No. 25A219

In The
Supreme Court of the United States

HICKORY HEIGHTS HEALTH AND REHAB, LLC;
CENTRAL ARKANSAS NURSING CENTERS, INC.;
NURSING CONSULTANTS, INC.; *and*
MICHAEL MORTON,

Applicants,

v.

YASHIKA WATSON,
as Guardian of the Person and Estate of Zeola Ellis,

Respondent.

On Application for an Extension of Time to File a Petition for a Writ of Certiorari to the Arkansas Court of Appeals

RESPONSE IN OPPOSITION TO APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

Matthew D. Swindle
Counsel of Record
Reddick Law, PLLC
1 Information Way, Suite 105
Little Rock, AR 72202
matthew@reddicklawfirm.com
(501) 907-7790

Counsel for Respondent

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The Application Should Be Denied Because the Applicants Have Not Demonstrated Good Cause for Extending the Time to File a Petition.

"An application to extend the time to file a petition for a writ of certiorari is not favored." Supreme Court Rule 13.5. An application to extend the time limit to file a petition for certiorari must be supported by "good cause" and "set out specific reasons why an extension of time is justified." *Id.* As members of this Court have previously acknowledged, such extensions are not favored because "delayed justice has become little less than scandalous," and the Court has attempted to take steps to eliminate the most frequent causes of delays. *Knickerbocker Printing Corp. v. U.S.*, 75 S.Ct. 212, 99 L.Ed. 1292 (1954). Even years ago when the time limit for filing a petition for certiorari was as short as 30 days, Justice Frankfurter was lamenting that "[o]ne of the most obdurate defects in our administration of justice is delay," and that extensions of this deadline "should be granted only in those exceptional circumstances in which the policy behind the general [30-day] rule is properly to be subordinated to a more compelling policy." *Brody v. U.S.*, 77 S.Ct. 910, 1 L.Ed.2d 1130 (1957). This case does not present such an exceptional circumstance.

This case has been paused since May 2022 while the applicants have pursued the appeals which accompany the denial of a motion to compel arbitration. The applicants have not demonstrated good cause supporting the requested extension—and its accompanying delay—to prepare a petition regarding an opinion that was first issued in November 2024. For the reasons further detailed below, Respondent respectfully opposes the application and requests that it be denied.

As an initial matter, it is only paragraph eight of the application that contains any sort of justification for **the extension** whatsoever. The majority of the application is devoted to discussing the merits of certiorari. *See* Application, ¶¶ 3-7. But extensions under Rule 13.5 do not hinge on whether the application is for a "good" case or an "important" case. They hinge on whether "good cause" has been shown to extend the deadline. As Justice Scalia explained in *Penry v. Texas*, "[t]his is indeed a capital case, but our Rules envision only one "good cause" standard." 515 U.S. 1304, 1306 (1995). He concluded, "[b]ecause the applicant here has failed to meet that standard, I deny the application for extension of time." *Id*.

The present application contains only two reasons in support of the extension: (1) "counsel was very recently retained on this matter," and (2) the "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." Application, ¶ 8. These proffered reasons do not satisfy the "good cause" standard of Rule 13.5, and the application should be denied.

Retention of additional counsel does not justify an extension, nor does the need to conduct additional research. Justice Frankfurter found such grounds to be unpersuasive in *Carter v. U.S.*, 75 S.Ct. 911 (1955). As he explained, "[c]ounsel who urged the point below is counsel here; the addition of another counsel hardly affords ground for the desired extension." *Id*. Likewise, counsel from Hardin, Jesson & Terry, PLC represented Hickory Heights in state court, just as they represented Hickory Heights, along with a large collection of other nursing homes, the last time it

attempted to obtain a writ of certiorari regarding similar issues. *See* Petition for Writ of Certiorari in *Northport Health Servs. of Ark., LLC, v. U.S. Dep't of Health and Human Servs.*, Supreme Court Docket No. 21-1455.

