No. ____

IN THE

Supreme Court of the United States

ROBERT H. GRAVATT III,

Petitioner,

v.

MONTGOMERY COUNTY, MARYLAND, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Two weeks after the district court's case dismissal order Petitioner Robert H. Gravatt III ("Mr. Gravatt") filed a detailed letter requesting a conference to file a motion for reconsideration of the dismissal order. Upon review of the letter, the district court issued an order: "1. Gravatt may file a Motion for Reconsideration under Rule 59(e) or 60(b). No conference is necessary. 2. Any Motion for Reconsideration shall be considered timely if it is filed by..." the final day of the 30-day appeal period. Mr. Gravatt timely filed his motion on the last day of the appeal period and later filed a notice of appeal four days after the denial of his reconsideration motion. The United States Court of Appeals for the Fourth Circuit *sua sponte* dismissed the appeal of the case dismissal order for lack of jurisdiction. In doing so, the Fourth Circuit concluded that it lacked jurisdiction because the motion for reconsideration was filed belatedly outside a 28-day time limit to toll the appeal period under Federal Rule of Appellate Procedure 4(a)(4)(A) and, thus, that the notice of appeal was also belatedly filed.

The question presented is:

Whether the 28-day limit to toll a post-judgment reconsideration motion of Federal Rule of Appellate Procedure 4(a)(4)(A) is jurisdictional.

PARTIES TO THE PROCEEDING

Petitioner is Robert H. Gravatt III. Mr. Gravatt was plaintiff-appellant below.

Respondents are Montgomery County, Maryland and its three employees: Caroline E. Headen, Edward B. Lattner and Rasheim R. Smith. All were defendants-appellees below.

RELATED PROCEEDINGS

Gravatt v. Montgomery County, Maryland; Caroline E Headen; Edward B. Lattner; Rasheim E. Smith, No. 23-1485 (4th Cir.) (judgment from panel entered July 17, 2024, judgment denying panel rehearing entered October 11, 2024).

Gravatt v. Montgomery County, Maryland; Caroline E. Headen; Edward B. Lattner; and Rasheim E. Smith, No. 8:22-cv-01296 (order dismissing action entered on March 3, 2023, order denying motion for reconsideration entered April 27, 2023).

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PETITION FOR WRIT OF CERTIORARI

Petitioner Robert H. Gravatt III ("Mr. Gravatt") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS AND ORDERS BELOW

The decision of the Fourth Circuit was issued on July 17, 2024. App. 1a-4a. The district court's April 27, 2023 order denying the Motion for Reconsideration is found at App. 5a-7a. The district court's March 20, 2023 order specifying "...Any Motion for Reconsideration shall be considered timely if it is filed by Monday, April 3, 2023." is found at App. 8a. The district court's order and memorandum opinion dismissing the case both of March 3, 2023 are found at App. 9a-10a and App. 11a-32a respectively. The petition for panel rehearing was denied on October 11, 2024. App. 33a.

JURISDICTION

The Fourth Circuit entered judgment on July 17, 2024 and denied rehearing on October 11, 2024. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS AND RULES INVOLVED

28 U.S.C. § 2107 – *Time for appeal to the court of appeals* is reproduced at App. H, 36a-37a. Federal

Rule of Appellate Procedure 4(a) is reproduced at App. I, 38a-43a. Federal Rules of Civil Procedure Rule 6(b), Rule 59, and Rule 60 are reproduced at App. J, K, L, 44a-49a.

STATEMENT OF THE CASE

I. Proceedings in the District Court

Mr. Gravatt, a Bethesda, Maryland homeowner and resident of more than thirty years was issued a disruptive behavior order which banned him from all Montgomery County owned facilities for a period of 90 days because of a dispute with a County employee over the posted rules at the Bethesda Outdoor Pool. Mr. Gravatt filed suit under 42 U.S.C. § 1983 in the United States District Court for the District of Maryland at Greenbelt against the Respondents for violations of his Fourteenth Amendment rights to procedural due process of law and to equal protection of the laws as well as for related state law claims. The district court had jurisdiction over the Federal claims under 28 U.S.C. §§ 1331 and 1343 and had supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367. On March 3, 2023, the district court granted a motion to dismiss all Federal claims for failure to state a claim upon which relief can be granted, and it declined to exercise jurisdiction over the state law claims, which were dismissed without prejudice. A final dismissal order was issued on the same day as the district court's memorandum opinion. App. 9a-32a. Accordingly, in the absence of an extension of time, a notice of appeal was due by

Monday, April 3, 2023. 28 U.S.C. § 2107(a) (providing that a notice of appeal shall be filed "within thirty days after the entry of such judgment, order or decree.") App. 36a.

