

No.

In the Supreme Court of the United States

CHRISTINE REULE; HARRIET NICHOLSON; REBECCA ALEXANDER FOSTER; JIMMY LEE MENIFEE;
TONY LAMAR VANN; HONORABLE MADELEINE CONNOR,
Applicants

v.

HONORABLE REEVE JACKSON; PENNY CLARKSTON; MEGAN LAVOIE,
Respondents

**Application for Extension of Time to File a Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit**

**Application to the Honorable Samuel A. Alito, Jr. as
Circuit Justice for the Fifth Circuit**

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November 12 , 2024

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

Under 28 U.S.C. 2101(c) and Rule 13.5 of the Rules of this Court, Applicants Christine Reule, Harriet Nicholson, Rebecca Alexander Foster, Jimmy Lee Menifee, Tony Lamar Vann, and the Honorable Madeleine Connor respectfully request an extension of time of 59 days to file a petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit. With a current deadline of December 23, 2024, Applicants request an extension to and including *February 20, 2025*. Good cause exists because of the untimely death of Applicants' counsel John W. Vinson.

As elaborated below, Applicants had two counsel at the start of this case and continue to need at least two counsel now. The undersigned needs more time to find at least one co-counsel to replace Mr. Vinson, but finding new counsel has been difficult because the issues are not facile, counsel must work *pro bono*—as Applicants were promised—and any new counsel's agreement to take on the additional *pro bono* work is complicated by the impending holidays.

This Application is presented substantially before the deadline because the undersigned has not been successful finding replacement co-counsel, and the search, and any willing counsel's work, will likely be impeded by the upcoming holidays.

All Respondents, through their respective counsel, are unopposed to the extension.

Jurisdiction. Jurisdiction is invoked under 28 U.S.C. § 1254(1). Applicants were plaintiffs and appellants in the courts below. They raised a constitutional challenge to a Texas state statute. The requirements of Rule 29.4(c) were met.¹ The district court dismissed Applicants' case without prejudice for lack of standing. On August 19, 2024 the Fifth Circuit affirmed in the judgment and published opinion for which Applicants seek review. Exx. 1, 2, Judgment and Opinion, *Reule v. Jackson*, No. 23-40478 (5th Cir. Aug. 19, 2024) (slip op.).² On September 23, 2024, the Fifth Circuit denied panel rehearing and noted rejection of rehearing *en banc*. Ex. 3.

Without the extension, the 90-day time period for Applicants to file their petition for certiorari expires on December 23, 2024.³ Rule 13.3. This Application is filed more than 10 days before that date. Rule 13.5. Applicants have neither requested nor were granted a prior extension.

Importance of the issues. The Fifth Circuit's decision whittles down federal constitutional review of state statutes by erroneously re-interpreting the doctrine of standing. Among other errors, the decision unjustifiably expands this Court's decision in *Whole Woman's Health v. Jackson*, 595 U.S. 30 (2021), interpreting it to add new

¹ The requirements of Rule 29.4(c) were met because the Attorney General of Texas was formally notified of the constitutional challenge upon filing of the complaint. In addition Respondents Jackson and LaVoie are state officers represented by the Attorney General.

² *Reule v. Jackson*, 114 F. 4th 360 (5th Cir. 2024).

³ Because the 90-day period elapses on Sunday, December 22, 2024, the deadline becomes Monday, December 23, 2024. Rule 30.1.

ground for eliminating federal review of constitutional rights. Where *Whole Woman's Health* disallowed a pre-enforcement constitutional challenge when enforcement lies with members of the public—not state officials—the Fifth Circuit's *Reule* decision applied *Whole Woman's Health* to a post-enforcement constitutional challenge and carved out an entire class of state officials that cannot be sued—specifically, those in or affiliated with the judicial branch. The Fifth Circuit is in conflict with the Ninth⁴ and Eighth Circuits on this issue.

As an example of other problems in the decision below, defendant state judges—acting only in administrative capacity, not in court, and not on the record—are said to be “adjudicating.”

In sum, the decision below expanded the class of cases in which, even post-enforcement, there is no one to sue. The decision does so, Applicants urge, in a case where the constitutional infirmities of the statute, Texas Civil Practice & Remedies Code §§ 11.001-11.104, are dire. First, the statute permits a state judge to dismiss a case before him solely in the absence of a *reasonable probability* of winning it (a higher-than-normal standard), if the plaintiff is also designated a so-called “vexatious litigant.” Second, paradoxically, the judge need not find that the plaintiff so designated actually filed a vexatious or frivolous lawsuit or paper at any time. Third, the plaintiff so designated is overbroadly barred for life from filing a *pro se* lawsuit against anyone, for

⁴ The Fifth Circuit's *Reule* opinion concludes that this Court's *Whole Woman's Health* decision overruled an earlier Ninth Circuit case, which Applicants dispute.

any reason, in any Texas court, without unspecified “permission” under off-the-record procedures that lack due process and cannot be appealed. Applicants claim that the procedures for both designation and permission violate due process and also that the statute is unconstitutional under the doctrines of void-for-vagueness, overbreadth, and prior restraint. Over time, the *Reule* decision will likely impair other federal constitutional rights.

Good cause for extension. At the start, Applicants had two *pro bono* counsel who extensively planned their case, filed a detailed complaint in the district court, and planned the appeal—the undersigned and John W. Vinson. Mr. Vinson untimely passed away on August 29, 2023. With the appeal already planned, the undersigned proceeded with the appeal and oral argument without additional counsel. Applicants now need the resources of at least one new counsel.

A Supreme Court petition for certiorari obviously requires more resources than does an appeal because the fundamental purposes are different. The undersigned has had difficulty finding counsel to replace Mr. Vinson because (1) the considerable work expected must be *pro bono*, as Applicants were promised initially (and all but one cannot afford paid counsel); (2) any new counsel will need time to absorb the record and issues; and (3) that work will be made more difficult by the un-extended deadline of December 23, 2024, near Christmas, and possibly by the intervening Thanksgiving holiday. Applicants should have resources comparable to those of Respondents. Respondents are represented by multiple, sophisticated, well-educated lawyers, including the forces of the Attorney General of Texas and those of a private firm.

For these reasons, Applicants respectfully request that an order be entered extending their time to petition for a writ of certiorari in the above-captioned case to and including *February 20, 2025*.

Respectfully submitted,



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