

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

GENBIOPRO, INC.,  
*Plaintiff-Appellant,*

v.

KRISTINA RAYNES, *in her official capacity as  
Prosecuting Attorney of Putnam County*, AND PATRICK MORRISEY,  
*in his official capacity as Attorney General of West Virginia,*  
*Defendants-Appellees.*

On Appeal from the United States District Court  
for the Southern District of West Virginia (Huntington),  
No. 3:23-cv-00058, Hon. Robert C. Chambers

**GENBIOPRO'S MOTION TO EXTEND THE TIME  
TO PETITION FOR REHEARING AND REHEARING EN BANC**

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July 24, 2025

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Plaintiff-Appellant GenBioPro, Inc. moves under Federal Rule of Appellate Procedure 26(b) and Fourth Circuit Local Rule 40(c) for a 30-day extension to petition for rehearing and rehearing en banc. Good cause exists for the requested extension due to undersigned counsel's other commitments and the need to afford amici curiae sufficient time to meaningfully aid the Court's consideration of this important case, which divided the panel 2-1 on the constitutionality of West Virginia's near-total ban of mifepristone.

Counsel for the other parties to the appeal have been informed of the intended filing of this motion. Undersigned counsel could not ascertain Defendant-Appellee Patrick Morrissey's position on this motion. Defendant-Appellee Kristina Raynes opposes this motion.

## **ARGUMENT**

This case presents the question whether FDA's approval and comprehensive regulation of the drug mifepristone preempts West Virginia's Unborn Child Protection Act, or UCPA, which bans abortion in almost all cases, at any stage of pregnancy. The district court determined there was no preemption. On appeal, this exceptionally important case drew amicus briefs from 24 states and dozens of

organizations and scholars, including North Carolina, the City of Baltimore, the American College of Obstetricians and Gynecologists, Doctors for America, economists, and historians.

The panel issued its 2-1 judgment affirming the district court on July 15, 2025. Under Federal Rule of Appellate Procedure 40(d)(1), GenBioPro's petition for rehearing and rehearing en banc is due on July 29, 2025.

The "court may extend the time prescribed" "[f]or good cause," Fed. R. App. P. 26(b), including "an extraordinary circumstance wholly beyond the control of counsel," 4th Cir. R. 40(c). Good cause exists to extend the deadline for GenBioPro to file its petition for rehearing and rehearing en banc for 30 days up to and including August 28, 2025. In support of this Motion, counsel states as follows:

1. GenBioPro has not previously sought to extend this deadline.
2. Good cause exists for the 30-day extension of GenBioPro's deadline to seek rehearing and rehearing en banc because undersigned lead counsel was on vacation when the panel issued its opinion and so has had limited time to draft the petition.

3. Good cause also exists for the requested extension because of undersigned lead counsel’s other, previously engaged matters. Lead counsel’s obligations include preparing post-trial briefing on July 22, 2025 in *Barnes v. Monsanto Co.*, No. 21-A-444 (Ga. St. Ct., Cobb Cty.); mediation on July 24, 2025 in *In re Samsung Electronics America, Inc.*, No. 25-1895 (3d Cir.); presenting to the U.S. Solicitor General on July 29, 2025 in *Monsanto Co. v. Durnell*, No. 24-1068 (U.S.), and on August 7 in *Parker-Hannifin Corp. v. Johnson*, No. 24-1030 (U.S.); preparing a brief for respondents on August 11, 2025 in *Hain Celestial Group v. Palmquist*, No. 24-724 (U.S.); and preparing a response brief on August 13, 2025 in *United States ex rel. Penelow v. Janssen Products, LP*, No. 25-1818 (3d Cir.).

4. The requested extension is necessary to ensure that amici curiae may participate in a manner that meaningfully contributes to the Court’s consideration of whether to rehear this exceptionally important case. Both the panel majority and dissent discussed and relied on the many amicus briefs submitted at the panel stage. *See Op.* 26-27; *see also id.* at 44 (Benjamin, J., concurring in part and dissenting in part) (noting that amici had “thoughtfully explained” the many

practical “consequences of the UCPA”). Counsel for certain amici curiae who participated at the panel stage have advised undersigned counsel that they are unable to meet the current deadline of August 5, 2025,<sup>1</sup> for filing a brief in support of rehearing, but that they would be able to do so by an extended deadline of September 4, 2025.<sup>2</sup> Given the importance of this case, this represents “an extraordinary circumstance wholly beyond the control of counsel.” 4th Cir. R. 40(c).

In light of these circumstances, good cause exists for a 30-day extension of the deadline for GenBioPro to petition for rehearing and rehearing en banc.

## CONCLUSION

For these reasons, GenBioPro requests that the Court extend the deadline to petition for rehearing and rehearing en banc 30 days from July 29, 2025 to August 28, 2025.

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<sup>1</sup> Seven days after the current deadline of July 29, 2025. *See* Fed. R. App. P. 29(b)(5).

<sup>2</sup> Seven days after the requested deadline of August 28, 2025. *See id.*

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Respectfully submitted,

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 23-2194

Caption: GenBioPro, Inc.v. Kristina Raynes et al.

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT**

Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

**Type-Volume Limit for Briefs if Produced Using a Computer:** Appellant's Opening Brief, Appellee's Response Brief, and Appellant's Response/Reply Brief may not exceed 13,000 words or 1,300 lines. Appellee's Opening/Response Brief may not exceed 15,300 words or 1,500 lines. A Reply or Amicus Brief may not exceed 6,500 words or 650 lines. Amicus Brief in support of an Opening/Response Brief may not exceed 7,650 words. Amicus Brief filed during consideration of petition for rehearing may not exceed 2,600 words. Counsel may rely on the word or line count of the word processing program used to prepare the document. The word-processing program must be set to include headings, footnotes, and quotes in the count. Line count is used only with monospaced type. See Fed. R. App. P. 28.1(e), 29(a)(5), 32(a)(7)(B) & 32(f).

**Type-Volume Limit for Other Documents if Produced Using a Computer:** Petition for permission to appeal and a motion or response thereto may not exceed 5,200 words. Reply to a motion may not exceed 2,600 words. Petition for writ of mandamus or prohibition or other extraordinary writ may not exceed 7,800 words. Petition for rehearing or rehearing en banc may not exceed 3,900 words. Fed. R. App. P. 5(c)(1), 21(d), 27(d)(2) & 40(d)(3).

**Typeface and Type Style Requirements:** A proportionally spaced typeface (such as Times New Roman) must include serifs and must be 14-point or larger. A monospaced typeface (such as Courier New) must be 12-point or larger (at least 10½ characters per inch). Fed. R. App. P. 32(a)(5), 32(a)(6). Sans-serif type, such as Arial, may not be used except in captions and headings.

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**NOTE: The Court's preferred typefaces are Times New Roman, Century Schoolbook, and Georgia. The Court discourages the use of Garamond.**

(s) David C. Frederick

Party Name GenBioPro, Inc

Date: July 24, 2025

## **CERTIFICATE OF SERVICE**

I hereby certify that, on July 24, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

*/s/ David C. Frederick*

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David C. Frederick