After judgment was entered, Mr. Gravatt filed on March 17, 2023 a letter requesting a pre-motion conference to file a motion for reconsideration of the dismissal order. On March 20, 2023, the district court issued an order stating:

> 1. Gravatt may file a Motion for Reconsideration under Rule 59(e) or Rule 60(b). No conference is necessary.
> 2. Any Motion for Reconsideration shall be considered timely if it is filed by **Monday, April 3, 2023**. App. 8a.

In accordance with the order, Mr. Gravatt timely filed his motion under both Rule 59(e) and 60(b) on Monday, April 3, 2023. On April 12, 2023 the Respondents filed a response brief in opposition to the motion. At the time, the Respondents made no challenge to the Rule 59(e) portion of the motion having been filed beyond 28 days from the entry of judgment. Fed. R. Civ. P. 59(e) (providing that "A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment."). App 46a. On April 21, 2023 Mr. Gravatt filed his motion reply brief, in which he quoted Rule 59(e) and stated: "As I filed the Motion for Reconsideration on April 3, 2023, I respectfully request that the Court treat the other sections of my motion mistakenly labeled as being reconsideration

under Rule 59(e) as being the second part of the motion for reconsideration under Rule 60(b)." Fed R. Civ. P. 60(c) (providing a Rule 60(b) motion "must be made within a reasonable time..."). App. 48a. However, on April 27, 2023 the district court denied the reconsideration motion's first part on Rule 60(b) grounds and the rest on Rule 59(e) and 60(b) grounds. App. 5a-7a. Four days later, on May 1, 2023 Mr. Gravatt filed a notice of appeal to the Fourth Circuit. App 34a-35a.

II. Proceedings in the Fourth Circuit

After the docketing of the appeal, Mr. Gravatt filed a timely Informal Opening Brief, where the Fourth Circuit uses an informal briefing schedule for *pro se* appellants. In the jurisdictional statement section of the opening brief, Mr. Gravatt wrote:

> ...It [the district court] entered a Memorandum Opinion and Order on March 3, 2023 dismissing all claims. Plaintiff filed a timely motion for reconsideration on April 3, 2023. The motion was denied on April 27, 2023. Plaintiff then filed a timely notice of appeal on May 1, 2023. This Court now has jurisdiction under 28 U.S.C. § 1291.

The Respondents answered in their Informal Response Brief: "The appellees agree with the Jurisdictional Statement submitted in Mr. Gravatt's Informal Opening Brief." In other words, the Respondents forfeited any challenge to the

timeliness of the postjudgment motion or to the district court's March 20, 2023 order.

However on July 17, 2024, the Fourth Circuit entered a judgment which: (1) *sua sponte* dismissed for lack of jurisdiction the appeal of the district court's grant of Defendants' motion to dismiss; (2) affirmed the denial of the reconsideration motion; and (3) granted Mr. Gravatt's then pending motion to amend the informal opening brief. App. 1a-4a. In doing so, the Fourth Circuit relied on Federal Rule of Appellate Procedure Rule 4(a)(4)(A) to conclude that it "lack[ed] jurisdiction to review the district court's order granting Defendants' motion to dismiss. *See Bowles*, 551 U.S. at 214." App. 3a. In particular, the Fourth Circuit treated as jurisdictional Rule 4(a)(4)(A)'s provision that:

> If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure – and does so within the time allowed by those rules – the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:
> ...
> (iv) to alter or amend the judgment under Rule 59;
> ...
> (vi) for relief under Rule 60 if the motion is filed within the time allowed for filing a motion under Rule 59.
> App. 39a-40a.

