

APP No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ANGELA KAY PLESE,
Petitioner,

v.

RONALD AUSTIN, et al.,
Respondents.

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

**PETITIONER’S APPLICATION TO EXTEND TIME
TO FILE PETITION FOR WRIT OF CERTIORARI**

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Corporate Disclosure Statement

Pursuant to Supreme Court Rule 29.6, Petitioner Angela Kay Plese is an individual person.

To the Honorable Brett M. Kavanaugh, as Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, Petitioner respectfully requests that the time to file her Petition for Writ of Certiorari in this matter be extended 60 days, up to and including January 5, 2026.

The Tennessee Court of Appeals issued its opinion on March 11, 2025 (Appendix ("App.") A), and the Tennessee Supreme Court denied review on August 7, 2025 (App. B). Absent an extension of time, the Petition for Writ of Certiorari would be due on November 5, 2025. Petitioner is filing this Application more than ten days before that date. See S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. 1257(a). Respondents do not consent to Petitioner's request.

Background

Petitioner and Respondents were once neighbors in Knox County, Tennessee. Tensions arose between them when Respondents built a fence on their property and put up orange traffic cones in front of their house. Petitioner opposed these measures, "and bitter exchanges followed." (App. A at 1.)

Things came to a head when Petitioner posted certain statements about Respondent Ms. Austin on her Facebook page on June 1, 2020. The post read:

When servicemen or guest parked in that area they would often get cussed out by Ron [Austin].

I finally did a background check hoping I was just overreacting. The criminal check revealed that Linda Austin has a criminal record in Texas. [The Austins] moved to Knoxville from Texas after she was arrested for "Deadly Conduct" with use of gun. I realized my instincts were correct and I needed to protect myself from the Austin family.

Linda Austin pleaded guilty to the charges of Deadly Conduct in Texas. This explained my experience of being attacked in the cul de sac by the Austin family.

(App. A at 2.)

It is now undisputed that Respondent Ms. Austin, after being charged with a DUI in Texas, pled guilty to a misdemeanor under a Texas statute called “Deadly Conduct,” but her offense did not involve a firearm. (App. A at 2–3.) Accordingly, Respondents sued Petitioner for defamation and false light invasion of privacy and sought punitive damages. (App. A at 3.)

Following a bench trial, the trial court entered judgment for Respondents and awarded damages for medical expenses (\$5,100), damage to reputation (\$20,000), emotional distress (\$25,000), punitive damages (\$25,000), and Mr. Austin’s loss of consortium (\$20,000). (App. A at 22.) On appeal, the Tennessee Court of Appeals generally affirmed but “vacate[d] that portion of the Trial Court’s award concerning damage to Ms. Austin’s reputation since the record contains no evidence of such damage.” (App. A at 1, 20–21.) The Tennessee Supreme Court denied review. (App. B.)

The court of appeals’ conclusion that Respondents did not prove reputational harm is crucial. While a minority of jurisdictions allow defamation claims to go forward in the absence of a showing of damage to reputation, that rule “has been soundly criticized” by courts and scholars alike. *Gobin v. Globe Publ’g Co.*, 649 P.2d 1239, 1243 (Kan. 1982) (citation modified). A substantial number of jurisdictions reject that rule and require defamation plaintiffs to prove reputational harm as a prerequisite to recovering for any other injury. *E.g.*, *Schlegel v. Ottumwa Courier*, 585 N.W.2d 217, 223–24 (Iowa 1998) (“we agree with those courts that have continued to impose a

reputational harm prerequisite in defamation actions”); *Richie v. Paramount Pictures Corp.*, 544 N.W.2d 21, 28 (Minn. 1996) (“[Defendants] argue that a showing of actual harm to reputation should be required before a defamation action can be sustained. We agree.”); *Smith v. Durden*, 276 P.3d 943, 949 (N.M. 2012) (“New Mexico is far from alone in requiring reputational injury to be shown as a prerequisite to recovery.”); *France v. St. Clare’s Hosp. & Health Ctr.*, 82 A.D.2d 1, 5–6 (N.Y. App. Div. 1981) (emotional-distress “damages are recoverable in a defamation action only when concomitant with a loss of reputation.”) (citation modified); *Joseph v. Scranton Times L.P.*, 129 A.3d 404, 430 (Pa. 2015) (“Pennsylvania is not alone in requiring reputational injury as a prerequisite to a defamation plaintiff’s recovery of damages for mental and emotional injuries.”); *Little Rock, Newspapers, Inc. v. Dodrill*, 660 S.W.2d 933, 936–37 (Ark. 1983) (“We can find no greater substantiation after *Gertz* than before that would permit recovery for a defamation action without the element of reputational damage.”).

