NO. 24A982

IN THE SUPREME COURT OF THE UNITED STATES

JOHN DOES 1, 2, 4, AND 5,

Applicants

v.

SEATTLE POLICE DEPARTMENT AND SAM SUEOKA,

Respondents.

ON APPLICATION FOR A STAY OF MANDATE
TO THE SUPREME COURT OF WASHINGTON

SAM SUEOKA'S RESPONSE IN OPPOSITION TO APPLICATION FOR STAY OF MANDATE

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To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit

A. SAM SUEOKA'S STATEMENT OF OPPOSITION

Respondent Sam Sueoka respectfully opposes the Does' *Application for a Stay of the Mandate Issued by the Washington Supreme State Court* ("*Application*").

First, the Washington Supreme Court issued its decision in *John Does 1, 2, 4, & 5 v. Seattle Police Dep't*, ___ Wn.3d ___, 563 P.3d 1037 (2025) ("*Does*") on February 13, 2025. In the past nearly ten weeks, the Does have not sought to seek to stay enforcement of the mandate in Washington courts. This is a prerequisite to obtaining relief under Rules of the Supreme Court of the United States (1/1/23), Rule 23.

Second, the decision of the Washington Supreme Court is not a final judgment and is only an interlocutory decision. Thus, this Court does not have jurisdiction under 28 U.S.C. § 1257.

Third, it is not likely that this Court will grant certiorari on the merits. The Washington Supreme Court's opinion is in full accord with

this Court's precedent. The Applicants do not identify any split in authority between the Washington Supreme Court and the highest courts of other states or federal courts of appeal, nor do they put forward significant public interests. They only argue that the Washington Supreme Court misapplied this Court's precedent regarding anonymous speech which makes it unlikely the Court will grant certiorari. Rule 10.

While there is certainly a right to anonymous speech, the Does never sought to exercise their First Amendment rights in an anonymous fashion. Only after their participation in a very public event (the "Stop the Steal" demonstration of January 6, 2021) became known and only after they disclosed their actions to the Seattle Police Department's ("SPD") Office of Police Accountability ("OPA") did the officers first assert anonymity. This was too late, and nothing about the disclosure of the public information in the OPA investigative files violates the First Amendment. There is also evidence that the identities of the officers is already publicly known, and thus there is some degree of mootness to this litigation.

Finally, as to the Does' asserted right to sue named members of the public (like Mr. Sueoka) in pseudonym, the decision of the Washington Supreme Court is rooted in state law. The Does failed to litigate federal constitutional issues adequately below. This Court is therefore not likely to grant certiorari regarding the pseudonym issue.

Procedurally and substantively, there is no basis for a stay.

B. STATEMENT OF THE CASE

Six current or former members of the Seattle Police Department journeyed to Washington, D.C., to participate in President Trump's "Stop the Steal" rally on January 6, 2021. When word spread of their participation, SPD's Office of Police Accountability opened an internal affairs investigation, and the officers were interviewed by OPA. Members of the public including Respondent Sam Sueoka requested information about the investigation through Washington's Public Records Act ("PRA"), Revised Code of Washington ("RCW") 42.56 *et seq*. The City of Seattle decided to honor the requests and planned

disclose public record about the investigation to the requesters. *Does*, 563 P.3d at 1042-44.

In February 2021, the six officers filed a lawsuit in King County Superior Court in pseudonym against SPD/OPA to prevent the disclosure of the public records. The officers also sued the individual members of the public who made the PRA requests (including Mr. Sueoka). *Id*. at 1044. Since the officers initiated the lawsuit themselves, anonymously suing those who merely made a PRA request, it is difficult to see how the Does can now say "[t]he very purpose of this action is to expose Applicants and constitutes harassment itself." *Application* at 20.

The King County Superior Court denied the six officers' request for a preliminary injunction, but granted their request to sue in pseudonym. The officers appealed, and Mr. Sueoka cross-appealed the pseudonym issue. The case was transferred to the Washington Supreme Court, but the officers' appeal was dismissed after the issuance of the final OPA report. *See John and Jane Does 1-6 v. Seattle Police Dep't*

et al., No. 99901-5 (Wash. Nov. 17, 2021). Sam Sueoka's Supplemental Appendix ("Supp. App.") at 7a-8a.

