

No. 22A__

**In the
Supreme Court of the United States**

STATE OF MISSOURI, ET AL.,
Petitioners,
v.

JOSEPH R. BIDEN, JR., IN HIS OFFICIAL CAPACITY AS THE PRESIDENT OF THE UNITED STATES, ET AL.,
Respondents.

*Application for Extension of Time to File a Petition for
Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit*

**APPLICATION TO THE HONORABLE BRETT M. KAVANAUGH
REQUESTING AN EXTENSION OF TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI PURSUANT TO RULE 13**

To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Eighth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, Applicants and Petitioners, the States of Missouri, Alaska, Arizona, Arkansas, Indiana, Kansas, Montana, Nebraska, Ohio, Oklahoma, South Carolina, Tennessee, and Utah, pray for a 60-day extension of time to file its petition for certiorari in this Court up to and including Monday, June 26, 2023. The Eighth Circuit entered a final judgment on October 21, 2022. Petitioners timely filed a petition for rehearing and rehearing en banc that was denied on January 27, 2023. The time to file a petition

for a writ of certiorari in this Court expires on April 27, 2023. This application is filed more than ten days before that date.

Copies of the opinions and the order denying the petition for rehearing and rehearing en banc are attached to this Application. The jurisdiction of this Court is properly invoked under 28 U.S.C. § 1254(1).

As shown by the Eighth Circuit's opinion, this cases involves a suit under the Administrative Procedure Act and the U.S. Constitution alleging that the Interagency Working Group on the Social Cost of Greenhouse Gases has improperly promulgated (both substantively and procedurally) a binding legislative rule determining specific numerical values that all U.S. agencies and departments must apply in all regulatory analyses. Petitioners also claim that this rule violates the Separation of Powers because it is not authorized by any statutory delegation of authority from Congress or the Executive Branch's enumerated powers. The district court and the Eighth Circuit granted Respondents' motion to dismiss on the basis that the States lacked standing and that the claims were unripe.

Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. Counsel that previously served as lead counsel departed the Missouri Attorney General's Office, and there is currently only one other attorney who handles civil cases that may practice before this Court. Undersigned counsel faces a significant press of business due to:

- No. SC99931, *Lucas v. Ashcroft, et al.*, an expedited original case in the Missouri Supreme Court that has upcoming discovery deadlines and

depositions scheduled throughout the month of April, 2023, and a special master's evidentiary hearing on May 4, 2023.

- No. 23-1457, *United States v. Missouri*, in the U.S. Court of Appeals for the Eighth Circuit. Counsel anticipates continued motions practice before the Eighth Circuit and this Court involving the U.S. District Court for the Western District of Missouri's decision invalidating a Missouri law based on its federal equitable jurisdiction. A motion to stay the judgment and injunction against Missouri is pending before the Eighth Circuit, and a decision and motions practice by the unsuccessful side is imminent. The merits brief is currently due on May 1, 2023.
- No. 22-cv-4104, *Stock v. Gray*, in the U.S. District Court for the Western District of Missouri. This case just entered discovery and also involves motions practice over a preliminary injunction issued by the district court involving the validity of a Missouri statute.
- Two proposed judgments (from different state court cases) are due in mid-April from hearings that occurred in December 2022 and March 22, 2023. See *City of Normandy v. Parson*, No. 15AC-CC531-01, Order (Cole County Mar. 22, 2023).

This significant press of business is not isolated to the current month. In the past few months, counsel has filed several briefs and motions in this Court and others, including, but not limited to:

- No. 22-816, *The School of the Ozarks v. Biden, et al.*, amici curiae brief for State of Missouri and Eighteen Other States on March 28, 2023.
- No. 22-816, *Doe v. Chapman*, Suggestions of Mootness and Unopposed Motion to Vacate the Judgment of the Court of Appeals filed on February 7, 2023.
- No. 15AC-CC531-01, *City of Normandy v. Parson* (Cole Cnty. Cir. Ct.), supplemental trial brief on February 21, 2023.
- No. 21AC-CC237-01, *City of St. Louis v. Missouri*, motions to compel and oppositions to motions for protective orders on January 30 and February 6.
- No. 2216-cv18354, *Lucas v. Bailey*, (Jackson Cnty. Cir. Ct.) Opposition to Motion for Summary Judgment filed January 17 and reply supporting a motion to dismiss filed February 14.
- No. 23-1457, *United States v. Missouri*, in the U.S. Court of Appeals for the Eighth Circuit, motions to stay the judgment and injunction in the district court on March 8, 2023 and in the court of appeals on March 13 and 20.
- No. SC99931, *Lucas v. Ashcroft*, in the Missouri Supreme Court. Motions filed on January 24 & 26, and February 1 & 8.
- No. 22AC-CC3185, *Faatz v. Ashcroft*, (Cole Cnty. Cir. Ct.), Motions related to imminent discovery deadlines filed on February 23 and March 23.
- No. 22-3617, *Thomas-El v. Francis*, U.S. Court of Appeals for the Eighth Circuit, Appellants' Brief filed on April 5.

The Applicants have not previously requested an extension of time.

CONCLUSION

Petitioners request that the time to file a writ of certiorari in the above-captioned matter be extended 60 days up to and including Monday, June 26, 2023.

April 11, 2023

Respectfully submitted,

s/ Jeff P. Johnson

Jeff P. Johnson

Deputy Solicitor General

Counsel of Record

OFFICE OF THE MISSOURI

ATTORNEY GENERAL

Supreme Court Building

207 West High Street

P.O. Box 899

Jefferson City, MO 65102

(314) 340-7366

Jeff.johnson @ago.mo.gov

Counsel for Applicant/Petitioner