

No. _____

IN THE
Supreme Court of the United States

WILLIAM EDWARD POWELL,

Petitioner,

v.

JANET L. YELLEN, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF TREASURY, UNITED STATES DEPARTMENT OF TREASURY, INTERNAL REVENUE SERVICE, DANIEL I. WERFEL, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE INTERNAL REVENUE SERVICE,

Respondents.

**Application for Extension of Time to File a Petition for a
Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit**

To the Honorable John G. Roberts, Chief Justice of the United States Supreme Court and Circuit Justice for the United States Court of Appeals for the District of Columbia Circuit:

Petitioner William E. Powell seeks from Respondents certain federal tax records relating to himself, deceased relatives for whom he is next of kin, and family corporations. He intends to file a Petition for a Writ of Certiorari in connection with a decision of the D.C. Circuit affirming a district court's dismissal of his case against Respondents seeking the tax records. The D.C. Circuit issued its decision on December 28, 2023. Petitioner, who was then *pro se*, and the court-appointed *amicus curiae* in the D.C. Circuit (the undersigned, now Petitioner's counsel here) timely filed

petitions for rehearing on January 30, 2024, and February 12, 2024, respectively. The petitions were denied on February 29, 2024. Pursuant to Supreme Court Rule 13.5, Petitioner respectfully requests that the time to file a Petition for a Writ of Certiorari to the D.C. Circuit be extended by thirty (30) days, which would extend Powell's deadline for filing to and including June 28, 2024. The Petition for a Writ of Certiorari is currently due in this Court on May 29, 2024. This Application is being filed more than ten days before that date.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The judgment sought to be reviewed is the Judgment of the D.C. Circuit in *Powell v. Yellen*, No. 22-5200, 2023 U.S. App. LEXIS 34479 (D.C. Cir. Dec. 28, 2023). A copy of the Judgment is attached as Appendix A. A copy of the orders denying rehearing are attached as Appendix B.

Good cause exists for granting this application. The opinion for which review is sought deals with an important, Circuit-splitting question: whether, when suing the Government for tax records whose disclosure the Government has denied, but whose disclosure is guaranteed by 26 U.S.C. § 6103, the relevant taxpayer may sue to enforce his rights under § 6103 via a claim under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706, or instead is relegated exclusively to seeking the records and suing pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. Powell invoked § 6103 and the APA (among other theories), but not FOIA; in the decision below, the D.C. Circuit, purporting to follow earlier precedents of its own, *see Maxwell v. Snow*, 409 F.3d 354 (D.C. Cir. 2005); *Church of Scientology of Cal. v. IRS*, 792 F.2d

146 (D.C. Cir. 1986), held that FOIA exclusively governs. The Sixth and Seventh Circuits, in contrast, have held that § 6103 and the APA control. *See White v. IRS*, 707 F.2d 897, 900 (6th Cir. 1983); *Cheek v. IRS*, 703 F.2d 271, 271-72 (7th Cir. 1983); *King v. IRS*, 688 F.2d 488, 495-96 (7th Cir. 1982). The D.C. Circuit itself has acknowledged the existing Circuit split. *See Church of Scientology*, 792 F.2d at 149.

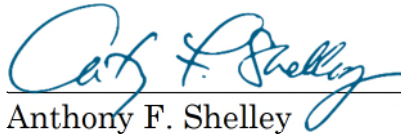
Additionally, Petitioner's Counsel of Record, Anthony F. Shelley, has primary responsibility for the preparation of the Petition for a Writ of Certiorari, and the press of other current and recent work-related matters in which he has or has had primary or substantial responsibility are such that, even with the assistance of other attorneys, he will not reasonably be able to complete the work necessary to prepare the Petition for a Writ of Certiorari by the current due date (May 29, 2024). These matters include: (1) *Su v. BCBSM, Inc.*, No. 0:24-cv-00099-JRT-TNL (D. Minn.) (motion-to-dismiss briefing completed on May 6, 2024; hearing scheduled for July 17, 2024); (2) *Naz v. Granholm*, No. 23-5237 (D.C. Cir.) (opening brief due June 28, 2024); (3) *BlueCross Blue Shield of Tenn., Inc. v. Nicolopoulos*, No. 24-5307 (6th Cir.) (opening brief due July 12, 2024); (4) *Dunne v. Elton Corp.*, No. 23-1499 (3d Cir.) (oral argument scheduled for July 9, 2024).

Petitioner makes this request in good faith and believes that the requested extension of time is necessary. Counsel for Petitioner has exercised, and will continue to exercise, diligence regarding the preparation of the Petition for a Writ of Certiorari.

Wherefore, Petitioner respectfully requests that an order be entered extending the time to file a Petition for a Writ of Certiorari to and including June 28, 2024.

May 16, 2024

Respectfully submitted,



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