Two of the officers (Jane Doe 1 and John Doe 3) stopped participating in the case after they were named publicly and fired for trespassing on the Capitol grounds. The other four Does -- who were by that point already likely publicly identified online, *Does*, 563 P.3d at 1045 -- again sought a preliminary injunction. The superior court denied this relief, but allowed them to proceed in pseudonym. The remaining four Does appealed a second time, and Sueoka cross-appealed on the pseudonym issue. *Id*. at 1045-46.

On appeal, Mr. Sueoka argued against the use of pseudonyms in this particular case under both article I, section 10, of the Washington Constitution and the First Amendment to the United States Constitution. In their primary briefs, the Does, though, did not explicitly argue a First Amendment right to proceed in pseudonym. Supp. App. at 12a-15a, 25a-44a (sections from Does' primary briefs addressing pseudonyms).

On June 26, 2023, Division One of the Washington State Court of Appeals reversed on the preliminary injunction issue and affirmed on the pseudonym issue. Mr. Sueoka and the City of Seattle sought review in the Washington Supreme Court. Review was granted on November 8, 2023. *John Doe I v. Seattle Police Dep't*, 531 P.3d 821, 27 Wn. App. 2d 295 (2023), *review granted* 537 P.3d 1031 (Wash. 2023), *rev'd sub nom. John Does 1, 2, 4, & 5 v. Seattle Police Dep't*, ___ Wn.3d. ___, 563 P.3d 1037 (2025).

After full briefing,[1] on February 13, 2025, the Washington State Supreme Court reversed, holding that the officers did not demonstrate a privacy interest in their public participation in a large demonstration

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[1] Contrary to inflammatory statements in the *Application* about the nature of amicus briefing in the Washington Supreme Court, *Application* at 21, amicus briefing in the current case (as opposed to the first dismissed appeal) came from the State of Washington, the Washington State Association of Municipal Attorneys, the Washington Coalition for Open Government, the American Civil Liberties Union of Washington, and the Fred Korematsu Center at Seattle University Law School. *See Does*, *supra* (listing amici).

and had never sought anonymity at the time of the demonstration. *Does*, 563 P.3d at 1053-54. Applying state law tests on pseudonyms, the Washington Supreme Court also held the lower courts had erred in allowing the officers to file their lawsuit anonymously. *Id*. at 1054-55.

Because the Does did not make a motion to have the actual public records at issue introduced into evidence in the superior court, did not formally by separate motion seek *in camera* review of the investigative files, and ultimately did not seek to prevent the release of the records themselves, only seeking to bar the release of their names, the Washington Supreme Court noted that its decision was interlocutory only:

> They [the Does] do not seek to prevent the disclosure of the public records in their entirety; they argue only that their identities and personally identifying information should be redacted. This case remains in a preliminary stage, and the requested records have not yet been made part of the case file or been reviewed in camera by any court . . .
> . . . .
>
> As the requested records in this case have not been made part of the case file or the record on review, this court

> cannot assess whether they resemble false allegations of sexual misconduct by a teacher against a student like in *Bellevue John Does*[2], or something more akin to improper off-duty actions in public, which are not entitled to the protection of personal privacy under *Cowles*[3]. That analysis needs to occur at the trial court, which has records not part of this appeal and is capable of reviewing records in camera, if necessary.

Does, 563 P.3d at 1046-47, 1052.

The Washington Supreme Court issued its decision on February 13, 2025, and remanded the case to the superior court for further proceedings. *Id*. at 1056. The Does sought reconsideration on March 4, 2025. This motion was denied on April 9, 2025. The Washington Supreme Court issued its mandate on April 10, 2025, at 3:28 p.m., not on February 13, 2025, as represented by the Does at page 2 of their *Application*. Supp. App. at 4a-6a.

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[2] *Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405*, 189 P.3d 139, 164 Wn.2d 199 (2008).

[3] *Cowles Publ'g Co. v. State Patrol*, 748 P.2d 597, 109 Wn.2d 712 (1988).

