

No. 24A\_\_

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**In the  
Supreme Court of the United States**

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STATE OF MISSOURI, GOVERNOR MICHAEL L. PARSON, AND  
ATTORNEY GENERAL ANDREW BAILEY,

*Applicants,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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

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**APPLICATION TO THE HONORABLE BRETT M. KAVANAUGH  
REQUESTING AN EXTENSION OF TIME TO FILE A PETITION FOR A  
WRIT OF CERTIORARI PURSUANT TO RULE 13**

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To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Eighth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, Applicants and Petitioners State of Missouri; Michael L. Parson, in his official capacity as Governor of the State of Missouri; and Andrew Bailey, in his official capacity as Attorney General of the State of Missouri seek a 60-day extension of time to file a petition for certiorari in this Court, up to and including Thursday, January 23, 2025. The final judgment of the United States of Court of Appeals for the Eighth Circuit was entered on August 26, 2024. The time to file a petition for a writ of

certiorari in this Court expires on November 24, 2024.<sup>1</sup> This application is filed more than ten days before that date.

A copy of the opinion is attached to this Application. Petitioners previously sought an emergency application for immediate administrative relief and a stay on the injunction issued by the United States District Court for the Western District of Missouri, which this Court denied over a dissent. *See* No. 23A296. The jurisdiction of this Court is properly invoked under 28 U.S.C. § 1254(1).

This case involves a challenge brought by the United States against the State of Missouri, its Governor, and its Attorney General, seeking to invalidate a state law. Missouri’s legislature enacted a law prohibiting localities within the State from helping to enforce certain federal firearms laws. The legislature did so because it believes those laws “infringe on the people’s right to keep and bear arms guaranteed by the Second Amendment to the Constitution” and are thus “invalid.” Mo. Rev. Stat. § 1.430. The legislature included in the statute legislative findings that described the legislature’s belief about the unconstitutionality of those statutes. *Ibid.*

The United States sued, arguing that the legislature’s decision to withhold state resources from federal enforcement based on a belief that those statutes are unlawful amounts to a nullification of federal law. The Eighth Circuit agreed with the United States. It acknowledged that under the Tenth Amendment, “Missouri may lawfully withhold its assistance from federal law enforcement.” Op. 9. But then

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<sup>1</sup> 90 days after entry of judgment falls on Sunday, November 24, 2024, and so the time to file a petition for a writ of certiorari expires on Monday, November 25. *See* Rule 30.

the Eighth Circuit held that Missouri cannot exercise that Tenth Amendment authority here because Missouri's *reason* for doing so is its belief that those laws are invalid. The Eighth Circuit said the legislature's "means" were impermissible (the legislature's factual assertion that several statutes are unconstitutional) even though the "ends" (withholding state resources) were perfectly legitimate. *Ibid.*

The Eighth Circuit also concluded that the United States had standing to bring this suit against the State, its Governor, and its Attorney General, even though the law at issue is enforced only by private parties. *Id.*, at 7. This is the same threshold standing issue the Fifth Circuit rejected when the United States sued Texas over its abortion laws. This Court granted certiorari in that case but then dismissed the appeal without deciding the issue. *United States v. Texas*, 595 U.S. 74, 75 (2021); *United States v. Texas*, No. 21-50949, 2021 WL 4786458, at \*1 (5th Cir., Oct. 14, 2021).

This case thus addresses (1) whether the United States has standing to enjoin a Missouri statute that is enforced only by private parties (and only against local state political entities, not the United States); and (2) whether federal courts may second-guess the reasons states decide to exercise their authority under the Tenth Amendment.

Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. Undersigned counsel faces a significant press of business due to many upcoming deadlines:

- No. 2416-CV31931, *Comprehensive Health v. Missouri*, a case challenging about two dozen statutes and regulations. Plaintiffs filed their action on November 6 and seek a preliminary injunction before December 5.
- No. 24-40447, *General Land Office v. Kinder*, a case in which Counsel has a response brief due in the Fifth Circuit Court of Appeals on November 20, 2024.
- No. 2:22-cv-00223, *Alliance for Hippocratic Medicine et al. v. U.S. Food and Drug Administration et al.*, a case in which Counsel has a response to pending motions to dismiss due on November 22, 2024.
- No. 1:20-cv-00099, *Missouri v. People's Republic of China, et al.*, a case in which Counsel has a pretrial brief due on November 22, 2024, and a trial scheduled for December 9, 2024.

This significant press of business is not isolated to the current month. In the past few months since the Eighth Circuit's decision, undersigned counsel has filed a multitude briefs, in this Court and others, and has represented the State in oral argument and at trial, including:

- No. 4:24-cv-01316, *State of Missouri, et al., v. U.S. Department of Education*, a case in which undersigned counsel filed a lawsuit and conducted expedited preliminary injunction briefing and an oral argument all during the month of September.

- No. 23AC-CC04530, *Noe et al. v. Parson et al.*, a case in which undersigned Counsel defended a Missouri law in a two-week trial that ended in October. Counsel submitted post-trial briefings and motions at the beginning of November.
- No. 24-2332, *State of Missouri et al. v. Joseph Biden Jr., et al.*, a case in which undersigned Counsel filed expedited briefs in September and October and represented the State of Missouri in oral argument before the Eighth Circuit Court of Appeals in late October.
- No. 23-1719, *State of Missouri v. EPA, et al.*, a case in which one of the counsel on this case represented the State of Missouri in oral argument before the Eighth Circuit Court of Appeals on October 22, 2024.
- No. 23-477, *United States v. Skrmetti*, a case in which undersigned Counsel filed an amicus brief in this Court in October.
- Nos. 24-90 and 24-99, *Folwell v. Kadell* and *Crouch v. Anderson*, two cases in this Court in which undersigned counsel filed multi-state amicus briefs in August supporting petitions for certiorari.

The Applicant has not previously requested an extension of time.

**CONCLUSION**

Applicant requests that the time to file a writ of certiorari in the above-captioned matter be extended 60 days, up to and including January 23, 2025.

November 08, 2024

Respectfully submitted,

**ANDREW BAILEY**  
Attorney General

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**PROOF OF SERVICE**

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In accordance with Rule 29.5(b), I, Joshua M. Divine, counsel for applicants/petitioners and a member of the Bar of this Court certify that all parties required to be served, have been served, and that on November 08, 2024, the required copies of the Application for Extension of Time to File a Petition for Writ of Certiorari in the above-captioned case were sent to the U.S. Supreme Court and were served by email on counsel for respondent listed below:

Elizabeth B. Prelogar  
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*Counsel for Respondent United States of America*

November 08, 2024

Respectfully submitted,

**ANDREW BAILEY**  
Attorney General

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