App No. _____

In The Supreme Court of the United States

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JEREMY MORRIS, et al.,

Applicants,

v.

WEST HAYDEN ESTATES HOMEOWNERS ASSOCIATION,

Respondent.

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On Application for an Extension of Time to File Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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

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September 16, 2024

Corporate Disclosure Statement

Pursuant to Supreme Court Rule 29.6, Applicants Jeremy Morris, et al., state that petitioners are not part of a parent corporation nor a publicly held company owning 10% or more of Applicant stock. Further, Liberty Law Group is not a nonprofit, but rather a law firm owned by one of the Petitioners.

To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, Petitioners Jeremy Morris, et al., respectfully request that the time to file its Petition for Writ of Certiorari in this matter be extended for 60 days up to and including November 15, 2024. The Court of Appeals issued its opinion on June 17, 2024. (Appendix ("App.") A). Absent an extension of time, the Petition for Writ of Certiorari would be due on September 16, 2024. This Court would have jurisdiction over the judgment under 28 U.S.C. 1254(1).

Background

This case presents an important question on the application of Rule 50B and, more specifically, under what circumstances a trial court judge may, in his discretion, overturn a unanimous jury. Specifically, when Congress passed the Fair Housing Act in 1968, whether enforcement of that Act would be held to such a high burden that even unanimous juries considering tape recorded confessions of discriminatory behavior would potentially lack the authority to decide questions of credibility and that factual determinations would be left to judges and not to juries.

Jeremy Morris is an attorney with a Christian ministry aiding families burdened by a cancer diagnosis of their children. He holds an annual fundraiser at his home to raise funds for those families. Jeremy and Kristy Morris made an offer on a home accepted by the sellers in January 2015. The West Hayden Estates

Homeowners Association wrote a letter stating, in part, "And finally, we are hesitant to bring up the fact that some of our residents are non-Christians or people of another faith and we don't even want to think of the problems that would bring up." After two years of harassment, including vandalism of Christmas lights, filming multiple "takes" of a fake snowplow accident staged by an HOA Board Member, and admitted discrimination of the HOA by its President (see trial court record, appellate brief, and Ninth Circuit Judge Collins' dissent), Petitioners filed a lawsuit in Idaho Federal Court against the HOA exactly 2 years from the date of the infamous letter. The federal trial culminated in a 7-member jury trial in October 2019 in which Judge B. Lynn Winmill instructed the jury that discrimination need only be shown to be motivated even "in part." After 15 hours of deliberation the jury unanimously held the HOA violated three provisions of the 1968 Fair Housing Act: §3604b discrimination in the provision of housing, §3604c publication of a discriminatory writing in relation to the sale of property, and §3617 creating a hostile environment related to religious discrimination and ordered the HOA to pay $15,000 in compensatory damages and $60,000 in punitive damages.

In April 2020, trial judge B. Lynn Winmill overturned the unanimous jury verdict under Rule 50B, claiming some witnesses at trial were "not credible" and offering different possible interpretations and rationales of the letter mailed to the homebuyers. Judge Winmill neglected to acknowledge the tape recorded admission of discrimination by the HOA anywhere in his decision to flip the verdict. The judge ordered Jeremy and Kristy Morris to pay the HOA attorney fees that were

calculated to be in excess of $111,000. Petitioners appealed to the 9th Circuit Court of Appeals to reinstate the jury verdict and oral argument was offered by Allyson Ho of First Liberty Institute on behalf of the Morrises in 2020. The 9th Circuit's Opinion was filed on June 17, 2024, with the Court's majority effectively affirming Judge B. Lynn Winmill's overturning of the jury verdict on all but §3617.

The Circuits are in disagreement about the manner and circumstances when a judge may remove a decision from the jury. For example, the 2nd Circuit decided only just this month that the "district court's Rule 50 ruling improperly intruded on the province of the jury by making credibility determinations, weighing evidence, and ignoring facts or inferences that a reasonable juror could plausibly have found to support Palin's case." Palin v. The NY Times Co., No. 22-558 (2d Cir. Aug. 28, 2024), (not yet published). In the present case, however, and in contrast with the decision taken by the 2nd Circuit on this question, a majority of the 9th Circuit ran the opposite direction when the 9th Circuit justified trial Judge B. Lynn Winmill's decision to weigh the "credibility of witnesses." In his 42-page dissent, 9th Circuit Judge Daniel Collins called the actions of the HOA "openly discriminatory."

The axiom "jurors are triers of facts and judges are triers of law" is imperiled by the precedent established in this case by the 9th Circuit Court of Appeals. Even the trial judge acknowledged the lack of this authority as he wrote in the Legal Standard, JMOL section he is not permitted to make "credibility determinations" about witnesses. (Judge Winmill Order, page 2). Yet in the same decision, the Judge stated that some witnesses were more "credible" than others (Id at 19).

The majority of the 9th Circuit acknowledged that a jury could have found that Defendants violated Plaintiffs' rights with respect to FHA under §3617 Interference, coercion, or intimidation, and thereafter ordered a new trial. Allowing the Appellate Court to go unchallenged would eviscerate the ability of future plaintiffs to enforce provisions of the FHA, even when juries as triers of fact have an "openly discriminatory" letter addressed to homebuyers (9th Circuit Judge Collins' dissent, Appendix 2), testimony by sellers to having received communications by an HOA about the "beliefs" of the buyers, and a tape-recorded admission by the Defendant. A new and emerging standard from the 9th Circuit on when a jury may be overturned appears to give greater weight to judges making "credibility" determinations not permitted in other Appellate courts.

Reasons For Granting An Extension Of Time

The time to file a Petition for a Writ of Certiorari should be extended for 60 days for the following reasons:

1. Petitioners were represented throughout the duration of their Appeal before the Ninth Circuit Court of Appeals by First Liberty Institute of Plano, Texas. Oral argument before the Ninth Circuit was held in 2020.

2. It was not until a full four years after Oral argument that on June 17, 2024, the Ninth Circuit issued its Opinion and some time after that that it was determined that First Liberty Institute would not be proceeding as counsel on Appeal to the Supreme Court of the United States.

3. A different public policy firm called "Liberty Counsel" explored representing Petitioners for the balance of the 90-day window following issuance of the Opinion by the Ninth Circuit. Richard Mast of Liberty Counsel (hereinafter, "LC"), acted as the liaison between the Petitioners and LC.

4. It was not until August 31, 2024, when Mr. Mast of LC informed the Petitioners that LC could not take this present case, but that LC would give Petitioners guidance on next steps, including assistance in obtaining new counsel.

5. One week was simply not enough time for Petitioner to write a Writ of Certiorari (Petitioner is a personally a member of the US Supreme Court Bar), or, in the alternative, to hire new counsel.

Conclusion

Applicant requests that the time to file a writ of certiorari in the above-captioned matter be extended 60 days to and including November 15, 2024.

Dated this 9th day of September, 2024.

Respectfully submitted,

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