No. _____

In the Supreme Court of the United States

EDWARD HEDICAN,

Petitioner,

v.

WALMART STORES EAST, L.P., ET AL.,

and

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Cameron* v. *EMW Women's Surgical Center*, this Court will determine whether the Sixth Circuit erred in holding that the Kentucky Attorney General's motion to intervene after the panel decision solely to continue the appeal was untimely. In so doing, this Court is also likely to provide clarity on the legal standard courts of appeals should apply in such situations.

This petition presents identical questions and should be held pending *Cameron*. Here, the Seventh Circuit denied Petitioner Edward Hedican's motion to intervene on appeal for the sole purpose of seeking this Court's review. The court did not question Petitioner's legal interest in the case, the potential impairment of his interest, the government's inadequate representation of his interest, or his statutory right to intervene. Instead, the court held that "Edward Hedican had [the] opportunity to intervene before the case was argued to the panel many months ago," and for that reason alone denied intervention. The question presented is:

Did the Seventh Circuit err in holding that Petitioner's post-judgment motion to intervene for the sole purpose of filing a petition for certiorari in this Court was untimely?

PARTIES TO THE PROCEEDINGS

Petitioner Edward Hedican was the charging party before the EEOC, and proposed intervenor-plaintiff-appellant in the court of appeals.

Respondents Walmart Stores East, L.P., and Wal-Mart Stores, Inc., were the defendants in the district court and the appellees in the court of appeals.

Respondent Equal Employment Opportunity Commission was the plaintiff in the district court and the appellant in the court of appeals.

RELATED PROCEEDINGS

Hedican v. *Walmart Stores East, L.P.*, *et al.*, No. 21M24 (U.S. Supreme Court, motion to intervene denied Oct. 12, 2021).

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INTRODUCTION

It is hard to imagine a stronger case for appellate intervention. Petitioner Edward Hedican has a statutory right to intervene in this litigation. And it is undisputed that this right would be impaired absent intervention because the federal government does not adequately represent Hedican's unique interests before this Court. The Seventh Circuit, however, believed that Hedican's post-judgment motion to intervene was untimely solely because Hedican could have intervened earlier in the litigation. While this is true, it misses the point. Earlier, Hedican's interests *were* adequately represented by the EEOC. Representation only became inadequate when it came time to seek this Court's review.

The Seventh Circuit's rule imposes a harsh result on Hedican. Despite having a statutory right to intervene in a case that addresses discrimination he suffered, and despite the fact that the EEOC found his case so meritorious it vigorously pursued it through en banc review, Hedican found himself locked out of the case when it mattered most: when the interests of the federal government no longer aligned with his interest in continuing to vigorously pursue this litigation. Absent intervention, Hedican will have no ability to continue pressing his claims.

This timing issue—the only issue addressed by the Seventh Circuit—is identical to the timing issue the Court is currently considering in *Cameron*. Like *Cameron*, Petitioner here sought to intervene solely for the purpose of exhausting his appellate rights. Like *Cameron*, Petitioner's intervention would not have prejudiced or delayed the existing litigation in any way.

And, like *Cameron*, intervention turns on the legal standard applicable to intervention in the courts of appeal.

Given that this Court's decision in *Cameron* will almost certainly prove dispositive or at least provide crucial guidance here, Petitioner respectfully requests that the Court hold this petition pending resolution of *Cameron*. Depending on the Court's final ruling in that matter, this petition should then be set for plenary review, or the Court should then grant the petition, vacate the judgment below, and remand for further proceedings. Alternatively, the Court should order the attached petition for certiorari on the merits to be filed.

OPINIONS BELOW

The Seventh Circuit's opinion is reported at 992 F.3d 656 and reproduced at App.1a. The district court's opinion is unreported but available at 2020 WL 247462 and reproduced at App.13a. The Seventh Circuit's order denying the EEOC's petition for rehearing en banc is reproduced at App.39a. The Seventh Circuit's orders denying Petitioner's motion to intervene and motion for reconsideration are reproduced at App.35a and App.37a, respectively.

