No.

IN THE

Supreme Court of the United States

CITY OF CLEVELAND, OHIO,

Applicant,

v.

ALBERT PICKETT, ET AL.

APPLICATION 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

Thomas H. Dupree Jr.
Counsel of Record
Jonathan C. Bond
Michael P. Corcoran
GIBSON, DUNN & CRUTCHER LLP
1700 M St. NW
Washington, DC 20036
(202) 955-8500
TDupree@gibsondunn.com

Counsel for Applicant

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

Under this Court's Rule 13.5, applicant City of Cleveland, Ohio, respectfully requests a 60-day extension of time, to and including December 8, 2025, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit. The Sixth Circuit entered its judgment on June 9, 2025, App., *infra*, 1a, and denied applicant's timely petition for rehearing on July 11, 2025, *id.* at 19a. Unless extended, the time within which to file a petition for a writ of certiorari will expire on October 9, 2025. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1). Counsel for Albert Pickett, et al. does not oppose the requested extension.

1. This case implicates important legal issues concerning whether a federal court may certify a class action that contains members who claim no Article III injury apart from being subjected to a policy they allege has a disparate racial impact in violation of a federal statute (here, the Fair Housing Act (FHA), 42 U.S.C. § 3601 *et seq.*). Those issues relate to two cases in which this Court recently granted but dismissed writs of certiorari, *Laboratory Corporation of America Holdings* v. *Davis*, 605 U.S. 327 (2025) (*LabCorp*) (whether courts may certify classes with members who lack standing); *Acheson Hotels, LLC* v. *Laufler*, 601 U.S. 1, 4-5 (2023) (whether testers have standing to bring ADA claims of unequal access absent concrete injury), as well as this Court's decision in *TransUnion LLC* v. *Ramirez*, 594 U.S. 413 (2021).

a. The City of Cleveland provides water services to approximately 1.5 million customers in Cuyahoga County, Ohio, through its Department of Public Utilities,

Division of Water ("Cleveland Water"). Like virtually all major municipalities' water departments, Cleveland Water charges its customers for water services. These charges are the sole source of revenue for Cleveland Water and are used to support Cleveland Water's operations, maintenance, and capital projects.

Not all customers pay their bills on time. Like many other municipalities, Cleveland Water places "water liens" on the properties of customers who have delinquent water bills. Cleveland Water does so only if the customer falls behind on a water bill for at least 180 days and owes an account balance of $300 or more; Cleveland Water has not placed liens on residential properties since at least 2020.

b. Respondents filed this putative class action against the City, alleging that its water-lien policy disproportionately harms black homeowners in Cuyahoga County and violates the FHA, 42 U.S.C. § 3604. Respondents do not claim that the City knows the race of its customers when it assesses water liens, much less that the City intentionally discriminates based on race. Instead, they allege that the City's race-neutral water-lien policy results in a disproportionate number of liens placed on properties in majority-black neighborhoods. Respondents also do not claim that mere placement of a water lien causes economic injury to customers. Although a water lien may ultimately lead Cuyahoga County or mortgage holders to impose penalties, interest, and eventual foreclosure, customers may pay their account balance before any such penalties are assessed, and many do so. Thus, many customers whose properties are subjected to a water lien never suffer any economic injury.

c. Respondents moved to certify a class of all black homeowners in Cuyahoga County who have had a water lien assessed against their property by Cleveland

Water. The City opposed certification on the grounds (*inter alia*) that up to 20% of putative class members have suffered no economic injury and therefore lack standing. The district court granted the motion and certified a class. App., *infra*, 5a.

The Sixth Circuit granted permission to appeal that order under Federal Rule of Civil Procedure 23(f), and later affirmed. App., *infra*, 5a, 14a-15a. The court did not dispute Cleveland's contention that up to 20% of the class lacks any economic injury. The court held, however, that every class member has standing because a water lien was assessed against their property. *Id.* at 11a-13a. The court reasoned that assessment of water liens that resulted in a disparate impact in violation of the FHA was sufficient to establish Article III injury, announcing that "disparate-impact claims" under the FHA bear "resemblances to constitutional claims." *Id.* at 12a.

