

No. A_____

In the Supreme Court of the United States

STATE OF MISSOURI,
Petitioner,

v.

PHILLIP DOUGLASS AND JENNIFER M. GAULTER,
Respondents.

APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF
MISSOURI

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Counsel for Petitioner State of Missouri

July 20, 2017

To the Honorable Neil M. Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eighth Circuit:

Petitioner the State of Missouri under Supreme Court Rule 13.5 requests two additional months in which to file a petition in this Court seeking certiorari to Supreme Court of Missouri, to and including Friday, September 28, 2018.

The judgment of the Supreme Court of Missouri was entered on February 13, 2018, No. SC95719, and an order denying rehearing was entered on May 1, 2018; as a result, the current due date for Petitioners' petition for certiorari in this Court is July 30, 2018. This application is being filed 10 days before that date. Petitioner has not before now sought any extension of time from this Court to file this petition.

Copies of the Supreme Court of Missouri's opinion and of the order denying rehearing are attached as Appendices A and B, respectively. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

This case is about the proper application of the exclusionary rule to the fruits of a criminal search under the Fourth Amendment to the U.S. Constitution. The issues potentially to be raised in the petition include:

(1) that the Supreme Court of Missouri incorrectly analyzed the "probable cause" portion of the warrant using a "particularity" test, which is contrary to the text of the Fourth Amendment and the United States Supreme Court's opinion in *United States v. Grubbs*, 547 U.S. 90, 97-98 (2006);

(2) that the Supreme Court of Missouri’s analysis of the “probable cause” portion of the warrant is inconsistent with the United States Supreme Court’s opinion in *Franks v. Delaware*, 438 U.S. 154, 171-72 (1978), when the Court held that “when material that is the subject of the alleged falsity or reckless disregard [for the truth] is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause,” a warrant will not be invalidated for lack of probable cause;

(3) that, because of the foregoing, the Supreme Court of Missouri’s application of the severance doctrine was not consistent with prevailing Fourth Amendment jurisprudence, in that “the greater part of the warrant” was both supported by probable cause and particular enough in its description of the place to be searched and the items to be seized; and

(4) that the search and seizure conducted here was reasonable under the Fourth Amendment and so the exclusionary rule should not have applied; and the Court should have analyzed the separate question of whether exclusion was appropriate under these facts.

The State believes that, because this case will raise several significant issues, it will require additional time adequately to research and draft a petition. The Missouri Attorney General's Office is heavily engaged in the press of business here as well as the other federal state courts.

For these reasons, the State of Missouri requests that an order be entered extending their time to petition for certiorari here by 60 days, to and including September 28, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Julie Marie Blake, counsel for Petitioner and a member of the Bar of this Court, hereby certify that a copy of this application for extension of time to file a petition for writ of certiorari here was mailed, first-class postage prepaid, to counsel for the respondents here.

s/ Julie Marie Blake

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