

No. _____

In the Supreme Court of the United States

MATTHEW EDWIN GRONDA and
PHILIP LEE ELLISON
Petitioners,

v.

TITLE CHECK, LLC,
Respondent.

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

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

1. Pursuant to Supreme Court Rule 13.5, Petitioners Matthew Edwin Gronda and Philip Lee Ellison respectfully requests a 60-day extension of time, to and including, Monday, October 16, 2023 (which would include an automatic extension given that the sixtieth day lands on a Saturday), within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Sixth Circuit issued its opinion on April 5, 2023. A copy of the opinion is attached as Exhibit A. The Sixth Circuit denied Petitioners' timely rehearing petition in an order issued on May 17, 2023. A copy of the order is attached is attached as Exhibit B. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

2. Absent an extension, a petition for a writ of certiorari would be due on August 15, 2023. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This case concerns whether sanctions imposed upon trial counsel are precluded pursuant to 28 U.S.C. § 1927 when case was expressly recognized as one of first impression and premised on an interpretation of the word “includes” within a state statute from which Michigan’s highest court has held has multiple possible meanings.

4. There is uniformity, sans this case, across the circuits and within the Sixth Circuit that sanctions for a first impression case, for which there was no evidence of bad faith by counsel, is totally inappropriate. E.g. *Asai v. Castillo*, 593 F.2d 1222, 1225 (D.C. Cir. 1979) (“Since the court ... had not previously addressed this matter ... [w]e cannot say [the attorney] acted in bad faith in the matter.”); *Bercovitch v. Baldwin Sch., Inc.*, 191 F.3d 8, 11-12 (1st Cir. 1999) (“No serious argument can be made that the [] action was frivolous, unreasonable, or without foundation at the time suit was brought or continued” when one of “first impression”); *Clarendon Nat. Ins. Co. v. Kings Reinsurance Co.*, 241 F.3d 131, 135 (2d Cir. 2001); *Gaiardo v. Ethyl Corp.*, 835 F.2d 479, 483 (3d Cir. 1987) (“advocating new or novel legal theories” “does not trigger a sanction award”); *Smith v. Detroit Fed’n of Tchrs. Loc. 231, Am. Fed’n of Tchrs., AFL-CIO*, 829 F.2d 1370, 1379 (6th Cir. 1987) (a case “found to lack merit... was not so obviously precluded by existing precedent that the attorney should have known that the claim was frivolous”); *Barney v. Holzer Clinic*,

Ltd., 110 F.3d 1207, 1213 (6th Cir. 1997) (sanctions are unavailable where the central issue is one of first impression, absent an improper purpose); *Overnite Transp. Co. v. Chicago Indus. Tire Co.*, 697 F.2d 789, 795 (7th Cir. 1983) (“cases presenting a question of first impression are not frivolous, holding otherwise ‘would have a profound chilling effect upon litigants.’”); *Guti v. I.N.S.*, 908 F.2d 495, 496 (9th Cir. 1990) (“A case is not frivolous when there is no controlling authority requiring a holding that the facts as alleged fail to establish even an arguable claim as a matter of law.”); *Suazo v. NCL (Bahamas), Ltd.*, 822 F.3d 543, 556 (11th Cir. 2016) (“Where an appeal requires a court to decide an issue of first impression in a circuit court, it is not frivolous.”).

5. Yet, the Sixth Circuit, similar to what it recently and erroneously did in *Calcutt v. FDIC*, No. 22-714, 598 U.S. __ (May 22, 2023), failed to apply the correct standard on governmental sanctions and, therefore, caused extensive harm to Petitioners in not correcting the error.

6. The Petitioners are long-time well-respected civil rights litigators and class counsel on various matters of first impression. E.g. *Kanuszewski v. MDHHS*, 927 F.3d 396 (6th Cir. 2019); *Freed v. Thomas*, 976 F.3d 729 (6th Cir. 2020); *Taylor v. City of Saginaw, Mich.*, 620 F. Supp. 3d 655 (E.D. Mich. 2022); *People v. Beck*, 504 Mich. 605, cert. denied sub nom. *Michigan v. Beck*, 140 S. Ct. 1243 (2020).

7. The Sixth Circuit’s affirmance of the local district court’s decision, while an error of law, is inappropriately being used by government attorneys to attempt to disqualify them as counsel in unrelated class action cases they have been leading for

years – suggesting that sanctions were sought for strategic advantage in unrelated cases being defended by Respondent’s counsel.

8. Petitioners respectfully request an extension of time to file a petition for a writ of certiorari for full consideration or, more pointedly, summary reversal of the decisions below.

9. A sixty (60) day extension would allow Petitioners, who are solo-practitioners, sufficient time to fully prepare the needed petition for filing. Additionally, undersigned counsel has a number of other pending matters with proximate due dates that will interfere with counsel’s ability to file the petition on or before August 15, 2023.

Wherefore, Petitioners respectfully request that an order be entered extending the time to file a petition for a writ of certiorari to and including Monday, October 16, 2023.

August 3, 2023

Respectfully submitted,



Philip L. Ellison
OUTSIDE LEGAL COUNSEL PLC
PO Box 107
Hemlock, MI 48626
(989) 642-0055
pellison@olcplc.com

Counsel for Petitioners