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IN THE

**Supreme Court of the United States**

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GREGORY GARMONG,

*Petitioner,*

v.

TAHOE REGIONAL PLANNING AGENCY, ET AL.,

*Respondents.*

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APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE  
A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT

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**APPLICATION TO THE HONORABLE  
ELENA KAGAN, AS CIRCUIT JUSTICE**

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*Counsel for Applicant / Petitioner*

February 23, 2024

\* Counsel of Record

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## **PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT**

Petitioner is Gregory Garmong.

Respondents are Tahoe Regional Planning Agency, John Marshall, Bridget Cornell, Joanne Marchetta, Jim Baetge, James Lawrence, Bill Yeates, Shelly Aldean, Marsha Berkbigler, Casey Beyer, Timothy Cashman, Belinda Faustinos, Austin Sass, Nancy Mcdermid, Barbara Cegavske, Mark Bruce, Sue Novasel, Larry Sevason, Maria Kim, Complete Wireless Consulting, Inc., Verizon Wireless, Inc., and Crown Castle.

Corporate parties involved in this case are Verizon Wireless, Inc., Complete Wireless, Inc., and Crown Castle.

## **APPLICATION FOR EXTENSION OF TIME**

Under this Court's Rule 13.5 and 28 U.S.C. § 2101(c), Applicant Gregory Garmong hereby requests a 60-day extension of time within which to file a petition for a writ of certiorari, to and including May 6, 2024.

## **JUDGMENT FOR WHICH REVIEW IS SOUGHT**

The judgment for which review is sought is *Gregory Garmong v. Tahoe Regional Planning Agency, et al.*, No. 22-15869 (9th Cir. Oct. 30, 2023) (Exhibit A). The Ninth Circuit denied Applicant's Petition for Rehearing on December 7, 2023 (Exhibit B).

## **JURISDICTION**

This Court will have jurisdiction over any timely filed petition for certiorari in this case under 28 U.S.C. § 1254(1). Under this Court's Rules 13.1, 13.3, and 30.1, a petition is currently due by March 7, 2024. In accordance with Rule 13.5, Mr. Garmong has filed this application more than 10 days in advance of that due date.

## **REASONS JUSTIFYING AN EXTENSION OF TIME**

1. An extension is warranted because of the importance of the issues presented and the seriousness of the errors made by the Ninth Circuit. The Court of Appeals affirmed an award of attorneys' fees to the defendants in a civil-rights action brought by Mr. Garmong related to a cell tower construction permit approved by the Tahoe Regional Planning Agency in an area of the Tahoe Basin where such construction was prohibited. The Ninth Circuit had earlier reversed a District Court

ruling that Mr. Garmong lacked standing to bring such an action (Exhibit C). On remand, however, the District Court again dismissed, declaring all counts “frivolous,” and a different panel of the Ninth Circuit affirmed. In doing so, the Ninth Circuit created a division of authority among the circuits as to (i) the standard for an award of attorneys’ fees to defendants in civil-rights actions and (ii) the constitutional due process protections that stem from express reservations of private rights of action under federal law. Further, the Ninth Circuit “so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court’s supervisory power.” Sup. Ct. R. 10(a).

2. Undersigned counsel is presently briefing and will present argument in this Court in *Fischer v. United States*, No. 23-5572. That oral argument is now scheduled for April 16, 2024. In the ordinary course, counsel would request only a 30-day extension, but given the pending reply briefing and the oral argument date in *Fischer*, counsel respectfully requests the full 60 days’ time.

3. In addition to forming a new law practice as of January 1, 2024, counsel continues to act as the Co-Director of the Northwestern Pritzker School of Law Supreme Court Clinic. In that on-going role, counsel is also responsible for several other matters before the Court, including recently filed petitions in *Robbertse v. Garland* (No. 23-873) and *Lopez-Aguilar v. Garland* (No. 23-6801) and forthcoming petitions in *Wilfred H. v. Ames, Superintendent* (West Virginia Supreme Court, No. 22-0506) and *Streett v. United States* (Tenth Circuit, No. 22-2056).

## CONCLUSION

For these reasons, Applicant respectfully requests an extension of 60 days, to and including May 6, 2024, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,

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