JURISDICTION

The Seventh Circuit denied Petitioner's intervention motion on June 4, 2021 and denied reconsideration of Petitioner's intervention motion on June 8, 2021. The Seventh Circuit denied the EEOC's en banc petition on June 1, 2021. This Court has jurisdiction under 28 U.S.C. 1254(1) and 28 U.S.C. 2106. See *International Union, United Auto., Aerospace & Agric.*

Implement Workers of Am., AFL-CIO, Local 283 v. *Scofield*, 382 U.S. 205, 208 (1965).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. 2000e-5(f)(1) provides in part:

> The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission[.]

42 U.S.C. 2000e-2(a) provides in part:

> It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual * * * because of such individual's * * * religion[.]

42 U.S.C. 2000e(j) defines "religion," and a defense to otherwise-unlawful discharge, as follows:

> The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

STATEMENT

I. Factual background

A. Petitioner Edward Hedican

Petitioner Edward Hedican was baptized into the Seventh-day Adventist Church in 2002. He later became an Elder in his local congregation, App.110a, assisting the pastor with church functions and occasion-

ally teaching lessons and giving sermons. As a practicing Seventh-day Adventist, Hedican observed the Sabbath every week, refraining from work starting at sundown on Friday until sundown on Saturday. App.110a. On Saturdays, Hedican would attend Sabbath school classes and church services, travel to different churches to attend church functions or district meetings, and spend time with his family.

B. Walmart offers Hedican an assistant manager position.

On April 25, 2016, Walmart offered Hedican a position as assistant manager at its Hayward, Wisconsin store. App.102a. As an assistant manager, Hedican would be responsible for overseeing hourly associates, "the stocking and rotation of merchandise," "monitoring expenses, asset protection and safety controls, overseeing safety and operational reviews, [and] analyzing reports and modeling proper customer service." App.18a. All assistant managers are also assigned a specific area of responsibility in the store. While assistant managers typically rotate areas of responsibility annually, some assistant managers maintained the same area of responsibility for several years. App.19a.

C. Hedican seeks an accommodation for his Sabbath observance and Walmart rescinds the offer.

On May 1, 2016, Hedican accepted Walmart's offer, explaining that he was "very excited to accept the position and begin [his] career with the Walmart family." App.109a. He also informed the company that he was a Seventh-day Adventist and that his "religious faith [wa]s extremely important" to him. App.110a. And he explained that he "believe[d] and ke[pt] the biblical

7th day Sabbath in the 10 Commandments which is Saturday." App.110a. Accordingly, he would "not [be] able to work any Saturdays until after sundown," but was "available any other day of the week and can be available after sundown on Saturday nights if needed." App.110a.

When Lori Ahern, Walmart's market human resources manager, was determining whether to accommodate Hedican's religious practice, she stated that she considered factors like Walmart's expectations for the role of assistant manager, the Hayward store's specific staffing needs, and overall manager coverage at the store. App.17a-18a.

Ahern also consulted Walmart's religious accommodations guidelines. These guidelines recommended accommodating Sabbath observance, noting that "flexible arrival and departure times," "staggered work hours," and "voluntary swaps with other associates" "may be necessary, unless providing the accommodation will result in an undue hardship." App.16a; 98a-99a.[1] This guidance specifically addressed Sabbath-observing managers like Hedican, even explaining that on the "rare occasion" when a manager is unable to find another manager to swap shifts, the manager may "be permitted to take a PTO day in lieu of working his/her Sabbath." App.99a-100a.

Despite this guidance, and without talking to Hayward's seven other assistant managers or making ad-

[1] Under these guidelines, any accommodation imposing "[m]ore than minimal cost" could be denied as an undue hardship. App.96a-97a.

ditional inquiries, Ahern assumed that accommodating Hedican would impose "a hardship on the business because it could cause them to be understaffed or to have to add an additional assistant manager to ensure that we have the coverage." App.132a. Ahern later testified she did not *think* Hedican would be able to swap shifts with other assistant managers, as other assistant managers "may have plans" or may not want to work extra Saturdays. App.132a-133a; App.23a. Ahern also did not consider other potential scheduling accommodations (like letting Hedican work night shifts or 12-hour shifts), instead asserting that all assistant managers needed to be available to work "various days" and "various shifts" given the variable needs of the store. App.133a. Accordingly, despite Hedican's offer to work nights or any other weekend hours, Ahern concluded that Walmart could not accommodate Hedican. App.132a-134a; App.113a.

