

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543-0001**

October 2005

WILLIAM K. SUTER
CLERK OF THE COURT

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479-3011

MEMORANDUM TO THOSE INTENDING TO PREPARE A PETITION FOR A WRIT OF CERTIORARI IN BOOKLET FORMAT AND PAY THE \$300 DOCKET FEE.

This memorandum is directed to those who intend to prepare a petition for a writ of certiorari in booklet format pursuant to Rule 33.1 and pay the \$300 docket fee required by Rule 38(a). It highlights the most common mistakes observed by the Clerk's Office. By following these guidelines you may help to expedite the processing of your petition. If you have questions, they should be directed to a case analyst in the Clerk's Office. This memorandum is useful also for those preparing appeals under Rule 18. The Rules of the Supreme Court were adopted January 27, 2003, with an effective date of May 1, 2003.

1. PAGE AND TYPE SIZE:

The petition and the appendix required by Rule 14 must be presented on paper that is 6½ by 9¼ inches and not less than 60 pounds in weight as stated in Rule 33.1(a) and (c). The color of the cover must be white. Rule 33.1(g)(i). The petition shall be typeset in traditional Roman 11-point or larger type with 2-point or more leading between lines. Footnotes must be 9-point or larger with 2-point or more leading between lines. **Please note that computer generated "Roman" type is smaller than traditional Roman type and you may need to increase the font size.** Any type that does not measure on a typesize finder to be 11-point for the body and 9-point for footnotes will not be accepted. There is a discrepancy between what traditionally is considered 11-point type and what today's computers refer to as 11-point type. The problem encompasses both typeface and type size. The Roman type mentioned in the Rules refers to traditional

roman type (as opposed to script or italics). It does not refer to computer-generated “Roman” such as “Times New Roman” font. Likewise, computer-generated 11-point type size does not always correspond to 11-point type size produced using traditional printing methods. The typeface should be similar to that used in the current volumes of the United States Reports. Rule 33.1(b). New Century Schoolbook 11-point type closely approximates the typeface used in the United States Reports. Times New Roman is acceptable if 12-point type is used for the body of the petition and 10-point type is used for footnotes. Attached are sample copies of correct and incorrect type.

Petitions produced on a personal computer using word processing, electronic publishing, or image setting are considered typeset and are acceptable. Such petitions shall not be double-spaced. Petitions produced on a typewriter are not acceptable. Type size and face shall be consistent throughout the petition. Rule 33.1(b). Quotations exceeding 50 words shall be indented. The text of the petition and the appendix thereto must appear on both sides of the page. Rule 33.1(b).

2. COVER and COVER PAGE INFORMATION:

The front and back covers of the petition shall consist of 65-pound weight white paper. Rule 33.1(e). Items on the cover of the petition shall be in the order set forth in Rule 34.1(a) through (f). The caption of the case must list the petitioner(s) in this Court on the topside of the *versus* with your real opponent(s) on the bottom side. You should not copy the caption of the case as it appeared in the lower court unless it accurately identifies who the petitioner(s) and who the respondent(s) are in this Court. Counsel of record shall be a member of the Bar of this Court at the time the petition is presented for filing. Rule 34.1(f). Names of other attorneys who are members of the Bars of the several states may be listed on the cover, but names of non-lawyers such as research assistants, law students, and advisors may not appear on the cover under any circumstances; nor are they to be credited with having contributed to the preparation of the petition either in the text, in a footnote, or at the conclusion of the petition. If you are representing yourself, your name, address, and telephone number shall appear on the cover. If the names of the parties are too lengthy to be fully included on the cover of the petition, a short caption may be used. The complete listing of the parties to the proceeding in this Court shall be

placed on the page following Questions Presented for Review. Rule 14.1(b). No text of the petition is to appear on the inside of the front or back covers. Do not list the October Term of the Court on the cover of the petition. A sample cover that may be followed as to form only is attached to this memo.

3. QUESTIONS PRESENTED:

The first page of the petition, not the back of the front cover, must contain **Questions Presented for Review**. Rule 14.1(a). The caption of the petition is not to be repeated on this page. The question(s) may be prefaced by a very brief introductory statement to set the scene, so that the question(s) may be understood. The question(s) should be short and concise and may not be argumentative or repetitious. If the petitioner or respondent is under a death sentence that may be affected by the disposition of the petition, the notation “**CAPITAL CASE**” shall precede the words “Questions Presented.” No other information is to be included on this page. Rule 14.1(a).

