

No. 24A-

IN THE
SUPREME COURT OF THE UNITED STATES

CARLANDA D. MEADORS, LEONARD A. MATARESE, JOMO D. AKONO,
KIM P. NIXON-WILLIAMS, AND FLORENCE E. BAUGH,

Applicants,

v.

ERIE COUNTY BOARD OF ELECTIONS, RALPH M. MOHR, AND JEREMY
J. ZELLNER,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI

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October 14, 2024

**APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI**

TO: The Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Second Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, Applicants Carlanda D. Meadors, Leonard A. Matarese, Jomo D. Akono, Kim P. Nixon-Williams, and Florence E. Baugh respectfully request an extension of forty-three (43) days in which to file a petition for a writ of certiorari in this case. The U.S. Court of Appeals for the Second Circuit issued its decision on July 26, 2024. *See Carlanda D. Meadors, et. al. v. Erie County Bd. of Elections, et al.*, 2024 WL 3548729 (2d Cir. July 26, 2024); App. Exh. 1.

Absent extension, the deadline for filing a petition for writ of certiorari is October 24, 2024. With the requested extension, the petition would be due on December 6, 2024. This application is being filed at least ten days before the petition is due. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). In support of this application, Applicant states:

1. The petition for certiorari in this case will present a question that has produced a deep and persistent split in the circuits: Whether the “capable of repetition, yet evading review” standard is given a flexible interpretation in election law cases. That standard, in its classic formulation, applies to a controversy that otherwise would be moot when “the challenged action was in its duration too short to

be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.” *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975). Most circuits, citing decisions of this Court, give the second part of this test a flexible application in election law cases given the timing and circumstances under which such claims arise. Two circuits hold that the requirement is met so long as the challenged action is likely to recur with respect to future voters or candidates. *See Graveline v. Benson*, 992 F.3d 524, 533–34 (6th Cir. 2021); *Catholic Leadership Coal. of Tex. v. Resiman*, 764 F.3d 409, 423–24 (5th Cir. 2014). Other circuits readily infer that the plaintiffs may be subjected to the same action again, even in the absence of specific allegations to that effect. *See, e.g., Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 37 n.12 (1st Cir. 1993); *Merle v. United States*, 351 F.3d 92, 95 (3d Cir. 2003); *North Carolina Right to Life Comm. Fund for Ind. Political Expenditures v. Leake*, 524 F.3d 427, 435–36 (4th Cir. 2008); *Majors v. Abell*, 317 F.3d 719, 723 (7th Cir. 2003); *Schaefer v. Townsend*, 215 F.3d 1031, 1033 (9th Cir. 2000).

2. Other circuits, including the Second Circuit in this case, take a conflicting view. These circuits hold that it is not sufficient that the controversy is likely to recur with respect to future voters or candidates, and therefore require plaintiffs to show a reasonable expectation that they are likely to face the same situation in a future election. *See Van Wie v. Pataki*, 267 F.3d 109, 114–15 (2d Cir. 2001); *Whitfield v. Thurston*, 3 F.4th 1045, 1048 (8th Cir. 2021).

3. The conflict in the circuits arises in part from this Court's decisions applying the "capable of repetition" standard. In several cases, this Court held that the standard was satisfied because the law at issue remained in effect and would have negative effects on voters and candidates in future elections. *See, e.g.*; *Storer v. Brown*, 415 U.S. 724, 737 n.8 (1974); *Anderson v. Celebrezze*, 460 U.S. 780, 784 n.3 (1983); *Dunn v. Blumstein*, 405 U.S. 330, 333 n.2 (1972). In other cases, the Court cited plaintiffs' statements of intent to participate in future elections as a basis for holding that the "capable of repetition" standard was met. *See, e.g.*, *Davis v. Federal Election Comm'n*, 554 U.S. 724, 736 (2008); *Federal Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 463–64 (2007); *Meyer v. Grant*, 486 U.S. 414, 417 n.2 (1988).

4. In short, this case presents a substantial and recurring question on which the federal circuit courts are divided. As a result, there is a reasonable prospect that this Court will grant the petition, such that it warrants additional time for these important questions to be fully addressed.

5. Mr. Sells and the University of Virginia Supreme Court Litigation Clinic are working diligently to prepare the petition, but need additional time to research, complete, print, and file Applicants' petition. The University of Virginia Clinic became involved in this case only after the Second Circuit issued its decision, and additional time is needed for the Clinic's faculty and staff to fully familiarize themselves with the record, the decisions below, and the relevant case law. In addition, this Court recently granted two petitions for certiorari in cases in which the Clinic is lead counsel for petitioners. *See Cunningham v. Cornell Univ.*, No. 23-1007

(cert. granted Oct. 4, 2024); *Ames v. Ohio Dep't of Youth Servs.*, No. 23-1039 (cert. granted Oct. 4, 2024).

6. The Clinic is also counsel of record for an amicus brief on behalf of members of Congress in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, No. 23-975 (due October 25, 2024), and a petition for rehearing en banc in *Coastal Environmental Rights Foundation v. Naples Restaurant Group, LLC*, No. 23-55469 (9th Cir.) (due November 18, 2024). Mr. Sells is counsel of record in *Colorado Montana Wyoming State Area Conference of the NAACP v. Smith*, No. 24-1328 (10th Cir.), which has a merits brief due on November 7, 2024.

In light of these obligations, Applicants' counsel would face significant challenges completing the petition by the current due date. For these reasons, Applicants request that this Court grant an extension of forty-three days to and including December 6, 2024, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,

_____/s/ Xiao Wang _____

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