Fed. R. Civ. P. 59 (providing that a motion: "must be filed no later than 28 days after the entry of judgment."). App. 45a-46a. However, Rule 4(a)(4)(A) is a court-promulgated claim-processing rule without origin in statute. The Fourth Circuit further relied on *Bowles v. Russell*, 551 U.S. 205 (2007) in its decision, where the 14-day reopening period of Rule 4(a)(6) was unchangeable by court order because the Rule was derived from 28 U.S.C. § 2107(c) and, thus, was a jurisdictional requirement.

Mr. Gravatt on July 25, 2024 timely filed a petition for panel rehearing where he argued that the district court's March 20, 2023 order was a *sua sponte* grant of an extension of time to file a notice of appeal until after it had ruled on the motion for reconsideration. He cited Federal Rule of Appellate Procedure 4(a)(5) *Motion for Extension of Time* (App. 41a) and the provision in Federal Rule of Civil Procedure 6(b), which allowed the district court to grant an extension of time without a formal request or motion during the appeal period. Fed. R. Civ. P. 6(b) (providing that "When an act may or must be done within a specified time, the court may for good cause, extend the time: (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires."). App. 44a. Indeed, Mr. Gravatt filed his notice of appeal on May 1, 2023 within 30 days of April 3, 2023 but without a motion for extension of time to file a notice of appeal because the reconsideration motion had been timely filed per the district court's

March 20, 2023 order. On October 11, 2024 the Fourth Circuit denied the rehearing petition.

REASONS FOR GRANTING THE PETITION

I. The Fourth Circuit's Decision Conflicts with This Court's Two Earlier Decisions on Appellate Jurisdiction of Two Different Sections of Federal Rule of Appellate Procedure 4(a).

The Fourth Circuit in dismissing Mr. Gravatt's appeal based on Federal Rule of Appellate Procedure 4(a)(4)(A) misinterpreted and misapplied this Court precedents set in *Bowles v. Russell*, 551 U.S. 205 (2007), a case in which Federal Rule of Appellate Procedure 4(a)(6) was derived from statute, 28 U.S.C. § 2107(c), and thus was a jurisdictional rule. Secondly, the Fourth Circuit made no mention or citation of this Court's precedent later set in *Hamer v. Chicago Neighborhood Housing Services*, 138 S. Ct. 13 (2017) in which Federal Rule of Appellate Procedure 4(a)(5)(C) was not derived from statute and, thus, was not a jurisdictional rule. This Court's clarification of Federal Rule of Appellate Procedure 4(a)(4)(A)'s status as a nonjurisdictional rule is needed to insure that the courts of appeals are not improperly dismissing appeals for lack of jurisdiction based on sections of the Federal Rules of Appellate Procedure not of statutory origin.

A. This Court's Decision in *Bowles* Established that the 14-day Deadline in Federal Rule of Appellate Procedure 4(a)(6) Is Jurisdictional Because It Derives from a Statute, but The Court Did Not Address Federal Rule of Appellate Procedure 4(a)(4)(A).

In *Bowles*, the appellant ("Bowles") missed his deadline to file a notice of appeal because the clerk of court failed to mail a court order. Bowles did not recognize this error until approximately sixty days after the expiration of the time to file a notice of appeal. *See Bowles*, 551 U.S. at 207. Accordingly, because he had not timely filed a motion to extend the time to appeal, Bowles was unable to avail himself of the first sentence of 28 U.S.C. § 2107(c), which allows a district court to extend the time for appeal "upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal." 28 U.S.C. § 2107(c). App. 37a. Instead, because no motion was filed within 30 days of the expiration of the time to bring an appeal, Bowles' only remedy lay in the second part of 28 U.S.C. § 2107(c), which permits the district court, under certain circumstances, to "reopen the time for appeal for a period of 14 days from the entry of the order reopening the time for appeal." 28 U.S.C. § 2107(c). App. 37a. Consistent with the second part of 28 U.S.C. § 2107(c), Federal Rule of Appellate Procedure 4(a)(6) also provides that a district court, under certain conditions, "may reopen the time to file an appeal for a period of 14 days after the date

when its order to reopen is entered, ..." Fed. R. App. P. 4(a)(6). App. 41a-42a.