4. PARTIES TO PROCEEDING:

The next page shall list the parties to the proceeding in this Court if all their names do not appear on the cover. Rule 14.1(b). This listing must be precise. Should a corporate entity be a petitioner, the Rule 29.6 corporate disclosure statement is to appear on this page. If there is no parent or publicly held company owning 10% or more of the corporation’s stock, a statement to that effect shall be included on this page. Rule 29.6.

5. NUMBERING OF PAGES:

The pages containing questions presented for review, the list of parties and corporate disclosure statement, table of contents, and table of authorities should be numbered (i), (ii), (iii), etc. The table of contents and the table of authorities are followed by the text of the petition. Rule 14.1(c). There should be no second cover page prior to beginning the text of the petition. The pages of the text of the petition should be numbered 1, 2,

3, etc., and not a continuation of (i), (ii), (iii), etc. In no event may the text of the petition exceed 30 pages. Rule 33.1(d) and Rule 33.1(g)(i).

6. CONTENTS OF APPENDIX:

The appendix to the petition must contain all items required by Rule 14.1(i). If you are seeking review of a state court judgment and an intermediate state appellate court was the last court to act on the merits, you shall include in the appendix any order regarding a petition for rehearing that may have been acted upon by that court as well as any orders denying discretionary review that may have been issued by higher state courts. Any order denying rehearing that starts the running of the time for filing the petition must also be contained in the appendix. Those orders shall include the caption showing the name of the issuing court, the title and number of the case, and the date of entry. Rule 14.1(i)(i) through (iv). If you are seeking review of a judgment from a United States Court of Appeals, you must, on that document, include the names of the judges who acted on the appeal. Any published and unpublished opinions issued with respect to the judgment sought to be reviewed shall be included in the appendix. Should the appendix become too voluminous, it may be presented in a separate volume or volumes with white covers bearing the appropriate caption.

7. REPRODUCING DOCUMENTS IN APPENDIX:

Material contained in the appendix as required by Rule 14.1(i) must also comply in all respects with the type size and page size requirements contained in Rule 33.1. Lower court orders and opinions issued on paper larger than 6 $\frac{1}{8}$ by 9 $\frac{1}{4}$ inches *may not be photo-reduced*. Rule 33.1(b). These items must be reformatted to comply with Rule 33.1 and they must contain the caption showing the name of the issuing court or agency, the title and number of the case, and the date of entry. Rule 14.1(i). If a signature is contained on the original, reproduce the name by using “s/_____”. The seal of the lower court and the file stamp may be reproduced by typesetting the information verbatim. Photo reproductions from Federal Supplement, Federal 2nd and 3rd Reporters, and regional reporters are not acceptable under Rule 33.1. Such materials must be reformatted to

comply with the type size requirements of Rule 33.1. Items in the appendix are to be arranged as required by Rule 14.1(i)(i) through (vi).

8. BINDING:

The petition and appendix shall be bound firmly in at least two places along the left margin so as to make an easily opened volume. No part of the text may be obscured by the binding. Saddle stitching or perfect binding is preferred. Staples may be used, with at least two along the left margin, covered with tape. Under no circumstances may spiral, plastic, metal, or string bindings be used. Rule 33.1(c).

9. DOCKET FEE:

The \$300 docket fee and the certificate of service shall accompany the petition. These items should not be sent under separate cover. The \$300 docket fee may be paid by personal check, cashiers check, money order, or certified check made out to “Clerk, U. S. Supreme Court.” Rule 38(a). **Do not send cash.**

10. CERTIFICATE OF SERVICE:

The certificate of service of the petition shall be on a separate piece of paper apart from the petition. Rule 29.5. The certificate of service shall identify who was served with three copies of the petition and list the names, addresses, and telephone numbers of counsel indicating the name of the party or parties each counsel represents. Rule 29.5. If the proof of service is signed by a member of the Bar of this Court, notarization is not needed. If it is executed by one who is not a member of the Bar of this Court, the signature shall be either notarized or be accompanied by a declaration in compliance with 28 U. S. C. §1746. Rule 29.5(c). The certificate of service is not to be included in the bound petition.

