be shown that the presiding judge in Martin v. Bravenec adjudicated a part of the same case in prior government employment as a state appellate court judge. See, Code of Conduct for U.S. Judges, Canon 3C(1)(e) (prior government employment) cited in *Holland v. Florida*, Case 22-6206 (2023) (noting denial of petition for rehearing in which Justice Kagan took no part in the consideration or decision of this petition due to prior government employment).

qualifying for judicial nature defenses under *Mireles v. Waco*, 112 S.Ct. 286 at 288 (1991).[5]

CONCLUSION

It aids jurisdiction to administer *Marbury v. Madison* to apply the intervening decisions on judicial review from *Moore v. Harper* and the related decision on online speech from *303 Creative LLC v. Elenis*, for the Court to grant the proposed extension of time to file a petition for writ of certiorari in *In re Martin*.

September 10, 2023

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[5] There, the Court recognized that the "judicial nature" defense is intended for application in cases where judicial branch behavior qualifies as "judicial" in nature. The same limiting principle was classically explained by the courts of England to mean that " … when the court has no jurisdiction of the cause, then the whole proceeding is coram on judice, and actions will lie against [court officers] without any regard of the precept or process…" See, *The Case of the Marshalsea*, 77 Eng. Rep. 1027 (1612).