At 4:05 p.m., also on April 10, 2025, by email and not through the court's filing system, the Does provided to the Washington Supreme Court a copy of their *Application* for a stay in this Court. Supp. App. at 3a. The Does did not actually seek a ruling by the Washington Supreme Court to stay the mandate. Because the mandate had already issued, the court clerk placed the Does' pleadings in the file without further action. Supp. App. at 1a-2a. The Does have not filed any motions in the superior court to try to stay proceedings pending a certiorari petition in this Court.

C. ARGUMENT

1. *Introduction*

The Does ask this Court for an "extraordinary remedy," one which traditionally has not been granted unless the applicant's right to relief is "indisputably clear." *Communist Party of Indiana v. Whitcomb*, 409 U.S. 1235, 93 S. Ct. 16, 34 L. Ed. 2d 40 (1972) (Per Rehnquist, J., as Circuit Justice). With regard to an application to an individual Justice for a stay of a lower court's judgment pending disposition of petition for certiorari, the applicant bears the burden of persuasion as to whether

there is a balance of hardships in their favor and as to whether four Justices of Supreme Court will likely vote to grant certiorari. *New York Times Co. v. Jascalevich*, 439 U.S. 1304, 1304-05, 98 S. Ct. 3060, 58 L. Ed. 2d 12 (1978) (Marshall, J.) (denying stay in case involving subpoena of reporters' confidential files).

The Does seek a stay under Rule 23 and the All Writs Act, 28 U.S.C. § 1651. *Application* at 2. At the outset, the All Writs Act does not provide an independent grant of authority to this Court to issue a stay. *See* 28 U.S.C. §1651(a) (permitting writs "necessary or appropriate in aid of" a court's jurisdiction); *Clinton v. Goldsmith*, 526 U.S. 529, 534-535, 119 S. Ct. 1538, 143 L. Ed. 2d 720 (1999) ("the express terms of the Act . . . confine the power of [a court] to issuing process 'in aid of' its existing statutory jurisdiction; the Act does not enlarge that jurisdiction.") (quoting 28 U.S.C. §1651(a)).

If there is to be a stay, it must issue under Rule 23 which provides in part:

> 3. An application for a stay shall set out with particularity why the relief sought is not available from any other court or judge. Except in the most extraordinary

> circumstances, an application for a stay will not be entertained unless the relief requested was first sought in the appropriate court or courts below or from a judge or judges thereof. An application for a stay shall identify the judgment sought to be reviewed and have appended thereto a copy of the order and opinion, if any, and a copy of the order, if any, of the court or judge below denying the relief sought, and shall set out specific reasons why a stay is justified. . . .

The Does do not meet their burden of obtaining a stay under this rule.

2. *The Does Have Not Sought a Stay in Washington Courts*

Rule 23 requires that before this Court normally would issue a stay the applicant should seek relief in the courts below. Yet, in the over two months since the Washington Supreme Court issued its decision, the Does did not seek a stay of the issuance of the mandate in the Washington Supreme Court.

Emailing a copy of their *Application* to this Court to the Washington Supreme Court 37 minutes *after* the mandate had already issued does not constitute an attempt to seek a stay in the Washington Supreme Court. To be sure, while Washington Rule of Appellate Procedure ("WA RAP") 12.6 does not allow for a stay to be entered

pending review by this Court, this rule is discretionary under WA RAP 18.8(a) and subject to the "interests of justice." *In re Pers. Restraint of Rhone*, 528 P.3d 824, 827, 1 Wn.3d 572 (2023). Given this discretion, the Does have failed to take steps necessary to obtain extraordinary relief in this Court by attempting to seek a stay in the Washington Supreme Court.

Moreover, as noted *infra* at § 3, the Washington Supreme Court's decision in this case was interlocutory only. Because the Washington Supreme Court remanded the case for further proceedings and for a final decision, the Does should have sought a stay in the King County Superior Court. They have not filed such a motion, and therefore under Rule 23 they should not be allowed to obtain a stay in this Court.

