

No. _____

IN THE
Supreme Court of the United States

SCOTT WILFORD, ET AL.,

Petitioners,

v.

NATIONAL EDUCATION ASSOCIATION, ET AL.,

Respondents.

**APPLICATION TO THE HONORABLE ELENA KAGAN FOR AN
EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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To the Honorable Elena Kagan, as Circuit Justice for the United State Court of Appeals for the Ninth Circuit:

Pursuant to this Court’s Rules 13.5, 22, 30.2, and 30.3, Petitioners Scott Wilford, et al., respectfully request that the time to file their Petition for Writ of Certiorari in this matter be extended 60 days, up to and including September 16, 2022. The Court of Appeals issued its opinion on January 26, 2022. (Appendix (“App.”)), and the Ninth Circuit denied rehearing en banc on April 19, 2022. Absent an extension of time, the Petition for Writ of Certiorari would be due on July 18, 2022. Petitioners file this Application more than 10 days before that date. See S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. 1254(1). Respondents, through their counsel, have consented to a 30-day extension.

Background

Petitioners represent a putative class of California public sector employees. They filed suit in the United States District Court for the Central District of California, seeking declaratory and monetary relief under 42 U.S.C. 1983, plus state-law conversion and restitution, for agency fees that were unconstitutionally taken from their paychecks by the Respondent unions.

The United States Court of Appeals for the Ninth Circuit affirmed dismissal of Petitioners’ claims based on the Respondent unions’ alleged “good faith,” applying that court’s decision in *Danielson v. Inslee*, 945 F.3d 1096, 1097–99 (9th Cir. 2019). App., pp. 1. That court also rejected Petitioners’ claim for prospective declaratory relief as moot, *id.* at 1–2, and held Petitioners’ state-law claims barred, *id.* at 3.

Reasons for Granting an Extension of Time

The time within which to file a Petition for a Writ of Certiorari should be extended for 60 days for the following reasons:

1. Petitioners' Counsel of Record, John J. Bursch, has had since May 6, 2022, and will continue to have, numerous litigation deadlines in the weeks leading up to and following the current, July 18th deadline for filing a Petition, including but not limited to the following:

- An amicus brief in support of rehearing en banc filed in the United States Court of Appeals for the Eleventh Circuit on April 22, 2022 (*Keister v. Bell*, No. 20-12152);
- A motion to intervene and brief opposing certification filed in the Michigan Supreme Court on April 22, 2022 (*Whitmer v. Linderman*, No. 164256);
- A petition for certiorari filed in this Court on May 6, 2022 (*Kerr v. Planned Parenthood South Atlantic, et al.*, No. 21-1043);
- A merits amicus brief filed in this Court on May 9, 2022 (*Students for Fair Admission v. President and Fellows of Harvard College*, No. 20-1109);
- A reply brief filed in the Alabama Supreme Court on May 10, 2022 (*YAL v. University of Alabama Huntsville*, No. 1210309);
- Preparing a colleague for a May 17, 2022 oral argument in the United States Court of Appeals for the Ninth Circuit (*Tingley v. Ferguson*, No. 21-35815);
- A merits brief filed in the Virginia Supreme Court on May 23, 2022 (*Vlaming v. West Point School Board*, No. 211061);
- A merits brief and appendix filed in this Court on May 26, 2022 (*303 Creative, LLC v. Elenis*, No. 21-476);
- A supplemental brief filed in the Michigan Supreme Court on June 8, 2022 (*Whitmer v. Linderman*, No. 164256);

- A merits reply brief filed in the United States Court of Appeals for the District of Columbia on June 13, 2022 (*Frederick Douglas Foundation v. D.C.*, No. 21-7108);
- A merits reply brief to be filed in the Michigan Supreme Court by Jun 17, 2022 (*TruGreen Limited Partnership v. Department of Treasury*, No. 163515);
- A reply brief in support of superintending control to be filed in the Michigan Court of Appeals by July 5, 2022 (*In re Jarzynka*, No. 361470); and
- A merits amicus brief to be filed in this Court by July 25, 2022 (*Health & Hosp. Corp. of Marion County v. Talevski*, No. 21-806).

2. In addition, Mr. Bursch's son is getting married on June 25, 2022.

3. This case presents issues of great importance to public employees who have suffered damages for the violation of their constitutional rights.

4. The Ninth Circuit's decision conflicts with this Court's ruling in *Abood v. Detroit Board of Education*, 431 U.S. 209, 237–42 (1977), which invalidated agency fees used for political activities and held that a refund of unlawfully collected fees was appropriate.

5. The Ninth Circuit's decision also conflicts with this Court's ruling in *Harper v. Virginia Department of Taxation*, 509 U.S. 86, 97 (1983), which makes clear that the Court's decisions must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate the Court's announcement of the rule.

6. In addition, the Ninth Circuit's decision conflicts with decisions of other circuits, first regarding whether a good-faith defense to liability under 42

U.S.C. 1983 exists, and second regarding whether private unions may invoke a good-faith defense to section 1983 liability if it exists.

7. As a result of these conflicts, a significant prospect exists that this Court will grant certiorari and reverse the Ninth Circuit.

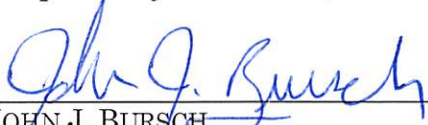
8. Counsel requires the additional requested time to fully research the issues and prepare an appropriate petition for the Court's consideration.

9. No meaningful prejudice would arise from granting the extension. The mandate has already issued, and it is not stayed.

Conclusion

For the foregoing reasons, Petitioners hereby request that an extension of time to and including September 16, 2022, be granted within which Petitioners may file a petition for a writ of certiorari.

Respectfully submitted,



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June 23, 2022

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CERTIFICATE OF SERVICE

A copy of this application was served by email and U.S. mail to the counsel listed below in accordance with Supreme Court rule 22.2 and 29.3:

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