

Case No. ____

In the Supreme Court of the United States

SHIRLEY CRAIN, ET AL.,
Petitioner,

v.

LISA CRAIN, ET AL.,
Respondents.

**APPLICATION TO THE HONORABLE BRETT M. KAVANAUGH 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 EIGHTH CIRCUIT**

Pursuant to Supreme Court Rule 13(5), Shirley Crain hereby moves for an extension of time of 60 days, to and including January 11, 2024, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be November 12, 2023.

In support of this request, Applicant states as follows:

1. The United States Court of Appeals for the Eighth Circuit rendered its decision on June 23, 2023 (Exhibit 1) and denied a timely petition for rehearing on August 14, 2023 (Exhibit 2). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. This case involves an exceptionally important question regarding whether federal courts have subject-matter jurisdiction over breach of contract claims stemming directly from divorce decrees entered by state courts under the domestic relations exception to diversity jurisdiction. The U.S. District Court for the Western

District of Arkansas ordered Shirley Crain to transfer millions of dollars and assets to her step-daughters, purportedly to enforce a promise her late husband made as a part of the divorce settlement from his first wife. The District Court's order even included income and assets constituting Mrs. Crain's separate property, simply because she jointly owned the assets with her husband at the time of his death.

3. The Eighth Circuit affirmed and held that federal courts have jurisdiction over disputes arising from divorce decrees in these circumstances, notwithstanding the domestic relations exception. The court held the domestic relations exception did not apply here because "the issues presented do not involve a domestic relations dispute between a feuding couple," but rather "Appellees present a third-party beneficiary claim based in contract law." Ex. 1, at 10.

4. The Eighth Circuit's decision creates a direct circuit split with decisions from the First and Sixth Circuits, both of which have held breach of contract claims seeking to enforce a divorce settlement are not cognizable in federal court. *See Irish v Irish*, 842 F.3d 736, 741 (1st Cir. 2016); *McLaughlin v. Cotner*, 193 F.3d 410, 413 (6th Cir. 1999).

5. Applicant's counsel returned from maternity leave on October 4, 2023, and has a period of adjustment returning to work from that extended absence. Moreover, counsel has substantial argument and briefing obligations in coming weeks, including: an amicus brief for Mothers against Drunk Driving in the Massachusetts Supreme Court, No. SJC-13384, (Ma. S.Ct.); an opening brief in *Crain*

v. Crain, No. 22-2693 (8th Cir.); oral argument in *Appvion v. Buth*, No. 23-01073 (7th Cir.).

6. Counsel therefore requests a modest extension of time in which to prepare and file this petition, in order to fully address the complex issues below in a way that will be helpful to the Court's consideration of the petition.

WHEREFORE, for the foregoing reasons, Applicant requests an extension of time within which they may file a petition for a writ of certiorari to and including January 11, 2024.

Respectfully submitted,

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October 6, 2023