

SUPREME COURT OF THE UNITED STATES

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; AND ALL OTHERS SIMILARLY
SITUATED,

Appellants,

V.

GOVERNOR OF NEW JERSEY; NEW JERSEY COMMISSIONER OF
EDUCATION; NEW JERSEY COMMISSIONER OF HEALTH,

Appellees.

**APPLICATION FOR A FURTHER EXTENSION
OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI**

Directed to The Honorable Samuel A. Alito, Jr., Justice of the Supreme Court of
the United States and Circuit Justice for the Third Circuit

Bruce I. Afran,
Counsel of Record
Law Offices of Bruce I. Afran
10 Braeburn Dr.
Princeton, New Jersey 08540
609-454-7435

I. APPLICATION FOR A FURTHER 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 an additional 30-day extension of time, up to and including September 3, 2023 (or the next business day, September 5, 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.

Following plaintiffs' original request for a 60-day adjournment, Justice Alito granted leave for a 30-day adjournment up to and including August 4, 2023.

For the same reasons as requested initially, plaintiffs respectfully seek the additional extension of 30 days so as to have sufficient time to adequately brief and argue the basis for certiorari on the following issues:

- 1) Did the New Jersey Governor's COVID-19 masking orders as to New Jersey schoolchildren violate the First Amendment in its speech and associational aspects?
- 2) Did the Third Circuit err in failing to address the merits and, instead, declaring the matter moot due to the expiration of the executive orders?

As a result of mootness decisions, the constitutional aspects of masking claims in the federal and state courts have mostly been avoided or averted. 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 also 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.

II. 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 as Exhibit 1 (See Lower Court Orders/Opinions filed with the original Application for Extension).

III. 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 August 4, 2023 (based on the prior extension granted by Justice Alito). In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the August 4, 2023 filing date.

IV. 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 other 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.

V. SPECIFIC REASONS JUSTIFYING FURTHER EXTENSION

Appellants respectfully request the additional 30-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 (or the next business day, September 5).

Applicants continue to have the same need for additional time for preparation of the petition as was asserted on the initial request. The petition concerns significant issues of speech and associational interests of schoolchildren arising from the masking orders. These are largely novel questions under the First Amendment that require additional time for a careful and thoughtful analysis; there is still a need to canvass all decisions in all other circuits and district courts to demonstrate the distinction between this matter and other decided masking cases. As noted

earlier, the issue of mootness that underlies the Third Circuit decision covers a vast array of subject areas in federal case law, requiring additional time. Counsel is also required to prepare and draft in this same time period a responsive brief in a related case in the New Jersey Supreme Court in a matter known as *In re Exec. Orders 251 & 253*, Docket No. 08673. As a result, counsel still needs and respectfully requests the additional 30 days adjournment.

Therefore, for the same substantive reasons as expressed on the original application, counsel requests that plaintiffs receive the full 60-day adjournment as originally sought and, therefore, respectfully requests the additional 30-days time in which to prepare the petition.

VI. PRAYER

For the foregoing reasons and good cause shown, Applicants respectfully pray this Court grant this application for an additional 30-day extension of time to file a petition for writ of certiorari (for a total adjournment of 60-days).

Respectfully submitted,

/s/ Bruce I. Afran
Bruce I. Afran*
bruceafran@aol.com
10 Braeburn Dr.
Princeton, New Jersey 08540
609-454-7435
Counsel for Applicants

July 20, 2023

*Counsel of Record