

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543-0001**

October 2018

SCOTT S. HARRIS
CLERK OF THE COURT

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479-3011

MEMORANDUM TO THOSE INTENDING TO PREPARE A PETITION FOR A WRIT OF CERTIORARI IN BOOKLET FORMAT AND PAY THE \$300 DOCKET FEE.

This memorandum is directed to those who intend to prepare a petition for a writ of certiorari in booklet format pursuant to Rule 33.1 and pay the \$300 docket fee required by Rule 38(a). It highlights the most common mistakes observed by the Clerk's Office. By following these guidelines you may help to expedite the processing of your petition. If you have questions, they should be directed to a case analyst in the Clerk's Office. This memorandum is useful also for those preparing appeals under Rule 18. The Rules of the Supreme Court, including amendments to those Rules that went into effect on November 13, 2017, are available at the Filing and Rules section of the Court's website.

In November 2017, the Court began requiring attorneys to submit petitions and other documents through its electronic filing system. At this time, paper remains the official means of filing, and the electronic filing requirements are in addition to the existing requirements for paper filings. Attorneys must register through the electronic filing system prior to submitting their documents; it may take 1-2 days for an application to be approved, so attorneys should apply well in advance of a filing deadline. Documents should be submitted through the electronic filing system contemporaneously with the submission of the paper version. Certain types of filings—including those containing sealed material and those in cases that were governed below by Fed. R. Civ. P. 5.2(c)—should not be submitted electronically. Personal identifying information contained in filings must be redacted pursuant to Rule 34.6. More detailed information can be found in the Court's Rules, in the Guidelines for the Submission of

Documents to the Supreme Court's Electronic Filing System, and in other guidance available at the Electronic Filing section of the Court's website.

1. PAGE AND TYPE SIZE:

The petition and the appendix required by Rule 14 must be presented on paper that is 6 $\frac{1}{8}$ by 9 $\frac{1}{4}$ inches and not less than 60 pounds in weight as stated in Rule 33.1(a) and (c). The color of the cover must be white. Rule 33.1(g)(i). The petition shall be typeset in a Century family (*e.g.*, Century Expanded, New Century Schoolbook, or Century Schoolbook) 12-point type with 2-point or more leading between lines. Footnotes must be 10-point with 2-point or more leading between lines. Any type that does not measure on a typesize finder to be 12-point for the body and 10-point for footnotes will not be accepted. Attached are sample copies of correct and incorrect type.

Petitions produced on a personal computer using word processing, electronic publishing, or image setting are considered typeset and are acceptable. Petitions produced on a typewriter are not acceptable. Quotations exceeding 50 words shall be indented. The text of the petition and the appendix thereto must appear on both sides of the page. Rule 33.1(b).

2. COVER and COVER PAGE INFORMATION:

The front and back covers of the petition shall consist of 65-pound weight white paper. Rule 33.1(e). Items on the cover of the petition shall be in the order set forth in Rule 34.1(a) through (f). The caption of the case must list the petitioner(s) in this Court on the topside of the *versus* with your real opponent(s) on the bottom side. You should not copy the caption of the case as it appeared in the lower court unless it accurately identifies who the petitioner(s) and who the respondent(s) are in this Court. Counsel of record shall be a member of the Bar of this Court at the time the petition is presented for filing. Rule 34.1(f). Names of other attorneys who are members of the Bars of the several states may be listed on the cover, but names of non-lawyers such as research assistants, law students, and advisors may not appear on the cover under any circumstances; nor are they to be credited with having contributed to the preparation of the petition either in the

text, in a footnote, or at the conclusion of the petition. If you are representing yourself, your name, address, and telephone number shall appear on the cover. If the names of the parties are too lengthy to be fully included on the cover of the petition, a short caption may be used. The complete listing of the parties to the proceeding in this Court shall be placed on the page following Questions Presented for Review. Rule 14.1(b). No text of the petition is to appear on the inside of the front or back covers. Do not list the October Term of the Court on the cover of the petition. A sample cover that may be followed as to form only is attached to this memo.

3. QUESTIONS PRESENTED:

The first page of the petition, not the back of the front cover, must contain **Questions Presented for Review**. Rule 14.1(a). The caption of the petition is not to be repeated on this page. The question(s) may be prefaced by a very brief introductory statement to set the scene, so that the question(s) may be understood. The question(s) should be short and concise and may not be argumentative or repetitious. If the petitioner or respondent is under a death sentence that may be affected by the disposition of the petition, the notation “**CAPITAL CASE**” shall precede the words “Questions Presented.” No other information is to be included on this page. Rule 14.1(a).

