

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

AMERICULTURE, INC., *et al.*
Applicants,

v.

LOS LOBOS RENEWABLE POWER, LLC, *et al.*,
Respondents.

**APPLICATION TO THE HON. SONIA SOTOMAYOR
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 TENTH CIRCUIT**

To the Honorable Sonia Sotomayor, Associate Justice and Circuit Justice for the Tenth Circuit:

Pursuant to Rule 13.5 of this Court, Applicants AmeriCulture, Inc. and Damon Seawright¹ respectfully request that the time to file a petition for a writ of certiorari in this matter be extended to and including July 16, 2018. The United States Court of Appeals for the Tenth Circuit entered judgment on March 12, 2018. A copy of its opinion is attached to this application. Unless extended, the time for filing a petition for certiorari will expire on June 11, 2018.² This Court's jurisdiction will be invoked under 28 U.S.C. § 1254.

¹ Pursuant to Rule 29.6 of this Court, Applicant AmeriCulture, Inc. states that it has no parent corporation and that no publicly-held company owns 10% or more of its stock. Applicant Damon Seawright is an individual.

² Because the 90-day period for filing a petition for certiorari would otherwise expire on June 10—a Sunday—the time to file runs instead to the following Monday, June 11, 2018. *See* S. Ct. R. 30.1. In

In support of this application, Applicants state as follows:

1. The decision below presents an important question of federal law that has divided the federal courts of appeals. The Tenth Circuit below joined one side of a circuit split about whether state anti-strategic lawsuits against public participation (“anti-SLAPP”) statutes apply in federal court under the doctrines of *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938) and *Hanna v. Plummer*, 380 U.S. 460 (1965). That issue has divided the circuits and elicited strong disagreements among federal circuit judges.

The decision below held that New Mexico’s anti-SLAPP statute, which defines a class of civil actions in which an expedited “special motion to dismiss” is available, along with costs and fees for defendants prevailing on such motions, does not apply in federal diversity litigation. Slip Op. 5, 30. That holding joined a holding of the D.C. Circuit in conflict with the holdings of other circuits applying similar state-law provisions in federal diversity actions. *Compare Abbas v. Foreign Pol’y Grp., LLC*, 783 F.3d 1328 (D.C. Cir. 2015), with *Godin v. Shencks*, 629 F.3d 79 (1st Cir. 2010); *Henry v. Lake Charles Am. Press, LLC*, 566 F.3d 164 (5th Cir. 2009); and *United States ex rel. Newsham v. Lockheed Missiles & Space Co., Inc.*, 190 F.3d 963 (9th Cir. 1999). *See also, e.g., Makaeff v. Trump Univ. LLC*, 736 F.3d 1180, 1180-87 (9th Cir. 2013) (Wardlaw & Callahan, JJ., concurring in the denial of rehearing en banc); *id.* at 1188-92 (Watford, J., dissenting from the denial of rehearing en banc). This Court’s review will be necessary to resolve that conflict, which has serious

calculating the extension requested in this application, Applicants have included that additional day, and seek a 35-day extension from June 11, 2018, to July 16, 2018.

implications for the interests in free speech and political participation that state anti-SLAPP statutes seek to protect.

2. Applicants require more time to prepare a petition for certiorari presenting this important unresolved question. Applicants have recently engaged new counsel, Scott E. Gant of Boies Schiller Flexner LLP, to represent it in this Court. Mr. Gant has substantial briefing and argument obligations in the coming months. In addition, Mr. Gant has planned family vacations from June 7-18, and around the July 4th holiday.

For the foregoing reasons, Applicants respectfully request that an extension of time to file a petition for certiorari be granted to and including July 16, 2018.

March 29, 2018

Respectfully submitted,

/s/ Scott E. Gant

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