In a May 18, 2016 email, Ahern denied Hedican's requested accommodation, claiming that his Sabbath observance constituted an "inability to perform the essential functions of the job." App.113a. Ahern said she could "assist [him] in the application process" for other positions in the store, App.113a, but all of these positions were hourly (instead of salaried, like the assistant manager position) and paid less. See App.29a.

II. The proceedings below

A. Hedican's charge and the EEOC's complaint

Hedican filed a charge with the EEOC, outlining Walmart's recission of his employment offer and denial of a religious accommodation. At that time—and

at all times up until seeking intervention at the Seventh Circuit—Hedican acted *pro se*. After investigating Hedican's charge, the EEOC sued Walmart on September 27, 2018. App.70a. As the charging party, Hedican was not included in the EEOC's complaint, though the EEOC's prayer for relief included a request for monetary damages for Hedican.

On January 16, 2020, the district court dismissed the case and held, under the *Hardison* standard, that Walmart "could not accommodate [Hedican's] request to have every Saturday off without incurring undue hardship." App.14a.

B. Seventh Circuit proceedings

The EEOC appealed. In its brief, the EEOC argued that Walmart should have considered voluntary shift swaps, see EEOC CA7 Br.44-48, and that Walmart could not rely on speculative hardships, see *id.* at 46-47. The EEOC also stated that this Court should overrule *Hardison*. See *id.* at 36 n.5.

On March 31, 2021, a divided panel of the Seventh Circuit affirmed. App.7a. The majority acknowledged an ongoing debate at the Supreme Court over the validity of the *Hardison* standard, noting "[t]hree Justices believe that *Hardison*'s definition of undue hardship as a slight burden should be changed[,]" but stated that "[o]ur task, however, is to apply *Hardison* unless the Justices themselves discard it." App.7a. Accordingly, the panel held that Walmart's options for accommodating Hedican—including hiring "a ninth assistant manager"—would "require Walmart to bear more than a slight burden," in violation of *Hardison*. App.3a; App.7a. The majority rejected voluntary shift swaps as an accommodation, asserting that this

"would not be an accommodation *by the employer*" because it "would thrust [accommodating Hedican] on *other workers*." App.5a. The majority also thought other workers might "balk[]" and refuse to swap shifts, but acknowledged this was hypothetical as Walmart didn't even ask. App.5a-6a.

Judge Rovner dissented. She observed that "Hedican was available to work on Fridays, Saturday nights and Sundays," and explained that "if he were willing to disproportionately accept shift assignments during the 48 of 72 weekend hours outside of his observed Sabbath, then other managers might have been willing to pick up the slack on Friday nights and Saturdays." App.8a. She noted Walmart "could not know for certain unless [it] asked" the other assistant managers, "and yet [it] did not." *Ibid.* Had Walmart done so, it "might have discovered that it was in fact feasible to accommodate both Hedican and the other managers." *Ibid.*

On May 17, 2021, the EEOC filed a petition for panel rehearing and rehearing en banc, describing a division of authority among the circuits on two different questions regarding what constitutes an "undue hardship" under Title VII. App.41a. On June 1, 2021, the Seventh Circuit denied the EEOC's petition. App.39a.

Hedican obtained his own legal counsel for the first time on May 26, 2021. One week later, he moved to intervene at the Seventh Circuit for the sole purpose of filing a petition for review in this Court. App.58a-85a. Hedican explained to the Seventh Circuit that the federal government, now represented by the Solicitor General, might not seek this Court's review of the

panel's decision and that the federal government for the first time in the litigation did not adequately represent Hedican's interests. *Ibid.*

On June 4, 2021, the Seventh Circuit, in a single-judge order issued by Judge Easterbrook, denied Hedican's motion as "untimely" because "Hedican had [the] opportunity to intervene before the case was argued to the panel many months ago." App.35a-36a.

Hedican immediately sought reconsideration, explaining that, because he sought intervention for the sole purpose of seeking Supreme Court review, his request was timely and that he was not seeking to reargue the appeal at the Seventh Circuit. App.86a-92a. The Seventh Circuit, in another single-judge order issued by Judge Easterbrook, denied his reconsideration motion the next day. App.37a.