4. PARTIES TO PROCEEDING:

The next page shall list the parties to the proceeding in this Court if all their names do not appear on the cover. Rule 14.1(b). This listing must be precise. Should a corporate entity be a petitioner, the Rule 29.6 corporate disclosure statement is to appear on this page. If there is no parent or publicly held company owning 10% or more of the corporation’s stock, a statement to that effect shall be included on this page. Rule 29.6.

5. NUMBERING OF PAGES:

The pages containing questions presented for review, the list of parties and corporate disclosure statement, table of contents, and table of authorities should be numbered (i), (ii), (iii), etc. The table of contents and the table of authorities are followed by the text

of the petition. Rule 14.1(c). There should be no second cover page prior to beginning the text of the petition. The pages of the text of the petition should be numbered 1, 2, 3, etc., and not a continuation of (i), (ii), (iii), etc. In no event may the text of the petition exceed 9000 words. Rule 33.1(d) and Rule 33.1(g)(i).

6. CONTENTS OF APPENDIX:

The appendix to the petition must contain all items required by Rule 14.1(i). If you are seeking review of a state court judgment and an intermediate state appellate court was the last court to act on the merits, you shall include in the appendix any order regarding a petition for rehearing that may have been acted upon by that court as well as any orders denying discretionary review that may have been issued by higher state courts. Any order denying rehearing that starts the running of the time for filing the petition must also be contained in the appendix. Those orders shall include the caption showing the name of the issuing court, the title and number of the case, and the date of entry. Rule 14.1(i)(i) through (iv). If you are seeking review of a judgment from a United States Court of Appeals, you must, on that document, include the names of the judges who acted on the appeal. Any published and unpublished opinions issued with respect to the judgment sought to be reviewed shall be included in the appendix. Should the appendix become too voluminous, it may be presented in a separate volume or volumes with white covers bearing the appropriate caption.

The Court's practice is to scan and make available on its website most filings submitted by litigants representing themselves. The Court scans petitions, motions to proceed *in forma pauperis*, proofs of service, and the portion of an appendix that includes relevant lower court opinions and rulings. While the Court does not scan other portions of an appendix from a *pro se* litigant, the entire appendix is fully a part of the Court's record and is available to the Justices.

7. REPRODUCING DOCUMENTS IN APPENDIX:

Material contained in the appendix as required by Rule 14.1(i) must also comply in all respects with the type size and page size requirements contained in Rule 33.1. Lower court orders and opinions issued on paper larger than 6½ by 9¼ inches *may not be photo-*

reduced. Rule 33.1(b). These items must be reformatted to comply with Rule 33.1 and they must contain the caption showing the name of the issuing court or agency, the title and number of the case, and the date of entry. Rule 14.1(i). If a signature is contained on the original, reproduce the name by using “s/”. The seal of the lower court and the file stamp may be reproduced by typesetting the information verbatim. Photo reproductions from Federal Supplement, Federal 2nd and 3rd Reporters, and regional reporters are not acceptable under Rule 33.1. Such materials must be reformatted to comply with the type size requirements of Rule 33.1. Items in the appendix are to be arranged as required by Rule 14.1(i)(i) through (vi).

8. BINDING:

The petition and appendix shall be bound firmly in at least two places along the left margin so as to make an easily opened volume. No part of the text may be obscured by the binding. Saddle stitching or perfect binding is preferred. Staples may be used, with at least two along the left margin, covered with tape. Under no circumstances may spiral, plastic, metal, or string bindings be used. Rule 33.1(c).

9. DOCKET FEE:

The \$300 docket fee and the certificate of service shall accompany the petition. These items should not be sent under separate cover. The \$300 docket fee may be paid by personal check, cashiers check, money order, or certified check made out to “Clerk, U. S. Supreme Court.” Rule 38(a). **Do not send cash.**

10. CERTIFICATE OF SERVICE:

The certificate of service of the petition shall be on a separate piece of paper apart from the petition. Rule 29.5. The certificate of service shall identify who was served with three copies of the petition and list the names, addresses, and telephone numbers of counsel indicating the name of the party or parties each counsel represents. Rule 29.5. If the proof of service is signed by a member of the Bar of this Court, notarization is not needed. If it is executed by one who is not a member of the Bar of this Court, the

signature shall be either notarized or be accompanied by a declaration in compliance with 28 U. S. C. § 1746. Rule 29.5(c). The certificate of service is not to be included in the bound petition.

11. CERTIFICATE OF COMPLIANCE:

The petition for a writ of certiorari must be accompanied by a certificate signed by the attorney, the unrepresented party, or the preparer of the document stating that the petition complies with the word limitation. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the petition. The word-processing system must be set to include footnotes in the word count. The certificate must state the number of words in the petition. The certificate shall accompany the petition when it is presented to the Clerk for filing and shall be separate from it. If the certificate is signed by a person other than a member of the Bar of this Court, the counsel of record, or the unrepresented party, it must contain a notarized affidavit or declaration in compliance with 28 U. S. C. § 1746. A sample certificate of compliance that may be followed as to form is attached to this memo.