Despite the clear statutory mandate that a district court may only reopen the time to appeal for a period of 14 days under those circumstances, the district court "inexplicably gave Bowles 17 days . . . to file his notice of appeal." *Bowles*, 551 U.S. at 207. Bowles filed his notice of appeal within the time set by the district court, "but after the 14-day period allowed by Rule 4(a)(6) and § 2107(c)." *Id.*

This Court concluded that the Court of Appeals lacked jurisdiction over the appeal. Critical to this Court's analysis, however, is the fact that the 14-day time limit in Federal Rule of Appellate Procedure 4(a)(6) is also set forth in a statute. *See Bowles*, 551 U.S. at 210 (noting this Court's "longstanding treatment of statutory time limits for taking an appeal as jurisdictional" and "recogniz[ing] the jurisdictional significance of the fact that a time limitation is set forth in a statute"). In no way did the Court address Federal Rule of Appellate Procedure 4(a)(4)(A), which does not derive from a statute. Indeed, the Court distinguished the case from *Kontrick v. Ryan*, 540 U.S. 443 (2004) because the time limitation at issue in *Kontrick*—although set forth in the Federal Rules of Bankruptcy Procedure—did not implicate a court's jurisdiction because it did not appear in a statute. *Bowles*, 551 U.S. at 210-11. In fact, the Court recognized that "[o]nly Congress may determine a lower federal court's subject-matter jurisdiction[.]" *Id.* at 211 (quoting *Kontrick*, 540 U.S. at 452).

The Court further explained that equitable considerations could not excuse the tardy notice of appeal because the late filing deprived the Court of Appeals of jurisdiction. In particular, the Court concluded that "because Bowles' error [was] one of jurisdictional magnitude, he cannot rely on forfeiture or waiver to excuse his lack of compliance with the statute's time limitations." *Bowles*, 551 U.S. at 213. Moreover, the Court concluded that Bowles could not rely on the "'unique circumstances' doctrine" to excuse his late filing. *Id.* at 213-14. Under that doctrine—which stems from two of this Court's cases—the untimely filing of an appeal has been excused when the appellant relied on the district court's erroneous assurances about the timeliness of the appeal. *Harris Truck Lines, Inc. v. Cherry Meat Packers, Inc.*, 371 U.S. 215, 216-17 (1962) (excusing the late filing of a notice of appeal where the appellant had relied on the district court's erroneous extension of time to file a notice of appeal); *see also Thompson v. Immigration & Naturalization Serv.*, 375 U.S. 384, 385- 86 (1964) (excusing the late filing of a notice of appeal where the district court had erroneously assured the appellant that post-trial motions were filed "in ample time"). Because Bowles' error deprived the Court of Appeals of jurisdiction, this Court concluded that "[it] has no authority to create equitable exceptions to jurisdictional requirements," and "overrule[d] *Harris Truck Lines* and *Thompson* to the extent they purport to authorize an exception to a jurisdictional rule." *Bowles*, 551 U.S. at 213-14.

B. This Court's Decision in *Hamer* Established that the 30-day Limit for an Extension of Time to File an Appeal in Federal Rule of Appellate Procedure 4(a)(5)(C) Is Non-Jurisdictional Because It Is Not Derived from a Statute.

In *Hamer*, 138 S. Ct. 13 (2017), prior to the deadline to file a notice of appeal the attorney for the appellant Hamer filed motions in the district court that sought: (1) to withdraw as counsel and (2) a sixty-day extension of time for Hamer to file a notice of appeal. In seeking the sixty-day extension of time, Hamer's counsel relied on 28 U.S.C. § 2107(c), which permits a district court, "upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, [to] extend the time for appeal upon a showing of excusable neglect or good cause." In this motion, counsel explained that Hamer needed additional time to secure appellate counsel and determine an appropriate appellate strategy. The district court granted the motion, where the respondents made no objection to the sixty-day extension of time. Hamer after appearing *pro se* later filed a notice of appeal in the district court within sixty days (but after 30 days) from the original deadline for an appeal when she was able to retain counsel she could afford. On appeal, in the docketing statement the respondents asserted appellate jurisdiction. After calling for briefing on jurisdiction, the Court of Appeals dismissed the appeal and concluded that Federal Rule of Appellate Procedure 4(a)(5)(C) "limits a district court's authority to extend the notice of

appeal filing deadline to no more than an additional 30 days [from the original deadline to file a notice of appeal]." Fed. R. App. P. 4(a)(5)(C). App. 41a.

