

No. _____

In the Supreme Court of the United States

GLAXOSMITHKLINE LLC,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

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

1. Pursuant to Supreme Court Rule 13.5, petitioner GlaxoSmithKline respectfully requests a 60-day extension of time, until Monday, July 9, 2018, within which to file a petition for a writ of certiorari. The court of appeals issued its opinion on December 22, 2017. A copy of the opinion is attached. The full court denied rehearing en banc on February 7, 2018. A copy of the order denying rehearing en banc is attached. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

2. Absent an extension, a petition for a writ of certiorari would be due May 8, 2018. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This petition concerns a Third Circuit decision releasing Louisiana, in its status as a *plaintiff*, from an otherwise-binding class settlement agreement under principles of state sovereign immunity. In 2008, indirect purchasers of GlaxoSmithKline's product Flonase brought a class action against GlaxoSmithKline in the Third Circuit alleging that GlaxoSmithKline unlawfully delayed the entry of competing generic drugs onto the market. The parties settled, and the purchasers and GlaxoSmithKline executed a Rule 23(b)(3) "opt-out" class settlement agreement. In the agreement, GlaxoSmithKline agreed to pay tens of millions of dollars, and class members relinquished their claims and authorized the district court to enjoin future suits asserting released claims. The agreement provided that class members would be "permanently barred and enjoined" from asserting any released claims "in any state or federal court" in the future. The settlement class explicitly included "State governments and their agencies." The district court certified the class and approved the settlement agreement in June 2013, retaining exclusive jurisdiction over disputes related to the settlement.

4. The State of Louisiana did not opt out of the class settlement. Nevertheless, almost eighteen months after the district court's final approval of the settlement, Louisiana's Attorney General sued GlaxoSmithKline in Louisiana state court asserting claims released by the class settlement. The State's complaint

largely copied verbatim the indirect purchasers' earlier class complaint. In response, GlaxoSmithKline moved the district court below to enjoin the Louisiana Attorney General from pursuing claims in state court that were released in the class settlement.

5. The district court denied the request. While recognizing that States fell within the settlement class, the court held that sovereign immunity shields States from being bound as absent plaintiff class members without their express consent. The court of appeals affirmed. It held that, because the settlement agreement authorized an injunction to prevent class members from reasserting released claims, the *plaintiffs own motion* to approve the settlement was a “suit” by “private parties” against their co-plaintiff Louisiana seeking an “equitable remedy,” and that sovereign immunity accordingly barred the district court from exercising jurisdiction over States in the class without their express consent. *In re Flonase Antitrust Litig.*, 879 F.3d 61, 66–67 (3d Cir. 2017). The court of appeals further concluded that Louisiana had not given express consent to the settlement and that consent could not be inferred from Louisiana’s decision not to opt out despite its Rule 23 duty to do so. *Id.* at 68-70.

6. This is an exceptionally important case. The decision below makes Rule 23(b)(3) opt-out class settlement agreements unenforceable against States in the Third Circuit. The decision also deepens a circuit conflict over the question whether the Eleventh Amendment shields States from the consequences of their litigation choices in suits where States are aligned as *plaintiffs*.

7. Petitioner respectfully requests an extension of time to file a petition for certiorari. A 60-day extension would allow counsel sufficient time to fully examine the decisions' consequences, research and analyze the issues presented, and prepare the petition for filing. In addition, undersigned counsel has a number of other pending matters that will interfere with counsel's ability to file the petition on or before May 8, 2018. These include, among others, two additional petitions for certiorari due April 7, 2018 and April 30, 2018.

Wherefore, petitioner GlaxoSmithKline respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to July 9, 2018.

April 5, 2018

Respectfully submitted,

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CORPORATE DISCLOSURE STATEMENT

In accordance with Supreme Court Rule 29.6, petitioner makes the following disclosures:

GlaxoSmithKline LLC is owned, through several levels of wholly-owned subsidiaries, by GlaxoSmithKline plc, a publicly-traded public limited company organized under the laws of England. GlaxoSmithKline plc has no parent company. To the knowledge of GlaxoSmithKline LLC and GlaxoSmithKline plc, none of the shareholders of GlaxoSmithKline plc beneficially owns ten percent or more of its outstanding shares.

Dated: April 5, 2018

Respectfully submitted,

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