

No. 25-A-____

IN THE SUPREME COURT OF THE UNITED STATES

TESSA NEEDHAM,

Petitioner-Plaintiff,

v.

MERCK & COMPANY, INC., et al.,

Respondent.

ANGELA M. WALKER,

Petitioner-Plaintiff,

v.

MERCK & COMPANY, INC., et al.,

Respondent.

SHANIE D. ROMAN, et al.,

Petitioner-Plaintiff,

v.

MERCK & COMPANY, INC., et al.,

Respondent.

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

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**TO THE HONORABLE JOHN F. ROBERTS, JR. CHIEF JUSTICE OF THE
SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR
THE FOURTH CIRCUIT:**

Pursuant to Supreme Court Rules 13.5, 22, and 30, Petitioners Tessa Needham, Angela M. Walker, and Shanie D. Roman respectfully request a 60-day extension of time, up to and including February 1, 2026, to file a petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit to review that court's decision in *In re: Gardasil Prod. Liab. Litig.* 151 F.4th 178 (4th Cir. 2025) (attached as Exhibit A). In the case below, the Fourth Circuit consolidated three appeals into a single proceeding. *See Ibid.* The Third Circuit issued its opinion on September 4, 2025. *Ibid.* Petitioners did not seek rehearing. Absent an extension of time, Petitioner's petition would be due on December 3, 2025. S. Ct. R. 13.1. This Application is being filed more than ten days before the current deadline in compliance with Supreme Court Rule 13.5. The jurisdiction of this Court is based on 28 U.S.C. § 1254(1). Petitioners intend to file a joint petition seeking review of the Fourth Circuit's judgment under Supreme Court Rule 12.4. Petitioners counsel has contacted Respondent's counsel, and Respondent does not oppose Petitioner's request for an extension of time.

This case presents, inter alia, the question of whether the National Childhood Injury Act ("Vaccine Act"), 42 U.S.C. § 300aa-1 et seq. delegated power to alter the text of the Vaccine Act to the Secretary of Health and Human Services in violation of the separation of powers and the presentment clause, article I, section 7, clause 2 of the United States Constitution. The Vaccine Act is a rare statute that contains an

express non-severability clause. Pub. L. No. 99-660, Title III, § 332 (“42 U.S.C. 300aa-1 – note’ NONSEVERABILITY”); *Barr v. A, Ass’n of Political Consultants, Inc.*, 140 S. Ct. 2335, 2349 (2020). 28 U.S.C. § 2403(a) may apply to this proceeding and Petitioners are serving this Application on the Solicitor General of the United States. The Third Circuit certified to the Attorney General the fact that the constitutionality of an Act of Congress was drawn in to question by the appeal below. *Walker v. Merck & Co., Inc.*, No. 24-1828 (L), 24-1831, Doc. 17 (4th Cir. Sept. 17, 2024).

Petitioners are only three out of hundreds of plaintiffs whose claims were consolidated into an MDL proceeding in the Western District of North Carolina. *In re Gardasil Prods. Liab. Litig.*, No. 3:22-md-03036-KDB (Aug. 8, 2022), ECF No. 1. The district court entered judgment on the pleadings on Petitioners’ claims before the claims of the other MDL plaintiffs prompting the first appeal from the district court. *Ibid.*, ECF Nos. 172, 173, 176 (Aug. 28, 2024). The district court then entered judgment against most of the other MDL plaintiffs prompting a second appeal. *Ibid.*, ECF No. 311 (April 10, 2025). The reply brief in the second appeal is due on December 15, 2025. *Walker*, Doc. 94. The district court’s judgments against Petitioners and the other MDL plaintiffs are based on application of the Vaccine Act to all of the claims in the MDL. On Petitioners’ appeal, the Fourth Circuit did not reach other arguments that were raised by Petitioners that have also been raised by the other MDL plaintiffs in their appeal.

An extension of time is sought to allow coordination of Petitioners’ petition with the pending appeals of the other MDL plaintiffs. Given that Petitioners and all of the

other plaintiffs have claims arising from the same product against the same Respondent for similar injuries, based on the same legal theories, and subject to the same legal defenses, it would be more efficient to allow resolution of the pending Fourth Circuit appeals before Petitioners file their petition for certiorari in this Court.

In addition, Petitioners' plan to raise issues in their petition that will likely be impacted by the Court's upcoming decision in *Learning Resources, Inc. v. Donald J. Trump*, Nos. 24-1827 & 25-250. *Learning Resources* concerns delegation and separation of powers issues that are closely related to the issues that Petitioners plan to raise in their petition. The Court heard argument in *Learning Resources* on November 5, 2025, so a decision may be issued in the near future. That decision is likely to have a strong impact on Petitioners' petition and the requested extension would allow that impact to be incorporated into Petitioners' petition and Respondents' response.

Accordingly, the petitioners respectfully request that an order be entered extending the time to file a petition for a writ of certiorari for 60 days, up to and including February 1, 2026.

Dated: November 18, 2025.

Respectfully Submitted,

/s/ Kenneth S. Robbins

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