

No. _____

In the Supreme Court of the United States

RACHAEL EUBANKS, IN HER PERSONAL CAPACITY; TERRY STANTON, IN HIS PERSONAL
CAPACITY; STATE OF MICHIGAN, PETITIONERS

v.

DENNIS O'CONNOR, AND ALL THOSE SIMILARLY SITUATED

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR
A WRIT OF CERTIORARI TO U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT**

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

Ann M. Sherman
Michigan Solicitor General
Counsel of Record
Michigan Dep't of Attorney General
P.O. Box 30212
Lansing, Michigan 48909
ShermanA@michigan.gov
(517) 335-7628

James A. Ziehmer
Brian McLaughlin
B. Thomas Golden
Assistant Attorneys General
Revenue and Tax Division

Attorneys for Applicants

Dated: February 9, 2024

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

Pursuant to 13.5, 22, 30.2, and 30.3 of the Rules of this Court, applicants Rachael Eubanks, Terry Stanton, and the State of Michigan respectfully request a 60-day extension of time, to and including May 17, 2024, to file a petition for a Writ of Certiorari in this case. The Sixth Circuit Court of Appeals issued its opinion and order on October 16, 2023, and denied rehearing on December 19, 2023. (Appendix to this Application, App'x 1–24.) Absent an extension of time, the Petition for Writ of Certiorari would be due on March 18, 2024. Petitioners file this Application more than 10 days prior to that date. See S. Ct. R. 13.5. Respondent, through counsel, does not take a position on the request for the 60–day extension. This Court would have jurisdiction over the judgment under 28 U.S.C. § 1254(1).

1. At the heart of the dispute is the proper interpretation of Michigan's Uniform Unclaimed Property Act and whether individuals who abandoned property have a property right to interest generated and retained by the State of Michigan on statutorily presumed abandoned property. Michigan's Unclaimed Property Act permits individuals who abandoned property to file a claim, and if successful, receive from the State the value the State received from the property's disposal.

2. There is no factual dispute that Respondent O'Connor had a property right in three debt-obligations. He abandoned those properties by failing to claim them, and the holders remitted the properties to the State. He then filed an administrative claim with the State of Michigan, and the State paid him, as required by statute, the exact value it received from the holders of the abandoned property.

3. O'Connor then filed a putative class action lawsuit in the Eastern District of Michigan, naming two State employees in their individual capacities and the State of Michigan, alleging various takings and due process violations for failing to pay him interest. The district court dismissed the claims based on sovereign immunity and qualified immunity (i.e., the right to accrued interest in abandoned property was not clearly established).

4. On appeal, the Sixth Circuit held that not only do such property rights to interest on abandoned property exist, but also that such rights are clearly established by this Court's precedent. The Sixth Circuit deemed O'Connor's due process claims cognizable and remanded the case to the district court for further proceedings.

5. The Sixth Circuit's decision conflicts with this Court's precedent. *Texaco Inc., v. Short*, 454 U.S. 516 (1982). This Court has already held that states may pass generally applicable laws that provide for statutory abandonment of property interests. *Id.* After abandonment, the property interests lapse and may devolve to another as prescribed by statute. *Id.* In contrast, the Sixth Circuit held that a property owner retains title to property statutory presumed abandoned. The decision ignores that a property owner's rights lapse upon abandonment. Michigan law provides that those rights then devolve to the State, permitting the State to step into the shoes of the former owner, and claim the properties from the holder. This is the act of Michigan asserting its rights as a sovereign over the ownerless property. Then, Michigan provides a statutory process governing the disposal of the abandoned property as well as when, how, and to what extent individuals may make a claim

against the State for the value of that abandoned property. The rights bestowed in this process are creatures of statute and State law—they are not constitutionally protected property rights previously abandoned. There is a significant likelihood that this Court will grant certiorari and reverse the Sixth Circuit decision.

6. Contemporaneously, a separate individual filed a putative class action lawsuit in state court, alleging the same legal arguments. That case is pending in the Michigan Court of Appeals—*Kemerer, et al, v. State of Michigan*, Michigan Court of Appeals, Docket No. 362055, alleging the same legal arguments. The Michigan Court of Appeals heard oral argument on October 4, 2023, and the parties are awaiting the decision.

7. Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. The Michigan Court of Appeals decision, once issued, may well conflict with the Sixth Circuit’s opinion in both its interpretation of Michigan’s Uniform Unclaimed Property Act and as to whether a property right to interest on abandoned property exists under state law. Regardless of the outcome, the Michigan Court of Appeals’ decision will affect briefing on the issues presented in the Petition. Permitting the extension should allow the parties to address the decision and any conflicts between that decision and the Sixth Circuit’s opinion.

8. Additionally, both counsel of record, Michigan Solicitor General Ann Sherman, and the attorney assisting in the drafting of the petition, Assistant Attorney General James Ziehmer, have numerous deadlines before and after March 18, 2024. Counsel

need time to thoroughly research and prepare arguments for this Court's consideration.

9. This case presents issues of great importance to the People of Michigan, and no meaningful prejudice would arise from the granting of the requested extension.

For the foregoing reasons, Petitioners request that this application for a 60-day extension of time be granted, from March 18, 2024, to and including May 17, 2024, within which to file a Petition for a Writ of Certiorari.

Respectfully submitted,

Ann Sherman 2/9/2024

Ann M. Sherman
Michigan Solicitor General
Counsel of Record
Michigan Dep't of Attorney General
P.O. Box 30212
Lansing, Michigan 48909
ShermanA@michigan.gov
(517) 335-7628

James A. Ziehmer
Brian McLaughlin
B. Thomas Golden
Assistant Attorneys General
Revenue and Tax Division

Attorneys for Applicants

Dated: February 9, 2024