3. *The Washington Supreme Court's Decision is Not a Final Judgment*

The Does argue that this Court has jurisdiction under 28 U.S.C. § 1257. *Application* at 3. This statute gives this Court certiorari jurisdiction but only in cases of final judgments: "Final judgments or decrees rendered by the highest court of a State in which a decision

could be had, may be reviewed by the Supreme Court by writ of certiorari." 28 U.S.C. § 1257.

The operative word in this statute is "final judgment." To be reviewed by this Court, a state court judgment must be final "in two senses: it must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final word of a final court." *Jefferson v. City of Tarrant*, 522 U.S. 75, 81, 118 S. Ct. 481, 139 L. Ed. 2d 433 (1997) (internal quotes and citations omitted).

The Washington Supreme Court's opinion in this case was not a final decision on the merits. Because the Does had never filed a motion for *in camera* review of the actual records of the OPA investigation and had never made the OPA records part of the court file, the Washington Supreme Court essentially issued an opinion giving "guidance" to the superior court:

> However, the trial court proceedings occurred without clear guidance from this court on these issues, so we provide that guidance here. It appears that the trial court did not err in

> denying the preliminary injunction, but we remand for further proceedings based on this opinion.

Does, 563 P.3d at 1042.

This is self-evidently not a final adjudication on the merits of the Does' claims. The decision of the Washington Supreme Court's decision gave "guidance" to the superior court but ultimately the Does' lawsuit is still pending. Whether they will or will not prevail in their claims must await another day, following additional proceedings in King County Superior Court.

Because the Washington Supreme Court's decision is not a "final judgment," this Court does not have certiorari jurisdiction, and a stay is not appropriate.

4. *Four Justices Are Unlikely to Vote to Grant Certiorari*

"Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." Rule 10. The rule sets out several situations that weigh in favor of certiorari. The Does do not cite Rule

10 at all and make no argument that their case fits into the suggested criteria.

The Does certainly do not argue that the Washington Supreme Court's decision in this case conflicts with the decisions of another state's highest court or a United States court of appeals. Rule 10(b). As for Rule 10(c)'s provision for an "important question of federal law that has not been, but should be, settled by this Court," not only do the Does not make this argument, but the January 6th context is so unique and unlikely to recur such that this Court would not really be able to use this case to give meaningful guidance looking forward on any important issue of law.

The Does appear to argue that certiorari would be granted under Rule 10(c)'s provision that the Washington Supreme Court "has decided an important federal question in a way that conflicts with relevant decisions of this Court." However, their argument appears to be that the Washington Supreme Court misapplied this Court's precedent, ignoring Rule 10's additional language that "[a] petition for a writ of certiorari is

rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

a. Certiorari is Unlikely on the Public Records Act Issue

The core of the Does' substantive argument is that they have the right to anonymous speech and thus the disclosure of their identities at this point will cause them First Amendment harm. However, a closer examination of the Does' claims and the Washington Supreme Court's decision does not support the conclusion that the First Amendment will be violated if this case proceeds in the superior court.

To be sure, this Court has been protective of anonymity in cases where people have actually been or likely will be victims of violence or targeted harassment. *See Doe v. Reed*, 561 U.S. 186, 200, 130 S. Ct. 2811, 177 L. Ed. 2d 493 (2010) ("[T]hose resisting disclosure can prevail under the First Amendment if they can show a reasonable probability that the compelled disclosure of personal information will subject them to threats, harassment, or reprisals from either Government officials or private parties.") (cleaned up); *Brown v. Socialist Workers*

'74 Campaign Comm., 459 U.S. 87, 98-99, 103 S. Ct. 416, 74 L. Ed. 2d 250 (1982) (harassment including threats, property destruction and shots fired); *NAACP v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 462-63, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958) (economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility).

