

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

GPI DISTRIBUTORS, INC.,

Petitioner/Applicant,

v.

NORTHEAST OHIO REGIONAL SEWER DISTRICT,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH
TO FILE A PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT**

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CORPORATE DISCLOSURE STATEMENT

Under Sup. Ct. R. 29.6, Applicant GPI Distributors, Inc. states there is no parent or publicly held company owning 10% or more of the corporation's stock.

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TO: The Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit:

Applicant GPI Distributors, Inc. (“GPI”) respectfully requests, under Sup. Ct. R. 13.5 and 22, a sixty-day extension within which to file a petition for a writ of certiorari. GPI’s forthcoming petition will challenge the decision in *GPI Distributors, Inc. v. Northeast Ohio Regional Sewer District*, No. 106806, 2018 WL 6444097 (Ohio Ct. App. Dec. 6, 2018), *rev’w denied*, 128 N.E.3d 243 (Ohio), *recons. denied*, 128 N.E.3d 243 (Ohio 2019) (copy attached as Exhibit A). In support of this application, GPI provides the following information:

1. The Ohio Court of Appeals for the Eighth Appellate District issued its decision on December 6, 2018. The Supreme Court of Ohio declined to accept GPI’s discretionary appeal on May 29, 2019 (copy of order attached as Exhibit B) and denied GPI’s timely motion for reconsideration on August 6, 2019 (copy of order attached as Exhibit C). *GPI Distribs., Inc. v. Ne. Ohio Reg’l Sewer Dist.*, 122 N.E.3d 1291, *recons. denied*, 128 N.E.3d 243 (Ohio 2019). Without an extension, GPI’s petition for a writ of certiorari is due on November 4, 2019. With the requested extension, GPI’s petition would be due on January 3, 2020.

2. This case is a serious candidate for certiorari review because it raises both a substantial constitutional question and an issue of public interest about which the state courts are divided.

a. Respondent, Northeast Ohio Regional Sewer District (the “Sewer District”), billed GPI \$12,047.76 for sewer services during a six-month period when GPI’s real property was vacant. GPI could not afford to pay the exorbitant and unexplained bill. So the Sewer District caused the Cuyahoga County Fiscal Officer to place a non-consensual tax lien on GPI’s property for the full amount.

GPI requested from the Sewer District an administrative hearing to challenge the bill. The hearing examiner—a Sewer District employee with no legal training—denied GPI’s requests for pre-hearing discovery and for hearing subpoenas that would have permitted GPI to produce evidence establishing the miscalculation of its bill. Some of that evidence resided with a third party, the City of Cleveland Water Department. Without these litigation tools, GPI had no way to demonstrate that the underlying water-meter reading (on which sewer charges were calculated) was erroneous. The Sewer District examiner upheld the bill and the tax lien.

GPI then filed an administrative appeal in the Cuyahoga County, Ohio, Court of Common Pleas, challenging both the sewer bill and the lien. The Sewer District moved to dismiss GPI’s appeal under Ohio Rev. Code Ann. § 2505.06. That statute ostensibly required GPI to post a supersedeas bond in the full amount of the disputed \$12,047.74 bill—despite the lien already filed against GPI for the same amount—before the trial court could hear GPI’s administrative appeal.

GPI could not afford to post the statutory bond and did not do so. The Sewer District then moved to dismiss the administrative appeal. In response, GPI challenged the bond requirement on due-process and equal-protection grounds. It argued that: (1) the government had already taken GPI's property without due process when it placed the non-consensual lien; (2) the statute improperly discriminates against administrative appellants because it imposes a bond requirement only on them (and not on appellants who appeal from a trial court to an appellate court); and (3) the statute improperly discriminates against appellants who cannot afford to post the required bond. The trial court granted the Sewer District's motion to dismiss without addressing these constitutional challenges.

GPI appealed to Ohio's Eighth District Court of Appeals. That court affirmed the dismissal, likewise declining to address GPI's constitutional arguments. The appellate court took the baffling position that GPI could not challenge the bond statute's constitutionality without first having complied with it by posting the bond. The appellate court concluded that GPI's failure to abide by the statute justified the application of the constitutional-avoidance doctrine. GPI moved for reconsideration, and the appellate court denied that motion.

