

No. 23A764

In the Supreme Court of the United States

RICHARD ROSE et al.,

Applicants/Petitioners

v.

BRAD RAFFENSPERGER, in his official capacity as
Secretary of State of the State of Georgia

Respondent.

On Application for an Extension of Time to File a Petition for a Writ of
Certiorari to the United States Court of Appeals for the Eleventh Circuit

**APPLICATION TO THE HONORABLE JUSTICE
CLARENCE THOMAS AS CIRCUIT JUSTICE**

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To the Honorable Justice Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

Applicants Richard Rose, Brionté McCorkle, Wanda Mosley, and James “Major” Woodall respectfully request a further extension of time to file a petition for a writ of certiorari in this matter. This Court previously extended the time to file a petition for a writ of certiorari until March 23, 2024.

Issuance of the mandate from the Eleventh Circuit continues to be withheld at the direction of at least one unnamed judge of that court and for reasons that are currently unknown to the Applicants. It is possible that the Eleventh Circuit’s action with respect to the mandate would operate to reset the 90-day deadline for the Applicants to file their petition, if, for example, the Eleventh Circuit were to decide, *sua sponte*, to grant or deny rehearing en banc. *See* Sup. Ct. R. 13.3. But it is also possible that the Eleventh Circuit’s action would not reset the deadline.

This latter possibility is what prompts the Applicants, out of an abundance of caution, to request an extension of 60 days up to and including May 22, 2024, or, in the alternative, 60 days following the Eleventh Circuit's disposition with respect to the mandate if that disposition does not otherwise reset the original 90-day deadline.

Counsel for the Secretary of State has advised that the Secretary does not oppose this motion.

Jurisdiction

The Applicants seek review of the Eleventh Circuit's judgment entered on November 24, 2023. (A copy of this judgment was attached to the initial application for an extension.) The Applicants moved to stay the issuance of the mandate on December 7, 2023, and the Eleventh Circuit denied the motion without explanation on December 18, 2023. This Court previously extended the time to file a petition for a writ of certiorari until March 23, 2024.

Upon the timely filing of a petition for a writ of certiorari, this Court would have jurisdiction over the Eleventh Circuit’s judgment under 28 U.S.C. § 1254(1).

Reasons for Granting an Extension of Time

The Court should grant an extension of time for the following reasons:

1. On December 18, 2023, the Eleventh Circuit *sua sponte* entered an order stating that “[a] judge of this Court withholds issuance of the mandate in this appeal.” (A copy of that order was attached to the initial application for an extension.) As a result, the mandate is currently stayed until further order of the court.

While the court has not explained *why* the mandate is being withheld, one possibility is that a judge has requested a poll on rehearing en banc:

Requesting a Poll on Court’s Own Motion. Any active Eleventh Circuit judge may request that the court be polled on whether rehearing en banc should be granted whether or not a petition for rehearing en banc has been filed by a party. This is ordinarily done by a letter from the requesting judge to the chief judge with copies to the other active and senior judges of the court and

any other panel member. At the same time the judge shall notify the clerk to withhold the mandate, and the clerk will enter an order withholding the mandate. The identity of the judge will not be disclosed in the order.

11th Cir. L.R. 35, Internal Operating Procedure No. 5. If so, an order granting or denying rehearing would reset the 90-day deadline for the applicants' petition for a writ of certiorari in this Court. *See* Sup. Ct. R. 13.3. But it is also possible that the Eleventh Circuit could act in a way that does not operate to reset the 90-day deadline if, for example, the court of appeals were to vacate the order withholding the mandate.

Given this uncertainty, and out of an abundance of caution, the applicants seek a 60-day extension to give the Eleventh Circuit more time to resolve whatever has caused a judge to withhold the mandate. But there is no guarantee that the Eleventh Circuit will rule within 60 days. The Applicants therefore suggest, in the alternative, an extension until 60 days after the Eleventh Circuit's disposition with respect to the mandate if that disposition does not otherwise reset the deadline.

2. A significant prospect exists that this Court will grant certiorari and reverse the Eleventh Circuit. The current panel opinion conflicts with this Court's decisions in *Thornburg v. Gingles*, 478 U.S. 30 (1986), and *Allen v. Milligan*, 599 U.S. 1 (2023), among others. This Court has already intervened once in this case to reverse the Eleventh Circuit. *See Rose v. Raffensperger*, 148 S. Ct. 58 (2022) (Mem.) It will need to do so again to bring the Eleventh Circuit back in line with this Court's precedents on important questions of federal law.

3. An extension will cause no prejudice to the respondent, who does not oppose this motion.

Conclusion

For the foregoing reasons, the Applicants respectfully request a 60-day extension of time to file a petition for a writ of certiorari up to and including May 22, 2024, or, in the alternative, 60 days following the Eleventh Circuit's disposition with respect to the mandate if that disposition does not otherwise reset the original 90-day deadline.

Respectfully submitted,

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