

No. _____

In the
Supreme Court of the United States

LEMON BAY COVE, LLC,

Petitioner,

v.

UNITED STATES,

Respondent.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit**

**APPLICATION TO THE HONORABLE JOHN G. ROBERTS, JR.,
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 FEDERAL CIRCUIT**

DAVID SMOLKER
Smolker, Mathews, P.A.
100 S. Ashley Dr., Ste. 1490
Tampa, FL 33602
(813) 819-2552

CHRISTOPHER M. KIESER
Counsel of Record
Pacific Legal Foundation
555 Capitol Mall, Ste. 1290
Sacramento, CA 95814
(916) 419-7111
ckieser@pacificlegal.org

MARK MILLER
KATHRYN D. VALOIS
Pacific Legal Foundation
4440 PGA Blvd., Ste. 307
Palm Beach Gardens, FL 33410

Counsel for Petitioner Lemon Bay Cove, LLC

To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court of the United States and Circuit Justice for the Federal Circuit:

Pursuant to Supreme Court Rule 13.5, Petitioner Lemon Bay Cove, LLC, respectfully requests an extension of time of 35 days to file its Petition for a Writ of Certiorari in this Court up to and including July 9, 2024.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Lemon Bay Cove, LLC v. United States*, No. 2022-2242, 2024 WL 959732 (Fed. Cir. Mar. 6, 2024) (attached as Exhibit 1). The judgment was issued on March 6, 2024, which means a Petition is presently due on June 4, 2024. This application for an extension of time is filed more than ten days in advance of that date.

JURISDICTION

This case arises under the Fifth Amendment to the United States Constitution and the Tucker Act, 28 U.S.C. § 1491. The district court had original jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1491(a)(1). The Court of Appeals had appellate jurisdiction under 28 U.S.C. § 1295(a)(3). This Court has jurisdiction under 28 U.S.C. § 1254(1).

REASONS FOR GRANTING EXTENSION OF TIME

Good cause exists for the requested extension. Counsel of record for Petitioner, Christopher Kieser, has a substantial workload in the period leading up to the current due date. Counsel is counsel of record in this Court for Petitioner in *Boston Parent*

Coalition for Academic Excellence Corp. v. School Committee of City of Boston, No. 23-1137. The petition for a writ of certiorari in that case was docketed on April 19, 2024, and a response is due on May 20, 2024. Counsel will be responsible for drafting Petitioner's reply brief after that date. Additionally, counsel represents Judy's Moody, LLC in the Maine Supreme Judicial Court in a pending appeal in *Masucci v. Judy's Moody, LLC*, No. Cum-24-82. Judy's Moody, LLC, is an appellee and a cross-appellant in that case and its opening brief as a cross-appellant is due on June 14. In addition to counsel's typical obligations, these matters will occupy a substantial portion of time. Thus, additional time would greatly assist counsel in preparing an effective petition in this case.

This is Petitioner's first request for an extension of time.

CONCLUSION

For the foregoing reasons, Petitioner requests that this Court grant an extension of 35 days, up to and including July 9, 2024, within which to file a Petition for a Writ of Certiorari.

DATED: May 7, 2024.

Respectfully submitted,



CHRISTOPHER M. KIESER

Counsel of Record

Pacific Legal Foundation
555 Capitol Mall, Ste. 1290
Sacramento, CA 95814
(916) 419-7111
ckieser@pacificlegal.org

Counsel for Petitioner

CERTIFICATE OF SERVICE

A copy of this application was served via email and U.S. mail to counsel listed below in accordance with Supreme Court Rules 22.2 and 29.3:

TODD KIM
Assistant Attorney General
MICHAEL T. GRAY
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7415
Washington, D.C. 20044
(202) 514-0000
michael.gray2@usdoj.gov

BENJAMIN RICHMOND
Trial Attorney, Appellate Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7415, Ben Franklin Station
Washington, DC 20044
(202) 514-3977
benjamin.richmond@usdoj.gov

ANDREW M. BERNIE
Trial Attorney, Appellate Section
Environment & Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 514-4010
andrew.m.bernie@usdoj.gov

Counsel for Respondent

DATED: May 7, 2024.



CHRISTOPHER M. KIESER
Counsel for Petitioner

EXHIBIT 1

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

LEMON BAY COVE, LLC,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2022-2242

Appeal from the United States Court of Federal Claims
in No. 1:17-cv-00436-MCW, Senior Judge Mary Ellen Cos-
ter Williams.

JUDGMENT

DAVID SMOLKER, Smolker Mathews, LLP, Tampa, FL,
argued for plaintiff-appellant.

ANDREW MARSHALL BERNIE, Environment & Natural
Resources Division, United States Department of Justice,
Washington, DC, argued for defendant-appellee. Also rep-
resented by MICHAEL THOMAS GRAY, THEKLA HANSEN-
YOUNG, TODD KIM, BENJAMIN RICHMOND.

CHRISTOPHER M. KIESER, Pacific Legal Foundation,

Sacramento, CA, for amicus curiae Pacific Legal Founda-
tion.

THIS CAUSE having been heard and considered, it is
ORDERED and ADJUDGED:

PER CURIAM (MOORE, *Chief Judge*, CLEVINGER and
CHEN, *Circuit Judges*).

AFFIRMED. See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

March 6, 2024
Date



Jarrett B. Perlow
Clerk of Court