

No. _____

IN THE
Supreme Court of the United States

MIKE FITZHUGH, ET AL.,

Petitioners,

v.

BRADLEY PATTON,

Respondents.

**APPLICATION TO THE HONORABLE BRETT
M. KAVANAUGH FOR AN EXTENSION OF
TIME TO FILE A PETITION FOR A WRIT OF
CERTIORARI TO THE SIXTH CIRCUIT
COURT OF APPEALS**

NICK CHRISTIANSEN
16 Public Square N.
P.O. Box 884
Murfreesboro, TN 37130
(615) 893-5522
nchristiansen@mborolaw.com

*Counsel for Mike Fitzhugh
and Melissa Harrell*

JONATHAN SKRMETTI
Attorney General

J. MATTHEW RICE
*Solicitor General
Counsel of Record*

JOSHUA D. MINCHIN
*Assistant Solicitor
General*

OFFICE OF TENNESSEE
ATTORNEY GENERAL
P.O. Box 20207
Nashville, TN 37202
(615) 532-6026
Matt.Rice@ag.tn.gov

*Counsel for Howard
Wilson, James Turner,
Barry Tidwell*

To the Honorable Brett M. Kavanaugh, as Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

Pursuant to Supreme Court Rules 13.5, 22, 30.2, and 30.3, Petitioners Mike Fitzhugh, Melissa Harrell, Howard Wilson, James Turner, and Barry R. Tidwell respectfully request that the time to file the Petition for Writ of Certiorari in this matter be extended 30 days, up to and including July 11, 2025. The Sixth Circuit issued its opinion on March 13, 2025. Absent an extension, the Petition for Writ of Certiorari would be due on June 11, 2025. As required, Petitioners file this Application more than 10 days before that date. *See* S. Ct. R. 13.5. This Court would have jurisdiction over the judgment pursuant to 28 U.S.C. § 1254. Respondents, through counsel, do not oppose this extension request.

BACKGROUND

In Tennessee, the General Assembly has authorized state courts to investigate the source of funds offered for bond. Specifically, courts may “conduct such hearings and enter such orders” as necessary to ensure that criminal defendants do not use “any proceeds . . . derived from a criminal offense for the purpose of securing an appearance bond or to pay the premium for the bond.” Tenn. Code Ann. § 39-11-715. Consistent with that statute, Tennessee’s 16th Judicial District promulgated Rule 16.07, which requires a defendant or bonding agent, in open court, to prove the source of funds to pay a bond that exceeds \$75,000 for certain enumerated offenses. This “source hearing” requirement is intended to prevent funds that were derived from criminal activity from being used to post a bond.

In 2023, after committing various felony offenses covered by Rule 16.07, Bradley Patton became subject to the source hearing requirement. While he was still in custody, he filed a putative class action in federal district court challenging Rule 16.07 on constitutional grounds. Several months later, Patton voluntarily amended his complaint to add a new cause of action. He also clarified that he was no longer in pretrial detention. Defendants moved to dismiss, arguing that Patton's case became moot when he was released, and that he lacked standing to seek prospective relief.

Over a year after Patton first filed suit, the district court dismissed Patton's complaint as moot because he had failed to show that the alleged wrong was capable of repetition yet evading review. The Sixth Circuit reversed. Although it acknowledged that Patton's claims were moot absent an exception, it held that the "inherently transitory" exception applied, even though Patton had never moved for class certification and was the only named plaintiff.

Article III of the U.S. Constitution limits federal "judicial Power" to the adjudication of "Cases" or "Controversies." U.S. Const. Art. III, § 2. "A case becomes moot—and therefore no longer a Case or Controversy for purposes of Article III—when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). Thus, if the party invoking the court's jurisdiction ceases to have "a personal stake in the outcome of the lawsuit any point during litigation, the action can no longer proceed and must be dismissed as moot." *Genesis HealthCare Corp. v. Symczyk*, 569 U.S. 66, 72 (2013) (quotations omitted).

