

No. _____

IN THE
Supreme Court of the United States

JILL HILE, ET AL.,

Petitioners,

v.

STATE OF MICHIGAN, 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 SIXTH CIRCUIT**

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

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, Petitioners Jill Hile, Samantha Jacokes, Phillip Jacokes, Nicole Leitch, Michelle Lupanoff, George Lupanoff, Parent Advocates for Choice in Education Foundation, Joseph Hile, Jessie Bagos, Ryan Bagos, and Jason Leitch respectfully request that the time to file their Petition for Writ of Certiorari in this matter be extended 60 days, up to and including April 1, 2024. The Court of Appeals issued its opinion on November 6, 2024. (Appendix ("App.")). Absent an extension of time, the Petition for Writ of Certiorari would be due on February 4, 2024. Petitioners file this Application more than 10 days before that date. See S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. 1254(1). Respondents, through their counsel, do not object to a 60-day extension.

Background

In the mid-1960s, after years of paying private, religious-school tuition *and* paying taxes to subsidize public schools, families who sent their children to private religious schools began to lobby the State of Michigan to provide a modicum of financial support. In response, the Legislature appropriated a modest \$100 for each high-school student and \$50 to each grade-school student attending a private school in Michigan.

Anti-religious-school organizations mobilized voter animus against religion to mount a ballot campaign that results in Article VIII, § 2, ¶ 2 of Michigan's Constitu-

tion—a so-called “Blaine Amendment”—that bars direct or indirect public financial support for nonpublic schools, by appropriation, tax exemption, or otherwise.

This Court has repeatedly condemned such Blaine Amendments, which deprive religious schools and families of an equal opportunity to public benefits. *E.g.*, *Carson v. Makin*, 142 S. Ct. 1987 (2002); *Espinoza v. Mont. Dep’t of Revenue*, 140 S. Ct. 2246 (2020); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017). But the anti-religious-school groups behind Michigan’s Blaine Amendment cleverly couched it in facially neutral language—the Amendment does not explicitly target only “religious” or “secular” schools—immunizing the Amendment from these precedents.

The Michigan Supreme Court has held that Michigan’s Blaine Amendment was targeted at religious schools and families, as evidenced both by the Amendment’s disparate impact and the political advocacy that surrounded its passage. “[W]ith ninety-eight percent of the private school students being in church-related schools” in 1970, Article VIII, § 2, ¶ 2’s classification “is nearly total” in its “impact” on the class of “church-related schools.” *Traverse City Sch. Dist. v. Attorney Gen.*, 185 N.W.2d 9, 29 (Mich. 1971). And “[a]s far as the voters were concerned in 1970 ... ‘—[the Blaine Amendment] was an anti-parochial amendment—no public monies to run parochial schools—and beyond that all else was utter and complete confusion.’” *Council of Orgs. & Others for Educ. About Parochial, Inc. v. Engler*, 566 N.W.2d 208, 220–21 (Mich. 1997) (quoting *Traverse City*, 185 N.W.2d at 17 n.2)). In sum, the Amendment’s anti-religious impact was intentional, and it continues.

Under Michigan's Blaine Amendment, religious persons and schools cannot lobby their state representative or state senator for governmental aid or tuition help. Rather they must undertake the onerous process of securing signatures and passing a state constitutional amendment. By eliminating the right of religious persons and institutions to petition for legislative help on the same terms as other people, Michigan's Blaine Amendment structurally denies religious persons and institutions the "rights, privileges and immunities" secured by the Equal Protection Clause and by the Constitution and laws of the United States. Petitioners are entitled to a ruling that places them on a level political-access field.

In a 2-1, published decision, the Sixth Circuit rejected Petitioners' claims. The panel majority recognized that this Court has invalidated political restructuring that disadvantages minority classes in cases like *Hunter v. Erickson*, 393 U.S. 385 (1969), and *Washington v. Seattle School District No. 1*, 458 U.S. 457 (1982), even though those cases, too, involved facially neutral laws. App.9–10. But the majority refused to apply those precedents here for three reasons: (1) the Court's plurality decision in *Schuette v. Coalition to Defend Affirmative Action*, 572 U.S. 291, 307 (2014), "casts doubt on the continued viability of political process claims," App.10, (2) "it is far from settled that a political process claim may be based on religious discrimination," App.11, and (3) a failed 2000 Michigan ballot measure to create private-school vouchers in Michigan "purged any taint of animus" in the Blaine Amendment, App.14.