2. The Sixth Circuit's decision warrants this Court's review. The decision below implicates multiple interconnected issues that have caused division and confusion in the courts of appeals about the intersection of Article III standing, federal statutes that create a cause of action, and Rule 23 class actions.

This Court recently granted review in *LabCorp* to resolve a split concerning whether courts may certify a class that contains members who lack Article III standing. The Second and Eighth Circuits have held that courts cannot do so, see *Denney* v. *Deutsche Bank AG*, 443 F.3d 253, 264 (2d Cir. 2006); *Avritt* v. *Reliastar Life Insurance Co.*, 615 F.3d 1023, 1034 (8th Cir. 2010), while the Seventh, Ninth, and Eleventh Circuits permit certification even if many unnamed class members lack standing, see *Kohen* v. *Pacific Investment Management Co.*, 571 F.3d 672, 677 (7th Cir. 2009); *Ruiz Torres* v. *Mercer Canyons Inc.*, 835 F.3d 1125, 1137 n.6 (9th Cir. 2016); *Cordoba* v.

DIRECTV, LLC, 942 F.3d 1259, 1267 (11th Cir. 2019). But the Court dismissed the writ of certiorari in *LabCorp* as improvidently granted without resolving that conflict. 605 U.S. at 327-328; but see *id.* at 328-334 (Kavanaugh, J., dissenting).

The Sixth Circuit has now staked out a third position on that question: that plaintiffs asserting disparate-impact claims under the FHA (and perhaps other statutes) necessarily have standing because such claims bear "resemblances to constitutional claims," and all members of a class asserting such claims therefore have Article III standing. App., *infra*, 12a. That conclusion implicates—and further complicates—a separate conflict on whether, under *TransUnion*, *supra*, Article III requires a concrete injury beyond a bare statutory violation to establish standing. The Second, Fifth, and Seventh Circuits hold that a mere statutory violation causing unequal impacts on protected individuals is not sufficient to establish Article III standing. *Harty* v. *West Point Realty, Inc.*, 28 F.4th 435, 444 (2d Cir. 2022) (mere "unequal treatment on the basis of a protected characteristic" without more "is not sufficient for Article III standing"); *Laufer* v. *Mann Hospital, LLC*, 996 F.3d 269, 273 (5th Cir. 2021) (no standing despite claims regarding the "equal enjoyment" of services); *Carello* v. *Aurora Policemen Credit Union*, 930 F.3d 830, 834-835 (7th Cir. 2019) (plaintiff's "alleged injury" of being "denied equal treatment" is insufficient); see also *Alig* v. *Rocket Mortgage, LLC*, 126 F.4th 965, 974 (4th Cir. 2025). The First Circuit, by contrast, has held that "testers" under antidiscrimination statutes have standing merely by showing that they are placed "on unequal footing" compared to those without disabilities and suffer "frustration and humiliation" from that unequal access. *Laufler* v.

Acheson Hotels, LLC, 50 F.4th 259 (1st Cir. 2022), cert. dismissed, 601 U.S. 1 (2023). The decision below embodies the First Circuit's outlier approach.

3. Good cause exists for a 60-day extension of time to file a petition for a writ of certiorari. Counsel of record for applicant had no involvement in the proceedings below and was retained only recently to prepare a petition for a writ of certiorari. Additional time is necessary in order to permit counsel to complete a review of the record below, to research the relevant legal issues in this case, and to prepare and file a petition that would be helpful to the Court. Also, counsel for Applicant have had—and will continue to have—significant professional responsibilities in other time-sensitive matters in the period shortly before and after the current deadline.

4. Counsel for respondent does not oppose the requested extension.

CONCLUSION

For the foregoing reasons, the City respectfully requests that the time within which to file a petition for a writ of certiorari be extended by 60 days, to and including December 8, 2025.

Respectfully submitted.

/s/ Thomas H. Dupree
Thomas H. Dupree Jr.
Counsel of Record
Jonathan C. Bond
Michael P. Corcoran
GIBSON, DUNN & CRUTCHER LLP
1700 M St. NW
Washington, DC 20036
(202) 955-8500
TDupree@gibsondunn.com
Counsel for Applicant

September 25, 2025