

No. 23A1085

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IN THE  
SUPREME COURT OF THE UNITED STATES

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Jennifer I. Sykes and Alexander Cote, Individually and on  
Behalf of All Others Similarly Situated,  
*Applicants,*

v.

Office of the California State Controller; Betty T.  
Yee, in Her Official Capacity as California State Controller,  
*Respondents.*

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**APPLICATION FOR FURTHER EXTENSION OF TIME WITHIN WHICH  
TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

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July 18, 2024

## **PARTIES TO THE PROCEEDINGS BELOW**

Applicants Jennifer I. Sykes and Alexander Cote were the plaintiffs in the district court and the appellants in the court of appeals. Respondents Office of the California State Controller and Betty T. Yee, in her official capacity as California State Controller, were the defendants in the district court and the appellees in the court of appeals.

## **RULE 29.6 STATEMENT**

Pursuant to Supreme Court Rule 29.6, applicants are individuals and have no affiliated entities. Applicants do not issue any stock.

## RELATED CASES

*Alison Cole-Kelly, etc. v. Office of the California State Controller, et al.* (9th Cir. March 14, 2024) (No. 23-15413).

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To the Honorable Elena Kagan, Associate Justice of the United States Supreme Court and  
Circuit Justice for the Ninth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.3 of the Rules of this Court,  
applicants Jennifer I. Sykes and Alexander Cote respectfully request an additional 15-day  
extension of time, up to and including August 13, 2024, within which to file a petition for a writ  
of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

The court of appeals entered its judgment and issued an opinion on March 14, 2024. The  
Ninth Circuit’s opinion (which is unreported) is attached hereto as Exhibit A. On June 6, 2024,  
Justice Kagan granted a 45-day extension of time within which to file a certiorari petition, to and  
including July 28, 2024.

The order of the district court dismissing applicants’ complaints is attached hereto as  
Exhibit B. The petition would be due on July 28, 2024, and this application is made at least 10  
days before that date. This Court’s jurisdiction would be invoked under 28 U.S.C. § 1254(1).

1. This case presents an important issue regarding the meaning and application of  
the Takings Clause of the Fifth Amendment of the United States Constitution. This Court has  
held that just compensation must be paid *whenever private property is used for public purposes*.

2. The Takings Clause mandates that “just compensation” be paid to the owners of  
private property whenever their property is put to public use. *Cedar Point Nursery v. Hassid*, 141  
S. Ct. 2063, 2074 (2021); *Murr v. Wisconsin*, 582 U.S. 383, 392 (2017); *Webb’s Fabulous  
Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980). Just compensation is required whether  
the public use of private property is permanent or merely temporary. The “duration of an

appropriation—just like the size of an appropriation, *see Loretto [v. Teleprompter Manhattan CATV Corp., 458 U.S. 419,] 436-37 [(1982)]—bears only on the amount of compensation”* that is owed to the property owner. *Cedar Point Nursery*, 141 S. Ct. at 2074 (emphasis added) (citing *United States v. Dow*, 357 U.S. 17, 26 (1958)). A taking occurs as soon as the property is used by the State for public purposes without paying for it. *See Knick v. Twp. of Scott, Pennsylvania*, 139 S. Ct. 2162, 2170 (2019) (Takings Clause is violated “as soon as a government takes [private] property for public use without paying for it”).

3. The California Unclaimed Property Law prohibits the payment of *any* additional compensation when unclaimed property is returned to its owners. Cal. Civ. Proc. Code § 1540(c). Despite this Court’s precedent, the Ninth Circuit held that owners of unclaimed private property, which is held by the Controller and used for public purposes, are not entitled to recover *any* just compensation for the public use of their property. Misapplying two inapplicable Ninth Circuit decisions, *Turnacliff v. Westly*, 546 F.3d 1113 (9th Cir. 2008), and *Suever v. Connell*, 579 F.3d 1047 (9th Cir. 2009), the Ninth Circuit held that unclaimed property owners are not owed just compensation for the taking of their private property. Both cases involved a different statutory regime than the one at issue in this case. That version of California’s Unclaimed Property Law allowed the Controller to pay interest to the owners of unclaimed property. The narrow issue in *Turnacliff* was whether the Controller correctly computed the amount of interest owed on unclaimed property that had been returned to its owner. 546 F.3d at 1115. The issues in *Suever* were whether the plaintiffs received sufficient notice of their unclaimed property, whether the Controller mishandled their property while it was held by the State, and (like the issue in *Turnacliff*), whether the State’s miscalculation of interest under the prior version of the UPL and was itself another taking. 579 F.3d at 1050-51. The Ninth Circuit’s failure to follow

this Court's precedent and its misapplication of the inapplicable decisions in *Turnacliiff* and *Suever* warrants this Court's review.

4. The Ninth Circuit's ruling also raises a conflict among the circuit courts of appeals. In *In Kolton v. Frerichs*, 869 F.3d 532, 533 (7th Cir. 2017), the Seventh Circuit held that the Takings Clause requires the states to pay just compensation to the owners of unclaimed property for the time their property is in the state's possession and used for public purposes. In reaching its decision, the Seventh Circuit relied upon this Court's precedent that "the Takings Clause protects the time value of money just as much as it does money itself." *Id.* (citing *Brown v. Legal Found. of Washington*, 538 U.S. 216, 235 (2003); *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 165-72 (1998); and *Webb's Fabulous Pharmacies*, 449 U.S. at 162-65). In *Goldberg v. Frerichs*, 912 F.3d 1009, 1011 (7th Cir. 2019), the Seventh Circuit again held that a state may not use unclaimed property for public purposes without paying just compensation, regardless of the form of the property and whether or not it appreciated in value. Thus, there is a clear split among the circuits warranting this Court's review.

5. The additional 15-day extension to file a certiorari petition is necessary because undersigned counsel needs the additional time to prepare the petition and appendix in light of unexpected time demands in other, previously engaged matters in this and other courts, including: (1) completion of complex settlement papers by the impending deadline set by the Court on July 25, 2024, in *In re Packaged Seafood Antitrust Litig.*, No. 3:15-md-02670-DMSMSB (S.D. Cal.); and (2) the completion of extensive fact and expert discovery in *In re Apple iPhone Antitrust Litig.*, No. 11-cv-06714-YGR (N.D. Cal.) by the deadline set by the Court in its recently entered scheduling order.

6. In addition, this will permit the petition for certiorari in this case to be filed

together with any petition for certiorari filed in the related case, *Alison Cole-Kelly, etc. v. Office of the California State Controller, et al.* (9th Cir. March 14, 2024) (No. 23-15413), which is not due until July 22, 2024.

7. For all these reasons, there is good cause for an additional 15-day extension of time, up to and including August 12, 2024, within which to file a certiorari petition in this case to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,



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