

App. No. ____

IN THE
SUPREME COURT OF THE UNITED STATES

RYAN HARVEY, ROCKS OFF, INC., AND WILD CAT RENTALS, INC.

Applicants,

v.

UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, *ET AL.*,¹

Respondents.

**APPLICATION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF UTAH**

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¹ Other respondents are Dino Cesspooch, Jackie LaRose, Sheila Wopsock, Newfield Production Company, Newfield Rocky Mountains, Inc., Newfield RMI, LLC, Newfield Drilling Services, Inc., L.C. Welding & Construction, Inc., Scamp Excavation, Inc., Huffman Enterprises, Inc., LaRose Construction Company, Inc., and D. Ray C. Enterprises, LLC.

**PETITIONERS' APPLICATION TO EXTEND TIME TO
FILE A PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Justice Sotomayor, as Circuit Justice for the United States Court of Appeals for the Tenth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.3, petitioners Ryan Harvey, Rocks Off, Inc., and Wild Cat Rentals, Inc. respectfully request that the time to file a petition for a writ of certiorari in this case be extended for thirty days to March 7, 2018. The Supreme Court of Utah issued its opinion on November 7, 2017. *See* App. A. Absent an extension of time, the petition therefore would be due on February 5, 2018. Petitioners are filing this application at least ten days before that date. *See* Sup. Ct. R. 13.5. The Court has jurisdiction under 28 U.S.C. § 1257(a) to review this case.

Background

This case involves whether a plaintiff suing tribal officials must first exhaust tribal remedies before proceeding in state court.

1. Petitioners are Ryan Harvey and two corporations for which he is a part owner. App. A, at 2. Harvey alleges that tribal officials from the Ute Tribe attempted to extort him by threatening to shut down his businesses if he did not agree to the tribe's demands. *Id.* Though Harvey's businesses are on private land, their primary service is to provide materials to oil and gas companies that may use those materials on tribal land, private fee land, state land, and federal land. *Id.* at 3. Capitalizing on those relationships, a tribal official demanded that Harvey give him a bribe in order

to continue working with those businesses that conduct some part of their operations on tribal land. *Id.* at 4. Harvey refused. *Id.*

Soon thereafter, the tribe sent a letter to Harvey's customers stating that they were not allowed to do business with Harvey. If they did, those businesses would face penalties and sanctions under tribal law. *Id.* at 4-5. Those businesses predictably stopped working with Harvey as a result. *Id.* at 5.

2. Harvey sued the tribe and officials in state court, alleging that tribal officials exceeded their jurisdiction in threatening Harvey's customers and other claims under state law. App. A, at 5. The defendants moved to dismiss. The trial court granted the motion. *Id.* at 5-6. While the trial court "did not directly rule on the tribal exhaustion doctrine, stating that it 'has already granted the Tribe's Motion to Dismiss, making this issue moot,'" the Supreme Court of Utah concluded that "it essentially did so in substance" by determining "that Harvey's claim that the tribal officials exceeded the jurisdiction of the tribe or acted outside the scope of their authority under tribal law must be addressed in the tribal court." *Id.* at 6.

Harvey appealed to the Supreme Court of Utah. That court affirmed, holding that Harvey must first exhaust tribal remedies before pursuing his claims in state court. *Id.* at 16-23. Justice Lee dissented. *Id.* at 49-61 He noted that this Court has never addressed the issue and there was a split among state courts as to the correct answer. *Id.* at 50. On the merits, he highlighted that no party had ever sought to invoke the jurisdiction of the tribal courts—neither plaintiffs nor defendants. *Id.* at 55. In Justice Lee's view, the majority erred in concluding that decisions of this Court

required plaintiffs to pursue their claims in tribal court first before filing a lawsuit in state court when no party had invoked that forum. *Id.* at 61.

Reasons For Granting An Extension Of Time

The time to file a petition for a writ of certiorari should be extended for thirty days, to March 7, 2018, for several reasons:

1. The forthcoming petition will present an important question of federal law this Court should resolve. Though this Court has held the tribal exhaustion doctrine applies for federal lawsuits, *see Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9 (1987), it has never addressed whether that rule extends to state courts. And as Justice Lee explained in his dissent, there is an acknowledged split among state courts whether it does. *Compare Drumm v. Brown*, 716 A.2d 50, 63-64 (Conn. 1998) (extending tribal exhaustion doctrine to state courts), *with Meyer & Assocs. v. Coushatta Tribe of La.*, 992 So 2d 446, 451 (La. 2008) (declining to extend tribal exhaustion doctrine to state court); *Astorga v. Wing*, 118 P.3d 1103, 1106-97 (Ariz. Ct. App. 2005) (same); *Michael Minnis & Assocs. v. Kaw Nation*, 90 P.3d 1009, 1014 (Okla. Civ. Appl. 2003) (same); *Maxa v. Yakima*, 924 P.2d 372, 373 (Wash. Ct. App. 1996) (same); *Seneca v. Seneca*, 293 A.D.2d 56, 60 (N.Y. App. 2002) (same). The Court's guidance is needed on this recurring question that the Supreme Court of Utah incorrectly decided.

2. Petitioner recently retained outside counsel with Supreme Court expertise to assist in this case. While the Supreme Court of Utah's judgment was entered on November 7, 2017, new counsel entered the case on January 3, 2017. Additional time is necessary and warranted for counsel to review the record in the case, research case

law in other state courts, and prepare a clear and concise petition for certiorari for the Court's review.

3. No prejudice would arise from the extension. Whether the extension is permitted or not, the petition will be considered during this Term and the case would be heard next term should the Court choose to grant the writ.

4. The press of other matters before this Court and other federal courts makes the submission of the petition difficult absent an extension. Petitioner's counsel is counsel or co-counsel in several other cases in which filings are due in this Court and in other federal courts in the next two months.

Conclusion

For the foregoing reasons, the time to file a petition for a writ of certiorari in this matter should be extended thirty days to and including March 7, 2018.

Dated: January 8, 2018

Respectfully submitted,

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