

App No. _____

In the Supreme Court of the United States

DAN MCCALEB,

APPLICANT

v.

MICHELLE LONG, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE TENNESSEE
ADMINISTRATIVE OFFICE OF THE COURTS,

RESPONDENT

**On Application for an Extension of Time to File Petition for a Writ of
Certiorari to the United States Court of Appeals for the Sixth Circuit**

JEFFREY SCHWAB
Counsel of Record
REILLY STEPHENS
JAMES MCQUAID
Liberty Justice Center
7500 Rialto Blvd.
Austin, Texas 78735
(512) 481-4400
jschwab@ljc.org
rstephens@ljc.org
jmcquaid@ljc.org

Corporate Disclosure Statement

Pursuant to Supreme Court Rule 29.6, Applicant Dan McCaleb states that he is not a subsidiary or affiliate of a publicly owned corporation, and that no publicly owned corporation not party to this appeal has a financial interest in the outcome.

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

In accordance with this Court’s Rules 13.5, 22, 30.2, and 30.3, Applicant Dan McCaleb respectfully requests that the time to file his petition for a writ of certiorari be extended for 60 days, up to and including February 13, 2026. The Court of Appeals issued its opinion on September 16, 2025 (Exhibit A). Absent an extension of time, the petition would be due on December 15, 2025. The jurisdiction of this Court is based on 28 U.S.C. 1254(1). This request for an extension of time is unopposed.

Background

This case concerns whether, in determining whether the public has a right to access meetings of the Tennessee Judicial Advisory Commission, a court must apply the “experience and logic” test prescribed by *Richmond Newspapers Inc v. Virginia*, 448 U.S. 555 (1980) and *Detroit Free Press v. Ashcroft*, 303 F.3d 681 (6th Cir. 2002).

The Tennessee Judicial Advisory Commission (“Commission”) is an advisory body established by the Tennessee General Assembly, whose members are appointed by the Tennessee Supreme Court. Before 2018, the Commission’s meetings were open to the public. In 2018, a member of the public was verbally (but not physically) disruptive during one of the Commission’s meetings. This incident prompted either the Tennessee Supreme Court or the Tennessee Administrative Office of the Courts to close the meetings. The current Director of the Administrative Office of the Courts has kept the meetings closed to the public,

except for two meetings held in 2023 during the pendency of this litigation and as the result of a temporary injunction entered by the district court. There were no disruptions during those two meetings, and the Commission has not made any showing that its stated justification of encouraging candor among Commission members was impaired during either of those meetings.

In June 2022, after hearing that the Commission's meetings were closed, Applicant Dan McCaleb filed a complaint against Michele Long in her official capacity as Director of the Tennessee Administrative Office of the Courts. His lawsuit alleges that Long's exclusion of the public from Commission meetings violates his First Amendment right to free speech.

Although it initially granted McCaleb's motion for a preliminary injunction, the district court ultimately ruled against him, holding that McCaleb's claim was governed under (and foreclosed by) *Houchins v. KQED, Inc.*, 438 U.S. 1 (1978), not *Richmond Newspapers v. Virginia*, 448 U.S. 555 (1980). The Sixth Circuit affirmed, holding that the Commission's meetings are advisory rather than adjudicatory.

McCaleb maintains that while *Houchins* forecloses First Amendment claims seeking access to *information*, that is distinct from First Amendment claims seeking access to government proceedings, which are governed by *Richmond Newspapers*. Under the *Richmond Newspapers* "experience and logic" test, McCaleb should prevail because a) under the "experience" prong, proceedings like those of the Commission have historically been open to the public, and b) under the "logic"

prong, public access plays a significant positive role in the Commission's functioning.

Reasons for Granting an Extension of Time

There has been an unusual level of turnover at the Liberty Justice Center, the firm representing Applicant, this year. Of the eleven attorneys employed by Liberty Justice Center at the start of 2025, seven left the firm this year, including both this case's original lead attorney and his first replacement. The new main attorney – this case's third – has also been busy with other matters, including *Trump v. V.O.S. Selections* (Supreme Court No. 25-250); *Griffin v. Stillie*, (D. Alaska No. 3:22-cv-00077-SLG); and *Jakiche v. Board of Regents of the University of New Mexico*, (D. New Mexico No. 25-cv-01070).

Conclusion

Applicant requests that the time to file a writ of certiorari in the above-captioned matter be extended 60 days to and including February 13, 2026.

Dated this 5th day of December, 2025.

/s/ Jeffrey Schwab
Jeffrey Schwab
Counsel of Record
Reilly Stephens
James McQuaid
Liberty Justice Center
7500 Rialto Blvd.
Austin, Texas 78735
(512) 481-4400
jschwab@ljc.org
rstephens@ljc.org
jmcquaid@ljc.org

Counsel for Applicant