However, this Court found that Rule 4(a)(5)(C)'s 30-day time extension limit is not jurisdictional and without statutory origin in 28 U.S.C. § 2107(c) and vacated the dismissal for lack of jurisdiction. *See Hamer*, 138 S. Ct. 13, 20 (2017) (citing *Bowles*, for the proposition that if "a time prescription governing the transfer of adjudicatory authority from one Article III court to another appears in a statute, the limitation is jurisdictional; otherwise, the time specification fits within the claim-processing category.").

Indeed, *Hamer* supports that this Court should vacate the dismissal of Mr. Gravatt's appeal because Rule 4(a)(4)(A) like Rule 4(a)(5)(C) is not jurisdictional as it is without statutory origin in 28 U.S.C. § 2107. When the Respondents have waived and forfeited challenge under Rule 4(a)(4)(A), the Rule's 28-day limitation has served its purpose as a mandatory claim-processing rule. As in *Bowles*, 28 U.S.C. § 2107 is the sole jurisdictional authority on the time for appeal to the court of appeals.

By the same analysis, Federal Rule of Civil Procedure 59 is also a claim-processing rule not of statutory origin. As with Rule 4(a)(4)(A), the Respondents waived and forfeited objection to Rule 59's 28-day deadline. In *Alston v. MCI Communications Corp.*, 84 F.3d. 705 (4th Cir. 1996) cited by the Fourth Circuit, the appellant sought and

obtained an extension of time beyond the then allowed 10 days to file a Rule 59(e) motion but then exceeded the district court's extended time period by one day. Alston, therefore, could not claim that he was following the district court's erroneous order. In contrast, Mr. Gravatt followed the district court's March 20, 2023 order exactly. Thus, the "unique circumstances" doctrine may apply in Mr. Gravatt's case and may excuse his May 1, 2023 filing of a notice of appeal or his failure to file a motion for extension of time to appeal. *Thompson*, 375 U.S. at 385-86 (excusing the late filing of a notice of appeal where the district court had erroneously assured the appellant that post-trial motions were filed "in ample time").

II. The Fourth Circuit's Decision Conflicts with This Court's Other Precedents.

As the Fourth Circuit failed to acknowledge, the relevant portion of 28 U.S.C. § 2107(c) provides that "the district court may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon a showing of excusable neglect or good cause." App. 37a. Thus, Rule 4(a)(4)(A)'s 28-day time limit to toll the appeal period must be a non-jurisdictional rule because the district court may grant a motion for an extension of time to file an appeal up to 30 days after the appeal period. Indeed, Mr. Gravatt could have filed a motion for an extension of time to appeal at the time he filed his notice of appeal on May 1, 2023, which was within 30 days of April 3, 2023, but did not because the

district court had earlier assured him that the reconsideration motion was timely and, thus, the promptly-filed notice of appeal was also timely. It is undisputed by the parties that the Fourth Circuit had jurisdiction over the district court's case dismissal order. Nevertheless, the Fourth Circuit inexplicably concluded that the 28-day time limit (from Rule 59) in Rule 4(a)(4)(A)(iv, vi) sets forth a limitation on appellate jurisdiction. App. 3a. The Fourth Circuit's reason for this conclusion is that like Rule 4(a)(6) in *Bowles* Rule 4(a)(4)(A) is also a vehicle by which 28 U.S.C. § 2107(c) is employed and that it limits the district court's authority to extend the appeal period. App. 2a-3a. The Fourth Circuit did not address the fact that unlike Rule 4(a)(6)'s 14-day time limitation, 28 U.S.C. § 2107(c) does not impose appellate Rule 4(a)(4)(A)'s or Federal Rule of Civil Procedure 59's 28-day time limitations.

