

No. \_\_\_\_\_

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**In the Supreme Court of the United States**

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NEIL DUPREE,

*Petitioner,*

*v.*

KEVIN YOUNGER,

*Respondent.*

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**APPLICATION FOR AN EXTENSION OF TIME TO FILE  
A PETITION FOR A WRIT OF CERTIORARI**

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To the Honorable John G. Roberts, Jr., Chief Justice of the United States Supreme Court and Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

1. Pursuant to Supreme Court Rule 13.5, petitioner Neil Dupree respectfully requests a 60-day extension of time, until Monday, September 5, 2022, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Fourth Circuit issued its opinion on March 11, 2022. A copy of the opinion is attached. The Fourth Circuit denied petitioner's rehearing petition on April 8, 2022. A copy of the order 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 on July 7, 2022. 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 case concerns whether, in order to preserve for appeal a purely legal issue resolved pretrial, a party must restate its objection in a post-trial in a motion for judgment as a matter of law.

4. There is an entrenched conflict among the circuits on this issue. As the Fourth Circuit panel acknowledged in this case “[b]ased on our review of precedent from the other courts of appeals, the Second, Third, Sixth, Seventh, Ninth, Tenth, D.C., and Federal Circuits appear to allow appellate review of legal issues that were resolved pretrial and not presented to the district court again in a post-trial motion.” Slip op. at 8 n.3 (citing *Rothstein v. Carriere*, 373 F.3d 275, 284 (2d Cir. 2004); *Pennbarr Corp. v. Ins. Co. of N. Am.*, 976 F.2d 145, 146, 149-55 (3d Cir. 1992); *McPherson v. Kelsey*, 125 F.3d 989, 995 (6th Cir. 1997); *Chemetall GMBH v. ZR Energy, Inc.*, 320 F.3d 714, 719-20 (7th Cir. 2003); *Pavon v. Swift Transp. Co.*, 192 F.3d 902, 906 (9th Cir. 1999); *Ruyle v. Cont’l Oil Co.*, 44 F.3d 837, 841-42 (10th Cir. 1994); *Feld v. Feld*, 688 F.3d 779, 783 (D.C. Cir. 2012); *United Techs. Corp. v. Chromalloy Gas Turbine Corp.*, 189 F.3d 1338, 1344 (Fed. Cir. 1999)). “The First and Fifth Circuits, on the other hand, do not permit appellate review in such circumstances.” Slip op. at 8 (citing *Ji v. Bose Corp.*, 626 F.3d 116, 127-28 (1st Cir. 2010); *Feld Motor Sports, Inc. v. Traxxas, L.P.*, 861 F.3d 591, 596 (5th Cir. 2017)).

5. The Fourth Circuit “adheres to the minority view.” *Id.* The Fourth Circuit thus “will not review, under any standard, the pretrial denial of a motion for summary judgment after a full trial and final judgment on the merits,’ when the issue rejected pretrial has not been pursued in the district court by way of a post-trial motion” even if the issue is purely legal. *Id.* at 5-6 (quoting *Chesapeake Paper Prod. Co. v. Stone & Webster Eng’g*

*Corp.*, 51 F.3d 1229, 1237 (4th Cir. 1995) and citing *Varghese v. Honeywell Int'l*, 424 F.3d 411, 423 (4th Cir. 2005)).

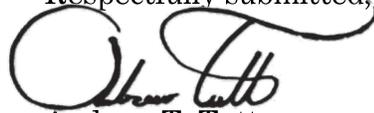
6. This is an important case. The division among the circuits means the appeal rights of defendants in civil cases are different in different circuits. The circuits in the minority are routinely foreclosing appellate review of potentially meritorious claims on the basis of the failure to file a futile post-trial motion re-raising a purely legal issue that was already resolved against the defendant at an earlier stage. *Varghese v. Honeywell Int'l, Inc.*, 424 F.3d 411, 426-27 & n.2 (4th Cir. 2005) (Motz, J., concurring in part and dissenting in part). This pointless rule “works a particular injustice” when, as here, the “defense is, in fact, meritorious.” *Id.* at 427 n.2.

7. Petitioner respectfully requests an extension of time to file a petition for certiorari. At the certiorari stage, petitioner engaged new counsel who were not previously involved in the case. A 60-day extension would allow counsel sufficient time to fully examine the decision’s consequences, research and analyze the issues presented, and prepare the petition for filing. Additionally, the undersigned counsel have a number of other pending matters that will interfere with counsel’s ability to file the petition on or before July 7, 2022.

*Wherefore*, petitioner, Neil Dupree, respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to Monday, September 5, 2022.

May 12, 2022

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew T. Tutt". The signature is written in a cursive style with a large, looping initial "A".

Andrew T. Tutt

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