

No. _____

In the Supreme Court of the United States

UPSTATE JOBS PARTY, MARTIN BABINEC, & JOHN BULLIS,

Applicants,

v.

PETER S. KOSINSKI, NEW YORK STATE BOARD OF ELECTIONS CO-CHAIR
COMMISSIONER, ET AL.,

Respondents.

**Consent Application to the Honorable Sonia Sotomayor, Associate
Justice of the Supreme Court of the United States and Circuit Justice
for the Second Circuit, For an Extension of Time within Which to File a
Petition for a Writ of Certiorari to the United States Court of Appeals for
the Second Circuit**

Shawn T. Sheehy

Counsel of Record

HOLTZMAN VOGEL BARAN

TORCHINSKY & JOSEFIK PLLC

2300 N Street, NW, Ste 643

Washington, DC 20037

Phone: (202) 737-8808

Fax: (540) 341-8809

ssheehy@holtzmanvogel.com

Counsel for Applicants

To the Honorable Sonia Sotomayor, Associate Justice of the United States and Circuit Justice for the Second Circuit:

Pursuant to this Court’s Rule 13.5, Upstate Jobs Party, Martin Babinec, and John Bullis (“Applicants”) hereby move for an extension of time of thirty (30) days, up to and including October 31, 2024, for the filing of the petition for a writ of certiorari to the Second Circuit in the above-captioned case. Should the extension be denied, the deadline for filing the petition for writ of certiorari will be October 1, 2024. Applicants have conferred with counsel for the Commissioners of the New York State Board of Elections (“Respondents”) and Respondents’ counsel consents to this request.

GOOD CAUSE EXISTS FOR GRANTING THE 30-DAY EXTENSION

In support of this request, Applicants state the following:

1. The United States District Court for the Northern District of New York rendered its decision on October 8, 2021. *Upstate Jobs Party v. Kosinski*, 559 F. Supp. 3d 93 (N.D.N.Y. 2021). The district court granted summary judgment in favor of Applicants on two challenges to New York’s asymmetrical contribution limits. By contrast, the district court granted summary judgment in favor of Respondents on a separate challenge to New York’s asymmetrical contribution limits. The Parties timely cross-appealed.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

2. The United States Court of Appeals for the Second Circuit rendered its decision on July 3, 2024. The Second Circuit affirmed the district court’s grant of

summary judgment in favor of Respondents. The Second Circuit, however, vacated the district court's grant of summary judgment to Applicants and remanded with instructions to grant summary judgment in favor of Respondents.

3. The judgment for which review is sought is *Upstate Jobs Party v. Kosinski*, 106 F.4th 232 (2d Cir. 2024). The slip opinion is attached as Exhibit A.

JURISDICTION

4. This Court has jurisdiction under 28 U.S.C. § 1254(1). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for a writ of certiorari is due to be filed on or before October 1, 2024. This deadline is 90 days from July 3, 2024, the date on which the United States Court of Appeals issued its opinion and judgment. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the filing date for the petition for a writ of certiorari.

REASONS JUSTIFYING AN EXTENSION OF TIME

5. Under the Free Speech Clause of the First Amendment to the Constitution, and the Equal Protection Clause of the Fourteenth Amendment to the Constitution, Applicants challenge the constitutionality of New York's asymmetrical campaign contribution limits. Applicants challenge New York's laws distinguishing between political parties and independent bodies, including the disparate individual contribution limits and transfer limits, and the application of New York's "housekeeping account" contribution limit exception. The Second Circuit reversed in part and affirmed in part as to the Fourteenth Amendment claim and reversed in part and affirmed in part the district court's judgment as to the First Amendment

claim, and so remanded for summary judgment to be entered in Respondents' favor on all claims. Ex. A at 66. The Second Circuit found no equal protection violation, because it held that Upstate Jobs Party and political parties are not similarly situated. Ex. A at 22-28. The Second Circuit found no First Amendment violation as to the lower contribution and transfer limits for independent bodies, because it held that New York showed an interest in avoiding the appearance of quid pro quo corruption. Ex. A at 33-42. The Second Circuit found no First Amendment violation as to the housekeeping exception for the same reasons. Ex. A at 57-60.