C. Proceedings in this Court

On September 1, 2021, Hedican moved to intervene in this Court. As Hedican explained, while "he could *also* file a petition for review of the Seventh Circuit's denial of intervention," this "[wa]s not the only means by which intervention may be sought." *Hedican* v. *Walmart Stores East, L.P.*, No. 21M24, Reply 2 n.2. This Court denied Petitioner's motion on October 12, 2021. On the same day, this Court heard oral argument in *Cameron* v. *EMW Women's Surgical Center*, No. 20-601, during which the legal standards for intervention on appeal, and specifically the standards for timeliness of intervention on appeal, were discussed.

REASONS FOR GRANTING THE PETITION

I. The only question in this petition is whether Hedican's motion to intervene at the Seventh Circuit was timely.

Throughout this litigation, Hedican's *right* to intervene has not been questioned. As the "aggrieved person" identified in the EEOC's complaint, Hedican has an unconditional right to intervene under 42 U.S.C. 2000e-5. See *General Tel. Co. of the Nw., Inc.*, v. *EEOC*, 446 U.S. 318, 326 (1980) (expounding 42 U.S.C. 2000e-5). And, under Rule 24(a)(2), Hedican also has a direct and substantial legal interest in this lawsuit. *EEOC* v. *Associated Dry Goods Corp.*, 449 U.S. 590, 602 (1981) ("Congress considered the charging party a 'private attorney general,' whose role in enforcing the ban on discrimination is parallel to that of the Commission itself."). Nor is there any doubt that, absent intervention, Hedican's unique interests will not just be impaired—they will be extinguished. The current litigation is Hedican's only opportunity to vindicate his rights. See *EEOC* v. *Waffle House, Inc.*, 534 U.S. 279, 291 (2002). Any future suit challenging the same conduct would be precluded. See, *e.g.*, *EEOC* v. *United States Steel Corp.*, 921 F.2d 489, 495 (3d Cir. 1990).

Nor does anyone disagree that the federal government is unable to adequately represent Hedican's interests before this Court. While Hedican's interests in this litigation remain the same, his interests no longer align with the shifting interests of the federal government. Through the court of appeals, the EEOC retained independent litigating authority in this case and thus was able to vigorously pursue relief for Hedi-

can. But litigating authority was transferred to the Attorney General when it came time to seek certiorari before this Court. 42 U.S.C. 2000e-4(b)(2). Unlike the EEOC, the Attorney General is charged with representing the interest of the entire federal government. And, as the nation's largest employer, the federal government's interests in seeing *Hardison* reversed are, at best, conflicted.

That makes the question presented by this petition narrow: the only issue is whether Hedican's motion to intervene at the Seventh Circuit was timely. The Seventh Circuit concluded that it was not, explaining that "Hedican had [the] opportunity to intervene before the case was argued to the panel many months ago." App.35a-36a. Hedican, of course, disagrees. He acted "promptly" once it became clear that his interests "would *no longer* be protected." *United Airlines, Inc.* v. *McDonald*, 432 U.S. 385, 394 (1977) (emphasis added); see also *NAACP* v. *New York*, 413 U.S. 345, 367 (1973) (prospective intervenors were required to act once it was "obvious that there was a strong likelihood" that the United States would cease to represent their interests). This question—whether Hedican's motion to intervene post-judgment for the sole purpose of seeking this Court's review was timely—will decide whether intervention should have been granted in the Seventh Circuit and is the same question before this Court in *Cameron*.

II. The Court's decision in *Cameron* will likely prove dispositive or provide crucial guidance regarding resolution of this petition.

This petition raises at least two of the same questions before this Court in *Cameron* v. *EMW Women's*

Surgical Center, No. 20-601: whether intervention for purposes of appeal after a panel decision is "timely," and, more broadly, what standard applies for intervention on appeal.

