

App. No. ____

In the Supreme Court of the United States

United States of America, State of Illinois, State of California, State of Florida,
State of Tennessee, State of Texas, State of Massachusetts, State of Delaware, State of Nevada,
State of Louisiana, State of Hawaii, District of Columbia, State of Virginia, State of Georgia,
State of Indiana, State of Michigan, State of Montana, State of New Hampshire,
State of New Jersey, State of New Mexico, State of New York, State of Oklahoma,
State of Rhode Island, and State of Wisconsin ex rel. John King and Tammy Drummond,

Petitioners,

v.

Solvay Pharmaceuticals, Inc.,

Respondent.

APPLICATION TO EXTEND TIME TO FILE PETITION FOR A WRIT OF CERTIORARI
FROM JANUARY 25, 2018 TO MARCH 26, 2018

To the Honorable Justice Alito, as Circuit Justice for the United States Court of Appeals
for the Fifth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.3, petitioners
John King and Tammy Drummond respectfully request that the time to file a petition for a writ of
certiorari in this case be extended for sixty days to and including March 26, 2018. The court of
appeals issued its opinion on September 12, 2017. *See App. A, infra.* The court denied a timely
petition for rehearing and rehearing en banc on October 27, 2017. *See App. B, infra.* Absent an
extension of time, the petition would be due on January 25, 2018. Petitioners are filing this

application more than ten days before that date. *See* Sup. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review this case.

BACKGROUND

This case presents significant questions of national importance relating to the False Claims Act—including the interpretation of the public disclosure bar and the substantive standards for liability for the off-label promotion of drugs.

Petitioners John King and Tammy Drummond are former employees of respondent Solvay Pharmaceuticals, Inc. Petitioners brought a False Claims Act suit under seal in the Southern District of Texas in 2003, alleging that Solvay induced false Medicaid claims through a nationwide off-label marketing and kickback scheme. The federal and state governments investigated for seven years before declining intervention, and the complaint was unsealed in 2010.

The district court eliminated petitioners' claims in a series of partial summary judgment orders, with final judgment entered in March 2016. Petitioners appealed, and the Fifth Circuit affirmed the district court's grant of summary judgment and taxable costs. The court of appeals affirmed partially on causation grounds, holding that circumstantial evidence could not be used to demonstrate the existence of false claims. The court also affirmed partially on grounds relating to the False Claims Act's public disclosure bar. Because the court concluded that petitioners' claims did not connect direct and independent knowledge of the underlying conduct to actual claims submitted to the government, the court found the claims barred.

The court of appeals denied petitioners' timely petition for rehearing en banc.

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a petition for a writ of certiorari should be extended for sixty days, to March 26, 2018, for several reasons.

First, Petitioners only recently retained the undersigned counsel for the filing of a rehearing petition below and a petition for a writ of certiorari before this Court. Additional time is necessary for counsel to review the substantial record in the case as well as the decisions of other courts of appeals in order to prepare a clear and concise petition for the Court's review.

Second, the press of other matters makes the submission of the petition difficult absent an extension. Petitioners' counsel is conducting pre-litigation negotiations in two unrelated non-public matters, one of which involves a looming statute of limitations. Counsel also is serving as an instructor in a three-week intensive course on Supreme Court litigation at Harvard Law School, and is currently responsible for numerous pending matters in the courts of appeals and this Court. These include:

- January 12: A reply brief in *United States v. Seng Yong*, No. 17-16017 (9th Cir.);
- January 26: An opening brief in *Sikkelee v. Precision Airmotive Corp.*, No. 17-3006 (3d Cir.);
- February 2: A brief in opposition in *Gilead Sciences, Inc. v. United States ex rel. Campie*, No. 17-936 (S. Ct.).

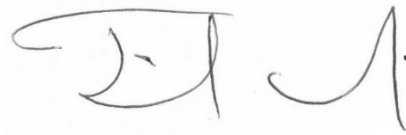
Third, while it is not our ordinary practice to request a 60-day extension, counsel has long-scheduled overseas travel plans from February 16 until March 9 that cannot be moved, during which it will be impossible to work on the petition. A full-length extension is therefore warranted in this unusual case.

Finally, no prejudice would result from the extension. Whether the extension is granted or not, the petition will be considered during this Term – and, if the petition were granted, the case would be heard and decided in the Court's next Term.

CONCLUSION

For the foregoing reasons, the time to file a petition for a writ of certiorari should be extended for sixty days to and including March 26, 2018.

Respectfully submitted,



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