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IN THE
Supreme Court of the United States
October Term 2024

THE HIGHER EDUCATION LOAN AUTHORITY OF THE STATE OF MISSOURI,
Applicant-Petitioner,

v.

JEFFREY GOOD, AND THE UNITED STATES DEPARTMENT OF EDUCATION,

Respondents

**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 Tenth Circuit**

**APPLICATION TO THE HONORABLE JUSTICE
NEIL GORSUCH AS CIRCUIT JUSTICE**

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PARTIES TO THE PROCEEDING

The Higher Education Loan Authority of the State of Missouri, applicant/petitioner.

Jeffrey Good, and the United States Department of Education, respondents.

APPLICATION FOR EXTENSION OF TIME

Pursuant to Rule 13.5 of the Rules of this Court, Applicant hereby requests a 30-day extension of time to and including March 12, 2025, within which to file a petition for a writ of certiorari in this case.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review will be sought is the decision of the United States Court of Appeals for the Tenth Circuit in *Good v. United States Department of Education*, No. 22-3286 (10th Cir.), which was entered on November 12, 2024, and is attached as Exhibit 1.

JURISDICTION

This Court will have jurisdiction over any timely filed petition in this case pursuant to 28 U.S.C. § 1254(1). Under Rules 13.1, 13.3 and 30.1 of the Rules of this Court, a petition for certiorari is due to be filed on or before February 10, 2025. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the filing date for a petition for certiorari.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari seeking review of the decision of the United States Court of Appeals for the Tenth Circuit in this case, to and including March 12, 2025.

1. Undersigned counsel of record, who did not participate in the case below, was only recently retained to assist in preparation of a petition for writ of certiorari in this matter. As a result, additional time is necessary to allow counsel an opportunity to review fully the record created below and the relevant legal issues presented by this case that justify further review by this Court.

2. At the same time, undersigned counsel of record has multiple obligations that would make it difficult to complete a petition for certiorari by the current deadline. Mr. Feith* has a motion to dismiss the complaint in *DMK Pharmaceuticals Corp. v. Catalent Belgium S.A.*, Adv. Pro. No. 24-50070 (D. Del. Bankr.) due on February 3, 2025; a reply brief in support of a motion for summary judgment in *Steiner v. eBay*, No. 21 Civ. 11181 (D. Mass.) due on February 14, 2025; a reply brief in *Nebraska v. EPA*, No. 24-1129 (D.C. Cir) due on February 24, 2025, and a reply brief in *Kentucky v. EPA*, No. 24-1087 (D.C. Cir.) due on February 27, 2025.

3. Further, an extension is warranted here because this case involves an important question of federal law that presents a conflict among the federal courts

* Mr. Feith's application for admission to the Court's bar is currently pending. Upon being admitted to the Court's bar, Mr. Feith will be counsel of record in this matter.

of appeals for determining whether an entity created by a State is an arm of the State that is entitled to immunity from suit in federal court under the U.S. Constitution. Applicant-petitioner the Higher Education Loan Authority of the State of Missouri (“MOHELA”) is “an instrumentality of Missouri.” *Biden v. Nebraska*, 143 S. Ct. 2355, 2366 (2023). MOHELA was created by the State “to perform the ‘essential public function’ of helping Missourians access student loans needed to pay for college” and of funding development projects at Missouri colleges and universities. *Id.* (quoting Mo. Rev. Stat. § 173.360). MOHELA is “governed by state officials and state appointees, reports to the State, and may be dissolved by the State.” *Id.* Yet in the decision below, the Tenth Circuit held that MOHELA is not an arm of the State entitled to Eleventh Amendment immunity. Ex. 1 at 81–82.

In reaching this result, the court discounted concerns that judgments against MOHELA could affect its statutory duty to make payments to a Missouri state fund for colleges and universities or to provide scholarships to Missouri residents, and instead gave special weight to the fact that “the State of Missouri is not directly responsible in the first instance for a judgment against MOHELA.” *Id.* at 75. That reasoning is wrong and implicates a circuit split. As the Tenth Circuit explained, in light of this Court’s emphasis that “[t]he preeminent purpose of state sovereign immunity is to accord States the dignity that is consistent with their status as sovereign entities,” *Fed. Mar. Comm’n v. S.C. State Ports Auth.*, 535 U.S. 743, 760 (2002), “some of our sister circuits have jettisoned arm-of-the-state-tests that give any special weight to the question of impact on the state treasury.” Ex. 1 at 21 n.11

(citing *Kohn v. State Bar of Cal.*, 87 F.4th 1021, 1030 (9th Cir. 2023); *Benn v. First Jud. Dist. of Pa.*, 426 F.3d 233, 239–40 (3d Cir. 2005); *P.R. Ports. Auth. v. Fed. Mar. Comm’n*, 531 F.3d 868, 873–74 (D.C. Cir. 2008)). But other circuits—including the Tenth Circuit below—“have continued to describe the impact on the treasury as the most important factor in the arm-of-the-state analysis.” Ex. 1 at 21 n.11 (citing *DuPage Reg’l Off. Of Educ. v. U.S. Dep’t of Educ.*, 58 F.4th 326, 340–41 (7th Cir. 2023); *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 979 F.3d 426, 433 (6th Cir. 2020); *U.S. ex. rel. Fields v. Bi-State Dev. Agency of Mo-Ill. Metro Dist.*, 872 F.3d 872, 883 (8th Cir. 2017); *Leitner v. Westchester Cmty. Coll.*, 779 F.3d 130, 137 (2d Cir. 2015)).

4. In light of the foregoing, Applicant submits that a 30-day extension, to and including March 12, 2025, would allow counsel of record adequate time to review the record, to analyze applicable law, and to prepare a petition for certiorari that will assist this Court in resolving this matter.

CONCLUSION

For the foregoing reasons, this Court should grant Applicant a 30-day extension, to and including March 12, 2025, within which to file a petition for certiorari.

Dated: January 29, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Carter G. Phillips certify that, on this twenty-ninth day of January, 2025, I caused a copy of the foregoing Application for Extension of Time to be served on the following by first-class mail, postage pre-paid, and by email to:

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