11. TIME FOR FILING:

You have ninety calendar days, not three months, from the date of entry of judgment, order or opinion, or the date a timely filed petition for rehearing is denied, or a subsequent judgment based on the grant of the petition for rehearing, within which to file with the Clerk a petition for a writ of certiorari. Rule 13.1 and .3. The time to file does not begin to run when the mandate, remittitur, rescript, or similar document issues or is filed in the lower court. Rule 13.3. In order for the petition to be timely filed, it shall either be received by the Clerk of the Court within those ninety days or be sent to the Clerk by first-class United States Postal Service, including express and priority mail, postage pre-paid, and bearing a postmark, other than a commercial postage meter label, showing that the document was mailed on or before the last day for filing; or if it is delivered on or before the last day for filing to a third-party commercial carrier for delivery to the Clerk within 3 calendar days.

CORRECT TYPE

by allowing defenses based on school misconduct in situations in which the school's involvement in the lending relationship was not unusually extensive.

For the same reason, petitioner errs in contending (Pet. 18–19) that the decision of the court of appeals conflicts with this Court's cases allowing state law to impose liability greater than the liability imposed by federal law. Such cases, including *English v. General Electric Co.*, 496 U.S. 72 (1990), and *California v. ARC America Corp.*, 490 U.S. 93 (1989), address situations in which there is no conflict between the State's imposition of greater liability and federal law. Here, as in *Hines*, there is a conflict, because the federal scheme did not simply permit state-law school-based defenses in specified circumstances but *limited* state-law school-based defenses to those circumstances.⁵

3. There is no conflict among the courts of appeals on the question presented by petitioner, as petitioner herself admits. Pet. 21, 24. Petitioner nonetheless urges this Court to grant review on the basis of “divergent decisions emerging from the lower courts.” Pet 21. In fact, the lower courts have uniformly found state laws comparable to the one at issue here to be preempted. This Court's review is not warranted based on petitioner's assertion that those courts apply different rationales in reaching their uniform results.

⁵Petitioner's reliance (Pet. 20–21) on *United States v. Kimbell Foods, Inc.*, 440 U.S. 715 (1979), *Wallis v. Pan American Petroleum Corp.*, 384 U.S. 63 (1966), and *United States v. Yazell*, 382 U.S. 341 (1966), is also misplaced. Those decisions concern the issue whether a court should rely on state law or fashion a federal common law rule when the court must fill in the interstices of a federal program. They do not concern the question presented here—under what circumstances federal law preempts conflicting state law.

INCORRECT TYPE

ing whether an agency's statement is what the APA calls a "rule" can be a difficult exercise. We need not conduct that exercise in this case, however. For even assuming that a statement terminating the Program would qualify as a "rule" within the meaning of the APA, it would be exempt from the notice-and-comment requirement of § 553.⁷ Termination of the Program might be seen as affecting the Service's organization, but "rules of agency organization" are exempt from notice-and-comment requirements under § 553(b)(A). Moreover, § 553(b)(A) also exempts "general statements of policy," which we have previously described as "'statements issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'" *Chrysler Corp., supra*, at 302, n. 31 (quoting Attorney General's Manual on the Administrative Procedure Act 30, n. 3 (1947)). Whatever else may be considered a "general statemen[t] of policy," the term surely includes an announcement like the one before us, that an agency will discontinue a discretionary allocation of unrestricted funds from a lump-sum appropriation.

Our decision in *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U. S. 402 (1971), confirms our conclusion that the Service was not required to follow the notice-and-comment procedures of § 553 before terminating the Program. *Overton Park* dealt with the Secretary of Transportation's decision to authorize the use of federal funds to construct an interstate highway through a public park in Memphis, Tennessee. Private citizens and conservation organizations

the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing."

⁷We express no view on the application of the publication requirements of § 552, or on the propriety of the relief granted by the District Court. The Court of Appeals did not address these issues. See, *supra*, at 190.

SAMPLE COVER TO FOLLOW AS TO FORM

No.

IN THE
Supreme Court of the United States

MY CLIENT(S), *Petitioner(s)*
v.
MY OPPONENT(S) *Respondent(s)*

On Petition For Writ Of Certiorari
To The (court whose judgment you seek to review)

PETITION FOR WRIT OF CERTIORARI

MY NAME
Counsel of Record
MY FIRM
MY STREET ADDRESS
CITY, STATE, ZIP CODE
MY TELEPHONE NUMBER
