

No. \_\_\_\_\_

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OCTOBER TERM 2021

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IN THE  
SUPREME COURT OF THE UNITED STATES

LIBERTARIAN PARTY OF ALABAMA,  
*Applicant,*

v.

JOHN HAROLD MERRILL,  
SECRETARY OF STATE FOR THE STATE OF ALABAMA,  
*Respondent*

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On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Eleventh Circuit

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APPLICATION TO THE HONORABLE JUSTICE CLARENCE THOMAS  
FOR EXTENSION OF TIME TO FILE A PETITION  
FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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To the Honorable Justice Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Eleventh Circuit:

The Libertarian Party of Alabama, by undersigned counsel, pursuant to Supreme Court Rules 13.5, 22, 30.2, and 30.3, respectfully requests that this Court grant it a 60-day extension of time to file his petition for a writ of certiorari. That Petition will challenge the decision of the United States Court of Appeals for the Eleventh Circuit in *Libertarian Party of Ala. v. Merrill*, 2021 U.S. App. LEXIS 34383, 2021 WL 5407456 (11<sup>th</sup> Cir., November 19, 2021), a copy of which is attached [Attachment “A”]. The undersigned is authorized to represent to the Court that Respondent consents to the requested extension of time. This Court has jurisdiction under 28 U.S.C. § 1254(1).

In support of this application, Applicant states:

1. The United States Court of Appeals for the Eleventh Circuit entered its decision in this case on November 19, 2021 [Attachment “A”]. Without an extension, the petition for writ of certiorari would be due to be filed on February 17, 2022. With the extension, the petition for writ of certiorari will be due to be filed on April 18, 2022.
2. This case is a serious candidate for review. Applicant Libertarian Party of Alabama brought this lawsuit, seeking declaratory relief and permanent injunctive, to challenge the constitutionality of Alabama law that expressly discriminates against minor political parties by providing for Alabama’s major political parties to receive copies of the State’s taxpayer-funded electronically maintained voter registration list free of charge, while requiring minor political parties to pay approximately \$36,000 to obtain a single copy of the list - a list that is distributed in a single email for free to a other entities as well, as frequently as once a month.

3. The district court granted summary judgment in favor of the Secretary of State, *Libertarian Party of Alabama v. Merrill*, 476 F. Supp. 3d 1200 (M.D. Ala. 2020) and a panel of the United States Court of Appeals for the Eleventh Circuit affirmed in an unpublished decision (Attachment “A”).

4. At issue in the case is a fundamental principle in ballot access jurisprudence -, recognized as such by this Court, in summarily affirming the lower court decision squarely on point and involving the exact same issue in *Socialist Workers Party v. Rockefeller*, 314 F. Supp. 984, 995 (S.D.N.Y. 1970) (Three Judge Court), *summarily affirmed*, 400 U.S. 806 (1970) - that it violates the First and Fourteenth Amendments to the United States Constitution for a State to discriminate against minor political parties by providing a voter registration list free of charge to major political parties, while charging a fee to minor parties.

5. Since this Court’s summary affirmance on this issue in *Socialist Workers Party v. Rockefeller* over fifty (50) years ago, every other decision, from every other court in this country, until the decision at issue in the instant case, has reaffirmed in no uncertain terms the same principle and its fundamental grounding in the First and Fourteenth Amendments.

*See e.g., Schultz v. Williams*, 44 F.3d 48, 60 (2d Cir. 1994) (reiterating the principle and language used in *Socialist Workers Party* 24 years earlier and finding the question needs no further consideration, as it is well settled on this precise issue); *Fusaro v. Cogan*, 930 F.3d 241, 256, n.8 (4<sup>th</sup> Cir. 2019) quoting from and reaffirming this

fundamental principle from *Socialist Workers Party*); *Libertarian Party of Indiana v. Marion County Bd. of Voter Registration*, 778 F. Supp. 1458 (S.D. Ind. 1991) (giving the voter registration list free of charge to major parties while charging minor parties a fee unconstitutionally discriminates against minor parties, giving a significant and unwarranted advantage to major political parties and “... impinges not only upon the members freedom to associate as a party but also upon an individual voter’s ability to assert her preferences” and creates other severe burdens; discrimination of this nature with the voter lists, like ballot access discrimination violates the minor party members’ freedom to associate to express their views to the voters and the voters’ ability to express preferences in light of the political views being advanced; rejecting claim of financial or administrative burden for the State), and several more, without exception.

