

No. \_\_\_\_\_

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**IN THE SUPREME COURT OF THE UNITED STATES**

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**KANE COUNTY, UTAH,**  
*Applicant,*

v.

**SOUTHERN UTAH WILDERNESS  
ALLIANCE, ET AL.,**  
*Respondents.*

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On Application for an Extension of Time to File A Petition For A Writ Of  
Certiorari To The United States Court Of Appeals For The Tenth Circuit

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To the Honorable Neil M. Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Tenth Circuit:

Pursuant to this Court's Rule 13.5, Applicant Kane County, Utah ("Kane County") respectfully requests a 60-day extension of time, to and including January 31, 2025, to file a petition for a writ of certiorari to review a judgment of the United States Court of Appeals for the Tenth Circuit.

### **JURISDICTION AND JUDGMENT FOR WHICH REVIEW IS SOUGHT**

On March 4, 2024, the Tenth Circuit entered its judgment as reported in *Kane Cnty. v. United States*, 94 F.4th 1017 (10th Cir. 2024). A copy of this decision is attached as Appendix ("App.") Exh. 1. On September 3, 2024, the Tenth Circuit denied petitions for rehearing as reported in *Kane Cnty. v. United States*, 113 F.4th 1290 (10th Cir. 2024). A copy of this decision is attached as App. Exh. 2. Thus, the time for filing a petition for a writ of certiorari to this Court is due on or before December 2, 2024, unless the time for filing is extended. In compliance with Rules 13.5 and 30.2, this Application for Extension is filed at least 10 days before the date the petition is due.

Kane County notifies the Court that on November 20, 2024, the United States of America, a party in the proceedings below, filed its own application for an extension of time, to and including January 31, 2025. The State of Utah, also a party below, is expected to file a similar application.

The underlying district court proceedings involved claims filed under the Quiet Title Act, 28 U.S.C. § 2409a, where it had “exclusive original jurisdiction.” 28 U.S.C. § 1346(f). The Tenth Circuit’s jurisdiction was based on 28 U.S.C. § 1292(b). *See Kane Cnty.*, 94 F.4th at 1027. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## BACKGROUND

This case involves intervention as of right under Fed. R. Civ. P. 24(a)(2) and a congressional statute that granted public highway rights-of-way to states and counties. Rule 24(a)(2) allows a party to intervene who “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” *Id.*

The congressional land grant statute, commonly called R.S. 2477, provided that the “right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.” Act of July 26, 1866, ch. 262, § 8, 14 Stat. 251, 253, codified at 43 U.S.C. § 932, repealed by the Federal Land Policy Management Act of 1976 (“FLPMA”), Pub.L. No. 94-579 § 706(a), 90 Stat. 2743.

From 1866 until its repeal in 1976, Congress used R.S. 2477 to grant rights-of-way for public highways crossing the lands of the United States. Acceptance of title to an R.S. 2477 right-of way in Utah required proof of either a governmental act of acceptance or proof of continuous public use as a highway for a period of ten

years prior to FLPMA's repeal in October of 1976. *S. Utah Wilderness All. v. BLM*, 425 F.3d 735, 770-771 (10th Cir. 2005).

Commencing in 2004, the State and several Utah counties filed lawsuits against the United States under the Quiet Title Act, 28 U.S.C. § 2409a to confirm their existing title to highway rights-of-way granted by R.S. 2477. *See generally San Juan Cnty. v. United States*, 420 F.3d 1197 (10th Cir. 2005), rev'd 503 F.3d 1163 (10th Cir. 2007) (en banc). As public highways, "[m]embers of the public as such do not have a 'title' in public roads." *Kinscherff v. United States*, 586 F.2d 159, 160 (10th Cir. 1978).

Several of the Respondent groups herein, such as the Southern Utah Wilderness Alliance (collectively "SUWA"), promptly sought to intervene as of right in the quiet title suits, even though they had no title to claim or defend. In *San Juan Cnty. v. United States*, 503 F.3d 1163 (10th Cir. 2007), a divided court sitting en banc determined that the interest groups, such as SUWA, could not intervene as of right in a quiet title suit. *Id.* at 1207. Several years later, a unanimous Tenth Circuit panel similarly decided that SUWA could not intervene as of right in an R.S. 2477 title suit. *Kane Cnty. (1) v. United States*, 597 F. 3d 1129 (10th Cir. 2010).

Nine years after that, however, a divided Tenth Circuit panel held that SUWA could intervene as of right on the remand of *Kane Cnty. (1)*. *Kane Cnty. (1) v. United States*, 928 F.3d 877 (10th Cir. 2019). The divided panel determined that SUWA could only intervene on the issue of the scope of the highway rights-of-way, not as to title. *Id.* at 891. The parties (the United States, the State, and Kane

County) petitioned for rehearing, which was denied by an equally divided 5-5 vote. *Kane Cnty. (1) v. United States*, 950 F.3d 1323 (10th Cir. 2020). This Court later denied petitions for certiorari filed by the United States, State, and County. *United States v. Kane County*, 141 S. Ct. 1284 (2021) and *Kane County v. United States*, 141 S. Ct. 1283 (2021).

In this case, referred to as *Kane County (2)*, SUWA filed five motions to intervene before the district court certified its decision denying intervention as final for purposes of appeal. As extensively recited by the district court, the facts and history of SUWA's involvement in the case proved that SUWA factually and legally should not intervene as of right. *See Kane Cnty. v. United States*, 606 F. Supp. 3d 1138 (D. Utah 2022). A copy of this decision is attached as App. Exh. 3.

Given the conflict in the Tenth Circuit's intervention decisions, the United States, the State, and Kane County petitioned for initial en banc review on appeal, but were denied. The Tenth Circuit later issued its decision reversing the district court and allowing SUWA to intervene as of right. *Kane Cnty. (2)*, 94 F.4th 1017 (10th Cir. 2024). App. Exh. 1. Following this decision, the United States, the State, and Kane County petitioned the Tenth Circuit for en banc rehearing, but that request was denied by another equally divided 5-5 vote. *Kane Cnty. v. United States*, 113 F.4th 1290 (10th Cir. 2024) (App. Exh. 2).

### **REASONS FOR GRANTING AN EXTENSION OF TIME**

The foregoing extensive history and conflicting decisions demonstrate the complexity of the issues in this case and the need for fair presentation. The

undersigned has been lead counsel for Kane County throughout these and other cases and will be the primary drafter of the petition.

Unfortunately, the other attorney with knowledge of these cases has been on leave since September and will not return until January of 2025. This absence has affected the undersigned's workload in this and other matters. For example, the undersigned has been busy drafting a dispositive motion in *Reed v. Tintic Consolidated Metals, et al.*, Civil No. 220600021 (Fourth Dist. Utah), and is also busy drafting a complicated complaint to be filed in the next three or four weeks. Attention to these matters does not leave the undersigned with sufficient time to prepare a petition without an extension.

At this time, the Thanksgiving and year-end holiday seasons will further delay the proper completion of the petition.

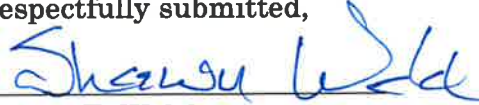
On November 20, 2024, the United States of America requested an identical extension of time, and the undersigned expects the State to request the same extension. Thus, granting this extension will facilitate the State and County's coordination on briefing and better presentation of the questions for review.

### CONCLUSION

For the good cause shown herein, Applicant Kane County, Utah, respectfully requests that its deadline for filing a petition for a writ of certiorari be extended by 60 days, up to and including January 31, 2025.

November 21, 2025

Respectfully submitted,



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