

App. No. ____

IN THE
SUPREME COURT OF THE UNITED STATES

NATIONAL ASSOCIATION FOR GUN RIGHTS, INC.

Applicant,

v.

JEFF MANGAN, in his official capacity as the Commissioner of Political Practices for the State of Montana; Timothy G. Fox, in his official capacity as Attorney General for the State of Montana; Leo J. Gallagher, in his official capacity as County Attorney for the County of Lewis and Clark

Respondents.

**APPLICATION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

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

To the Honorable Justice Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22 and 30.3, petitioner National Association for Gun Rights, Inc. respectfully requests that the time to file a petition for a writ of certiorari in this case be extended for thirty days to December 12, 2019. The Ninth Circuit issued its opinion on August 12, 2019, Appendix (“App.”) A. There was no petition for rehearing or rehearing *en banc*. Absent an extension of time, the petition for a writ of certiorari would be due on November 12, 2019.¹ Petitioner is filing this application at least ten days before that date. *See* S. Ct. R. 13.5. The Court has jurisdiction under 28 U.S.C. § 1254 to hear this case.

BACKGROUND

This case involves important and recurring issues concerning the state regulation of speech protected by the First Amendment.

1. The National Association for Gun Rights, Inc. (“NAGR”) is a grassroots organization whose mission is to defend the “right to keep and bear arms” and educate the public on issues related to the Second Amendment. One way NAGR does so is by letting the public know, through informational mailings, where government officials stand on issues related to the Second Amendment. NAGR has mailed and desires to

¹ Ninety days from the date of the Ninth Circuit’s opinion is November 10, 2019 which is a Sunday, and November 11, 2019 is Veterans Day, a federal holiday, therefore, pursuant to Sup. Ct R. 30.1 and 5 U.S.C. § 6103, the due date is November 12, 2019.

mail such educational literature to Montanans. The literature describes officials who have supported the Second Amendment and those who have not and educates citizens about those officials' actual voting records; however, these communications do not advocate for or against a candidate for office. It is traditional issue advocacy and the most fundamental type of speech protected by the First Amendment.

2. In 2015, the Montana Legislature enacted SB-289 (codified at Mont. Code Ann. § 13-1-101(15)(a)) which created a new category of speech “electioneering communications” subject to regulation by Montana. This statute swept within its reach any type of communication made near an election that merely mentions the name of a candidate for office.

3. That statutory provision defined “electioneering communication” as:

a paid communication that is publicly distributed by radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the district voting on the candidate or ballot issue, and that: (i) refers to one or more clearly identified candidates in that election; (ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election; or (iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

Mont. Code Ann. § 13-1-101(15)(a).

4. Anyone who makes an electioneering communication is required to register as a political committee and comply with a variety of regulations including: registration (Mont. Code Ann. § 13-37-201(b)), appointment of a campaign treasurer (Mont. Code Ann. §§ 13-37-201 to 204), creation of a campaign depository (Mont. Code

Ann. § 13-37-205), record keeping requirements (Mont. Code Ann. §§ 13-37-207 to 208), and various reporting requirements (Mont. Code Ann. §§ 13-37-225 to 231), including identification of donors (Mont. Code Ann. §§ 13-37-229(1) and 232(1)).

5. In 2016, NAGR filed suit against several Montana officials and agencies alleging, *inter alia*, that Montana’s definition of electioneering communications was unconstitutional both facially and as applied to NAGR for a 2012 communication.²

6. The district court granted summary judgment to Montana, rejecting NAGR’s argument that Montana’s definition of “electioneering communications” was constitutionally overbroad. The court held that disclosure requirements were not limited to speech that is express advocacy or its functional equivalent and Montana’s interest in increased transparency was a sufficiently important governmental interest to justify Montana’s regulation of “electioneering communications.”

7. With the exception of finding unconstitutional Montana’s requirement (Mont. Code Ann. § 13-37-203), that the treasurer of a political committee be Montana registered voter, the Ninth Circuit affirmed the district court’s decision. The court rejected NAGR’s argument that Montana’s “electioneering communication” statute impermissibly regulates a nearly limitless array of speech simply because candidates’ names are mentioned in a communication made near in time to an election. According to the Ninth Circuit, “Montana’s scheme is sufficiently tailored to

² NAGR also challenged Montana’s “compelled-vote-reporting” provision, Mont. Code Ann. § 13-35-225(3)(a) as well as sought declaratory judgment and injunctive relief to prevent the Montana Commissioner of Political Practices from prosecuting NAGR for the 2012 mailing. The district court dismissed NAGR’s request for declaratory judgment and injunctive relief as time barred and granted NAGR summary judgment on its challenge to § 13-35-225(3)(a) holding it unconstitutional. Neither claim was appealed and therefore is not subject to this petition.

Montana's interest in informing its electorate of who competes for the electorate's attention and preventing the circumvention of Montana's laws." App. A, at 36.

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 December 12, 2019, for several reasons:

1. The forthcoming petition will present important questions of federal law pertaining to the extent that states may regulate First Amendment activities requiring speakers to register with state authorities and report their activities and identity of their donors, particularly in cases where the speech at issue does not contain express advocacy, is not an expensive broadcast advertising targeted to a large audience, and there is no actual evidence to support the state's gratuitous assertion of an interest to justify its regulation of the speech. *See Buckley v. Valeo*, 424 U.S. 1 (1976); *McConnell v. FEC*, 540 U.S. 93 (2003); *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 474 (2007); *Citizens United v. FEC*, 558 U.S. 310, 361 (2010).

2. Additionally, the forthcoming petition will present the conflict between the Ninth Circuit's decision here and the Seventh Circuit's decision in *Wisconsin Right to Life, Inc. v. Barland*, 751 F.3d 804 (7th Cir. 2014), holding a similar Wisconsin law to be unconstitutional. The Court's guidance is needed to resolve this circuit split on this recurring federal question that the Ninth Circuit incorrectly decided.

3. No prejudice would arise from the extension. Whether or not the extension is granted, the petition will be considered during this Term and the case

would be heard either this Term or the next Term should the Court choose to grant the writ. The judgement below will be in force and effect pending the disposition of this petition for a writ of certiorari.

4. The press of other matters before this Court and other federal courts makes the submission of the petition difficult absent an extension. Applicant's counsel is counsel in several other cases with impending deadlines.

CONCLUSION

For these foregoing reasons, the time to file a petition for a writ of certiorari in this matter should be extended thirty days to and including December 12, 2019.

Dated: October 30, 2019

Respectfully submitted,

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