App. No. ___

In The

Supreme Court of the United States

RODNEY KEISTER,

Applicant-Appellant,

v.

STUART BELL, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNIVERSITY OF ALABAMA, ET AL.,

Respondent-Appellees.

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

To the Honorable Justice Clarence Thomas, as Circuit Justice for the United States Court of Appeals for the Eleventh Circuit:

Applicant (Petitioner) Rodney Keister respectfully requests additional time to file a petition for a writ of certiorari, specifically, an extension of sixty (60) days, to and including October 24, 2022. The U.S. Court of Appeals for the Eleventh Circuit issued its Order denying Petitioner's motion for rehearing and rehearing *en banc* on May 26, 2022. *See* App. A. Absent an extension of time, the Petition would be due on August 25, 2022. Petitioner is filing this Application at least ten (10) days before that date. *See* S. Ct. R. 13.5.

This case involves a public university depriving a citizen the fundamental right

to hand out literature or otherwise share his views on a bordering city sidewalk. Elevating the university's intent over objective factors of the property, the Eleventh Circuit deepened a circuit split regarding how to distinguish public versus limited fora and flouted this Court's precedent on whether government intent should dictate traditional public fora status.

Background

1. Petitioner wants to share his Christian faith on city sidewalks running alongside two city streets that intersect near several university buildings and private businesses. The city granted the university a revocable, non-exclusive license to maintain these sidewalks, under which licensing agreement, the university assumes responsibility for maintenance of the sidewalks and the city retains control over the property, specifically reserving the sidewalks for pedestrian access in the agreement. And true to this arrangement, the intersection sidewalks appear and function like other city sidewalks.

2. On March 10, 2016, Petitioner attempted to speak and evangelize on the subject sidewalks. Initially, university officials acknowledged the appropriateness of this action. An administrator referred to area as a "little square" that is a "municipal corner" and not university property and the supervising police officer informed the Petitioner "you're good" on those sidewalks. But, as it turned out, Petitioner was not good there. Officials subsequently informed him the university applies its grounds-use policy to those city sidewalks, requiring Petitioner to secure a permit and university approval ten business days in advance of his speech.

3. Petitioner sought relief, including preliminary relief, from this restriction, but he obtained none from the district court, which denied his request for preliminary injunction. Based on the limited record before it, the district court held the sidewalks ae not traditional public fora because they sit in the "heart" of the university campus. Petitioner appealed this decision, the Eleventh Circuit affirmed, and this Court declined the petition to review the preliminary ruling.

4. Thereafter, Petitioner amended his complaint, the parties conducted discovery, and the parties later filed cross-motions for summary judgment. In the context of these motions, Petitioner refuted the impression that the sidewalks are located in the heart of the campus, showing they are not on the campus at all, but are city sidewalks bordering the campus. Despite the new evidence, the lower court granted the university's motion for summary judgment and denied Petitioner's, opining city ownership of the sidewalks "does not change in any way the court's analysis," pegging the sidewalks as limited public fora instead of traditional public fora. *See* App. B.

5. The Eleventh Circuit affirmed this decision, particularly, the ruling the city sidewalks do not classify as traditional public fora, holding "it's the *University's* intent that matters with respect to that property." *See* App. C. The Eleventh Circuit also denied the request for rehearing and rehearing *en banc*. *See* App. A.

Reasons for Granting an Extension of Time to File a Petition for a Writ of Certiorari

The Application for an extension of 60 days to file a Petition is merited, for

several reasons:

1. The forthcoming Petition has reasonable likelihood of being granted due to the Eleventh Circuit rendering a profoundly erroneous decision that exacerbates a circuit split on the proper legal analysis for determining traditional public fora and contradicts clear precedent of this Court.

The Eleventh Circuit applied a misguided framework emphasizing government intent over objective factors for determining a traditional public forum classification. And this analysis led the appellate court to reach the extraordinary conclusion that a city sidewalk is a limited public forum and not a traditional one, severely hampering free speech in a venue that is supposed to be set aside for free speech.

