

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

STATE OF SOUTH CAROLINA,

Petitioner,

v.

UNITED STATES OF AMERICA, et al.,

Respondents.

On Application For Extension Of Time To File A Petition For
A Writ Of Certiorari To The United States Court Of Appeals
For The Fourth Circuit

**PETITIONER'S APPLICATION TO EXTEND TIME TO
FILE PETITION FOR A WRIT OF CERTIORARI**

Alan Wilson
Robert D. Cook
T. Parkin Hunter
*ATTORNEY GENERAL FOR
THE STATE OF SOUTH CAROLINA*
Post Office Box 11549
Columbia, South Carolina 29211-1549
Telephone: (803) 734-3970

Randolph R. Lowell
Counsel of Record
Tracey C. Green
John W. Roberts
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
Telephone: (803) 252-3300
rlowell@willoughbyhoefer.com

Counsel for Petitioner

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT:

Pursuant to Supreme Court Rules 13.5, 22, and 30 and 28 U.S.C. § 2101(c), petitioner respectfully requests a 60-day extension of time, up to and including June 7, 2019, to file a petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit to review that court's decision in *State of South Carolina v. United States of America, et al.*, 912 F.3d 720 (4th Cir. 2019). (Attached as Exhibit A.) The Fourth Circuit issued its judgment in this matter on January 8, 2019. (Attached as Exhibit B.) The petitioner intends to file a petition seeking review of this judgment, and the jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). The time to file a petition for a writ of certiorari will expire without an extension on April 8, 2019. This application is timely because it has been filed at least ten days before the petition is due.

1. This case presents important questions of law related to federalism and the rights of states to challenge final agency action of federal agencies in matters where Congress enacted specific protections for a state and its interests that were disregarded by a federal agency. Specifically, in this instance the United States Department of Energy undertook final agency action to terminate construction of a weapons-grade plutonium processing facility under construction and 70% complete in South Carolina. The State brought an action seeking to enforce its legal rights that no such action was permitted unless an alternative pathway for disposition of the weapons-grade plutonium stored in the State had been approved, as prescribed by

Congress. The United States District Court for the District of South Carolina agreed with the State and entered a preliminary injunction halting the termination of construction. On appeal, the United States Court of Appeals for the Fourth Circuit held that the State of South Carolina did not have standing to challenge the United States Department of Energy's agency action that renders the State the indefinite repository for the Nation's weapons-grade plutonium and subjects the State to significant harms. This case presents important legal questions about the ability of a state to enforce congressional mandates enacted specifically for the purpose of protecting the interests of that state and hold executive agencies accountable for compliance with legal and statutory mandates, implicating serious constitutional questions of federalism, separation of powers, and justiciability.

2. Undersigned counsel, Randolph R. Lowell, is counsel of record for the petitioner and served as lead counsel for the petitioner before the District Court and Court of Appeals. On March 21, 2019, Mr. Lowell's wife gave birth to twins—the couple's second and third child—earlier than expected. While the prognosis is good, complications arose that required both newborns to be admitted to the hospital's neonatal special care unit that has extended the time for which they must remain at the hospital (and as of this filing the infants remain in the hospital). This has limited counsel's availability to work on this matter and will limit his availability to work on this matter between today and April 8, 2019.

3. In addition, due in part to his limited availability, Mr. Lowell has requested another attorney with the same firm to assist in this matter that previously

was only involved on a very limited basis. Additional time is necessary and warranted for that attorney to become familiar with the record below, the relevant legal precedents, and the issues involved in this matter.

4. The parties also are involved in settlement negotiations related to this matter as well as other pending and related litigation. (*See* March 26, 2019 Status Report and request for 60-day stay filed by United States in related United States Court of Federal Claims litigation attached as Exhibit C.) The parties intend to schedule a meeting within the next month to further discuss settlement. If a settlement is reached, filing of the petition may be unnecessary.

Accordingly, petitioner respectfully requests that, good cause having been shown, an order be entered extending the time to file a petition for a writ of certiorari for 60 days, up to and including June 7, 2019.

Dated: March 28, 2019

Respectfully submitted,

Alan Wilson
Robert D. Cook
T. Parkin Hunter
ATTORNEY GENERAL FOR
THE STATE OF SOUTH CAROLINA
Post Office Box 11549
Columbia, South Carolina 29211-1549
awilson@scag.gov
bcook@scag.gov
phunter@scag.gov
Telephone: (803) 734-3970

/s/ Randolph R. Lowell
Randolph R. Lowell
Counsel of Record
Tracey C. Green
John W. Roberts
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
rlowell@willoughbyhoefer.com
tgreen@willoughbyhoefer.com
jroberts@willoughbyhoefer.com
Telephone: (803) 252-3300

Counsel for Petitioner