

No. 24A356

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 N. 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 A SECOND EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI

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November 26, 2024

**APPLICATION FOR A SECOND 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 additional extension of 14 days, to and including December 20, 2024, 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. By order dated October 17, 2024, the deadline for filing a petition for a writ of certiorari in this case was extended by 43 days, from October 24, 2024 to December 6, 2024. With the requested second extension, the petition would be due on December 20, 2024, which is 57 days after the original due date. 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).

2. 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).

3. 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).

4. 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., Anderson v. Celebrezze*, 460 U.S. 780, 784 n.3 (1983); *Storer v. Brown*, 415 U.S. 724, 737 n.8 (1974); *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).

5. 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.

6. Mr. Sells and the University of Virginia Supreme Court Litigation Clinic continue to work diligently to prepare the petition, but additional time is needed to 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 its faculty and staff have needed additional time to fully familiarize themselves with the record, the decisions below, and the relevant case law. The most pressing reason that a short additional extension is needed is that the Clinic is counsel of record for petitioners in two cases in which this Court has granted review. Petitioners' opening

brief on the merits in *Cunningham v. Cornell Univ.*, No. 23-1007 (cert. granted Oct. 4, 2024) was due on November 22, 2024, with a reply brief due on January 10, 2025 and oral argument on January 22, 2025. Petitioners' opening brief on the merits in *Ames v. Ohio Dep't of Youth Servs.*, No. 23-1039 (cert. granted Oct. 4, 2024) is due on December 9, 2024, with a reply brief due on February 7, 2025, and oral argument on February 26, 2025.

7. The Clinic is also counsel of record on a petition for rehearing en banc in *Coastal Environmental Rights Foundation v. Naples Restaurant Group, LLC*, No. 23-55469 (9th Cir.) (due December 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.) (merits brief filed November 7, 2024).

In light of these obligations, an additional extension is necessary to provide sufficient time for Applicants' counsel to complete the petition for certiorari, and to print and file the petition with the Court. For these reasons, Applicants request that this Court grant an additional extension to and including December 20, 2024, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,

_____/s/ Xiao Wang _____

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