This Court “has never resolved the issue of what to do when the named plaintiff’s case becomes moot before the motion to certify the class has been filed.” Johnathan Lott, *Moot Suit Riot: An Alternative View of Plaintiff Pick-Off in Class Actions*, 2013 U. Chi. Legal F. 531, 531 (2013). And the circuits take different approaches. The Third, Sixth, Ninth, Tenth, and Eleventh Circuits allow such actions to proceed. See *Patton v. Fitzhugh*, 131 F.4th 383, 396 (6th Cir. 2025); *Richardson v. Bledsoe*, 829 F.3d 273, 284 (3d Cir. 2016); *Stein v. Buccaneers Ltd. P’ship*, 772 F.3d 698, 707 (11th Cir. 2014); *Lucero v. Bureau of Collection Recovery, Inc.*, 639 F.3d 1239, 1249 (10th Cir. 2011); *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1091 (9th Cir. 2011). The First, Fourth, Fifth, and Seventh Circuits do not. See *Fontenot v. McCraw*, 777 F.3d 741, 748 (5th Cir. 2015); *Damasco v. Clearwire Corp.*, 662 F.3d 891, 896 (7th Cir. 2011); *Cruz v. Farquharson*, 252 F.3d 530, 531-32 (1st Cir. 2001); *Nestler v. Bd. of Law Examiners*, 611 F.2d 1380, 1382 (4th Cir. 1980).

The implications are immense. Five circuits currently allow a plaintiff whose claims are indisputably moot to litigate an expensive, burdensome class action—and even obtain *merits* rulings—on the theory that the plaintiff may one day file a class certification motion that creates a class. This case presents an ideal vehicle to resolve this intractable 5-4 split and ensure that the federal judiciary stays within Article III’s boundaries.

REASONS FOR GRANTING AN EXTENSION

Petitioners request a 30-day extension of time within which to file a Petition for a Writ of Certiorari for the following reasons:

1. Petitioners' Counsel of Record, J. Matthew Rice, is new to this case and needs additional time to familiarize himself with the record and proceedings below.
2. Mr. Rice has had and will continue to have numerous litigation deadlines before and after the current June 11, 2025, deadline, including numerous filings before this Court, the Tennessee Supreme Court, and the U.S. Court of Appeals for the Sixth Circuit, as well as emergency briefing in suits seeking to enjoin Tennessee's state laws.
3. As discussed above, there is a substantial split of authority over whether putative class actions may proceed under mootness exceptions if the named plaintiff's claims become moot before the filing of a motion for class certification.
4. As a result of this split, a significant prospect exists that this Court will grant certiorari and reverse the Sixth Circuit Court of Appeals.
5. No meaningful prejudice would arise from the granting of this extension. Counsel for Respondents has indicated that Respondents do not oppose this request.

CONCLUSION

Petitioners respectfully request that an extension of time up to and including July 11, 2025, be granted within which to file a Petition for a Writ of Certiorari.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Matthew Rice", is written over a horizontal line.

J. MATTHEW RICE
Solicitor General
Counsel of Record

JOSHUA D. MINCHIN
Assistant Solicitor General

OFFICE OF TENNESSEE
ATTORNEY GENERAL
P.O. Box 20207
Nashville, TN 37202
(615) 532-6026
Matt.Rice@ag.tn.gov

NICK CHRISTIANSEN
16 Public Square N.
P.O. Box 884
Murfreesboro, TN 37130
(615) 893-5522
nchristiansen@mborolaw.com

Counsel for Petitioners

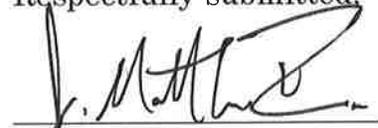
May 22, 2025

CERTIFICATE OF SERVICE

A copy of this application was served by email and U.S. mail to the counsel listed below in accordance with Supreme Court Rules 22.2 and 29.3:

Paul Andrew Justice, III
Justice Law Office
1902 Cypress Drive
Murfreesboro, TN 37130
drew@justicelawoffice.com

Respectfully submitted,



J. MATTHEW RICE
Solicitor General
Counsel of Record
OFFICE OF TENNESSEE
ATTORNEY GENERAL
P.O. Box 20207
Nashville, TN 37202
(615) 532-6026
Matt.Rice@ag.tn.gov