One of the primary reasons for the majority rule is concern about First Amendment protections. The Arkansas Supreme Court, for example, put it this way:

The spirit of the *Gertz* decision [*Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974)] on this point is clearly one to protect First Amendment rights from unjustifiable and unsubstantiated intrusions. To allow recovery in a defamation action where the primary element of the cause of action is missing not only sets the law of defamation on end, but also substantially undercuts the impact *Gertz* seeks to effect. The law of defamation has always attempted to balance the tension between the individual’s right to protect his reputation and the right of free speech. To totally change the character of defamation to allow recovery where there has been no loss of the former right, would be an unjustified infringement on the First Amendment. . . . We can find no greater substantiation

after *Gertz* than before that would permit recovery for a defamation action without the element of reputational damage.

Little Rock, Newspapers, 660 S.W.2d at 936–37; accord, *e.g.*, *Schlegel*, 585 N.W.2d at 224 (“to allow defamation damages without a showing of reputational harm would undercut the Supreme Court’s purpose behind the presumption limitation” in *Gertz*).

The Tennessee Court of Appeals’ decision thus exacerbates a substantial split in authority among lower courts on an important and recurring constitutional question: “Whether the First Amendment allows a plaintiff who suffers no reputational harm to recover for defamation.”

Reasons For Granting an Extension of Time

The time to file a Petition for a Writ of Certiorari should be extended for 60 days for the following reasons:

1. Undersigned counsel has recently been retained as potential counsel of record for Petitioner. Counsel was not involved in the litigation below. It will take time for Mr. Bursch to familiarize himself with the record and prepare a concise petition of maximum helpfulness to the Court.

2. Additionally, Petitioner’s counsel has numerous litigation deadlines in the weeks leading up to and immediately following the current deadline, including but not limited to the following matters in this Court:

- A cert-stage reply brief in this Court due on November 3, 2025, *Foote v. Ludlow*, No. 25-77.
- A merits-stage reply brief in this Court due on November 13, 2025, *Enbridge Energy, LP et al. v. Dana Nessel, Attorney General of Michigan*, No. 24-783.

- A merits-stage reply brief in this Court due on November 14, 2025, *First Choice v. Platkin*, No. 24-781.
- A cert-stage reply brief in this Court due on November 17, 2025, *Kane v. City of New York*, No. 25-126.
- Preparing a colleague to present oral argument in early December, *First Choice v. Platkin*, No. 24-781.
- A merits-stage reply brief due in this Court on December 10, 2025, *Hecox v. Little*, No. 24-38.
- A merits-stage reply brief due in this Court on December 10, 2025, *B.P.J. v. West Virginia*, No. 24-43.
- And a cert petition due in this Court on December 29, 2025, *E.D. v. Noblesville*, CA7 No. 24-1608.

3. This case presents issues of importance to parties in defamation litigation nationwide who face varying First Amendment standards based on the split in authority.

4. A significant prospect exists that this Court will grant certiorari and reverse the Tennessee Court of Appeals given the longtime percolating conflict in the lower courts.

5. An extension of 60 days will not cause prejudice to Respondents.

Conclusion

For the foregoing reasons, Petitioner respectfully requests that the time to file the Petition for a Writ of Certiorari in this matter be extended 60 days, up to and including January 5, 2026.

Respectfully submitted.

s/ John J. Bursch

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CERTIFICATE OF SERVICE

A copy of this application was served by email and U.S. mail to the counsel listed below on Monday, October 20, 2025, in accordance with Supreme Court Rule 22.2 and 29.3:

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*s/ John J. Bursch*_____
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