
In The Supreme Court of the United States

MICHAEL ROP, ET AL.,

Applicants,

v.

FEDERAL HOUSING FINANCE AGENCY, ET AL.,

Respondents.

**APPLICATION FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

December 14, 2022

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To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit:

1. Under Supreme Court Rules 13.5, 22, and 30, Petitioners, plaintiff-appellants in *Rop v. Federal Housing Finance Agency*, respectfully request a thirty-day extension of time, up to and including February 2, 2023 to file a petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit, to review *Rop v. Federal Housing Finance Agency*, 50 F. 4th 562 (6th Cir. 2022). The United States Court of Appeals issued its decision on October 4, 2022. Appendix A. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254. The time to file a petition for a writ of certiorari will otherwise expire on January 3, 2022. The application is timely because it has been filed more than ten days before the date on which a petition is otherwise due.

2. The decision of the Sixth Circuit presents important questions concerning the Appointments Clause and the extent to which the Constitution permits officers to serve in an “acting” capacity without the advice and consent of the Senate. The Sixth Circuit held that the Constitution provides no barrier to the President appointing individuals as “acting” officers to serve indefinitely because Congress has “acquiesced” to such indefinite appointments. *Rop*, 50 F. 4th at 573. By contrast, the dissent carefully assessed the Constitution’s text and structure, history, and practice to conclude that the Constitution *does* provide a limit on how long an “acting officer can serve without confirmation.” *Id.* at 580 (Thapar, J., dissenting). Proposing alternative frameworks for assessing how long an “acting” appointment can

constitutionally last, the dissent concluded that under “[n]o viable interpretation of the [Appointments] Clause” may “an acting officer” simply “skip confirmation for three years” under the circumstances of this case. *Id.* at 583 (emphasis added). The Sixth Circuit’s contrary decision creates a significant loophole to the Constitution’s careful articulation of a system of appointment depending on advice and consent.

3. Good cause exists for this requested extension. Counsel for Petitioners have a number of conflicts making it extremely difficult to meet the current January 3, 2023 deadline. Counsel are briefing and preparing for a preliminary injunction hearing in *Indiana v. TikTok, et al.*, No. 02D02-2212-PL-000400 (Ind. Super. Ct.) on December 28, 2022, in addition to briefing in *New York v. Arm or Ally, LLC, et al.*, No. 1:22-cv-06124-JMF (S.D.N.Y.) due December 22, 2022, briefing in *Hardaway, et al., v. Nigrelli, et al.*, No. 1:22-cv-00771-JLS (W.D.N.Y.) due December 29, 2022, and briefing in *Meyer v. Raoul*, No. 3:21-cv-00518 (S.D. Ill.) due January 6, 2023.

WHEREFORE, Petitioners respectfully request that an order be entered extending the time for Petitioners to file a petition for a writ of certiorari for thirty days, up to and including February 2, 2023.

Dated: December 14, 2022

Respectfully submitted,

/s/ David H. Thompson

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