6. This case presents issues of exceptional importance for the First Amendment because “[t]he First Amendment has its fullest and most urgent application precisely to the conduct of campaigns for political office.” *FEC v. Ted Cruz for Senate*, 596 U.S. 289, 302 (2022). The petition will have a strong chance of being granted. Applicants will argue that the Second Circuit’s decision is at odds with the approach of the Supreme Court and other federal appellate courts on important First Amendment legal questions, namely, the type and threshold amount of evidence needed for a State to justify an interest in avoiding the appearance of quid pro quo corruption. *See, e.g., id.* at 306-311. The Second Circuit greatly curtailed First Amendment political speech even though it conceded that no evidence of actual corruption had been shown by Respondents. Ex. A at 42. It then held that expert hypotheticals combined with “common sense” alone justified the restrictions through the interest of the State in combatting the *appearance* of corruption. Ex. A at 50. Therefore, this important First Amendment question is implicated: Did the Second

Circuit err in holding that a State carried its burden of presenting substantial evidence of a legitimate objective in imposing restrictive (fifteen-to-one) contribution and transfer limits when the State presented only hypotheticals and expert opinion, without (i) presenting evidence of actual corruption or (ii) presenting legislative findings or empirical data substantiating any fear of the appearance of corruption?

7. Additionally, Respondents consent to the requested 30-day extension. On September 3, 2024, counsel for Applicants contacted counsel for Respondents requesting consent to a 30-day extension. On the same day, counsel for Respondents stated that they consent to the requested 30-day extension.

8. Good cause therefore exists for a moderate extension so that counsel for Applicants may give the issues noted above due care, time, and research.

9. Further good cause exists because undersigned counsel Shawn Sheehy, as well as other attorneys assisting in the preparation of the petition, require additional time to prepare the petition to fully address the issues noted above. This is because Mr. Sheehy and attorneys at his firm have prior engagements in the weeks immediately prior to October 1, 2024. The following are just some examples:

- A new lawsuit challenging the constitutionality of a federal government action is set to be filed on or around September 20;
- Amicus brief due in *Center for Biological Diversity v. Regan*, No. 24-5156 (D.C. Cir.) on September 23, 2024;
- Amicus brief due to this Court on September 27, 2024;

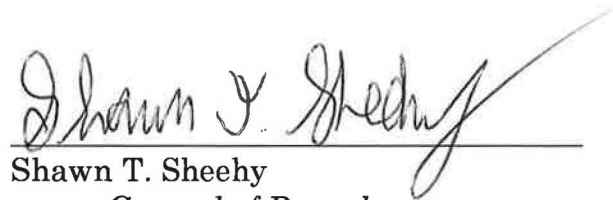
- Unless pre-litigation settlement efforts are successful, undersigned counsel will file complaints, on behalf of multiple plaintiffs, on or about September 27, 2024.

10. As indicated by Respondents' consent to this request, an extension of time will not cause prejudice to Respondents. Should this Court grant the petition in this case, the oral argument and briefing will likely be in late October Term 2024.

WHEREFORE, for the foregoing reasons, Applicants respectfully request the application for an extension of time, up to and including October 31, 2024, be granted.

Dated: September 12, 2024

Respectfully submitted,



Shawn T. Sheehy

Counsel of Record

HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIK PLLC
2300 N Street, NW, Ste 643
Washington, DC 20037
Phone: (202) 737-8808
Fax: (540) 341-8809
ssheehy@holtzmanvogel.com

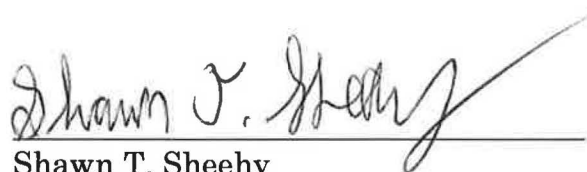
Counsel to Applicants

CERTIFICATE OF SERVICE

Pursuant to Supreme Court Rule 29.5(b), undersigned counsel certifies that the Applicants have filed the foregoing with the Court in both electronic and paper format. Undersigned counsel further certifies that the foregoing has been served on all counsel of record at the address below via overnight delivery service and electronic mail.

Sarah L. Rosenbluth
Assistant Solicitor General
New York State Office of the Attorney General
350 Main Street, Suite 300A
Buffalo, New York 14202
sarah.rosenbluth@ag.ny.gov

Dated: September 12, 2024



Shawn T. Sheehy

Counsel of Record

HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIK PLLC
2300 N Street, NW, Ste 643
Washington, DC 20037
Phone: (202) 737-8808
Fax: (540) 341-8809
ssheehy@holtzmanvogel.com