

No. 17-807

In The
SUPREME COURT OF THE UNITED STATES

DONIVON CRAIG TINGLE, et al.
Petitioners,

v.

SONNY PERDUE, Secretary, United States
Department of Agriculture, et al.
Respondents.

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

PETITION FOR REHEARING

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PRELIMINARY STATEMENT

On March 26, 2018, the Court released an order denying Donivon Craig Tingle's petition for Writ of Certiorari. The accrual of intervening facts and circumstances create an appearance and a reality that silent class members are being denied equal justice under the law, as well as the absence of sound judicial decision making. Donivon Craig Tingle asks this Court to reconsider the Court's denial of his Petition for a Writ of Certiorari.

STANDARDS FOR REHEARING

Pursuant to Fed. R. Civ. P. 59(e) this Court may grant a motion for rehearing if it finds that there is "an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." Firestone v. Firestone, 76 F.3d 1205, 1208 (D.C. Cir. 1996) (per curiam) (citation omitted). Additionally, Fed. R. Civ. P. 60(b) allows this Court to grant a Motion for Rehearing for a variety of reasons including (1) mistake, inadvertence, surprise, or excusable neglect; (6) and any other reason that justifies relief.

This Court has substantial discretion in ruling on Motions for Rehearing, whether under Fed. R. Civ. P. 59(e) or Fed. R. Civ. P. 60(b). See, Black v. Tomlinson, 235 F.R.D. 532,533 (D.D.C. 2006). Rule 59(e) motions may be granted in "extraordinary circumstances." Koretov v. Vilsack, 626 F. Supp. 2d at 6 (U.S.D.C. 2009).

MOTION FOR REHEARING

Intervening facts and circumstances have accrued in such a manner as to allow this Court to consider *cy pres* in a complex, thorough, and omnibus fashion. Another case is making its way to this Court and that case is Paloma Gaos v. Google, Inc., 889 F.3d 737 (9th Cir. 2017). This Court should vote to hear *Keepseagle*, but stay that hearing until the *Paloma* case makes its way to the United States Supreme Court.

In so doing, the benefits are numerous and made manifest herein. First, this Court would then be able to consider *cy pres* in each of its myriad permutations. It could review commercial civil and non-governmental aspects of *cy pres*, as well as the civil rights and governmental aspects of the *cy pres* doctrine.

This Court would also be in a position to consider both the Ninth Circuit's articulation of *cy pres*, as well as the District of Columbia's articulation of the doctrine. The Court could consider both an East Coast understanding of *cy pres* and a West Coast interpretation of *cy pres*. In short, consolidation would prevent an incomplete analysis of the *cy pres* issues at hand.

Importantly, if this Court reconsidered 17-807 and granted the petitioner's petition, this Court could negate the appearance of selection and deselection based upon the clout of the litigants (i.e., the clout of Google, Inc., as compared to the lack of

clout of American Indians). It is becoming increasingly clear that *cy pres* will be considered by this Court this year and is immensely practical to consolidate *Keepseagle* with *Paloma* and hear the two cases together. The granting of the Tingle's Petition for Certiorari would also go a long way to quelling the belief held by many that *Keepseagle* 17-807 was deselected to save the Washington, D.C. power elites from embarrassment by holding out to hear the *Paloma (Google)* case exclusively.

By granting this motion for rehearing and granting petitioner's 17-807 petition, this Court would demonstrate convincingly that the only proper way to reach the United States Supreme Court is to file convincing pleadings and not to use ghost writers to write editorials in the Wall Street Journal and politic outside the courtroom.

At best, the Courtroom is the only place where all litigants can appear with some semblance of equality. However, once a competing party is allowed to use *ex parte* clout to get editorial comments published on the same day as another (weaker) party is up for consideration for certiorari on its calendar date, the one shot it has to go to the United States Supreme Court, it gives the unmistakable appearance that even the legal system is rigged against those without substantial clout to steer results in a direction that is favorable to that particular interest.

If this Court were to grant the relief requested, it would restore confidence that the United States Supreme Court is the one deliberative body whose incorruptibility is inviolate. Because right now it appears to many that the pathway to the United States Supreme Court might be enhanced by the people you know and the strings you can pull at the Wall Street Journal and other places, rather than the intrinsic value of the case at hand and the applicability of the issues.

CONCLUSION

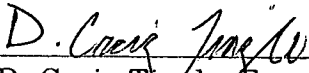
This Court should enter an order granting rehearing, grant petitioner Tingle's Petition for a Writ of Certiorari, stay the matter and consolidate that case with Poloma Gaos v. Google, Inc., 897 F.3d 737 (9th Cir. 2017) when it comes up for certiorari review.

Respectfully submitted,

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CERTIFICATION OF COUNSEL
PURSUANT TO RULE 44.2

I certify that the foregoing Motion for Rehearing of Denial of Petition for Writ of Certiorari in United States Supreme Court Case No. 17-807 is presented in good faith and not for delay. I further certify that the grounds for the motion are intervening circumstances of a substantial or controlling effect and that such grounds have not been previously presented in support of the granting of petitioner's Petition for a Writ of Certiorari.



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