

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 14-2919 Caption [use short title] \_\_\_\_\_

Motion for: 30-day extension of time to file petition for rehearing en banc. New York State Citizens' Coalition for Children v. Poole

Set forth below precise, complete statement of relief sought:

Defendant-Appellee seeks an extension of 30 days, to and including June 3, 2019, to file a petition for rehearing en banc of this appeal, which a panel of this Court decided on April 19, 2019.

MOVING PARTY: Sheila J. Poole, in her official capacity OPPOSING PARTY: New York State Citizens' Coalition for Children  
 Plaintiff  Defendant  
 Appellant/Petitioner  Appellee/Respondent

MOVING ATTORNEY: Caroline A. Olsen OPPOSING ATTORNEY: Brian R. Matsui  
[name of attorney, with firm, address, phone number and e-mail]

Office of the New York State Attorney General Morrison & Foerster LLP  
28 Liberty Street, New York, NY 10005 2000 Pennsylvania Ave., NW, Suite 6000, Washington, D.C. 20006  
(212) 416-6184; caroline.olsen@ag.ny.gov (202) 887-8784; bmatsui@mofocom

Court-Judge/Agency appealed from: U.S. District Court for the Eastern District of New York (Kuntz, J.)

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):  
 Yes  No (explain): \_\_\_\_\_

Opposing counsel's position on motion:  
 Unopposed  Opposed  Don't Know

Does opposing counsel intend to file a response:  
 Yes  No  Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below?  Yes  No  
Has this relief been previously sought in this Court?  Yes  No  
Requested return date and explanation of emergency: \_\_\_\_\_

Is oral argument on motion requested?  Yes  No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?  Yes  No If yes, enter date: \_\_\_\_\_

Signature of Moving Attorney: /s/ Caroline A. Olsen Date: 04/26/2019 Service by:  CM/ECF  Other [Attach proof of service]

UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

---

New York State Citizens' Coalition for  
Children,

*Plaintiff-Appellant,*

v.

Sheila J. Poole, Acting Commissioner for the  
New York State Office of Children and Family  
Services, in her official capacity,

*Defendant-Appellee.*

---

No. 14-2919

**AFFIRMATION**

CAROLINE A. OLSEN, an attorney admitted to practice before this Court, affirms under penalty of perjury the following:

1. I am an Assistant Solicitor General in the Office of Letitia James, Attorney General of the State of New York, which represents appellee Sheila J. Poole, Acting Commissioner of the New York State Office of Children and Family Services, in the above-captioned appeal. I submit this affirmation in support of the State's unopposed motion for a 30-day extension of time to file a petition for rehearing or rehearing en banc in this appeal. If the request is granted, the petition will be due on June 3, 2019. The New York State Citizens' Coalition (the "Coalition") does not

oppose the extension, provided that it receives a similar extension for any papers it may submit in opposition to the petition.<sup>1</sup>

2. The issue in this appeal is whether foster children and their parents have a private right of action under 42 U.S.C. § 1983 to demand that the State cover the full costs of foster care under certain provisions of the Adoption Assistance and Child Welfare Act of 1980 (CWA), Pub. L. No. 96-272, 94 Stat. 500. *See* 42 U.S.C. §§ 672(a)(1), 675(4)(A).

3. On April 19, 2019, a divided panel of this Court issued a decision holding that the Coalition, an advocacy organization, has standing to sue on behalf of foster parents and their children, and that the CWA creates a privately enforceable federal right for foster parents and their children to obtain reimbursement for the costs of foster care. On these grounds, the Court vacated the district court's decision to dismiss the complaint and remanded for further proceedings. In a dissenting opinion, Judge Livingston disputed the majority's conclusion, reasoning that Congress did not manifest an unambiguous intent to create a private right to enforce foster care reimbursement under the CWA.<sup>2</sup>

---

<sup>1</sup> The Coalition changed its name to the Adoptive and Foster Family Coalition of New York in August 2016.

<sup>2</sup> Judge Livingston agreed with the majority that the Coalition had

4. An extension of time is needed because of the importance of these issues to the State and the time it will take for the State to undertake the rigorous internal review that it performs in deciding whether to seek rehearing or rehearing en banc when this Court issues adverse decisions. That review process involves not just deliberations within the Office of the Attorney General but also extensive consultation with the executive officials, state agencies, and other stakeholders affected by the panel decision.

5. The panel's decision raises difficult questions that an extension of time would allow the State to fully consider in deciding whether to seek rehearing or rehearing in banc. At minimum, this Court's finding of a private right of action here could expose the State to multiple federal lawsuits challenging its foster care reimbursement rate, raising the possibility of multiple, inconsistent judgments about the appropriate rate. These lawsuits may also interfere with the State's complex and judgment-laden process for establishing the reimbursement rate. *See also* Dissenting Op. at 30 ("Indeed, the majority's opinion raises the prospect that scarce

---

standing to pursue its claims.

foster care resources, instead of going to foster children, will be squandered in litigation destined to produce arbitrary and inconsistent results.”).

6. An extension of time is also warranted in light of this Office’s recent workload. Among other responsibilities, this Office has recently had to dedicate significant time and resources to prepare the New York State Solicitor General for her April 23 oral argument before the United States Supreme Court in *Department of Commerce v. New York*, No. 18-966. Moreover, professional obligations set well in advance of the panel’s decision have made certain individuals (including two of the principal attorneys on this case) unavailable for significant portions of the next two weeks.<sup>3</sup> A 30-day extension of time would ensure meaningful consideration and time to prepare any rehearing or en banc petition in this important case. Such an extension is also in line with the amount of time that is provided by default in appeals involving the federal government. *See* Fed. R. App. P. 35(c), 40(a).

---

<sup>3</sup> Among their other professional obligations, the two principal attorneys are working on an appellant’s brief, due in this Court on May 1, 2019, in a consolidated appeal from three district court cases, defending the constitutionality of a New York State statute designed to generate \$200 million in State revenue. *See Healthcare Distribution Alliance v. Zucker*, No. 19-199.

WHEREFORE, for the foregoing reasons, it is respectfully requested that this motion for a 30-day extension of time to file a petition for rehearing or rehearing en banc in these appeals be granted.

Dated: New York, New York  
April 26, 2019

/s/ Caroline A. Olsen

CAROLINE A. OLSEN