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April 27, 2022

BY ELECTRONIC FILING

Honorable Scott S. Harris
Clerk of Court
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Re: Opposition to Request for Additional Extension and Waiver of Time for
Reply
No. 21-1192, *Day & Zimmermann NPS, Inc. v. Waters*

Dear Mr. Harris:

On behalf of Petitioner Day & Zimmermann NPS, Inc. in the above-captioned case, Petitioner opposes Respondent's last-minute, second request for an extension to file his brief in opposition and requests distribution of the petition in this case at the earliest opportunity.

Petitioner filed its petition for writ of certiorari well before its deadline to align, as much as possible, the timing of this case with the Court's consideration of the petition in *Canaday v. The Anthem Cos.*, No. 21-1098, a case that is part of the circuit conflict created by the First Circuit's decision in our case. The *Canaday* petition was distributed this week.

Respondent's brief in opposition, with one 30-day extension already granted, is due today. Petitioner intends to waive the time to file a reply under Supreme Court Rule 15.5 so that its petition will be distributed on May 3, 2022 and considered only one week after the *Canaday* petition. Given important differences in the way the questions are presented to the Court in *Canaday* and this case, Petitioner believes it is important for the Court to consider the two petitions together. Indeed, the petition, brief in opposition, and reply in *Canaday* refer extensively to the *Waters* case and our petition.

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After having already been granted a 30-day extension, and without reaching out to Petitioner's counsel, Respondent's counsel waited until close of business today—its deadline for the opposition—to request an additional 14-day extension.

For these reasons, Petitioner requests that this Court deny Respondent's tardy motion for an additional extension. We also ask the Clerk to proceed to distribute the petition, and any brief in opposition the Court may allow Respondent to file by then, on May 3, 2022, for consideration at the May 19, 2022 conference—or otherwise take steps to align the Court's consideration of the petitions in *Canaday* and this case.

Respectfully submitted,

/s/ David B. Salmons

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