

No. 23A__

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

MISSOURI DEPARTMENT OF CORRECTIONS,
Applicant,
v.

JEAN FINNEY,
Respondent.

*Application for Extension of Time to File a Petition for
Writ of Certiorari to the Missouri Court of Appeals*

**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, Applicant and Petitioner Missouri Department of Corrections prays for a 60-day extension of time to file its petition for certiorari in this Court, up to and including Friday, September 1, 2023. The final judgment of the Missouri Court of Appeals was entered on December 27, 2022. Petitioner timely filed a motion for rehearing or application for transfer to the Missouri Supreme Court that was denied on January 31, 2023. On February 15, 2023, Applicant and Petitioner timely filed its Application for Transfer to the Supreme Court for the State of Missouri, which was denied on

April 4, 2023. The time to file a petition for a writ of certiorari in this Court expires on July 3, 2023. This application is filed more than ten days before that date.

Copies of the opinions and the order denying the motion for rehearing or application for transfer to the Missouri Supreme Court are attached to this Application together with the order denying the Application to Transfer to the Supreme Court for the State of Missouri. The jurisdiction of this Court is properly invoked under 28 U.S.C. § 1254(1).

As shown by the Missouri Court of Appeals Memorandum Supplementing Order Affirming Judgment (attached to the Opinion), this case addresses (1) whether under the Equal Protection Clause of the Fourteenth Amendment, a trial court may strike jurors for cause because of their religious views on homosexuality when the trial court expressly found that the jurors could apply the law fairly, and instead struck them for cause “to err on the side of caution;” (2) whether “religious belief” as opposed to just “religious status” is a protected classification under the Equal Protection Clause; (3) whether trial counsel preserves for ordinary review a *Batson*-type challenge by objecting in court and noting that a strike would amount to “religious discrimination,” even if trial counsel does not specifically cite a constitutional clause as the basis for the objection; and (4) whether a *Batson*-type violation causes a miscarriage of justice, or whether instead a *Batson* violation can be cured by empaneling a fair jury. The Court of Appeals affirmed the trial court’s denial of Petitioner’s motion for a new trial on the basis of a religious *Batson* violation. Petitioner disagrees.

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

- No. 2222-CC08920-01, *Missouri v. City of St. Louis*, a case in which Counsel has been engaging in written discovery and document review from April 2023 through the present.
- No. 20-2209, *Reproductive Health Servs. et al. v. Dep't of Health & Senior Services*, a case in which Counsel has been engaging in written discovery and document review from April 2023 to the present and preparing for a hearing scheduled for July 27, 2023.
- No. SC99864, *Robinson v. DHSS*, a case in which Counsel will have an oral argument before the Missouri Supreme Court on July 12, 2023.
- No. 2322-CC00120, *Blackmon et al. v. State of Missouri et al.*, in the Missouri Circuit Court for St. Louis City, a case in which the State has a responsive pleading or motion due on several cross-claims on July 13, 2023.
- No. WD86029, *Beach v. Zellers et al.*, in the Missouri Court of Appeals, a case in which Counsel currently has an appellant's brief due on June 20, 2023 (with a motion for 6-day extension pending up to and including June 26, 2023).

- No. SC99966, *Planned Parenthood v. Knodell*, in the Missouri Supreme Court, a case in which Counsel currently has an appellant's brief due on July 3, 2023.
- No. WD84917, *Missouri Office of Administration et al. v. Missouri Corrections Officers Association et al.*, is a case in which Counsel currently has a U.S. Supreme Court petition for certiorari due on July 3, 2023 (Counsel is requesting a 45-day extension of time to file a petition for certiorari in this case).

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

- Nos. 22A901, 22A902, *Danco Laboratories, L.L.C. v. Alliance for Hippocratic Medicine et al.; U.S. Food and Drug Administration, et al. v. Alliance for Hippocratic Medicine, et al.*, a case in which Counsel filed an amicus brief on behalf of the State of Missouri on April 18, 2023.
- No. SC99864, *Robinson v. DHSS*, a Missouri Supreme Court case in which Counsel filed a significant Respondent's Brief (69 pages) on May 12, 2023.
- No. 22-1104, *Missouri v. Biden*, Counsel filed a response to a motion on May 31, 2023.

- No. 2322-CC00120, *Blackmon et al. v. State of Missouri et al.*, in the Missouri Circuit Court for St. Louis City, a case challenging eight separate Missouri abortion laws, for which Counsel filed significant motion-to-dismiss reply briefing (40 pages) on June 6, 2023, and solely represented the State of Missouri and other State defendants on June 13, 2023, by arguing the motion to dismiss.

The Applicant has not previously requested an extension of time.

CONCLUSION

Applicant requests that the time to file a writ of certiorari in the above-captioned matter be extended 60 days, up to and including Friday, September 1, 2023.

June 21, 2023

Respectfully submitted,

ANDREW BAILEY
Attorney General

/s/ Maria A. Lanahan
Maria A. Lanahan
Deputy Solicitor General
Counsel of Record
OFFICE OF THE MISSOURI ATTORNEY
GENERAL
815 Olive Street, Suite 200
St. Louis, MO 63101
Tel: (314) 340-4978
Maria.Lanahan@ago.mo.gov

Counsel for Applicant/Petitioner

No. 23A__

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

MISSOURI DEPARTMENT OF CORRECTIONS,
Applicant,
v.

JEAN FINNEY,
Respondent.

*Application for Extension of Time to File a Petition for
Writ of Certiorari to the Missouri Court of Appeals*

PROOF OF SERVICE

In accordance with Rule 29.5(b), I, Maria A. Lanahan, counsel for applicant/petitioner and a member of the Bar of this Court certify that all parties required to be served, have been served, and that on June 21, 2023, the required copies of the Application for Extension of Time to File a Petition for Writ of Certiorari in the above-captioned case were sent to the U.S. Supreme Court by commercial overnight delivery and were served via the same and by email on counsel for respondent listed below:

David Andrew Lunceford
Peter Gardner
Lunceford Law Firm, LLC
201 SE 1st Street
Lees Summit, MO 64063
LLF.DLunceford@gmail.com
llf.peter.gardner@gmail.com
(816) 525-4701

Christina Nielsen
286 Caroline Ave.
St. Louis, MO 63122
llf.cnielsen@gmail.com
(314) 288-7144

Rachel Rutter
612 SW 3rd Street, Suite D
Lee's Summit, MO 64063
Rutter.c.rachel@gmail.com
(816) 525-4701

Christina Nielsen
5098 English Terrace
Unit 104
Alexandria, VA 22304
(314) 288-7144

Counsel for Respondent Finney

June 21, 2023

Respectfully submitted,

/s/ Maria A. Lanahan

Maria A. Lanahan

Deputy Solicitor General

Counsel of Record

OFFICE OF THE MISSOURI

ATTORNEY GENERAL

815 Olive Street, Suite 200

St. Louis, MO 63101

Tel: (314) 340-4978

Maria.Lanahan@ago.mo.gov

Counsel for Applicant/Petitioner