Yet, in this case, despite the dire predictions of Prof. Amy Sanders in a preliminary declaration filed three years ago about what might occur if the identities of the Does were disclosed to the public (*see Application* at 21-22[4]), the record reveals that the identities of the officers who attended Stop the Steal (or the identities of possible other officers actually or mistakenly identified as having attended the rally) are already publicly known in the media and on the Internet. *Does*, 563 P.3d at 1045. Despite this publicity, the record does not contain evidence of any targeted harassment towards the named officers. There have been

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[4] Although the Does claim that Prof. Sanders' report was submitted "at trial," *Application* at 21, there was never a trial in this case -- the superior court just denied the Does' request for a preliminary injunction. *Does*, 563 P.3d at 1045-46.

no demonstrations outside their homes; there have been no death threats or physical assaults. Significantly, there have not even been adverse employment actions against the four Does who are the applicants in this case. *See generally Nieves v. Bartlett*, 587 U.S. 391, 398-99, 139 S. Ct. 1715, 204 L. Ed. 2d 1 (2019) (First Amendment harm requires causal connection between retaliatory animus and an injury). There has not been any actual harm over the past four years that justifies a conclusion that the disclosure of public information now, years later, would violate the First Amendment.

The Does have always complained about being stigmatized if their names were officially released. Whether stigma alone is enough for First Amendment harm is unclear. *See Hous. Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 478-79, 142 S. Ct. 1253, 212 L. Ed. 2d 303 (2022) (First Amendment not implicated by censure vote); *Paul v. Davis*, 424 U.S. 693, 702, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976) (defamation by public employee in itself is not a constitutional violation). However, President Trump's pardons of all of those who actually were convicted of attacking the Capitol should put to rest any

lingering question that there would be constitutionally significant stigma as a result of disclosure of an officer's participation in the Stop the Steal rally.[5]

This Court also has recognized the right to First Amendment anonymity when those who wish to shield their political activities from the government take legal action *before* they engage in speech or before they disclose information. *See, e.g., Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595, 600-03, 141 S. Ct. 2373, 210 L. Ed. 2d 716 (2021) (facial challenge to charitable organization disclosure requirement filed before actual disclosure); *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150, 153-54, 122 S. Ct. 2080, 153 L. Ed. 2d 205 (2002) (pre-enforcement facial

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[5] Justice Scalia once disputed the First Amendment value of anonymous speech:

> There are laws against threats and intimidation; and harsh criticism, short of unlawful action, is a price our people have traditionally been willing to pay for self-governance. Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed.

Doe v. Reed, 561 U.S. at 228 (Scalia, J., concurring).

challenge to ordinance making it a misdemeanor to go door-to-door without obtaining permit); *Shelton v. Tucker*, 364 U.S. 479, 480-84, 81 S. Ct. 247, 5 L. Ed. 2d 231 (1960) (lawsuit against compelling teachers to disclose what organizations they belonged to filed after plaintiffs refused to file required affidavits).

The Washington Supreme Court opinion in *Does* does not conflict with this precedent. Here, the officers only claimed the right to anonymity *after* they openly attended one of the most public events in the history of the country, without taking any steps to protect their identities. *See Does*, 563 P.3d at 1051, 1053-54. "[T]he officers do not point to any evidence demonstrating they took measures to attend the rally anonymously or to exercise their political beliefs in private." *Id*. at 1053.

The Does then disclosed their participation to a public agency, knowing of the risk of disclosure to the public under Washington's Public Records Act (RCW 42.56 *et seq*.) and, in the appropriate cases, pursuant to *Brady v. Maryland,* 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). Although they could have filed a lawsuit to contest

being asked questions by their public employer about their participation in Stop the Steal, they opted against that course of action.

While the Does continue to argue that information about their participation in the public events of January 6th was compelled, the Washington Supreme Court properly recognized that this case does not involve a challenge to compelled speech:

> To the extent the officers argue disclosure of their identities is compelled, such compulsion, if any, would have occurred at the time of the OPA investigation, not the release of public records now already in existence. Moreover, this lawsuit does not challenge whether the OPA improperly required the officers to participate in the investigation.

Does, 563 P.3d at 1053 n.16.

The Washington Supreme Court's decision does not remotely come close to infringing on the Does' First Amendment right to anonymous speech. There is no basis for certiorari review on the Public Records Act issue.

b. Certiorari is Unlikely on the Pseudonym Issue

It is also unlikely that this Court would grant certiorari on the pseudonym issue because the Washington Supreme Court's decision here explicitly rests solely on independent and adequate state law grounds. *Does*, 563 P.3d at 1054-55. Such a decision is beyond the scope of this Court's review. *See Michigan v. Long*, 463 U. S. 1032, 1038 & n. 4, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983); *Fox Film Corp. v. Muller*, 296 U.S. 207, 210, 56 S. Ct. 183, 80 L. Ed. 158 (1935).

