

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

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

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Stephen E. Powers,  
*Applicant,*

v.

State of Mississippi,  
*Respondent.*

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**APPLICATION FOR AN EXTENSION OF TIME  
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI**

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December 11, 2023

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To the Honorable Samuel A. Alito, Jr., Associate Justice of the United States and Circuit Justice for the Fifth Circuit:

1. Pursuant to this Court's Rules 13.5, 22, and 30.3, and with the consent of Respondent, Applicant Stephen Powers respectfully requests a 60-day extension of time to petition for a writ of certiorari to review the judgment of the Supreme Court of Mississippi. This case involves important questions of federal constitutional law concerning the Mississippi Supreme Court's continued refusal to uphold *Batson v. Kentucky*, 476 U. S. 79 (1986).

2. Powers requests this extension because his Counsel of Record, Krissy C. Nobile, who will represent Powers before this Court, is continuing to research the issues here and handling a number of other substantial competing obligations. Counsel has numerous filing deadlines and other professional commitments which would otherwise prevent the sort of comprehensive analysis that aids this Court in determining whether to grant certiorari. Counsel's substantial competing

commitments include responding to two recent motions to set execution dates filed by the State. *See Manning v. State*, 2023-DR-01076-SCT; *Simon v. State*, 2016-DR-00092-SCT. In *Manning*, undersigned counsel filed a successor petition for post-conviction relief in the Mississippi Supreme Court based on newly discovered evidence showing that Willie Manning may, in fact, be innocent. In *Simon*, undersigned counsel was appointed just a few weeks ago to investigate and prepare a successive petition for post-conviction relief for Robert Simon. Counsel also has briefing and extensive travel and investigation in a multitude of other active capital cases.

3. Counsel has not previously sought an extension of time from this Court. The Mississippi Supreme Court denied rehearing on September 28, 2023. The time for filing a petition would therefore expire on December 27, 2023, absent an extension. Consistent with Rule 13.5, this application has been filed at least 10 days before that date. This Court has jurisdiction over this case under 28 U.S.C. § 1257.

4. Although this is a capital case, no execution date has been set.

5. By way of background, the Mississippi Supreme Court, on direct appeal, affirmed Powers' capital murder conviction and resulting death sentence. Powers then unsuccessfully sought relief in state post-conviction. The federal court then stayed Powers' habeas proceedings so that he could seek review before the Mississippi Supreme Court. Powers then filed a successive state court petition, which the Mississippi Supreme Court denied in its entirety.

6. In denying post-conviction relief, the Mississippi Supreme Court

eviscerated the core of *Batson v. Kentucky*. Indeed, despite Powers’ showing of a prima facie *Batson* violation, the Mississippi Supreme Court held that to prove a *Strickland*<sup>1</sup> prejudice when trial counsel is ineffective by not raising any *Batson* challenge, petitioners must show that the *outcome of the trial* would have been different. This holding turns *Batson* on its head and places post-conviction petitioners in an untenable position.

7. This case presents important issues of constitutional law. Powers’ petition will thus satisfy the Court’s criteria for certiorari.

8. Counsel for Respondent consented to the requested extension.

For these reasons, Counsel respectfully requests that the time to file a petition for a writ of certiorari be extended to and including Monday, February 26, 2024.

Respectfully submitted,

/s/ Krissy C. Nobile  
KRISSEY C. NOBILE  
*Counsel of Record*

*Counsel for Applicant Stephen Powers*

December 11, 2023

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<sup>1</sup> *Strickland v. Washington*, 466 U.S. 668 (1984).