First, in *Cameron* the Kentucky Attorney General argues that "set[ting] aside [petitioner's] sovereign interests," the motion to intervene "was timely." Pet. Br. 32., *Cameron*, No. 20-601. But the Sixth Circuit concluded that the Kentucky Attorney General should have sought intervention before the panel issued its merits decisions. *EMW Women's Surgical Ctr., P.S.C.* v. *Friedlander*, 831 Fed. App'x 748, 752 (6th Cir. 2020). Because the Attorney General failed to do so preemptively—even though another agent of the State was still defending the state statute at issue at that time—the Sixth Circuit denied the motion as untimely. *Ibid.*

This Court granted certiorari, and the parties extensively briefed whether the Sixth Circuit abused its discretion in holding that the Kentucky Attorney General's post-judgment motion for intervention was untimely. The Kentucky Attorney General argued that his motion for appellate intervention was timely because it did not delay the litigation and was intended solely to exhaust the State's appellate rights. Pet. Br. 21, 30-32, *Cameron*, No. 20-601. And Respondents added this as a separate question presented, asking "[w]hether the court of appeals acted within its discretion by concluding that the motion to intervene was untimely when the Attorney General * * * moved to intervene only after the court of appeals had affirmed the judgment below." Resp. Br. i, *Cameron*, No. 20-601. And at oral argument, the parties discussed this

exact issue—with the Kentucky Attorney General arguing that his intervention "was timely, even though it was post-judgment," and Respondent claiming the precise opposite: that it "was not an abuse of discretion to hold that post-judgment intervention * * * was untimely." Tr.6:14-15, 45:15-17, *Cameron*, No. 20-601.

Second, and more broadly, *Cameron* presents the important question of what legal standard governs motions to intervene on appeal. As this Court has explained, no rule of appellate procedure explicitly controls appellate intervention, though "helpful analogies may be found" in Federal Rule of Civil Procedure 24. *International Union, United Auto., Aerospace & Agric. Implement Workers of Am. AFL-CIO, Loc. 283* v. *Scofield*, 382 U.S. 205, 216-217 & n.10 (1965). The lower courts have followed the analogy. See, *e.g.*, *Sierra Club, Inc.* v. *EPA*, 358 F.3d 516, 517-518 (7th Cir. 2004) ("[A]ppellate courts have turned to the rules governing intervention in the district courts under Fed. R. Civ. P. 24."); *Elliott Indus. Ltd. P'ship* v. *BP Am. Prod. Co.*, 407 F.3d 1091, 1102 (10th Cir. 2005) ("[A] party seeking intervention on appeal must satisfy the prerequisites of Rule 24(a)."); *Northeast Ohio Coal. for the Homeless & Serv. Emps. Int'l Union, Local 1199* v. *Blackwell*, 467 F.3d 999, 1007 (6th Cir. 2006) (same).

The Kentucky Attorney General argues that Rule 24 is the touchstone of any appellate intervention analysis, Pet. Br. 16, 33, *Cameron*, No. 20-601, while the Respondent in *Cameron* contends that Rule 24 "may be relevant to consider, but serve[s] only as a guide to inform the appellate court's discretion," and that therefore, "motions to intervene on appeal are re-

served for truly exceptional cases." Resp. Br. 23, *Cameron*, No. 20-601 (cleaned up). Those same questions were also raised during oral argument, Tr. 5:20-6:15, 31:10-32:3, *Cameron*, No. 20-601 with a special emphasis on "the post-judgment intervention context," the Court's "inherent supervisory authority over the courts of appeal," and the proper standard "in the context of private parties," *id.* at 34:25-37:23 (Barrett, J.).

Both of these issues presented in *Cameron* are squarely presented in Hedican's case as well. First, determining the timeliness of a motion to intervene post-judgment is central to this case. The Seventh Circuit, in a single-judge order issued by Judge Easterbrook, denied Hedican's motion as "untimely" because "Hedican had opportunity to intervene before the case was argued to the panel many months ago." App.35a-36a. In *Cameron*, the Sixth Circuit similarly ruled that the Kentucky Attorney General's motion came "years into [the case's] progress, after both the district court's decision and—more critically—this Court's decision." *EMW*, 831 Fed. App'x at 750.

In both cases, the lower courts placed dispositive weight on the post-judgment timing of the motion, even though this Court has explained—in the analogous Rule 24 context—that "the point to which the suit has progressed is one factor in the determination of timeliness," but it is "not solely dispositive." *NAACP*, 413 U.S. at 365-366. Moreover, here, as in *Cameron*, Hedican's motion to intervene has not delayed this litigation a single day, which also favors a conclusion that the motion was timely. See Tr.74:5-10, *Cameron*, No. 20-601 ("[T]he Attorney General filed a petition for rehearing on the same date that it would have been

due if the Secretary had still been in the case. So it seems a bit much to say that they were delaying the proceedings." (Roberts, C.J.)). And finally, as in *Cameron*, Hedican moved to intervene shortly after learning that the party representing his interests earlier in the litigation might not seek further review of the panel's decision. Indeed, Hedican sought to intervene as soon as he determined that the federal government, now represented by the Solicitor General, no longer adequately represented his interests.

