

No. 19A\_\_\_\_

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IN THE  
*Supreme Court of the United States*

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TERESA BUCHANAN,

*Applicant,*

v.

F. KING ALEXANDER, DAMON ANDREW, A.G. MONACO, AND GASTON REINOSO,

*Respondents.*

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**APPLICATION FOR AN EXTENSION OF TIME TO FILE  
A PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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July 18, 2019

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## APPLICATION

To the Honorable Hon. Samuel A. Alito, Jr., Associate Justice and Circuit Justice for the U.S. Court of Appeals for the Fifth Circuit:

Pursuant to Rule 13.5 of the Rules of This Court and 28 U.S.C. § 2101(c), applicant Teresa Buchanan respectfully requests a 30-day extension of time, to and including August 28, 2019, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

1. The United States Court of Appeals for the Fifth Circuit issued its decision on March 22, 2019. *See Teresa Buchanan v. F. King Alexander, et al.*, No. 18-30148 (Appendix A). Buchanan sought rehearing, which was denied on April 30, 2019 (Appendix B). Unless extended, the time to file a petition for certiorari will expire on July 29, 2019. This application is filed more than ten days before the petition is currently due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254.

2. This case presents important questions of constitutional law on which this Court has not spoken, specifically, use of vague and overbroad sexual harassment policies to punish pedagogical and non-pedagogical speech, and whether and how the Court's "matter of public concern" standard articulated in *Pickering v. Board of Education*, 391 U.S. 563 (1968), *Garcetti v. Ceballos*, 547 U.S. 410 (2006), and *Lane v. Franks*, 573 U.S. 228 (2014), may be applied to pedagogical speech.

3. Former tenured professor Teresa Buchanan filed this civil rights action asserting facial and as-applied First Amendment challenges to Louisiana State

University's sexual harassment policies, and a due process challenge to her termination under the policy. On cross-motions for summary judgment, the district court granted judgment for respondents on all counts.

4. On appeal, Buchanan asked the Fifth Circuit to hold that LSU's sexual harassment policies violate the First Amendment on their face, that they are unconstitutional as they were applied to her, and that respondents are not protected by qualified immunity. A panel for the Fifth Circuit affirmed the decision below on the as-applied challenge, holding that some of applicant's speech did not relate to matters of public concern. It vacated the district court's holding that LSU's sexual harassment policies are facially constitutional, but denied applicant's facial challenge on grounds she sued LSU's President, the Dean of her college, and the Vice Chancellor and the Director of LSU's human resources office, but not LSU's Board of Supervisors. The panel also held respondents were entitled to qualified immunity. Buchanan's petition for rehearing *en banc* was denied.

5. Buchanan seeks to have this Court clarify that sexual harassment policies that fail to distinguish protected from unprotected speech using constitutionally accepted standards violate the First Amendment on their face, and as applied to pedagogical speech. The Fifth Circuit vacated the district court's decision to uphold LSU's sexual harassment policies, but affirmed their application even though they fail to distinguish protected from unprotected speech, much like similar policies that other circuits have invalidated. *E.g., DeJohn v. Temple Univ.*, 537 F.3d 301 (3d Cir. 2008). The circuit's holding that LSU's policy was constitutional

as applied failed to consider that the charges against Buchanan did not separate protected from unprotected speech, and even the decisionmakers could not identify what speech motivated their decision. The circuit's refusal to consider Buchanan's facial challenge not only potentially leaves those subject to such policies without a federal court remedy given prior Fifth Circuit rulings on the sovereign immunity LSU's Board enjoys, it raises the question of whether the First Amendment ever allows punishment under a facially unconstitutional speech code.

6. During the next several weeks, undersigned counsel is handling hearings on dispositive motions in a criminal matter in federal court in Arizona, *United States v. Lacey, et al.* No. CR-18-422-PHX-SMB (D. Ariz.), and in two civil matters in different Texas state courts, *Doe v. Facebook, et al.*, No. 2018-69816 (Harris Cty. 334th Dist., Tex.), and *Doe #3 v. Backpage.com, LLC, et al.*, No. 2018-12781 Harris Cty. 125th Dist., Tex.), as well as a hearing on a motion to stay yet a third Texas civil matter, *Doe #2 v. Lacey, et al.*, No. 2018-09781 (Harris Cty. 129th Dist., Tex.), with responsive briefing due just ahead of each hearing under Texas' rules of civil procedure.

7. For these reasons, applicant respectfully requests that an order be entered extending the time to file a petition for certiorari to and including August 28, 2019.

Respectfully submitted,



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July 18, 2019

## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Application for Extension of Time with the Clerk of the Court for the Supreme Court of the United States by using the CM/ECF system on July 18, 2019, and that copies were sent via First Class mail to the following Respondents:

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s/ Robert Corn-Revere  
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