Shoehorning government intention in the public forum doctrine analysis, the Eleventh Circuit relied on its own precedent, *Bloedorn v. Grube*, 631 F.3d 1218, 1233 ("we look to … the government's intent" for analyzing traditional public fora), like approaches adopted by the Second Circuit, *Hotel Emps. & Rest Emps. Union, Local 100 v. City of N.Y. Dep't of Parks & Recreation*, 311 F.3d 534, 546 (2d Cir. 2002) (for traditional public forum, "will inquire… the City's intent…) and the Eighth Circuit, *Ball v. City of Lincoln*, 870 F.3d 722, 731 (8th Cir. 2017) ("determining whether government property constitutes a tradition public forum…[w]e must also take into account…the government intent…) (citation and internal quotation marks omitted). But the consideration of government intent (in lieu of focusing on the objective factors of historical categories like sidewalks, streets, and parks) goes against the grain of

how other circuits assess traditional public fora, *see, e.g.*, *Am. Civil Liberties Union of Nev. v. City of Las Vegas*, 333 F.3d 1092, 1100-01 (9th Cir. 2003) (setting out five objective factors for determining traditional public fora); *First Unitarian Church of Salt Lake City v. Salt Lake City Corp.*, 308 F.3d 1114, 1124-25 (10th Cir. 2002) (holding objective characteristics, not government intentions, control whether given property is a traditional public forum); *Warren v. Fairfax County*, 196 F.3d 186, 189-90 (4th Cir. 1999) (applying objective factors only to judge existence of traditional public fora) and contravenes holdings of this Court, *see, e.g.*, *Ark. Educ. Television Com'n v. Forbes*, 523 U.S. 666, 677 (1998) ("public fora are defined by the objective characteristics of the property"). Aside from the conflicts the analysis creates generally, it causes further divide among circuits in judging the forum status of city sidewalks bordering government proprietor property specifically. Indeed, the result is different from comparable cases in the Fifth Circuit, *Brister v. Faulkner*, 214 F.3d 675, 681 (5th Cir. 2000) (recognizing city sidewalks bordering university property as traditional public fora), the Sixth Circuit, *McGlone v. Bell*, 681 F.3d 718, 732-33 (6th Cir. 2012) (finding perimeter city sidewalks running alongside of university campus traditional public fora) and this Court, *United States v. Grace*, 461 U.S. 171, 178-79 (1983) (holding sidewalks bordering Supreme Court grounds traditional public fora).

The public forum doctrine suffers from lack of consistency in the courts. *See, e.g.,* Suzanne Stone Montgomery, *Note*, *When the Klan Adopts-a-Highway: The Weaknesses of the Public Forum Doctrine Exposed*, 77 Wash. U. L. Q. 557, 558 (1999) (citing examples of how federal courts approach public forum doctrine in different

ways). Given the regrettable confusion over forum analysis, the importance of dependable forum analysis in protecting free speech, the pervasiveness of the concern in various settings, and the suitability of this case as a timely vehicle, this Court will likely accept the Petition and supply much needed guidance on the issue.

2. An extension of time is also warranted to allow incoming Supreme Court co-counsel for the Petition, Schaerr|Jaffe, LLP and Protect the First Foundation, adequate time to evaluate the case and prepare a petition to this Court. Undersigned counsel and well as new co-counsel have numerous court-dictated obligations to meet in addition to the forthcoming petition and will use additional time granted to prepare a suitable Petition to this Court. Undersigned counsel has worked on and is currently working on appeals in in the Ninth Circuit, *LaVelle v. City of Las Vegas*, *et. al.*, No. 21-16666 and *Stewart and Conway v. City and County of San Francisco*, No. 22-16018, among sundry cases in federal court in which counsel serves as lead counsel. Co-counsel are involved in extensive election-related litigation in multiple cases in the Northern District of Georgia, with multiple pressing deadlines for briefing, discovery, and depositions, around which they will have to work, as well as pre-planned travel domestically and abroad during the upcoming weeks and months that will further impinge on preparation time. An extension of 60 days will allow counsel to better coordinate with such prior commitments and devote appropriate time and attention to the petition to this Court.

3. No apparent prejudice would arise from the extension for submitting the Petition. Respondents, having prevailed below, are under no current disability, and

a limited extension would likely better comport with their and their counsel's summertime schedules as well.

Conclusion

For the foregoing reasons, Petitioner requests an extension of time to file a Petition for a Writ of Certiorari in this matter of 60 days to and including October 24, 2022.

Respectfully submitted,

s/Nathan W. Kellum

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