17-6272

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL A. MAGGIO,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit

PETITION FOR REHEARING OF DENIAL OF CERTIORARI

Petitioner respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari entered on November 6, 2017, and (2) granting the petition if certiorari is granted in *Jackson v. United States,* 17-448. For grounds, petitioner states as follows:

1. The petition for certiorari in *Jackson v. United States,* 17-448, was filed September 20, 2017. The issue in that case from the Eleventh Circuit is: "Does a federal funds bribery conviction under 18 U.S.C. § 666(a)(1)(B) require proof of a

quid pro quo or an 'official act,' as defined in *McDonnell v. United States,* 136 S. Ct. 2355 (2016)?" 2017 WL 4280574.

The petition here was filed October 2, 2017, and the question presented is: "Should the considerations of *McDonnell* and *Sun-Diamond* of fair notice under the due process clause, federalism, and free speech, and even the 'necessary and proper' clause apply to bribery prosecutions under § 666(a)(1)(B) and require a quid pro quo element?"

2. In this case, the Solicitor General waived response, and it was distributed for conference right after the waiver and denied November 6th. In *Jackson,* however, the government volunteered to file a response and did so on November 24, 2017. It cited petitioner's case and the denial of certiorari. *Id.* Brief of Respondent United States in Opposition at 9. Jackson has an opportunity to reply before his case is conferenced.

The issue in this case is close enough to *Jackson* that, if the petition *Jackson* is granted, this case should be considered with it or at least held back for consideration in light of *Jackson.* And, if the petition is *Jackson* is also denied, then this petition for rehearing would then essentially be moot.

The Petition at 16-17 shows conflict between the circuits and the muddled nature of the case law. Clarification is needed.

3. The fact an issue has come before the Court in another case still pending

is a ground to grant rehearing under S.Ct. Rule 44 ("its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented."). *See, e.g., Forgett v. United States,* 390 U.S. 203 (1968); *Simmons v. Sea-Land Services, Inc.,* 462 U.S. 1114 (1983).

When the petition was filed here, the Solicitor General had not yet determined whether to file a response in *Jackson.* Coincidentally, their time to respond in *Jackson* was extended thirty days on October 16, 2017, the same day they waived response here.

CONCLUSION

The petition for rehearing should be granted and the writ of certiorari granted if the petition in *Jackson* is granted.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I, John Wesley Hall, Jr., counsel for petitioner, certify that this petition for rehearing is presented in good faith and not for delay.

John Wesley Hall, Jr.