6. The decision below is at odds with this Court’s jurisprudence and all other authority on a fundamental issue of constitutional law with a major impact on the rights of those who wish to put forward a political platform that is an alternative to the two major parties’ platforms, and the voters who would like to know more about them and have an opportunity to cast their votes for them. Indeed, even the court below

recognized the indisputable fact that “[T]he voter list is an important tool for effectively locating voters, petitioning for ballot access, and campaigning for elected office.”

*Libertarian Party of Ala. v. Merrill*, 2021 U.S. App. LEXIS 34383 at \*3. Petitioner will demonstrate to this Court the error below, the importance of this case of a constitutionally significant dimension, and the need to correct the split of authority below created by the decision in this case.

7. Supreme Court Rule 13.5 permits a Justice of this Court, "for good cause," to extend the time to file a petition for a writ of certiorari for a period not exceeding sixty (60) days. The application must be received by the Clerk at least ten (10) days before the petition is due, except in extraordinary circumstances. Rules 13.5, 30.2. This request for an extension of time is being electronically filed ten (10) days before the petition is due.

8. Undersigned counsel respectfully submits that there is good cause to justify the requested extension of time. Undersigned counsel is a solo practitioner with no assistant or office staff. The undersigned currently has a very heavy docket of cases in various stages of litigation in courts around the country. Several filings and appearances in those courts have required the undersigned's full attention the past two months and additional pleadings and briefs due to be filed in other courts over the next several weeks will be full-time endeavors.

These include the filing of briefs in the United States Court of Appeals for the Second Circuit, the United States Court of Appeals for the Sixth Circuit and filings in United States District Courts for the Southern District of New York, the Eastern District of Michigan, and the District of Columbia, as well as the Circuit Court of Cullman County, Alabama in a capital case. The undersigned serves as *pro bono* lead counsel in a capital case and a non-capital murder case at present.

Wherefore, in order to afford undersigned counsel the opportunity to best apprise this Court of the relevant facts and law, Petitioner respectfully requests that an order be entered extending his time to petition for certiorari by 60 days, rendering his

petition due on or before April 18, 2022.

Respectfully submitted,

s/David Schoen  
David Schoen  
Attorney at Law  
2800 Zelda Road, Suite 100-6  
Montgomery, AL 36106  
Tel.: 334-395-6611  
Fax: 917-591-7586  
Email: [DSchoen593@aol.com](mailto:DSchoen593@aol.com)  
[Schoenlawfirm@gmail.com](mailto:Schoenlawfirm@gmail.com)

*Counsel for the Petitioner*

Certificate of Service

I, David Schoen, hereby certify that on February 7, 2022, a copy of this Application for Extension of Time to File a Petition for Writ of Certiorari in the above entitled case was emailed to counsel for Respondent herein, listed below, with a copy by mail, first class postage pre-paid, to follow, in compliance with Rule 29(3). I further certify that all parties required to be served have been served.

Edmund G. LaCour, Jr., Esq.  
Alabama Solicitor General  
Office of the Attorney General  
501 Washington Avenue  
Montgomery, AL 36130  
Tel.: (334) 242-7300  
Email: [Edmund.LaCour@AlabamaAG.gov](mailto:Edmund.LaCour@AlabamaAG.gov)

*Counsel for the Respondent*

s/David Schoen  
David Schoen  
Attorney at Law  
2800 Zelda Road, Suite 100-6  
Montgomery, AL 36106  
Tel.: 334-395-6611  
Fax: 917-591-7586  
Email: [Dschoen593@aol.com](mailto:Dschoen593@aol.com)  
[Schoenlawfirm@gmail.com](mailto:Schoenlawfirm@gmail.com)