

IN THE
Supreme Court of the United States

KRYSTLE PERRY, individually and on behalf of their minor child K.P.;
ANTHONY PERRY, individually and on behalf of their minor child K.P.,
Petitioners,

v.

STACY MARTENEY, in her official capacity as the Virtual Learning Coordinator of the
Upshur County Virtual School; CHRISTINE MILLER, in her official capacity as
Superintendent of the Upshur County School District,
Respondents.

**OPPOSITION TO PETITIONERS' APPLICATION FOR A
60-DAY EXTENSION OF TIME WITHIN WHICH TO
FILE A PETITION FOR A WRIT OF CERTIORARI**

Application to the Honorable John G. Roberts, Jr.,
as Circuit Justice for the Fourth Circuit

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

Respondents respectfully submit this response in partial opposition to
Petitioners' application for a 60-day extension of time in which to file a petition for a
writ of certiorari. Respondents do not oppose a reasonable 30-day extension of time,
but Petitioners' 60-day request is excessive and should be denied. The Application
omits entirely that, at Petitioners' request, the court of appeals stayed the mandate.
Respondents therefore remain under a preliminary injunction that the court of
appeals held to be erroneous. Every day of unjustified delay by Petitioners will

cause harm to Respondents and the schoolchildren in their care. Petitioners' retention of new counsel may support a modest 30-day extension, but they have failed to demonstrate "good cause" for their excessive request of a 60-day extension, Sup. Ct. R. 13.5, particularly where one month remains before the current (un-extended) deadline.

Background

1. West Virginia law requires certain compulsory vaccinations for schoolchildren. W. Va. Code § 16-3-4(c). That law includes a medical exemption for a child who has a "physical condition ... such that immunization is contraindicated or there exists a specific precaution to a particular vaccine." *Id.* § 16-3-4(h)(1); see W. Va. Code § 64-95-2.4 (defining "contraindication" to mean "a medical condition which renders an immunization improper for a particular individual" as found in certain publications from the Centers for Disease Control and Prevention).

Petitioners' daughter, K.P., is enrolled in a West Virginia public school. Petitioners filed the instant action alleging that the West Virginia statute, as applied to their daughter, violates the First Amendment's Free Exercise Clause.

2. The district court concluded that Petitioners were likely to succeed on the merits and granted a preliminary injunction. The court of appeals reversed. *Perry v. Marteney*, 172 F.4th 315 (4th Cir. 2026). Judge Wilkinson, writing for the majority, held that Petitioners were not likely to succeed on the merits because the West Virginia statute is a neutral and generally applicable law subject to rational basis review, which the statute easily satisfies because it advances a compelling

interest in protecting the health and well-being of schoolchildren. *Id.* at 322, 328. The court also noted that an “unbroken line” of Supreme Court authority and Fourth Circuit decisions “resolves the case,” *id.* at 322, and that “every [other] circuit that has considered the issue has held that medical exemptions to compulsory vaccination laws” do not change the neutral and generally-applicable character of such statutes, *id.* at 326. Accordingly, the court of appeals reversed the district court’s preliminary injunction and remanded for further proceedings. *Id.* at 329. Judge Niemeyer dissented. *Id.* at 329-36.

3. At Petitioners’ request, and with Respondents’ consent, the court of appeals stayed the mandate for 90 days to allow Petitioners to file a petition for a writ of certiorari. *See* CA Dkt. 69 (Apr. 15, 2026); Fed. R. App. P. 41(d). Accordingly, the district court’s preliminary injunction remains in full force pending the resolution of Petitioners’ forthcoming petition for certiorari.

Reasons For Denying A 60-Day Extension of Time

Respondents do not oppose a 30-day extension, to August 6, 2026, in which to file a Petition for a Writ of Certiorari. For the following reasons, however, the application should be denied with respect to its excessive request for a 60-day extension.

1. Petitioners wrongly claim that “an extension will cause no prejudice to Respondents.” Appl. 5. Because the court of appeals stayed its mandate at Petitioners’ request, the district court’s preliminary injunction is in full force today and will remain so until the petition for a writ of certiorari is resolved, even though

Respondents prevailed below. Accordingly, every day of delay causes Respondents additional harm, impeding the school district’s “compelling” interest in “protect[ing] the health and well-being of school children” and “reducing the spread and severity of infectious diseases.” *Perry*, 172 F.4th at 322. And Petitioners’ excessive extension request would, if granted, guarantee that the injunction and the resulting harm to schoolchildren will extend well into the next school year. Though Petitioners’ daughter is enrolled as a “virtual student[],” Appl. 4, she still “can participate in in-school provided extra-curricular activities and must go to school in person for periodic testing.” *Perry*, 172 F.4th at 328.

2. Petitioners’ request for a 60-day extension is excessive and unjustified. The original due date of July 7 is still more than one month away. Petitioners state that they “only recently” retained new counsel, Appl. 4, but they had ample time to bring in new counsel since the court of appeals’ decision nearly two months ago; they do not explain why that waited so long to do so. And while Petitioners’ new counsel recounts numerous upcoming litigation deadlines, by their own account those deadlines will occur by July 2, *see* Appl. 4-5, before the current July 7 deadline expires. Under the circumstances Respondents do not oppose a reasonable 30-day extension of time, but Petitioners’ 60-day request (which would give them a total of *five months* in which to file their petition) is unwarranted. From all appearances, that excessive request seems to be motivated more by a desire to avoid consideration at the Court’s so-called “long conference” on September 28, 2026, than by a genuine need for additional time.

For these reasons, the Application should be denied to the extent it seeks an extension beyond 30 days.

Respectfully submitted,

/s/ Floyd E. Boone Jr.

Floyd E. Boone Jr.

Counsel of Record

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June 3, 2026

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**CERTIFICATE OF SERVICE FOR THE OPPOSITION TO PETITIONERS'
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I, Floyd E. Boone Jr., hereby certify that on this 3rd day of June, 2026, one
copy of the Opposition to Petitioners' Application for a 60-Day Extension of Time
Within Which to File a Petition for a Writ of Certiorari was sent via FedEx and via
email to:

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All parties required to be served have been served.

/s/ Floyd E. Boone Jr. _____

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June 3, 2026