Moreover, the Fourth Circuit ignored this Court's precedent that Rule 4(a)(5)(C)'s 30-day time extension limitation is nonjurisdictional because it is without statutory origin in 28 U.S.C. § 2107(c). *Hamer*, 138 S. Ct. 13, 20 (citing *Bowles*, for the proposition that if "a time prescription governing the transfer of adjudicatory authority *from one Article III court to another* appears in a statute, the limitation is jurisdictional" (emphasis added)). *See also Fort Bend County, Texas v. Davis*, 139 S. Ct. 1843, 1850 n.6 (2019) (quoting *Hamer*) (citing same). Courts may "treat a procedural requirement as jurisdictional only if Congress 'clearly states' that it is." *Wilkins v. United States*, 143 S. Ct. 870, 876

(2023) (quoting *Boechler v. Commissioner of Internal Revenue*, 142 S. Ct. 1493, 1497 (2022)).

The Fourth Circuit's decision is squarely at odds with this Court's precedents even prior to *Bowles*, that have repeatedly recognized that court-promulgated rules of procedure which lack a statutory basis do not constitute a limitation on a court's jurisdiction. For example, the Fourth Circuit's decision conflicts with *Kontrick*, wherein a creditor's objection to a debtor's discharge was untimely under the Federal Rules of Bankruptcy Procedure. At issue was whether the creditor's untimely objection deprived the bankruptcy court of jurisdiction to adjudicate the creditor's objection. *Kontrick*, 540 U.S. at 446-47. The Court stated that "[n]o statute . . . specifies a time limit for filing a complaint objecting to the debtor's discharge[,]" and concluded that the tardy filing did not deprive the bankruptcy court of jurisdiction. *Id.* at 448-52. In so concluding, this Court explained that "[o]nly Congress may determine a lower federal court's subject-matter jurisdiction." *Id.* at 452 (citing U.S. Const., Art. III, § 1). The Court further recognized that "Court-prescribed rules of practice and procedure for cases in the federal district courts and courts of appeals . . . do not create or withdraw federal jurisdiction." *Id.* at 453 (citing *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 370 (1978)) (internal quotation marks omitted).

Similarly, in *Eberhart v. United States*, 546 U.S. 12 (2005), this Court summarily reversed the Seventh Circuit's conclusion that an untimely

motion for a new trial under the Federal Rules of Criminal Procedure deprived the district court of jurisdiction over the motion. *Eberhart*, 546 U.S. at 16-20. *See also Bowles*, 551 U.S. at 210-11 (distinguishing between deadlines set forth in statutes and deadlines set forth in rules); *Schacht v. United States*, 398 U.S. 58, 64 (1970) (providing that "[t]he procedural rules adopted by the Court for the orderly transaction of its business are not jurisdictional"); *Sibbach v. Wilson & Co.*, 312 U.S. 1, 10 (1941) (noting "the inability of a court, by rule, to extend or restrict the jurisdiction conferred by a statute").

Contrary to these precedents, the Fourth Circuit's decision attaches jurisdictional significance to Federal Rule of Appellate Procedure 4(a)(4)(A)—a court-promulgated rule—despite the fact that the Rule has no statutory origin, in stark contrast to Rule 4(a)(6) in *Bowles*.

III. This Case is the Proper Vehicle to Address Federal Rule of Appellate Procedure 4(a)(4)(A)'s Jurisdictionality, and This Court Has Repeatedly Intervened in Jurisdictional Matters.

This case is an ideal vehicle for the Court to address this critical issue. There is no question that the Fourth Circuit viewed Rule 4(a)(4)(A) as a jurisdictional requirement, as its judgment explicitly provided:

> The district court here entered its dismissal order on March 3, 2023. Therefore, the appeal period for the district court's March 3 order could only be tolled if Gravatt filed such a motion by March 31, 2023. However, pursuant to the district court's order that purported to expand the time in which Gravatt could have timely filed his postjudgment motion, Gravatt filed his motion on April 3, 2023, more than 28 days after the district court's dismissal order. Because of this belated filing, the appeal period applicable to the court's dismissal order was not tolled by the filing of Gravatt's motion for reconsideration. *See* Fed. R. App. P. 4(a)(4)(A). ... We therefore lack jurisdiction to review the district court's order granting Defendants' motion to dismiss. *See Bowles*, 551 U.S. at 214. App. 3a.

