

No. 23-\_\_\_\_\_

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In the Supreme Court of the United States

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ZACHARY GREENBERG,

*Petitioner,*

v.

JERRY M. LEHOCKY, IN HIS OFFICIAL CAPACITY AS BOARD CHAIR OF THE  
DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA, ET AL.

*Respondents.*

\_\_\_\_\_  
ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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

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**TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE  
JUSTICE OF THE SUPREME COURT OF THE UNITED STATES  
AND CIRCUIT JUSTICE FOR THE THIRD CIRCUIT:**

As Supreme Court Rules 13.5, 22, and 30 permit, Petitioner Zachary Greenberg respectfully requests a 59-day extension of time, up to and including Friday, March 1, 2024, to petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit to review that court's decision in *Greenberg v. Lehocky*, 81 F.4th 376 (3d Cir. 2023) (attached as Exhibit A).

Petitioner intends to petition seeking review of this judgment under Supreme Court Rule 12. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). The Third Circuit issued its order denying rehearing on September 22, 2023 (attached as Exhibit B). Without an extension, the time to petition for a writ of certiorari will expire on January 2, 2024. This application is timely because it has been filed more than ten days before that deadline. For the following reasons, there is good cause to grant this application.

1. This case presents two substantial and unsettled questions of federal law that divide the circuits. *First*, whether a court may bypass a mootness inquiry into mid-litigation developments and relieve a state actor's "burden to establish that a once-live case has become moot,"<sup>1</sup> by

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<sup>1</sup> *W. Va. v. EPA*, 142 S. Ct. 2587, 2607 (2022).

substituting a standing inquiry, just because the plaintiff amends his complaint to reflect the state's mid-suit revision of a challenged rule. *Contrast Zukerman v. USPS*, 961 F.3d 431, 441–45 (D.C. Cir. 2020), *and Horton v. City of St. Augustine*, 272 F.3d 1318, 1326–29 (11th. Cir. 2001), *with Greenberg*, 81 F.4th at 384 n.4. And, *second*, whether, even under a standing framework, a First Amendment pre-enforcement challenger to a vague anti-harassment rule lacks standing to bring his challenge because a single state enforcement agent issued a mid-litigation, non-binding, reversible, and qualified disavowal of enforcement to the challenger's planned speech. *Contrast Brown v. Kemp*, \_\_F.4th\_\_, 2023 WL 7489920 (7th Cir. Nov. 13, 2023); *and Speech First, Inc v. Fenves*, 979 F.3d 319 (5th Cir. 2000), *with Greenberg*; *see also Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200 (3d Cir. 2001) (Alito, J.).

2. This case involves many complex issues of jurisdictional, procedural, and First Amendment law. The current deadline of January 2, 2024 for Petitioner's petition for certiorari creates significant issues for counsel to prepare an effective petition due to the multiple federal and religious holidays in the interim. Counsel is also a member of a seven-person nonprofit law firm with no non-attorney staff. Therefore, counsel's other matters have affected counsel's availability and will continue to do so. Substantial commitments of counsel during the relevant period include:

- Ongoing expert discovery, including possible depositions and motion practice in the United States District Court for the Western District of Missouri in *Stock v. Gray*, No. 22-cv-04104;
- A hearing and multiple briefs in the United States District Court for the Eastern District of Pennsylvania in *In re Wawa, Inc. Data Security Litigation*, No. 19-cv-6019;
- An opening brief in the United States Court of Appeal for the Fifth Circuit in *Utah, et al. v. Su*, No. 23-11097;
- An *amicus* brief in the United States Court of Appeals for the Fifth Circuit in *Speech First, Inc. v. McCall*, No. 23-50633;
- A new litigation challenge in the United States District Court for the Western District of Tennessee; and
- The review of law student applications for summer 2024 law clerk positions, including conducting interviews and completing the hiring process.

An extension will ensure that counsel's other matters do not hinder Petitioner's ability to file an effective petition in this case.

Accordingly, Petitioner respectfully requests that an order be entered extending the time to petition for a writ of certiorari for 59 days, up to and including Friday, March 1, 2024.

Dated this 4th day of December, 2023.

Respectfully submitted,

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