GPI then filed a petition to the Ohio Supreme Court, seeking that court's discretionary review. The Ohio Supreme Court declined to hear the case and denied GPI's subsequent motion for reconsideration.

b. GPI's forthcoming petition will show that: (1) imposing a non-consensual tax lien based on an erroneous sewer bill—and then imposing an unreasonable bond

amount as a condition of judicial review – violates due process; and (2) the pay-to-litigate bond requirement violates both due-process and equal-protection guarantees. The Ohio courts should have addressed these arguments on the merits. Instead, the state appellate court misapplied the doctrine of constitutional avoidance, holding that GPI was required to comply with the unconstitutional statute as a predicate to complying with it.

“The Constitution controls any legislative act repugnant to it.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). Both the administrative procedure and the bond requirement undercut “the fundamental requisite of due process”: that litigants are afforded a *meaningful* opportunity to be heard. *Goldberg v. Kelly*, 397 U.S. 254 (1970). Even more, they undercut equal-protection guarantees. In *Lindsey v. Normet*, 405 U.S. 56 (1976), this Court struck down an Oregon statute requiring an appellant to post a bond before appealing a forcible-entry-in-detainer action. It held that when a state affords litigants an appeal, “it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause.” *Id.* at 77.

The Ohio courts ignored this Court’s precedent—indeed, neglected to address it even though GPI cited it consistently in its submissions—and arbitrarily denied GPI access to the court because of GPI’s indigency.

c. Ohio is not the only state that has the sort of bond statute at issue here. And the other states are divided on the breadth of *Lindsey’s* authority and the constitutionality of pay-to-litigate statutes.

Just under half of the states have upheld these types of statutes. *See, e.g., Browne v. Peters*, 360 A.2d 131 (Conn. Super. Ct. 1976) (holding that statute requiring petitioner to

post bond in the amount of money at issue did not violate due process or equal protection, in part because indigency alone has not been regarded as a suspect classification); *Matter of Simpson Manor, Inc.*, 548 P.2d 246 (Haw. 1976) (holding that the statute requiring the prepayment of tax did not violated due process); *Frantz v. Palmer*, 564 S.E.2d 398 (W. Va. 2001) (holding that the statute requiring petitioner to post bond equal to twice the amount of the judgment and costs was not unconstitutional).

Nearly just as many states, however, have decided the other way. *See, e.g., Blair v. Stump*, 617 P.2d 791 (Ariz. 1980) (holding that the double-rent bond requirement was unconstitutional); *Sittig v. Tallahassee Mem'l Reg'l Med. Ctr., Inc.*, 567 So. 2d 486, 487 (Fla. Dist. Ct. App. 1990) (holding that the statute requiring petitioner to post bond sufficient to pay costs and attorney's fees was unconstitutional as applied); *Frizzell v. Swafford*, 663 P.2d 1125 (Idaho 1983) (holding that the statute requiring petitioner to post bond in the amount of judgment and attorney's fees was unconstitutional).

GPI will show in its petition that this matter warrants the Court's intervention to settle the conflict among state courts – and that the correct result is to invalidate a statute that imposes impermissible financial barriers on parties seeking access to the judicial system, particularly when they have been deprived of due process in an administrative forum.

3. GPI does not file this application to delay. GPI's undersigned counsel practices at Case Western Reserve University School of Law's Milton A. Kramer Law Clinic Center, where third-year law students work under faculty supervision. The requested extension will provide the Clinic's students with the time necessary to


familiarize themselves with the record, the decisions below, and the relevant case law. Without this extension, the Clinic would not be able to adequately complete those tasks before the current due date.

4. Under Sup. Ct. R. 29.4(c), GPI notifies the Court that the constitutionality of an Ohio statute is drawn into question, and 28 U. S. C. § 2403(b) may therefore apply. GPI is serving a copy of this Application on the Attorney General of the State of Ohio concurrently with this filing.

5. For these reasons, GPI respectfully requests that the Court extend the due date for its petition for a writ of certiorari to and including January 3, 2020.

Respectfully submitted this 24th day of October, 2019.

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