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No.

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IN THE  
SUPREME COURT OF THE UNITED STATES

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MATTHEW O'REILLY

*Petitioner, Pro Se*

v.

ADAM TSOTTLES and WASTE MANAGEMENT,

*Respondents*

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*On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Fourth Circuit*

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MOTION TO DIRECT THE CLERK TO DOCKET  
A PETITION FOR CERTIORARI OUT-OF-TIME

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*Petitioner*

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## Motion To Direct The Clerk To Docket A Petition For Certiorari Out-Of-Time

On 5 December 2023, I submitted a *Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit* to review that court's decision in *Matthew O'Reilly v. Adam Tsottles & Waste Management*, 21-1194, (4th Cir. 2021). On 12 December, I was informed by the Clerk that by this Court's calculation, the Petition was submitted one day late. In response on 18 December, I submitted an *Application for an Extension of Time to File a Petition for a Writ of Certiorari* to Chief Justice Roberts, which the Clerk, citing incorrect jurisdictional grounds, refused to docket.

For the reasons set forth below, I humbly ask this Court to direct the Clerk to docket my *Petition for Writ of Certiorari* out-of-time.

- I. The application deadline for time extensions is a claims-processing rule, rather than a jurisdictional bar.

28 U.S. Code § 2101(c) does not specify when an application for extension of time to file a petition for certiorari may be made; the time limit to submit applications for extension is prescribed only by Sup. Ct. R. 13.5 and 30.2. Thus the deadline may be equitably tolled, and a Justice of this Court may grant an extension to the time to petition for certiorari beyond the initial 90-day certiorari period. In this case, that authority extends until 01 February, 2024.

In the letter refusing docketing (*see* Appendix C), the Clerk stated "the Court no longer has the power [...] to consider an application for an extension of time to file the petition." But this Court treats "a procedural requirement as jurisdictional only if Congress 'clearly states' that it is" (*Boechler, P.C. v. Commissioner of Internal Revenue*, 596 U.S.\_\_\_\_ (2022)); and "[...] a time limit prescribed only in a court-made rule is not

jurisdictional. It is a mandatory claim-processing rule [...]" (*Hamer v. Neighborhood Housing Servs. Of Chicago*, 583 U.S.\_\_\_\_ (2017)). Therefore it is inherently – and *solely* – within the power of the Justices to consider and/or grant applications outside that time.

## II. Blatant District and Appellate Court disregard for *stare decisis* is a matter of extraordinary importance and circumstance

Pursuant to the requirements of Sup. Ct. R. 13.5 and 30.2, this is an extraordinary circumstance, in part because the *Petition* presents a substantial and critically important question of Constitutional and procedural law: whether District Courts and Courts of Appeal are permitted to knowingly and deliberately disregard or ignore precedent from this Court and state high courts when adjudicating *pro se* cases. The District Court of Maryland has selectively ignored *stare decisis* in dozens of cases (including this one), and the Fourth Circuit has now split from all of its sister Circuits and this Court by deciding that continuing to do so constitutes "no reversible error". These decisions will continue to unfairly harm innumerable litigants if not quickly curbed.

## III. An Application for an Extension of Time to File a Petition for a Writ of Certiorari was filed

The *Application for an Extension of Time to File a Petition for a Writ of Certiorari*, as filed on 18 December 2023 and required by Sup. Ct. R. 30.3, is fully incorporated by reference herein (the full *Application* is attached as Appendix B).

I hand-delivered the printed copies of the *Petition* to the Court within an hour of their completion on 05 December. The writing of the *Petition* was finished before the deadline, but due to errors by the printers (and compounded by personal illness), the

booklets and associated papers required multiple re-printings in the final week and arrived late. Service on Respondents was nevertheless timely, and the Clerk acknowledged personal possession of the *Petition* within the three-day courier grace period provided for by Sup. Ct. R. 29.2.

Docketing the *Petition* will cause no unfair prejudice to Respondents. While the Court ordinarily requires that an application for extension be submitted "at least 10 days before the date the petition is due except in extraordinary circumstances" (*Sup. Ct. R. 13.5, 30.2*), I request that due to a severe illness and substantial and unforeseeable printing issues within the final ten days of the petition period, the Court grant a one-day *nunc pro tunc* extension out-of-time, and/or whatever other relief the Court finds equitable.

#### IV. Please direct the Clerk to docket my Petition out-of-time

It appears that this Court has never granted a motion to direct the Clerk to docket a petition out-of-time, but nonetheless, for the foregoing reasons, I beg the Court's indulgence to direct the Clerk to docket the *Petition for Writ of Certiorari* out-of-time. I have provided copies of the *Petition* to the Clerk as required by Rule 33.1.

Thank you for your time and consideration.

Respectfully submitted this [xxx]th day of January, 2024.

\_\_\_\_\_  
/s/  
Matthew O'Reilly, *Petitioner Pro Se*

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## Table of Authorities

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## APPENDIX A – Timeline of this Petition for Certiorari

05 September 2023: Denial of petition for rehearing (Fourth Circuit)

24 November 2023: Application for Extension due (per Rules 13.5 & 30.2)

26 November 2023: Severe respiratory illness (continues for several weeks)

27 November 2023: Scheduled Petition filing date; Printer fails to deliver booklets

28 November 2023: Printer cannot complete booklets; Printing canceled

28 November 2023: Second printer engaged to complete booklet printing

04 December 2023: Petition for Certiorari due; Second printer fails to deliver

05 December 2023: 1:05 PM - Second printer delivers booklets

05 December 2023: 1:48 PM – Booklets are hand-delivered to the Court

12 December 2023 Clerk informs me that Cert Petition was late

18 December 2023: Application for Extension hand-delivered to the Court

22 December 2023: Clerk returns Application for Extension, undocketed

26 December 2023: Motion to Docket Application or Petition out-of-time

13 January 2024: Clerk returns Motion to Docket, undocketed (for incorrect title)

17 January 2024: Corrected Motion to Docket Application or Petition out-of-time

[xxx] January 2024: Clerk returns corrected Motion to Docket, undocketed

[xxx] January 2024: This motion is filed.