None of these were adequate reasons to leave intentional, structural discrimination in Michigan's Constitution. First, *Schuette* did not overrule this Court's precedents in *Hunter* and *Seattle School District*; quite the opposite, six of eight Justices declined the explicit invitation to overrule the cases adopting it. Second, this Court has applied the political-restructuring doctrine to invalidate a law that discriminated against racial "and religious minorities," *Hunter*, 393 U.S. at 395 (Harlan, J., concurring) (emphasis added), consistent with the principle that race and religion are both suspect classification, e.g., *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). Third, the 2000 ballot initiative's focus was *not* repeal of the Blaine; its target was school vouchers and teacher testing. It was not equivalent to a "readoption" of the Amendment, much less a thorough reconsideration of it.

Reasons for Granting an Extension of Time

The time within which to file a Petition for a Writ of Certiorari should be extended for 60 days for the following reasons:

1. Petitioners' Counsel of Record, John J. Bursch, has had and will continue to have numerous litigation deadlines before and after February 4, 2024, when the Petition is due, including but not limited to the following:
 - A merits reply brief filed in the United States Court of Appeals for the Sixth Circuit on January 5, 2024 (*Sacred Heart of Jesus Parish v. Nessel*, No. 23-1781);
 - An opening merits brief filed in the United States Court of Appeals for the Ninth Circuit on January 11, 2024 (*Bates v. Pakseresht*, No. 23-4169);
 - A response to an emergency application for stay filed in this Court on January 17, 2024 (*Michigan Independent Citizens Redistricting Commission v. Agee*, No. 23A641);

- A petitioner's merits brief and joint appendix to be filed with this Court on February 2, 2024 (*Idaho v. United States*, No. 23-727);
- Assisting a colleague with preparation for an argument in the United States Court of Appeals for the First Circuit on February 8, 2024 (*L.M. v. Town of Middleborough*, No. 23-1535);
- Assisting co-counsel with preparation for an argument in the United States Court of Appeals for the Seventh Circuit on February 8, 2024 (*Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation v. Enbridge Energy Company, Inc.*, Nos. 23-2309, 23-2467);
- A merits reply brief to be filed in the United States Court of Appeals for the Ninth Circuit on February 12, 2024 (*Union Gospel Mission of Yakima v. Ferguson*, No. 23-2606);
- A merits reply brief to be filed in the United States Court of Appeals for the Ninth Circuit on February 21, 2024 (*Cedar Park v. Kreidler*, No. 23-35560);
- A respondents' merits brief to be filed with this Court on February 28, 2024 (*FDA/Danco v. Alliance for Hippocratic Medicine*, Nos. 22-235, 23-236);
- A merits reply brief to be filed in the United States Court of Appeals for the Ninth Circuit on February 29, 2024 (*Bates v. Pakseresht*, No. 23-4169);
- Objections to proposed remedial maps to be filed in a three-judge redistricting case in the United States District Court for the Western District of Michigan on March 8, 2024 (*Agee v. Benson*, No. 1:22-cv-272);
- A merits reply brief to be filed in the Arizona Supreme Court on March 19, 2024 (*Masterpiece v. Scardina*, No. 2023SC116);
- Supplemental briefs regarding Reviewing Special Master Report to be filed in a three-judge redistricting case in the United States District Court for the Western District of Michigan on March 20, 2024 (*Agee v. Benson*, No. 1:22-cv-272); and
- Assisting co-counsel with preparation for an argument in the United States Court of Appeals for the Sixth Circuit on March 21, 2024 (*Nessel v. Enbridge Energy, LP*, No. 23-1671).

2. This case presents issues of great importance to the public, which requires ready access to judicial records to ensure an accountable judiciary.

3. The Sixth Circuit's decision conflicts directly with this Court's rulings in *Hunter v. Erickson*, 393 U.S. 385 (1969), and *Washington v. Seattle School District No. 1*, 458 U.S. 457 (1982).

4. As a result of these conflicts, a significant prospect exists that this Court will grant certiorari and reverse the Sixth Circuit.

5. Counsel requires the additional requested time to fully research the issues and prepare an appropriate petition for the Court's consideration.

6. No meaningful prejudice would arise from granting the extension. The mandate has already issued, and it is not stayed.

Conclusion

For the foregoing reasons, Petitioners hereby request that an extension of time to and including April 1, 2024, be granted within which Petitioners may file a petition for a writ of certiorari.

Respectfully submitted,



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January 18, 2024

CERTIFICATE OF SERVICE

A copy of this application was served by email and U.S. mail to the counsel listed below in accordance with Supreme Court rule 22.2 and 29.3:

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