App. No. __________

In The
Supreme Court of the United States

Ryan Welter MD PhD

v.

Coverys, Gregg Hanson, Brenda Richardson and Joseph Dickerson

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ON APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION
FOR A WRIT OF CERTIORARI
TO THE U.S. FIRST CIRCUIT COURT OF APPEALS
(Docket # 23-1243)

May 14, 2024

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

To Circuit Justice Ketanji Brown Jackson:

Petitioner Dr. Ryan Welter respectfully requests that the time to file a Petition for a Writ of Certiorari in this matter be extended for sixty days, up to and including September 14, 2024. On April 17, 2024, the First Circuit Court of Appeals denied a motion for rehearing *en banc*. Docket report enclosed. Absent an extension of time, the Petition would be due on July 16, 2024. This Court has jurisdiction over this Application under 28 U.S.C. 1254 and has authority to grant the requested relief under 28 U.S.C. 1651.

BRIEF BACKGROUND

A US District Court is a court of limited jurisdiction and shall not voluntarily claim jurisdiction over cases where Congress has ruled that it has none. The Supreme Court's teachings on this point have been many, clear, and recent. In the First Circuit circuit, and nationwide, where there is any doubt over the court's jurisdiction, the district court shall remand the case to state court. Here, the defendants' removal was untimely because they gambled on tossing the suit out in state court, and removed only after their attempt failed. The district court

violated both the plain text of a Congressional statute, 28 U.S.C. § 1446(b)(3), and circuit precedents, and chose to unlawfully retain jurisdiction. The First Circuit ignored current circuit precedent in addition to this Court's controlling rulings and the plain text of federal law, and affirmed the district court based on an older ruling from the Sixth circuit. This was an extraordinary error that merits reversal.

STATEMENT

On February 21, 2021, petitioner Dr. Welter sued the defendants in state court via a *pro se* complaint. A judge strongly urged him to hire an attorney, which he did. The attorney amended the complaint and served it on the defendants. Thus the defendants received a proper summons with the amended pleading, *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999), which contained claims that arose under federal law and was immediately removable, 18 USC § 1030. They chose to not remove to federal court, and filed motions to dismiss instead. Dr. Welter moved to continue *pro se* and emailed the defendants the Second amended complaint, the classic subsequent paper. In March 2022, a Rule 12 hearing was held in state court at which the defendants demonstrated that they were aware that the claims in the Second Amended Complaint arose under federal law, and informed the judge:

> "Dr. Welter's complaint…has a morass of claims, Computer Fraud and Abuse claims… We believe that the complaint should be dismissed with prejudice, we are prepared to argue that now, there would be no need to deal with a motion for leave to amend because the case would be gone."

The defendants intentionally did not remove the case to federal court within thirty days of receiving "subsequent paper" in February 2022 itself. Then the state court granted Dr. Welter leave to proceed *pro se* and allowed his attorney to withdraw. On May 5, 2022, appellant again

served the Second Amended Complaint upon Coverys and Dickerson through the state court's Rule 9A procedure, and the defendants *again* had in hand the plaintiff's subsequent paper which openly asserted federal claims that arose under federal law and shouted that it was immediately removable. Coverys instead filed a motion to reconsider in state court that aimed to get all claims in the first amended complaint dismissed. Nobody removed the case to federal court within 30 days of receiving the subsequent paper.

On June 8, 2022, the state court declined to dismiss all counts in the amended complaint, and on June 10, 2022, over defendants' opposition, granted leave to amend. On June 30, 2022, more than thirty days after *again* being served plaintiff's subsequent paper, and well more than one year after the original complaint was filed, defendants removed the case to US district court.

Within one week of removal, Dr. Welter immediately moved to remand the case back to state court because an untimely removal is a defective removal, and the district court lacked subject-matter jurisdiction. Defendants opposed the motion and proceeded full tilt as if this case was properly in federal court, with motions to dismiss and discovery schedules. Dr. Welter filed a special limited appearance and refused to participate in anything other than a motion to remand because he objected robustly to the fatal lack of jurisdiction.

On August 18, 2022, the district court held a hearing on the motion to remand. Plaintiff argued that the defendants were already existing parties prior to the Second amended complaint being served upon them, they already knew that the amended complaint itself relied upon federal law, that they could and should have removed this case in August 2021 and in March 2022, and definitely should have removed it in May 2022, and most certainly did not need to wait until a judge granted leave to amend, given the plain text of the removal statutes.

