

March 13, 2018

Mr. Scott Harris
Clerk of the Court
Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543-0001

Re: Supplemental Authority
Ann McGeehan v. Michael McGeehan
No. 17-973

Dear Mr. Harris:

Petitioner Ann McGeehan in support of the Petition for Writ of Certiorari, by and through undersigned counsel, and pursuant to Supreme Court Rule 15.8, submits the supplemental authority of this Court's recent opinion in *Texas v. New Mexico*, No. 141, 2018 U.S. LEXIS 1518 (Mar. 5, 2018), (Appendix 'A') and a news article covering the Trump Administration's recent determination to use 28 U.S.C. § 517 in the pending trial level opioid class action cases. *See* "Justice Dept. Backs High-Stakes Lawsuit Against Opioid Makers," Katie Benner and Jan Hoffman, 2/27/2018, New York Times. (Appendix 'B') Due primarily to time-sensitivity concerns, this is being sent to this Court in letter format.

This Court in *Texas v. Mexico*, addressed as a matter of exceptions, the legal issue of whether and to what degree the United States government had authority to "intervene" in a pending inter-state Compact dispute, that does not involve the United States as a party. Citing cases from this Court before the codification of 28 U.S.C. § 517, (referenced in the Petition at pages 24, 27, 31), this Court noted "[o]ur role in compact cases differs from our role in ordinary litigation." *Slip Op.* at 4. While determining permission was appropriate under the facts of the case, "[a]t the same time, our permission should not be confused for license." *Id.* at pg. 5. Distinguishing the conceded "interest" and "integral role" of the United States in crafting the Rio Grande Compact, "[i]t does not necessarily follow that the United States *has blanket authority to intervene* in cases concerning the construction of those agreements." *Id.* at 5, 6 [Emphasis Added] Similarly, this Court in another pending case heard the same day as *Texas*, may soon opine what degree should a *blanket authorization* exist before this Court by technically third-party government agencies choosing to *not* intervene, under this Court's case law and rules. *See Florida v. Georgia*, (Oral Argument, 1/8/2018) (Noting that Army Corps of Engineers "said explicitly [in briefing] that it is not bound by an order of this Court..." and that "life would be a lot easier if the Corps had

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intervened.” Avail:

https://www.supremecourt.gov/oral_arguments/argument_transcripts/2017/142-orig_h3cj.pdf

The recent public announcement by the Justice Department two weeks ago, confirms that the legal issue sought Certiorari by Petitioner, on whether any standards or procedures exists in challenging the Government’s use of a *trial level* Statement of Interest under 28 U.S.C. § 517, in both state and federal courts, is one of increasing national importance. *See supra*, New York Times article, February 27, 2018 (“Justice Department plans to file a so-called statement of interest in the [opioid makers] lawsuit, a technique that past administrations have typically reserved for cases that directly affect the federal government’s interests, like diplomacy and national security. The Obama administration had used statements of interest to expand the boundaries of civil rights laws...The attorney general is legally able to argue on behalf of the government’s interest in any court in the country via a statement of interest, which does not make the government a plaintiff.”)

The Certiorari Petition pending with this Court, involved the Federal Government’s blanket and apparently standardless use of a Statement of Interest under 28 U.S.C. §517, which prominently illustrates the federalism issues invokable under Supreme Court Rule 10(c), with both the Special Master and Circuit Court judge ruling against the Government (yet concluding that they did not have discretion in the matter). Thus the Maryland appellate court concluded despite the “vague” circumstances of its use in a divorce case, and it being a federal statute “there is no standard by which to review the government’s decision to intervene or the trial court’s decision to permit the intervention. *See Falkowski [v. EEOC*, 783 F.2d 252, 254 (D.C. Cir. 1986)(JJ. Ginsburg, Robinson, and McGowan)(noting that there is no standard of review in the [§517] statute, any regulation, or any administrative practice.”] (Pet. Pg. 17; A8). Thus, inherent in this peculiar statute, without any applicable standards, and being used increasingly on a wide variety of state and federal cases, is the Government’s claimed ability to simultaneously claim and disclaim “intervention” and why Petitioner specified that this Court should seek the Solicitor General’s counsel on whether to grant or deny Certiorari though a CFR or CVSG. (Pet. Pg. 32-34)

Your assistance in bringing this supplemental authority to the immediate attention of the Court is appreciated. Distribution copies are enclosed.

Respectfully Submitted,

/s/_____

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