APPENDIX B – Application For Extension Of Time To File A Petition For A Writ Of  
Certiorari (Filed 18 December 2023)

TO THE HONORABLE JOHN G. ROBERTS, JR.  
CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES  
AND CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT

Pursuant to Supreme Court Rules 13.5, 22, and 30, I respectfully request an extension of time to re-file my Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit to review that court's decision in *Matthew O'Reilly v. Adam Tsottles & Waste Management*, 21-1194, (4th Cir. 2021).

I hand-delivered the printed copies of the Petition to the Court within an hour of receiving them on 05 December. The writing of the Petition was finished before the deadline, but due to errors by the printers (and compounded by personal illness), the booklets and associated papers required multiple re-printings in the final week and arrived late. Service on Respondents was nevertheless timely, and the Clerk acknowledged personal possession of the Petition within the Rule 29.2 three-day courier grace period. Granting this extension will cause no unfair prejudice to Respondents, and I am prepared to re-file immediately.

The jurisdiction of this Court for the Petition is invoked under 28 U.S.C. §1254(1). Your Honor has the authority and jurisdiction to grant this extension until 01 February 2024 under Rule 13.5 and 28 U.S. Code § 2101(c), though I request only until 22 December (or any date the Court finds reasonable) to re-file.

1. The Petition presents a substantial and important question of Constitutional and procedural law: whether District Courts and Courts of Appeal are permitted to knowingly and deliberately disregard or ignore precedent from this Court and state High Courts

when adjudicating *pro se* cases. I ask the Court to grant this minor (although admittedly extraordinary) extension to address the lower Courts' fundamental and far-reaching error.

Below, citing only local "custom" and its own unreported opinions as precedent, the District Court of Maryland dismissed this case in its entirety, stating – without notice and with prejudice – that I, a first-time *pro se* plaintiff, "abandoned" twenty-five causes of action I did not re-plead in response to a motion to dismiss, *even though* I had already fully pleaded the facts and allegations in the complaint. It dismissed the remaining causes of action as time-barred, citing case law from 2004 that this Court over-ruled in 2010. Reconsideration and leave to amend were both denied.

The District Court has used "abandonment" to dismiss all or part of more than a dozen cases; in just the last three years, it has cited its opinion in *this* case as sole approving authority on at least nine occasions, even as it was being appealed.

The Fourth Circuit, also disregarding its own and this Court's precedent, upheld the dismissal with a single sentence: "We have reviewed the record and find no reversible error." It then denied re-hearing without comment.

2. I had planned to file my Petition more than a week before the deadline, but a severe respiratory illness substantially impeded my ability to do so. In addition, the booklets had to be re-printed several times due to errors by two separate printers. At the eleventh hour, the first could unexpectedly not perform the task; and despite attesting delivery ability by 01 December, the second printer did not complete printing until 05 December, the day I filed.

3. I sincerely thought I had filed on time. Until the Clerk of this Court returned my filings to me, undocketed, I was not aware that I had missed the filing deadline by a single



day. Denial of re-hearing by the Fourth Circuit was sent to me by mail on 05 September, and I calculated 05 December as Day 90. While I do not doubt that the Clerk's interpretation is correct, the combined wording of Rules 13.1 and 30.1 is ambiguous and confusing to a lay person<sup>1</sup>.

I understand that extensions are disfavored and rarely granted, but I humbly plead that you allow me to re-file my Petition. Ultimately, the just and fair disposition of this entire matter hinges on Your Honor's clemency and discernment.

If you cannot see yourself to that end, I implore you to read the text of the Petition itself so that you might at least be aware of the persistent and continuing injustices below. Even if it is too late for my work over the past six years to be of any benefit to me, please do not let it be of benefit to no one.

Thank you, most sincerely, for your time and consideration.

Respectfully submitted this 18th day of December, 2023.

\_\_\_\_\_/s/\_\_\_\_

Matthew O'Reilly, *Petitioner Pro Se*

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<sup>1</sup> For example, I reasoned that "within two days after" the 5th would mean by the 7th, but "within two days after, but not including" the 5th would mean by the 8th. Thus, "within 90 days after [13.1], but not including [30.1]" 05 September would include 05 December, the date I filed.

APPENDIX C – Clerk's letter refusing to docket the Application for Extension of Time to File a Petition for a Writ of Certiorari (Received 22 December 2023)

The Clerk's letter, as delivered on 22 December, 2023:

Dear Mr. O'Reilly:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was postmarked December 18, 2023 and received December 20, 2023. The application is returned for the following reason(s):

The application is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was September 5, 2023. Therefore the application for an extension of time was due on or before December 4, 2023. Rules 13.1, 30.1 and 30.2. When the time to file a petition for a writ of certiorari in a civil case has expired (including any habeas action), the Court no longer has the power to review the petition or to consider an application for an extension of time to file the petition.

You may submit your petitions along with a motion to direct the Clerk to file out-of-time.

Sincerely,

Scott S. Harris, Clerk

By: \_\_\_\_\_/s/\_\_\_\_\_

Redmond K. Barnes

(202) 479-3022