

No. 22-A-_____

In the Supreme Court of the United States

ANNA ST. JOHN,

Petitioner,

v.

LISA JONES, HORACIO TORRES BONILLA,
KRISTOFFER YEE, AND MONSANTO COMPANY,

Respondents.

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

THEODORE H. FRANK
Counsel of Record
HAMILTON LINCOLN LAW
INSTITUTE
1629 K Street NW, Suite 300
Washington, D.C. 20006
(703) 203-3848
ted.frank@hlli.org

Counsel for Petitioner

Rule 29.6 Statement

Monsanto is an indirect, wholly-owned subsidiary of Bayer AG, a publicly held corporation. No publicly-traded corporation owns more than 10% of Bayer AG's stock.

**TO THE HONORABLE BRETT KAVANAUGH, ASSOCIATE
JUSTICE OF THE SUPREME COURT OF THE UNITED STATES
AND CIRCUIT JUSTICE FOR THE EIGHTH CIRCUIT:**

As Supreme Court Rules 13.5, 22, and 30 permit, Petitioner Anna St. John respectfully requests a 30-day extension of time, up to and including December 14, 2022, to file a petition for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit to review that court's decision in *Jones v. Monsanto*, 38 F.4th 693 (8th Cir. 2022) (attached as Exhibit A).

Petitioner intends to file a petition seeking review of this judgment under Supreme Court Rule 12. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). The Eighth Circuit issued its order denying rehearing (by a 6-to-5 vote) on August 16, 2022 (attached as Exhibit B). The time to file a petition for a writ of certiorari will expire without an extension on November 14, 2022. This application is timely because it has been filed more than ten days prior to the date on which the time for filing the petition is to expire.

1. This case presents substantial and important questions of federal law such as whether, or under what circumstances, a court may approve a settlement that resorts to *cy pres* payments before compensating class member claimants to the full extent of damages pleaded and requested in the class complaint in accordance with Fed. R.

Civ. Pro. 23, and whether class members' First Amendment rights are violated by compulsory subsidization of third-party activist groups through *cy pres*. Below, the Eighth Circuit held that it was permissible under Rule 23 to approve a settlement that left over 98% of the class with no pecuniary compensation while distributing over \$16 million to ideological nonprofits that most of the class was likely to disagree with—and that petitioner did disagree with. In so doing, the Eighth Circuit further fractured a circuit split. *Compare In re Baby Prods. Antitrust Litig.*, 708 F.3d 163 (3d Cir. 2013); *Klier v. Elf Atochem North America, Inc.*, 658 F.3d 468 (5th Cir. 2011); *and Pearson v. NBTY, Inc.*, 778 F.3d 772 (7th Cir. 2014); *with, e.g., In re EasySaver Rewards Litig.*, 906 F.3d 747 (9th Cir. 2018). This Court already granted review of a similar petition in *Frank v. Gaos*, but, after oral argument, ultimately vacated there on jurisdictional grounds with only Justice Thomas reaching the Rule 23 questions. 139 S. Ct. 1041 (2018).

2. Theodore H. Frank is counsel of record for Petitioner in this case. He had an oral argument in the U.S. Court of Appeals for the Ninth Circuit on October 17, 2022; appellate briefs in the U.S. Court of Appeals for the Third Circuit filed on September 8 and October 20, 2022, with another one due November 30, 2022 if an extension is granted; an appellate brief in the U.S. Court of Appeals for the Sixth Circuit due November 16, 2022; an appellate brief in the U.S. Court of Appeals for

the Seventh Circuit expected to be due December 5, 2022; an appellate brief in the U.S. Court of Appeals for the Eleventh Circuit filed October 17, 2022; an appellate *amicus* brief on an emergency motion in *Nebraska v. Biden* in the U.S. Court of Appeals for the Eighth Circuit filed on October 24, 2022; and is contributing to important substantive filings in cases in the Northern District of Illinois filed on September 15, 2022, and due on November 3 and November 18, 2022. He also has primary responsibility for fundraising for his six-attorney nonprofit public-interest law firm, and November 2022 is an important month for fundraising. All these commitments will limit counsel's availability to work on this matter between today and November 14, 2022, or limited counsel's availability to work on this matter before today.

Frank will also submit on December 14, 2022, a separate petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit to review that court's decision in *Hyland v. Navient*, 48 F.4th 110 (2d Cir. 2022) (*en banc* review denied October 7, 2022), that presents substantially similar questions relating to *cy pres* settlements. Though the *Yeatman v. Hyland* petition is not due until January 5, 2023, Frank believes presenting the two petitions to the Court together will aid the Court in evaluating the importance of these questions and the

frequency at which they occur and offer the Court multiple options to determine how best to take up the issue.

3. Counsel for Monsanto and for the named plaintiffs do not oppose this motion.

Accordingly, petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for 30 days, up to and including December 14, 2022.

November 3, 2022

Respectfully submitted,

THEODORE H. FRANK
Counsel of Record
HAMILTON LINCOLN LAW
INSTITUTE
1629 K Street NW, Suite 300
Washington, D.C. 200056
(703) 203-3848
ted.frank@hlli.org
Counsel for Petitioner