

NO. \_\_\_\_\_

---

**SUPREME COURT OF THE UNITED STATES**

---

CYNTHIA STEPIEN, ON BEHALF OF HERSELF  
AND HER MINOR CHILD, ET AL.,

*Applicants,*

v.

GOVERNOR OF NEW JERSEY, ET AL.,

*Respondents.*

---

On Application for Extension to file a Petition for Writ of Certiorari  
to the United States Court of Appeals for the Third Circuit

---

**APPLICATION TO JUSTICE ALITO FOR EXTENSION OF TIME  
TO FILE PETITION FOR WRIT OF CERTIORARI**

---

Bruce I. Afran,  
*Counsel of Record*  
Law Offices of Bruce I. Afran  
10 Braeburn Dr.  
Princeton, NJ 08540  
(609) 454-7435  
bruceafran@aol.com

June 23, 2023

## **PARTIES TO THE APPLICATION**

### **Applicants and Plaintiffs-Appellants below**

---

- Cynthia Stepien, on Behalf of Herself and Her Minor Child
- Stamatia Dimatos Schreck, on Behalf of Herself and Her Three Minor Children
- Ryan Cody, on Behalf of Himself and His Minor Child J.C.
- Kelly Ford, on Behalf of Herself and Her Minor Child A.F.
- Simona Chindea, on Behalf of Herself and Her Two Minor Children
- Gabe McMahon
- M. F.
- M. K. N.
- K. B.
- B. W.
- L. R.
- J. V. P.
- V. P.
- D. M.
- B. M.
- A. M.
- Danielle Escayg
- All Others Similarly Situated

### **Respondents and Defendants-Appellees below**

---

- Governor of New Jersey
- New Jersey Commissioner of Education
- New Jersey Commissioner of Health

## APPLICATION FOR AN EXTENSION OF TIME

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, applicants Cynthia Stepien, Stamatia Dimatos Schreck, Ryan Cody, Kelly Ford; Simona Chindea, Gabe McMahon; M. F.; M. K. N.; K. B.; B. W.; L. R.; J. V. P.; V. P.; D. M.; B. M.; A. M.; and Danielle Escayg respectfully request a 60-day extension of time, to and including September 3, 2023, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

The petition is expected to seek review on the following issues: 1) was the First Amendment violated in its speech and associational aspects by the Governor's COVID-19 masking orders as to New Jersey schoolchildren; and 2) whether the Third Circuit erred in failing to address the merits and declaring the matter moot due to the expiration of the executive orders.

As a result of prior mootness decisions, the constitutional aspects of masking claims in the federal and state courts have often been avoided or averted. In addition, the present matter presents issues not seen in other cases. For example, New Jersey's masking orders were imposed on schoolchildren long after all other COVID restraints had been rescinded by the Governor in all settings (aside from medical offices and mass transit facilities). School districts in New Jersey continued to impose masking mandates on schoolchildren after the gubernatorial orders had expired, an additional distinction between this and other cases.

It is respectfully submitted that the weight of these issues requires additional time for counsel to adequately prepare the petition.

### **JUDGMENT FOR WHICH REVIEW IS SOUGHT**

The judgment for which review is sought is *Stepien, et al. v. Governor of New Jersey, et al.*, No. 2021-3290 (April 6, 2023) attached at App.1.

### **JURISDICTION**

This Court has jurisdiction over any timely filed petition for a writ of certiorari in this case pursuant to 28 U.S.C. § 1254(1). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for writ of certiorari is due to be filed on or before July 5, 2023. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the July 5, 2023 filing deadline.

### **NATURE OF THE CASE**

Plaintiffs are teachers, parents and students who sued the Governor of New Jersey and the State's Commissioners of Education and Health under 42 U.S.C. §1983 to enjoin gubernatorial orders mandating full-day masking of schoolchildren in all public and private schools. New Jersey's student masking orders were issued at a time when the Governor had lifted masking orders in all other public places including malls, houses of worship, restaurants, stores, offices, bars, theaters, concert halls, supermarkets and the like (except for mass transit and medical offices). Plaintiffs asserted that the masking orders destroyed and eliminated all ordinary speech and associational rights in the school forum.

In support of their claims, plaintiffs filed declarations detailing injuries to First Amendment rights, i.e., from teachers who described the almost complete absence of normal communication, participation and associational activities among schoolchildren during masking and from students describing their experiences under masking. The District Court acknowledged intrusions into First Amendment rights but held that the masking orders were the least restrictive means of achieving the State's reasonable health objectives. The District Court did not hold an evidentiary hearing.

The Third Circuit dismissed the appeal on grounds of mootness despite evidence in the record that school districts were continuing to issue masking orders after the Governor's withdrawal of the executive orders. The Third Circuit did not address the merits of the First Amendment claims.

This present action differs substantially from federal and state masking challenges in which the plaintiffs asserted that the mask itself was an imposed form of speech or violated rights of religious freedom. In contrast, plaintiffs here assert, and demonstrated through their declarations, that the child masking orders prevented or severely limited speech and association among schoolchildren, an important and relatively unexplored area of the law.

#### **SPECIFIC REASONS JUSTIFYING EXTENSION**

Appellants respectfully request a 60-day extension of time within which to file a petition for a writ of certiorari seeking review of the decision of the United States Court of Appeals for the Third Circuit, up to and including September 3, 2023.

Applicants below raised significant issues of speech and associational interests of schoolchildren arising from the masking orders that require additional time for a careful and thoughtful analysis. Counsel must also canvass decisions in all other circuits and district courts to demonstrate the distinction between this matter and other decided cases. Finally, the issue of mootness itself covers a vast array of subject areas in the federal case law, requiring additional time.

For all of these reasons, Applicants respectfully submit that the extension of time is appropriate and will lead to more considered analysis in the filed Petition.

### **PRAYER**

For the foregoing reasons and good cause shown, Applicants respectfully pray this Court grant this application for an extension of time to file a petition for writ of certiorari.

Respectfully submitted,

Bruce I. Afran,  
*Counsel of Record*  
Law Offices of Bruce I. Afran  
10 Braeburn Dr.  
Princeton, NJ 08540  
(609) 454-7435  
bruceafran@aol.com

June 23, 2023