IN THE SUPREME COURT OF THE UNITED STATES

No. 19A____

LEGAL OUTSOURCE PA, PERIWINKLE PARTNERS, LLC, CHARLES PAUL-THOMAS PHOENIX, AND LISA M. PHOENIX, APPLICANTS

v.

REGIONS BANK

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, counsel for applicants Legal Outsource PA, Periwinkle Partners, LLC, Charles Paul-Thomas Phoenix, and Lisa M. Phoenix respectfully requests a 30-day extension of time, to and including December 26, 2019, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case. The opinion of the court of appeals (App., infra, 1a-30a) is reported at 936 F.3d 1184. The judgment of the court of appeals was entered on August 28, 2019. Unless extended, the time within which to file a petition for a writ of certiorari will expire on November 26, 2019. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. The forthcoming petition in this case will present the question that recently divided this Court, 4-4, in Hawkins v. Community Bank of Raymore, 136 S. Ct. 1072 (2016): Whether regulations promulgated under the Equal Credit Opportunity Act (ECOA) by the Board of Governors of the Federal Reserve System (Board) and the Consumer Financial Protection Bureau (CFPB) permissibly interpret the "applicants" protected from marital-status discrimination by ECOA to encompass guarantors and other secondary obligors. In acknowledged conflict with the Sixth Circuit's decision in RL BB Acquisition, LLC v. Bridgemill Commons Development Group, LLC, 754 F.3d 380 (2014), a divided panel of the court of appeals held below that ECOA's definition of "applicant" unambiguously excludes guarantors. App., infra, 1a-2a. The panel majority therefore refused to defer to the definition promulgated by the Board and CFPB through notice-and-comment rulemaking. Id. at 6a. In doing so, the decision below deepens the split of authority that led this Court to grant certiorari in Hawkins, but which the Court was ultimately prevented from resolving.

ECOA makes it unlawful "for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction," on the basis of characteristics including "race, color, religion, national origin, sex or marital status, [and] age." 15 U.S.C. § 1691(a). ECOA defines "applicant" as "any

person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit." Id. § 1691a(b). If a creditor violates ECOA, an "aggrieved applicant" may bring a suit seeking actual damages, punitive damages, and equitable or declaratory relief. Id. § 1691e(a)-(c).

Acting pursuant to its broad authority to "prescribe regulations to carry out the purposes of [ECOA]," 15 U.S.C. § 1691b(a) (2006), the Board promulgated rules known as "Regulation B." 12 C.F.R. Pt. 202 (2010). In 2010, Congress transferred the Board's rulemaking authority to the CFPB, 15 U.S.C. § 1691b(a), and the CFPB subsequently repromulgated Regulation B without material change. 12 C.F.R. Pt. 1002 & Supp. I; see 76 Fed. Reg. 79,442 (Dec. 21, 2011).

One component of Regulation B, referred to as the Additional Parties Rule (Rule), governs the circumstances under which a creditor may require a borrower to provide a signature from another person, including a guarantor, surety, cosigner, or similar party. To further ECOA's prohibition of marital-status discrimination, the Additional Parties Rule provides that "a creditor shall not require the signature of an applicant's spouse or other person * * * if the applicant qualifies under

the creditor's standards of creditworthiness for the amount and terms of the credit requested." 12 C.F.R. § 1002.7(d)(1). The Additional Parties Rule further prohibits a creditor from "impos[ing] requirements upon an additional party that the creditor is prohibited from imposing upon an applicant under" the Rule. Id. § 1002.7(d)(6). In this manner, the Rule ensures that, when a creditor requires a personal guarantee from an officer or owner of a small business seeking credit, it may not automatically require that the spouse of a married officer or owner also sign the guarantee.

Since 1985, Regulation B has defined the term "applicant," to include, "[f]or purposes of" the Additional Parties Rule, "guarantors, sureties, endorsers, and similar parties." 12 C.F.R. § 1002.2(e); see 50 Fed. Reg. 48,027 (Nov. 20, 1985). The regulatory definition thus clarifies that violations of the Additional Parties Rule constitute discrimination not only against the primary borrower, but also against a guarantor spouse.