Second, like *Cameron*, this petition may turn on the legal standard for appellate intervention. In the Seventh Circuit, Hedican argued, consistent with circuit precedent, that Federal Rule of Civil Procedure 24 should guide the court's consideration of this motion, and that he was entitled to intervene post-judgment under this standard. App.72a n.1. The same arguments are made by the Kentucky Attorney General in *Cameron*, who has suggested that Rule 24 is a "helpful analogy when considering whether to allow intervention before an appellate court." Pet. Br. 16, *Cameron*, No. 20-601 (cleaned up).

Additionally, during oral argument in this Court, several Justices asked the advocates about the legal standard for appellate intervention, recognizing that "there isn't much law for appellate intervention," Tr.5:14, and questioning (1) whether "abuse of discretion is a proper standard of review," Tr. 31:10-13, *Cameron*, No. 20-601; (2) whether "the same kind of rule appl[ies] in private litigation," *id.* at 33:6-7, 36:21-24; and (3) how this standard applies "in the post-judgment intervention context," *id.* at 35:21-25. Therefore, *Cameron* seems all but certain to clarify the legal

standard applicable to Hedican's motion for appellate intervention.

Given the numerous overlapping issues in these two cases, this Court's opinion in *Cameron* is likely to provide dispositive guidance here. Indeed, if this Court concludes that the Kentucky Attorney General's motion to intervene was timely, Hedican's motion to intervene in the Seventh Circuit should be an *a fortiori* case. And regardless of exactly how this Court rules in *Cameron*, the legal standard this Court employs will apply to motions to intervene on appeal like Hedican's.

To be sure, *Cameron* involves important state sovereignty interests not at issue here, but as the Kentucky Attorney General explained, the motion for appellate intervention was timely even "set[ting] aside Kentucky's sovereign interests." Pet. Br. 32, *Cameron*, No. 20-601. And questioning at oral argument confirmed that *Cameron* may impact the standard for intervention on appeal "even in the context of private parties." Tr.36:21-24, 33:6-19, *Cameron*, No. 20-601.

Accordingly, regardless of its outcome, this Court's decision in *Cameron* will very likely control or directly influence the outcome for Hedican.

III. To preserve Petitioner's rights, the Court should hold this petition pending resolution of *Cameron*.

To timely seek this Court's review of the merits decision below, a petition for certiorari would normally need to be filed by October 29. Accordingly, if this Court agrees that intervention was wrongly denied, this Court should accept for filing the attached petition for certiorari, which seeks this Court's review of

the Seventh Circuit's merits decision in *EEOC* v. *Walmart*. By attaching his merits petition to this filing, Hedican has complied with the deadline to file a petition for certiorari challenging the Seventh Circuit's decision. This Court should consider that petition on its merits.

Alternatively, this Court should remand the case to the Seventh Circuit with instructions to allow Hedican's intervention and to equitably toll the October 29 deadline for filing a petition for certiorari. Cf. *China Agritech, Inc.* v. *Resh*, 138 S. Ct. 1800, 1808 (2018) (explaining that equitable tolling is permissible for "plaintiffs who later intervened" so long as they "had not slept on their rights"); *Lozano* v. *Montoya Alvarez*, 572 U.S. 1, 10 (2014) ("[E]quitable tolling pauses the running of * * * a statute of limitations when a litigant has pursued his rights diligently but some extraordinary circumstance prevents him from bringing a timely action."); *Zipes* v. *Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982) (noting that "a timely charge of discrimination with the EEOC * * * is subject to * * * equitable tolling").

CONCLUSION

The Court should hold this petition pending resolution of *Cameron* v. *EMW Women's Surgical Center*. If this Court agrees that the Seventh Circuit's intervention decision was incorrect in light of *Cameron* or existing Supreme Court precedent, it should grant the petition, vacate the decision below, and remand for further consideration in light of this Court's decision. Alternatively, the Court should order the attached petition for certiorari on the merits to be filed.

Respectfully submitted.

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