Hickory Heights has now added even more counsel, this time from Arnold & Porter Kaye Scholer LLP to help its cause. But today, just as in 1955, the addition of more counsel should not justify extension of the time to prepare a petition, especially in light of the fact that any reasons justifying the writ have been known to counsel since the Arkansas Court of Appeals' original opinion was issued in November 2024. Applicants sought rehearing of the case, which was granted. The Court of Appeals substituted its opinion in February 2025, and the applicants sought rehearing **again**. After that petition was denied by the Court of Appeals, applicants then sought review in the Arkansas Supreme Court, which was denied in June 2025. Applicants have not provided any reason why they have been unable to begin preparation of a petition in the interim, nor why they waited so late to engage additional counsel. As Justice Jackson noted in *Knickerbocker Printing Corp.*, "[i]t raises doubt whether a case has that great importance if the case is not worthy of the attention of some attorney to prepare forthwith a petition for certiorari." 75 S.Ct. at 213, 99 L.Ed. at 1292. *See also Madden v. Texas*, 498 U.S. 1301, 1304 (1991) (noting that an application failed to explain why some other attorney "could not have undertaken this last-minute task [to prepare a petition for writ of certiorari], nor why the task ha[d] been left to the last minute").

Furthermore, the Court has been loath to grant extensions to enable counsel to do more research to prepare a petition. Despite ultimately granting a short, five-day extension in *Brody*, Justice Frankfurter noted that "[t]oo frequent is the suggestion of counsel asking for extension that more time is required for 'research' on the questions to be presented by the petition for certiorari . . . It does not require heavy research to charge the understanding of this Court adequately on the gravity of an issue on which review is sought and to prove to the Court the appropriateness of granting a petition for a writ of certiorari." 77 S.Ct. at 911, 1 L.Ed.2d at 1130. Likewise, in *Carter*, Justice Frankfurter denied such an application, stating that "counsel may be appropriately reminded that the requirements of the Rules of this Court regarding the contents of a petition for certiorari seldom call for the kind of research which may be demanded for a brief on the merits." 75 S.Ct. at 911.

More recent cases have expressed a similar reluctance to grant extensions so counsel can do more research. Much like the justification given in the present application, in *Kleem v. I.N.S.*, 479 U.S. 1308 (1986), the reasons given were that "the case presents 'important questions under the Constitution of the United States which were determined adversely to the petitioner by the court below,' and counsel desires 'additional time to research and prepare the Writ of Certiorari.'" Justice Scalia denied the application, explaining that "[t]he same reason could be adduced in virtually all civil cases," and "[i]t does not meet the standard of 'good cause shown' for the granting of a disfavored extension." *Id*.

Justice Scalia had occasion to elaborate on his reasoning in several other applications, developing a standard for "good cause shown" that was based upon "the result of events unforeseen and uncontrollable by both counsel and client." *Mississippi v. Turner*, 498 U.S. 1306 (1991) (denying application based on State's budget cuts resulting in a reduction of appellate staff). In *Madden v. Texas*, Justice Scalia again rejected the need for more research as a justification, explaining that "*all* petitioners can honestly claim that they would benefit from additional advice and consultation." 498 U.S. 1301, 1304 (1991) (emphasis in original). Justice Scalia also opined that even the withdrawal of appellate counsel in capital cases would not meet the Rule's "good cause" standard because such a development is reasonably foreseeable, and counsel and client have sufficient time to prepare to proceed in compliance with the deadlines established in the Rules. *Id.* at 1304-1305. Justice Scalia reluctantly granted some of the requested applications, however, because he had "not previously had an opportunity in [his capacity as Circuit Judge for the Fifth Circuit] to set forth [his] views on application of the 'good cause' standard," and because his views might have been more restrictive than to what the bar of the Fifth Circuit had previously been accustomed. *Id.* at 1305.

A few years later, Justice Scalia adhered to the promise he made in *Madden* to not grant such applications again. In *Penry v.* Texas, 515 U.S. 1304 (1995), Justice Scalia emphasized the Rule's language indicating that such applications are not favored and rejected a request premised upon the need for additional time to prepare

the petition because of a voluminous record allegedly consisting of a "breadth of errors that were committed below." *Id*.

The relief sought by Applicants is not favored under the Rules of the Court and must be justified by specific reasons demonstrating good cause that warrants the extension of time. Supreme Court Rule 13.5. As the cases discussed herein illustrate, the application does not demonstrate good cause sufficient to satisfy the requirements of Rule 13.5. Therefore, Respondent respectfully requests that the application be denied.

Dated: August 27, 2025

Respectfully submitted,

Matthew D. Swindle
Counsel of Record
Reddick Law, PLLC
One Information Way, Suite 105
Little Rock, AR 72202
matthew@reddicklawfirm.com
(501) 907-7790

Counsel for Respondent