2. Applicant Lisa M. Phoenix (Lisa) was the indirect owner of applicant Periwinkle Partners, LLC (Periwinkle). App., infra, 2a. In 2011, Periwinkle obtained a loan from respondent to finance the purchase of commercial real estate. Ibid. The loan was guaranteed by Lisa; by her husband, applicant Charles Paul-Thomas Phoenix (Charles); and by applicant Legal Outsource

PA (Legal Outsource), a law firm owned by Charles. Ibid. The loan documents contained a cross-default provision, under which a default by any of the guarantors on any other loan with respondent would also constitute a default under the Periwinkle loan. Ibid.

In 2014, Legal Outsource failed to make a required payment on a loan with respondent. App., infra, 2a. Respondent thereafter declared the Periwinkle loan to be in default and demanded full and immediate payment. Ibid. Respondent then filed suit against applicants, alleging breach of contact with respect to the Legal Outsource and Periwinkle loans and seeking foreclosure of the mortgage securing the Periwinkle loan. Ibid.

Applicants raised a number of affirmative defenses and counterclaims in response to respondent's suit. As is principally relevant here, Lisa alleged that respondent had violated ECOA's prohibition of marital-status discrimination by requiring Charles and his business, Legal Outsource, to guarantee the Periwinkle loan solely because Charles and Lisa were married to one another. App., infra, 2a; 2 Appellants' C.A. App. 399.

3. The district court granted summary judgment against Lisa on her ECOA counterclaim. 4 Appellants' C.A. App. 714-715. The court concluded that, because Lisa was a guarantor of the

Periwinkle loan rather than a first-party applicant, she could not pursue a claim under ECOA. Ibid.

4. A divided panel of the court of appeals affirmed in relevant part. App., infra, 1a-30a.

a. Acknowledging that "[t]he main issue presented" on appeal was one that "has divided our sister circuits," the panel majority held "that a guarantor is not an 'applicant'" under ECOA. App., infra, 1a-2a. The majority reasoned that "the ordinary meaning of the term 'applicant' is one who requests credit to benefit himself" and that "[a] guarantor does not fit within this definition." Id. at 4a. The majority further reasoned that other provisions of ECOA referring to "applicants" confirm that the term includes only first-party applicants who request credit for their own use. Id. at 5a-6a.

Having concluded that ECOA "unambiguously excludes guarantors" from qualifying as "applicants," the panel majority further concluded that Regulation B's definition of the term was not entitled to deference under Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). See App., infra, 6a. The panel majority rejected the Sixth Circuit's contrary holding in RL BB Acquisition, LLC, supra, and expressly sided with the Eight Circuit's decision in Hawkins v. Community Bank of Raymore, 761 F.3d 937 (2014), aff'd by an equally divided Court, 136 S. Ct. 1072 (2016). See App., infra, 6a.

b. Judge Rosenbaum dissented from the majority's resolution of Lisa's ECOA counterclaim. App., infra, 11a-30a. She reasoned that defining "applicant" to encompass guarantors was consistent with ECOA's text and furthered ECOA's purpose of eradicating discrimination on the basis of marital status. Id. at 25a-26a. She also emphasized that Congress has repeatedly amended ECOA since 1985 without disturbing the longstanding administrative definition of "applicant." Id. at 26a-27a. Accordingly, Judge Rosenbaum would have deferred to Regulation B's definition. Id. at 27a.

5. Counsel for applicants respectfully requests a 30-day extension of time, to and including December 26, 2019, within which to file a petition for a writ of certiorari. This case presents complex issues concerning the proper application of the ECOA. Undersigned counsel, who is working on this case in a pro bono capacity in conjunction with the University of Virginia School of Law's Supreme Court Litigation Clinic, did not represent applicants below and needs additional time to review the record and opinions below. In addition, counsel has been heavily engaged with the press of other matters before this Court and before other tribunals. Additional time is therefore needed to prepare and print the petition in this case.

Respectfully submitted.

Mark T. Stancil
Counsel of Record
Matthew M. Madden
Donald Burke
ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER & SAUBER LLP
2000 K Street NW, 4th Floor
Washington, DC 20006
(202) 775-4500
mstancil@robbinsrussell.com

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