

No. _____

In The
Supreme Court Of The United States

Bret Chialfalo, Levi Jenet Guerra, and Esther Virginia John,
Applicants,

v.

State of Washington,
Respondent.

**APPLICATION FOR AN EXTENSION OF TIME TO FILE A
PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF WASHINGTON**

**Directed to the Honorable Elena Kagan, Associate Justice,
as Circuit Justice**

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Dated: August 2, 2019

TO THE HONORABLE ELENA KAGAN:

APPLICATION FOR AN EXTENSION OF TIME

Pursuant to Rule 13.5 of the Rules of this Court, Applicants Bret Chiafalo, Levi Guerra, and Esther John hereby request a 60-day extension of time within which to file a petition for a writ of certiorari, up to and including October 21, 2019.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *In the Matter of Levi Guerra, Esther V. John, and Peter B. Chiafalo*, No. 95347-3 (May 23, 2019) (attached as Exh. 1). The Supreme Court of the State of Washington issued its opinion and judgment on May 23, 2019.

JURISDICTION

This Court will have jurisdiction over any timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1257(a). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for a writ of certiorari would be due to be filed on or before August 21, 2019. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the filing date for the petition for a writ of certiorari.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicants respectfully request a 60-day extension of time within which to file a petition for a writ of certiorari seeking review of the decision of the Supreme Court of the State of Washington, up to and including October 21, 2019.

1. This case presents an important and unresolved question of federal constitutional law: whether presidential electors may be penalized for their decision to vote for a presidential candidate other than the one that they had been pledged to vote for. In *Ray v. Blair*, 343 U.S. 214 (1952), this Court upheld a state law requiring such a pledge but specifically declined to decide whether “such promises of candidates for the electoral college are legally unenforceable because violative of an assumed constitutional freedom of the elector under the Constitution, Art. II, § 1, to vote as [the elector] may choose in the electoral college.” *Id.* at 230. Developments in presidential elections since *Ray* have revealed that it is critical for this Court to answer the question of the freedom of presidential electors before the next presidential election in 2020 so that states and presidential electors know whether laws purporting to bind the votes of presidential electors

are enforceable. (Approximately thirty states have some form of these laws.)

2. An extension is warranted so that this Court can effectively coordinate multiple cases and potentially render a decision on this unresolved issue before the 2020 presidential election. Several counsel for Applicants are also counsel for former presidential electors in *Baca v. Colorado Department of State*, 10th Cir. No. 18-1173. *Baca* presents substantially the same constitutional issue as this one. That appeal was argued in the U.S. Court of Appeals for the Tenth Circuit on January 24, 2019, but no decision has yet been issued.

If the presidential electors succeed in that appeal, that will create a direct, recent conflicting decision that this Court would be in sole position to resolve. And even if Colorado prevails on appeal in *Baca*, this Court will still have the benefit of an additional appellate decision as it considers whether to grant this important petition. In either event, if an extension is granted, this Court will receive the benefit of multiple recent lower court decisions. At the same time, even with an extension, this Court will still be able to potentially hear this appeal on the merits in October Term 2019

and render a decision in advance of the 2020 presidential election without any need for an expedited schedule.

Thus, there is good cause to extend the time to file this petition for 60 days so that this petition can be researched, written, and filed when the Court, the parties, and any potential amici have the maximum information available to them.

3. Once the Tenth Circuit decides the *Baca* appeal, the Applicants will move quickly to draft and file their petition in this case. Thus, while a pre-emptive extension is necessary so that the Applicants can have certainty about the ultimate due date for any petition, this Court may in fact receive the petition in this case earlier than the extended due date if the Tenth Circuit issues a decision relatively soon.

CONCLUSION

For the foregoing reasons, Applicants respectfully request a 60-day extension of time within which to file a petition for a writ of certiorari seeking review of the decision of the Supreme Court of the State of Washington, up and including October 21, 2019.

Dated: August 2, 2019

A handwritten signature in blue ink that reads "L. Lawrence Lessig". The signature is written in a cursive style and is positioned above a horizontal line.

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