This reliance on state law is a result of the Does' principle briefing below which barely touched on whether they had a federal constitutional right to litigate in pseudonym. *See* Supp. App. at 12a-15a, 25a-44a. The Does' legal arguments on pseudonyms have often been circular and perfunctory, simply arguing that if disclosure of their identities under the PRA would cause First Amendment harm so too would requiring them to litigate in their real names. *See, e.g.*, Supp. App. at 9a-11a, 16a-24a.

However, under the First Amendment, the press and the public have a presumed right of access to court proceedings and documents which can be overcome only by an overriding right or interest. *See Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510, 104 S. Ct. 819, 78 L. Ed. 2d 629 (1985). Generally, the First Amendment gives the public a right to know litigants' names, furthering openness in judicial proceedings. *See Doe v. Doe*, 85 F.4th 206, 210-11 (4th Cir. 2023) ("We have explained that '[p]seudonymous litigation undermines the public's right of access to judicial proceedings' because '[t]he public has an interest in knowing the names of litigants, and disclosing the parties' identities furthers openness of judicial proceedings.'") (quoting *Doe v. Public Citizen*, 749 F.3d 246, 274 (4th Cir. 2014)); *see also In re Sealed Case*, 971 F.3d 324, 326, 449 U.S. App. D.C. 193 (D.C. Cir. 2020) (noting "deeply rooted tradition" of identifying litigants in cases).

Here, the Does did not file significant briefing in Washington courts that explained how their desire to hide their identities outweighed the public's First Amendment right to know the identity of litigants in the courts. The lack of development in state court by the Does about the

federal constitutional underpinnings of pseudonymous litigation makes it unlikely that this Court will accept certiorari review. The Court should deny a stay.

D. CONCLUSION

For the foregoing reasons, the Court should deny the Does' request for a stay.

DATED this 22nd day of April 2025.

Respectfully submitted,

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Statutory Appendix

RAP 12.6
STAY OF MANDATE PENDING DECISION ON APPLICATION FOR REVIEW BY UNITED STATES SUPREME COURT

Except as provided in RAP 12.5, the appellate court will not stay issuance of the mandate for the length of time necessary to secure a decision by the United States Supreme Court on an application for review. In the event that the United States Supreme Court accepts review or grants certiorari and remands a case to the appellate court for further consideration, the clerk will recall the mandate.

[Adopted effective July 1, 1976; Amended effective September 1, 1993; November 20, 2018.]

RAP 18.8
WAIVER OF RULES AND EXTENSION AND REDUCTION OF TIME

(a) Generally. The appellate court may, on its own initiative or on motion of a party, waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice, subject to the restrictions in sections (c) and (d).

(b) Streamlined Extensions of Time for Filing Briefs in the Court of Appeals. If a party in the Court of Appeals has not previously filed a motion for an extension of time to file a brief authorized by RAP 10.2(a)-(c), that party may obtain a single streamlined extension of time to file that brief not to exceed 30 days. A party requesting a streamlined extension of time should file a written request as set forth in RAP Form 25. The clerk will approve requests that comply with this rule and will provide a new schedule. The clerk will inform parties not eligible for relief under this subsection as to the appropriate method to obtain relief. A streamlined extension of time to file a brief is not available if an appeal has been accelerated.

(c) Restriction on Extension of Time. The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, a petition for review, or a motion for reconsideration. The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section. The motion to extend time is determined by the appellate court to which the untimely notice, motion, or petition is directed.

(d) Restriction on Changing Decision. The appellate court will not enlarge the time provided in rule 12.7 within which the appellate court may change or modify its decision.

(e) Terms. The remedy for violation of these rules is set forth in rule 18.9. The court may condition the exercise of its authority under this rule by imposing terms or awarding compensatory damages, or both, as provided in rule 18.9.

[Adopted effective July 1, 1976; Amended effective July 2, 1976; October 1, 2024.]