The Fourth Circuit clearly recognized that Mr. Gravatt relied on the district court's order when he filed the reconsideration motion. In addition, he relied on the district court's assurance of timeliness of the motion a second time when he filed his notice of appeal on May 1, 2023 within 30 days of April 3, 2023 but *without* a motion for extension of time to file an appeal. Nevertheless, the Fourth Circuit on rehearing rejected the argument that the district court's order *sua sponte* extended the time to appeal, as provided for under 28 U.S.C. § 2107(c), until after

the ruling on the motion because it viewed the Rule as a jurisdictional requirement. Accordingly, the question of Rule 4(a)(4)(A)'s jurisdictionality is cleanly presented here.

The question of Rule 4(a)(4)(A)'s jurisdictionality is important. As this Court has recognized, the question of whether a timing requirement is jurisdictional "is not merely semantic but one of considerable practical importance for judges and litigants." *Henderson v. Shinseki*, 562 U.S. 428, 434 (2011). This is because a jurisdictional rule can be raised at any time by any party, and can even be raised *sua sponte* by a court. *Id.* at 434-35. Moreover, jurisdictional requirements are not subject to equitable considerations such as forfeiture, waiver, and the "unique circumstances" doctrine. *Bowles*, 551 U.S. at 213-14. In sharp contrast, nonjurisdictional claim-processing rules can "be forfeited if the party asserting the rule waits too long to raise the point." *Kontrick*, 540 U.S. at 456. Additionally, the "unique circumstances" doctrine may excuse noncompliance with a deadline "where a party acted belatedly in reliance on an erroneous district court ruling." *Mobley v. C.I.A.*, 806 F.3d 568, 577 (D.C. Cir. 2015). Although *Bowles* abrogated the "unique circumstances" doctrine with respect to jurisdictional deadlines, the doctrine remains applicable to nonjurisdictional claim-processing rules. *Mobley*, 806 F.3d at 577 (noting that *Bowles* "left open the doctrine's continued vitality as an exception to a non-jurisdictional rule" and applying the doctrine).

Because the issue of jurisdictionality is critically important, this Court has repeatedly intervened in cases to determine whether particular requirements are jurisdictional in nature. *See, e.g., Henderson*, 562 U.S. 428 (addressing the jurisdictionality of the deadline to appeal from the Board of Veterans' Appeals to the United States Court of Appeals for Veterans Claims); *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154 (2010) (considering jurisdictionality of registration requirement in copyright cases); *Union Pac. R.R. Co. v. Bhd. of Locomotive Eng'rs*, 558 U.S. 67 (2009) (determining jurisdictionality of procedural rules established by the National Railroad Adjustment Board); *Arbaugh v. Y&H Corp.*, 546 U.S. 500 (2006) (deciding jurisdictionality of employee numerosity requirement in Title VII of the Civil Rights Act of 1964); *Eberhart*, 546 U.S. 12 (reviewing jurisdictionality of deadline in Federal Rules of Criminal Procedure); *Scarborough v. Principi*, 541 U.S. 401 (2004) (evaluating jurisdictionality of timing requirement in Equal Access to Justice Act); *Kontrick*, 540 U.S. 443 (assessing jurisdictionality of deadline in Federal Rules of Bankruptcy Procedure); and more recently *Harrow v. Dept. of Defense*, 601 U.S. ___ (2024) (determining jurisdictionality of the deadline for appeals from the Merit Systems Protection Board); *Wilkins*, 143 S. Ct. 870 (deciding jurisdictionality of the time limit to commence an action under the Quiet Title Act). However, this Court has not yet addressed whether Federal Rule of Appellate Procedure 4(a)(4)(A) is jurisdictional in nature. This Court's clarification is needed to determine whether Rule 4(a)(4)(A) should be

permitted to "alter[] the normal operation of our adversarial system" by being "[b]rand[ed] . . . as going to a court's subject-matter jurisdiction." *Henderson*, 562 U.S. at 434.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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