

No. _____

In the Supreme Court of the United States

COLUMBIAN FINANCIAL CORPORATION,
Petitioner,

v.

TIM KEMP, IN HIS OFFICIAL CAPACITY AS BANK COMMISSIONER OF KANSAS; DEPUTY BANK
COMMISSIONER OF KANSAS,¹
Respondents.

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

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¹ Tim Kemp is the current Interim Bank Commissioner of Kansas and Deputy Bank Commissioner of Kansas and is named here in his official capacity. He is substituted for Michelle W. Bowman, whose commission has ended.

To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice of the Tenth Circuit:

Petitioner Columbian Financial Corporation requests under Supreme Court Rule 13.5 one additional month in which to file a petition in this Court seeking certiorari, to and including Monday, September 6, 2019.

1. Jurisdiction

The United States Court of Appeals for the Tenth Circuit entered a judgment in this case on April 12, 2019. A petition for rehearing was filed, and the Tenth Circuit denied the petition for rehearing on May 7, 2019. As a result, the current due date for Petitioner's petition for certiorari in this Court is Monday, August 5, 2019.

This application is filed more than 10 days before that date. Petitioner has sought no extension of time from this Court to file this petition before now.

The Tenth Circuit's opinion and its order denying the petition for rehearing is attached as Appendix A. This Court has jurisdiction under 28 U.S.C. §§ 1291, 1254, and 2102.

2. Reasons to Grant the Application

This case is about whether the state failed to provide constitutionally adequate post-deprivation procedures. On August 29, 2008, Kansas State Bank Commissioner (the "Commissioner") declared the Columbian Bank & Trust Company (the "Bank") to be insolvent and appointed a receiver. The receiver sold most of the Bank's assets on the same day. The Bank's owner, Petitioner Columbian Financial Corporation ("Columbian"), has sought since then a clear explanation of why the Bank's seizure did not violate its due process rights.

The Commissioner used a constitutionally infirm process to take away Petitioner's business, based on a new and novel interpretation of a state statute defining insolvency as when a

bank "is unable to meet the demands of its creditors in the usual and customary manner." K.S.A. 9-1902. The Commissioner did not prove, or even contend, that the Bank had failed to meet a creditor's demand before declaring it insolvent. Indeed, the Commissioner did not give the Bank or Columbian notice of its purported insolvency at any time before declaring the Bank insolvent.

When Petitioner initially contested the seizure, the Kansas state courts agreed that Respondents had "omitted" a "constitutionally adequate post-seizure procedure" and ordered Respondents to hold a post-deprivation hearing. During that hearing, Respondents refused to allow Petitioner discovery necessary to show Respondents' reliance on an unprecedented interpretation of the state statute. Following the hearing, the Commissioner held that the Bank was properly declared insolvent on August 22 on the basis of projections that, under certain assumptions, the Bank *might* be unable to meet a creditor's demand on August 29. Before the Bank's seizure, no Kansas court had ever interpreted the statute defining insolvency in such a manner.

The Tenth Circuit held that Petitioner's suit—which alleges the state failed to provide constitutionally adequate post-deprivation procedures—is precluded by the very same state proceeding that is alleged to be inadequate. But the precedent cited to support that holding, *B. Willis, C.P.A., Inc. v. BNSF Railway Corp.*, reached the opposite result, holding that the plaintiff's § 1983 suit alleging procedural violations was a "viable" claim that could be asserted as soon as it was fully ripened by the conclusion of the state proceeding. 531 F.3d 1282, 1304–06 (10th Cir. 2008). Moreover, the facts giving rise to Petitioner's claims arose during the course of the state proceeding at issue. The Tenth Circuit's holding that Petitioner was required to assert its due process claims in the state proceeding is directly contrary to precedent. *See Hatch v. Boulder Town Council*, 471 F.3d 1142, 1150 (10th Cir. 2006).

The issues substantiating certiorari include important questions of whether the state provided constitutionally adequate post-deprivation procedures, whether the application of a novel interpretation of a state statute violated Petitioner's procedural due process rights, and whether there is conflicting authority among the circuits regarding issue preclusion. Because of the very significant record below and the fact that this case raises these significant and important issues, it will require additional time to adequately research and draft a petition. Petitioner's counsel is heavily engaged in the press of business in federal and state courts.

For these reasons, Petitioner Columbian Financial Corporation respectfully requests that an order be entered extending the time to petition for certiorari in this matter by 30 days, up to and including Monday, September 6, 2019.

Respectfully submitted,

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner Columbian Financial Corporation does not have a parent corporation, and no publicly held company or corporation owns ten percent or more of Columbian Financial Corporation's stock.

/s/ John R. Munich
Counsel for Petitioner Columbian Financial
Corporation

CERTIFICATE OF SERVICE

I, John R. Munich, a member of the Bar of this Court, certify that on July 24, 2019, pursuant to Rule 29 of the Rules of the Supreme Court, an original and two copies of Petitioner's Application for an Extension of Time Within Which to File a Petition for a Writ Of Certiorari and Appendix were mailed to the Court, and three copies were mailed to the parties listed below, via overnight mail:

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