

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JEANETTE M. BRUCE, *Petitioner*,

v.

POTOMAC ELECTRIC POWER COMPANY, *Respondent*.

**APPLICATION FOR EXTENSION OF TIME
TO FILE A PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT OF COLUMBIA COURT OF APPEALS**

To the Honorable John G. Roberts, Jr., Chief Justice of the United States Supreme Court, as Circuit Justice for the District of Columbia.

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, Petitioner Jeanette M. Bruce respectfully prays for a 60-day extension of time to file her petition for certiorari in this Court to and including May 11, 2018. The final judgment which petitioner seeks to have this Court review is a June 29, 2017 decision by the District of Columbia Court of Appeals, reported at 162 A.3d 177. The Court of Appeals denied a timely petition for rehearing on December 12, 2017. Absent an extension, the time to petition for certiorari expires on March 12, 2018. This application is being filed more than 10 days before that date. *See* S.Ct. R. 13.5.

A copy of the opinion and the order respecting rehearing are attached to this application. The basis for this Court's jurisdiction is 28 U.S.C. § 1257(a)

and (b). The petitioner for whom this extension is sought is Jeanette M. Bruce, who is a non-party appellant in the proceedings below.

Respectfully, petitioner submits that the District of Columbia Court of Appeals has avoided or overlooked this Court's precedent on the Constitutional right to privacy in the contents of cell phones as established in *Riley v. California*, 134 S.Ct. 2473. In defending a wrongful death action filed by a surviving spouse as a result of her husband's death from a downed power line, Respondent Pepco served a subpoena duces tecum on non-party Bruce, who was one of their neighbors, demanding production of her personal cell phone after she voluntarily produced a photograph of the scene taken with her cell phone. The issue on appeal was the Superior Court's duty under Rule 45 and this Court's 2014 *Riley* decision to protect non-party Bruce and sanction Pepco for issuing an unduly burdensome, overbroad, and invasive subpoena duces tecum. Even though the subpoena duces tecum had resulted in petitioner having to hire her own computer forensics expert and retain counsel to protect her right to privacy, the District of Columbia Court of Appeals dismissed her appeal, holding that the Superior Court only had to engage in a "discretionary" balancing of the interests, including her "privacy concerns." Slip Op. at 14-17. The Court of Appeals did not address *Riley* at all – which the Superior Court had expressly removed from its consideration as

“wholly inapplicable.”

As the Court is aware, there is a related case to *Riley* under submission, *Carpenter v. United States*, No. 16-402, which was argued on November 29, 2017, where this Court will again address important Fourth Amendment rights regarding cell phone information. This time, the Court will address the Fourth Amendment’s protections in the context of a statutorily-authorized subpoena – whereas *Riley* involved a search and seizure of a cell phone incident to a traffic stop. Because *Carpenter* may be decided within the next 60 days, Petitioner has reason to believe an extension will enable her to petition for certiorari based on *Riley* and *Carpenter* and potentially to request that this Court grant, vacate, and remand (“GVR”) based on those two decisions “without ever calling for full briefing and oral argument.” Stephen Shapiro, *et al.*, *Supreme Court Practice* (BNA 10th ed.) at 346; *accord*, *Lawrence v. Chater*, 516 U.S. 163 (1996); *Kelsey-Hayes Co. v. Int’l Union, United Automobile, Aerospace and Agricultural Implement Workers*, No. 17-908, 2018 WL 1037569, 583 U.S. __ (2/26/2018). An extension will thus serve the interests of judicial economy because it will enable petitioner to address both *Riley* and *Carpenter* in her petition for certiorari.

An extension is also justified because all of petitioner’s counsel have unfortunately experienced serious health issues within the time for preparing

the petition which combined with their existing workloads makes it a hardship to prepare the petition for certiorari by March 12, 2018, as well as to supplement that petition when the *Carpenter* decision is issued. No prejudice will arise to any party from the extension because the petition will be considered in the normal course of this Court's consideration of petitions.

For the foregoing reasons, petitioner respectfully requests that an order be entered extending her time to petition for certiorari in the above-captioned case to and including May 11, 2018.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Allison C. Pienta", written in a cursive style.

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CERTIFICATE OF SERVICE

I, Allison C. Pienta, counsel for petitioner and a member of the Bar of this Court, hereby certify that on February 28, 2018, a copy of this Application for Extension of Time to File a Petition for Writ of Certiorari in the above-entitled case was mailed, first class postage prepaid, to Martin H. Freeman and Mark A. Freeman, Freeman & Freeman, 100 Park Ave #250, Rockville, MD 20850, counsel for the respondent herein, and also emailed to the counsel for the respondent. I further certify that this served all parties required to be served.

A handwritten signature in cursive script, reading "Allison C. Pienta".

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