

No. \_\_\_\_\_

**IN THE SUPREME COURT OF THE UNITED STATES**

JUSTIN ADKINS, ET AL.,

Petitioners,

v.

CSX TRANSPORTATION, INC.,  
ET AL.,

Respondents.

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**ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
FOURTH CIRCUIT**

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**PETITIONERS' APPLICATION FOR EXTENSION OF  
TIME TO FILE PETITION FOR WRIT OF CERTIORARI**

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**PETITIONERS' APPLICATION FOR EXTENSION OF  
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**To the Honorable Chief Justice John G. Roberts, Jr. of the Supreme Court of the United States and Circuit Justice for the Fourth Circuit Court of Appeals:**

Petitioners John Baker, Randall Craycraft, Chad Dowdy, Sammy Maddix, Danny Stewart and James Stinnett, request a sixty (60) day extension to file a Petition for Writ of Certiorari. The Fourth Circuit Court of Appeals issued an Order dated July 18, 2023 denying the Motion for rehearing en banc. The Mandate was issued on July 26, 2023. Accordingly, the deadline to file the Petition for Writ of Certiorari is due on October 16, 2023. This application is being filed ten (10) days prior to the due date.

Attached to this Petition is the decision from the Fourth Circuit Court of Appeals. The jurisdiction of this Court is invoked under USCS Const. Art. III, § 2, Cl 2.

The published opinion from the panel makes employers' compliance with the Family and Medical Leave Act (FMLA) optional both in terms of procedure and substantive protections. Contrary to the panel's decision, the plaintiffs did suffer prejudice in not receiving the FMLA medical certification forms which the employees and their healthcare provider would have completed within the required timeframes to substantiate the medical leave and allow the employer to request second and even third opinions if they doubt the validity of the certification form. Procedurally, the panel's decision allows an employer to

bypass the FMLA mandatory procedures in lieu of the collective bargaining agreement (CBA) hearing process.

The procedural issue for determining the legitimacy of a medical leave is not governed by the collective bargaining agreement. As stated by the Supreme Court, the arbiter addresses the “law of the shop” and not the “law of the land”. *Alexander v. Gardner-Denver*, 415 U.S. 36, 37 (1974).

Once an employee gives notice to an employer that FMLA is requested, the employer is charged with the duty to provide the employee with written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. 29 CFR 825.301(b)(1).

A failure of the employer to provide this written notice precludes any adverse action as stated in 29 CFR 825.302(f). (If the employer fails to provide notice in accordance with the provisions of this section, the employer may not take action against the employee for failure to comply with any provision required to be set forth in the notice).

In *Vannoy v FRB of Richmond*, 827 F.3d 296 (4<sup>th</sup> Cir. 2016), the Fourth Circuit reversed summary judgment on the FMLA interference claim because the employer’s notice did not comply with the regulatory requirements of 29 C.F.R. 825.300(c)(iv). As stated by the Court:

The FMLA requires that employers provide an individual, written notice to affected employees that an absence qualifies under the FMLA. See 29 CFR 825.300. There are two types of individualized notice that an

employer must give an employee who may be entitled to FMLA leave: a “rights and responsibilities notice”, id. 825.300(c); and a “designation notice”, id 825.300(d).

However, in this case, none of the employees were provided with any notice under the FMLA. If any of the employees were provided the FMLA medical certification form, the basis of the medical leave and reasons for it, would have been spelled out by the employee and healthcare provider to substantiate the leave.

Six petitioners remain in the case. Each requires a separate analysis and individual discussion concerning their respective appellate rights. For these reasons, Petitioners request a sixty (60) day extension to file their petition for writ of certiorari be extended to and including December 15, 2023.

Dated: October 6, 2023.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that this 6<sup>th</sup> day of October 2023,  
caused one copy of the foregoing Application for Extension of Time  
Within Which to File a Petition for Writ of Certiorari to be served on  
the below named counsel via email and first-class mail:

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