12. TIME FOR FILING:

You have ninety calendar days, not three months, from the date of entry of judgment, order or opinion, or the date a timely filed petition for rehearing is denied, or a subsequent judgment based on the grant of the petition for rehearing, within which to file with the Clerk a petition for a writ of certiorari. Rule 13.1 and .3. The time to file does not begin to run when the mandate, remittitur, rescript, or similar document issues or is filed in the lower court. Rule 13.3. In order for the petition to be timely filed, it shall either be received by the Clerk of the Court within those ninety days or be sent to the Clerk by first-class United States Postal Service, including express and priority mail, postage pre-paid, and bearing a postmark, other than a commercial postage meter label, showing that the document was mailed on or before the last day for filing; or if it is delivered on or before the last day for filing to a third-party commercial carrier for delivery to the Clerk within 3 calendar days.

CORRECT TYPE

by allowing defenses based on school misconduct in situations in which the school's involvement in the lending relationship was not unusually extensive.

For the same reason, petitioner errs in contending (Pet. 18–19) that the decision of the court of appeals conflicts with this Court's cases allowing state law to impose liability greater than the liability imposed by federal law. Such cases, including *English v. General Electric Co.*, 496 U. S. 72 (1990), and *California v. ARC America Corp.*, 490 U. S. 93 (1989), address situations in which there is no conflict between the State's imposition of greater liability and federal law. Here, as in *Hines*, there is a conflict, because the federal scheme did not simply permit state-law school-based defenses in specified circumstances but *limited* state-law school-based defenses to those circumstances.⁵

3. There is no conflict among the courts of appeals on the question presented by petitioner, as petitioner herself admits. Pet. 21, 24. Petitioner nonetheless urges this Court to grant review on the basis of “divergent decisions emerging from the lower courts.” Pet 21. In fact, the lower courts have uniformly found state laws comparable to the one at issue here to be preempted. This Court's review is not warranted based on petitioner's assertion that those courts apply different rationales in reaching their uniform results.

⁵ Petitioner's reliance (Pet. 20–21) on *United States v. Kimbell Foods, Inc.*, 440 U. S. 715 (1979), *Wallis v. Pan American Petroleum Corp.*, 384 U. S. 63 (1966), and *United States v. Yazell*, 382 U. S. 341 (1966), is also misplaced. Those decisions concern the issue whether a court should rely on state law or fashion a federal common law rule when the court must fill in the interstices of a federal program. They do not concern the question presented here—under what circumstances federal law preempts conflicting state law.

INCORRECT TYPE

ing whether an agency's statement is what the APA calls a "rule" can be a difficult exercise. We need not conduct that exercise in this case, however. For even assuming that a statement terminating the Program would qualify as a "rule" within the meaning of the APA, it would be exempt from the notice-and-comment requirement of § 553.⁷ Termination of the Program might be seen as affecting the Service's organization, but "rules of agency organization" are exempt from notice-and-comment requirements under § 553(b)(A). Moreover, § 553(b)(A) also exempts "general statements of policy," which we have previously described as "'statements issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'" *Chrysler Corp., supra*, at 302, n. 31 (quoting Attorney General's Manual on the Administrative Procedure Act 30, n. 3 (1947)). Whatever else may be considered a "general statemen[t] of policy," the term surely includes an announcement like the one before us, that an agency will discontinue a discretionary allocation of unrestricted funds from a lump-sum appropriation.

Our decision in *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U. S. 402 (1971), confirms our conclusion that the Service was not required to follow the notice-and-comment procedures of § 553 before terminating the Program. *Overton Park* dealt with the Secretary of Transportation's decision to authorize the use of federal funds to construct an interstate highway through a public park in Memphis, Tennessee. Private citizens and conservation organizations

the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing."

⁷We express no view on the application of the publication requirements of § 552, or on the propriety of the relief granted by the District Court. The Court of Appeals did not address these issues. See, *supra*, at 190.

SAMPLE COVER TO FOLLOW AS TO FORM

No.

IN THE

Supreme Court of the United States

MY CLIENT(S),

Petitioner(s)

v.

MY OPPONENT(S)

Respondent(s)

On Petition For Writ Of Certiorari
To The (court whose judgment you seek to review)

PETITION FOR WRIT OF CERTIORARI

MY NAME

Counsel of Record

MY FIRM

MY STREET ADDRESS

CITY, STATE, ZIP CODE

MY TELEPHONE NUMBER

SAMPLE CERTIFICATE OF COMPLIANCE WITH WORD COUNT

CERTIFICATE OF COMPLIANCE

No. 07-

MY CLIENT(S),

Petitioner(s)

v.

MY OPPONENT(S)

Respondent(s)

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains _____ words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20__
