

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2022

A.C., a minor, by her parent and guardian ad litem, Torrence S. Waithe; A.C.C., a minor, by her parent and guardian ad litem, Nicolas Cahuec; A.F., minor, by his parent and guardian ad litem, Aletha Forcier; R.F., a minor, by her parent and guardian ad litem, Aletha Forcier; I.M., a minor, by his parents and guardians ad litem Jessica Thigpen and Anthony Thigpen; L.M., a minor, by her parents and guardians ad litem Jessica Thigpen and Anthony Thigpen; K.N.M.R., a minor, by her parent and guardian ad litem, Marisol Rivera Pitre; J.R.H., a minor, by her parents and guardians ad litem, Moira Hinderer and Hillary Reser; M.S., a minor, by his parent and guardian ad litem, Mark Santow; M.M.S., a minor, by his parent and guardian ad litem, Amie Tay; M.S., a minor, by her parents and guardians ad litem, Maruth Sok and Lap Meas; A.W., a minor, by her parent and guardian ad litem, Chanda Womack; J.W., a minor, by her parent and guardian ad litem, Chanda Womack; N.X., a minor, by her parents and guardians ad litem, Youa Yang and Kao Xiong, Petitioners

v.

DANIEL J. MCKEE, in his official capacity as Governor of the State of Rhode Island; NICHOLAS A. MATTIELLO, in his official capacity as Speaker of the Rhode Island House of Representatives; DOMINICK J. RUGGERIO, in his official capacity as President of the Rhode Island Senate; RHODE ISLAND STATE BOARD OF EDUCATION; COUNCIL ON ELEMENTARY AND SECONDARY EDUCATION; ANGELICA INFANTE-GREEN, in her official capacity as Commissioner of Education of the State of Rhode Island, Respondents.

**MOTION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI
PURSUANT TO RULE 13(5)**

To the Honorable Stephen Breyer, Justice of the United States Supreme Court
and Circuit Justice to the First Circuit:

1. Petitioners, A.C., a minor, by her parent and guardian ad litem, Torrence S. Waithe, et al., pursuant to Rule 13(5), Rules of the Supreme Court, respectfully seek a sixty (60) day extension of time within which to file their petition for writ of certiorari in this Court. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). The Court of Appeals issued its judgment on January 11, 2022, *A.C. by Waithe v. McKee*, 23 F.4th 37 (1st Cir. 2022), affirming the District Court's dismissal of the complaint for failure to state a claim. A copy of the opinion is attached hereto as Exhibit A. Absent an extension of time, the Petition for Writ of Certiorari would be due on April 11, 2022. This application is being submitted more than ten (10) days prior to the scheduled filing date for the Petition.
2. Petitioners are Rhode Island public school students and their parents who allege that the defendants have denied them and other similarly situated students their rights under the Equal Protection Clause of the Fourteenth Amendment to an education that is adequate to prepare them to function productively as civic participants capable of exercising effectively their First Amendment rights to free speech and participation in the political process, their rights to the intelligent utilization of the right to vote, and the exercise of other important rights guaranteed by the United States Constitution.
3. In *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973),

this Court held that for most purposes, education is not a fundamental interest that triggers strict scrutiny analysis, but it left open the question of whether, nevertheless, the specific right to an education that prepares them adequately to exercise important constitutional rights does constitute a fundamental interest. Specifically, responding to the petitioners' claim and the dissent's insistence that "education is itself a fundamental personal right because it is essential to the effective exercise of First Amendment freedoms and to intelligent utilization of the right to vote," *id.* at 36, Justice Powell, writing for the *Rodriguez* majority, stated that "We need not dispute any of these propositions.....Even if it were conceded that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of either right, we have no indication that the present levels of educational expenditures in Texas provide an education that falls short." *Id.* at 36-37.

4. The plaintiffs in *Rodriguez* focused on issues involving inequities in education funding, and therefore did not present evidence that would allow the Court to consider whether the civic content of the education that they were receiving prepared them to exercise their constitutional rights. Plaintiffs in the present case, however, have set forth extensive specific allegations in their complaint regarding the "minimally adequate education" or the "quantum of education" necessary to exercise these important constitutional rights.

5. The Court of Appeals for the First Circuit agreed that this Court had left these questions open for future resolution. 23 F.4th at 43. It held, however, that Plaintiffs' claim here would trigger strict scrutiny review only if it alleged a "total deprivation of a minimally adequate education." *Id* at 45. or an education that fails to provide "basic literacy." *Id* at 43. The Court, thereby indicated, as the District Court had explicitly held, that an education that provides no civics knowledge or skills whatsoever was constitutionally acceptable.

6. Given that the constitutional question this Court left open for resolution in *Rodriguez* was what "quantum of education" is necessary "*to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process.*" 411 U.S. at 37 (emphasis added), Plaintiffs submit that this standard cannot possibly be met by an education that provides, at best, minimal literacy skills but no civics education whatsoever.

7. Counsel for Petitioners intend to ask this Court to grant review on the question of whether the First Circuit erred a) when it affirmed the dismissal of the Complaint without permitting the plaintiffs to submit evidence at trial on whether they had been denied an education that provided the "quantum of education" necessary to exercise effectively important constitutional rights that had been provided to other students, and b) in its interpretations of Equal

Protection decisions of this Court that are relevant to the issues raised by this case. In so doing, the First Circuit decided important questions of federal law that have not been, but should be, settled by this Court, as the First Circuit's decision conflicts with *Rodriguez* and other relevant decisions of this Court.

8. Petitioners are requesting an extension of time for filing their petition because they have entered into substantive settlement discussions with the defendants and additional time is needed to pursue these negotiations. A successful completion of these negotiations would make the filing of a petition for certiorari moot.
9. Opposing Counsel have no objection to this motion.

For the foregoing reasons, the Petitioners respectfully request that that the time to file the Petition for a Writ of Certiorari in this matter be extended 60 days, up to and including June 10, 2022.

Respectfully submitted,

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March 22, 2022

CERTIFICATE OF SERVICE

I, Michael A. Rebell, certify that I have this day served the foregoing Motion for Extension of Time to file Petition for Writ of Certiorari by first-class mail, postage prepaid, addressed to:

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This the 22 day of March, 2022.

/s/

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