

In the Supreme Court of the United States

CITY OF PENSACOLA, FLORIDA, ET AL.

Petitioners,

v.

AMANDA KONDRAT'YEV, ET AL.

Respondents.

**PETITIONERS' RESPONSE TO RESPONDENTS' APPLICATION
FOR AN EXTENSION OF TIME TO FILE A BRIEF IN OPPOSITION**

MICHAEL W. MCCONNELL
559 Nathan Abbott Way
Stanford, CA 94305

JAMES NIXON DANIEL
TERRIE LEE DIDIER
Beggs & Lane, RLLP
501 Commendencia St.
Pensacola, FL 32502

LUKE W. GOODRICH
Counsel of Record
LORI H. WINDHAM
JOSEPH C. DAVIS
The Becket Fund for
Religious Liberty
1200 New Hampshire
Ave., N.W., Ste. 700
Washington, DC 20036
(202) 955-0095
lgoodrich@becketlaw.org

Counsel for Petitioners

Today, Respondents requested that their deadline to file a Brief in Opposition in the above-captioned case be extended by 60 days, from October 18, 2018, until December 17, 2018. Petitioners oppose this request and, pursuant to Supreme Court Rule 30.4, request that the application for an extension of time be submitted to a Justice or to the Court for consideration.

As explained in our Petition and Motion to Expedite Consideration, there is significant value to the Court in considering the petition in this case close in time to the petitions in *American Legion v. American Humanist Association* (No. 17-1717) and *Maryland-National Capital Park & Planning Commission v. American Humanist Association* (No. 18-18) (together, “*American Legion*”), which are scheduled for the Court’s conference on October 5. Although both cases present similar questions under the Establishment Clause, this case raises the important question of standing that this Court found certworthy but was unable to reach in *Salazar v. Buono*, 559 U.S. 700 (2010); it offers more fully developed arguments on the application of *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014); and it offers a more representative set of facts. Mot. to Expedite 2-4. Respondents have not disputed any of these points.

To enable consideration of our petition alongside *American Legion*, Petitioners sought certiorari ten days after issuance of the decision below and moved for expedited review. However, granting Respondents’ request for a 60-day extension not only would make it difficult for this Court to consider this case alongside *American Legion*, but also could preclude the Court from hearing this case this Term at all. Accordingly, the extension should be denied.

Respondents have also failed to demonstrate a need for such an extension. Respondents first state (at 3) that they “must respond to the Petition for Rehearing En Banc by October 15, 2018.” But they fail to disclose that they have requested a 30-day extension of time for that response—justified in part on the ground that they “are currently preparing a Brief in Opposition, due October 18, 2018, to be filed with the Supreme Court.” Mot. to Ext. Time, No. 17-13025, at 3 (11th Cir.). Petitioners have consented to that request for an extension and are willing to consent to an even longer extension. Thus, the deadline for Respondents’ en banc response will likely be extended to November 14, if not beyond.

Counsel for Respondents (at 4) also seeks an extension based on two *past* filings. One is a brief filed on September 24 in *Nonhuman Rights Project, Inc. v. R.W. Commerford & Sons, Inc., et al*; A.C. 41464, which involves a petition for a writ of habeas corpus filed on behalf of three elephants in a traveling circus. Counsel for Respondents is not listed as an attorney on that brief (<https://www.nonhumanrights.org/content/uploads/2018-09-24-Brief.pdf>), and the lower court dismissed the petition as “wholly frivolous on its face.” *Nonhuman Rights Project, Inc. ex rel. Beulah v. R.W. Commerford & Sons, Inc.*, No. LLICV175009822S, 2018 WL 3014069, at *2 (Conn. Super. Ct. May 23, 2018). The other past filing is “a new habeas corpus case” (at 4) filed on October 2 on behalf of an elephant allegedly “unlawfully imprisoned” in the Bronx Zoo (<https://www.nonhumanrights.org/content/uploads/Verified-Petition.pdf>). Again, Counsel for Respondents is not listed as an attorney on that petition.

The only current deadlines noted by Respondents (at 4) are a “motion to transfer” and a “telephonic hearing” on a Rule 60(b) motion. These do not warrant an extension. Additionally, Counsel for Respondents states (at 5) that co-counsel Markert’s firm, Freedom From Religion Foundation, has oral arguments on October 18 and 25, but acknowledges that Ms. Markert is “preparing [other] attorneys for those oral arguments,” not presenting argument herself.

Counsel for Respondents is also counsel for respondents in *American Legion* and is intimately familiar with the questions presented and the similar legal arguments in each case. Thus, Respondents are well equipped to respond to the Petition in the normal course. Given the benefit to this Court from considering this case together with *American Legion*, and given the prejudice to Petitioners from a 60-day extension—which would likely push this case to next Term—the request for a 60-day extension should be denied. Cf. *York v. Texas*, No. 11-397 (respondent initially requested a 60-day extension for a brief in opposition because counsel was new to the case and had a Supreme Court oral argument, another brief in opposition, four appellate briefs, and a summary judgment motion due within 37 days; Court granted a 41-day extension). Instead, for the reasons expressed in Petitioners’ Motion to Expedite, the request for expedited consideration should be granted.

OCTOBER 4, 2018

Respectfully submitted.

MICHAEL W. McCONNELL
559 Nathan Abbott Way
Stanford, CA 94305

LUKE W. GOODRICH
Counsel of Record

LORI H. WINDHAM

JOSEPH C. DAVIS

JAMES NIXON DANIEL
TERRIE LEE DIDIER
Beggs & Lane, RLLP
501 Commendencia St.
Pensacola, FL 32502

The Becket Fund for
Religious Liberty

1200 New Hampshire

Ave., N.W., Ste. 700

Washington, DC 20036

(202) 955-0095

lgoodrich@becketlaw.org

Counsel for Petitioners