Dr. Welter presented the transcript of the defendants openly acknowledging to the state court judge that they knew the claims arose under federal law but chose to get the amended complaint dismissed with prejudice in state court instead of removing the case. He also presented current binding circuit precedent in *Romulus v. CVS Pharmacy, Inc.*, 770 F. 3d 67 (1st Cir. 2014) and *Rhode Island v. Shell Oil*, 35 F.4th 44 (1st Cir. 2022), and a case from the Middle District of Louisiana, *Estes v. C-K Sherwood Acres*, 3:19-CV-00823-BAJ (ECF# 37), that is more on point than any presented by the defendants.

On September 19, 2022, the district court chose to claim it had jurisdiction after ruling that the case became removable only after the state court judge granted leave to amend and not when the defendant received subsequent paper from the plaintiff, whether served or otherwise. The district court then dismissed the federal claims and remanded the state claims. Dr. Welter filed a notice of appeal that same day.

The First Circuit began "with the district court's denial of the motion to remand to state court. Appellant argued that the removal of the underlying case to federal district court had been untimely under 28 U.S.C. § 1446(b). This issue of timeliness is not jurisdictional in nature. See Universal Truck & Equip. Co. v. Southworth-Milton, Inc., 765 F.3d 103, 110 (1st Cir. 2014) (instructing that "the 30 day time limit is not jurisdictional")." Neither the original complaint nor the first amended complaint was removable. See Rhode Island Fishermen's All., Inc. v. Rhode Island Dep't Of Env't Mgmt., 585 F.3d 42, 48 (1st Cir. 2009) (describing the "well-pleaded complaint rule" as being a "shorthand nomenclature" for the necessity for "the federal question to be stated on the face of the plaintiff's well-pleaded complaint")...The second amended complaint did include claims invoking federal law and thus was capable of rendering the case

removable. See id.; see also 28 U.S.C. § 1446(b)(3). The operative notice of removal was filed within 30 days of the state court's grant of the motion to amend and resulting acceptance of the second amended complaint but was not filed within 30 days of service on appellees of the motion for leave to amend and proposed second amended complaint...Appellant argues that the removal was untimely because the service of the motion for leave to amend and proposed second amended complaint started the 30-day clock to remove under 28 U.S.C. § 1446(b)(3), irrespective of when the state court actually granted leave to amend. However, so long as the first amended complaint remained operative for removal purposes, the case was not removable, and mere service of the proposed second amended complaint and accompanying motion for leave to amend did not automatically transform the proposed second amended complaint into the operative complaint. *Cf.* ConnectU LLC v. Zuckerberg, 522 F.3d 82, 91-95 (1st Cir. 2008)"

It is notable that this rationale was overruled in 2014 by *Romulus*, which Dr. Welter relied on. The court then voted to deny *en banc* review.

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a Petition for a Writ of Certiorari should be extended for sixty days for these reasons:

After first declaring that the issue of timeliness is not jurisdictional in nature, the panel ignored current circuit precedent to declare that the 30-day removal clock did not begin when the defendants received subsequent paper but only after the state court judge granted leave to amend. This directly contradicts the binding holding in *Novak v. Bank of N.Y. Mellon Trust Co.*, 783 F.3d 910 (1st Cir. 2015)("Instead, we conclude that service is generally not a prerequisite for

removal and that a defendant may remove a state-court action to federal court any time after the lawsuit is filed but before the statutorily-defined period for removal ends.") cited by *Sutler v. Redland Ins. Co.*, 12-10656-RWZ (D. Mass. Oct. 23, 2012) The panel also ignored other newer binding circuit precedent, *Romulus v. CVS Pharmacy, Inc.*, 770 F. 3d 67 (1st Cir. 2014), *Rhode Island v. Shell Oil*, 35 F.4th 44 (1st Cir. 2022), and instead, inexplicably chose 15-year old cases from the Sixth and Seventh Circuits.

As a direct result, the First Circuit went against *stare decisis*, the rulings of this Court, and the plain text of Congressional law, and affirmed the district court's usurpation of jurisdiction where it had none, a massive foundational error by an Article III court.

This *per se* merits certiorari and reversal by this Court.

The Petitioner is working diligently to retain counsel with Supreme Court expertise to prepare the Petition. The extension sought shall assist greatly in locating appropriate counsel.

No meaningful prejudice to any party would arise from the extension.

CONCLUSION

Based on the facts and legal arguments presented herein, this Application for extension of time to file a petition for certiorari must be granted and the time to file should be extended sixty days up to and including September 14, 2024, which is what the petitioner respectfully requests.

Respectfully submitted,

/s/ Ryan Welter MD PhD

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May 14, 2024

CERTIFICATE OF SERVICE

Petitioner certifies that he served a copy of this application upon all defendants via counsel via email.

May 14, 2024

/s/ Ryan Welter MD PhD
RYAN WELTER MD PhD, *pro se*