

IN THE SUPREME COURT OF THE UNITED STATES

No. 23A _____

MERRICK B. GARLAND, ATTORNEY GENERAL, AND
SHIRA PERLMUTTER, IN HER OFFICIAL CAPACITY AS THE REGISTER OF
COPYRIGHTS OF THE U.S. COPYRIGHT OFFICE, APPLICANTS

v.

VALANCOURT BOOKS, LLC

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 DISTRICT OF COLUMBIA CIRCUIT

Pursuant to Rules 13.5 and 30.3 of the Rules of this Court, the Solicitor General respectfully requests a 30-day extension of time, to and including April 12, 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 District of Columbia Circuit in this case. The court of appeals entered its judgment on August 29, 2023, and denied a petition for rehearing on December 14, 2023. Unless extended, the time within which to file a petition for a writ of certiorari will expire on March 13, 2024. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1). Copies of the opinion of the court of appeals, which is reported at 82 F.4th 1222, and the orders denying rehearing are attached. App, infra, 1a-30a.

1. This case concerns a longstanding requirement that the owners of copyrighted published works deposit two copies of the work with the Library of Congress. 17 U.S.C. 407. As amended in 1988, Section 407 of Title 17 states that except as exempted by the Register of Copyrights, "the owner of copyright or of the exclusive right of publication in a work published in the United States shall deposit, within three months after the date of such publication * * * two complete copies of the best edition" of the work with the Copyright Office "for the use or disposition of the Library of Congress." 17 U.S.C. 407(a)-(b). The law does not require deposit of the work before copyright protection vests; copyright protection attaches to copyrightable works automatically upon their fixation in a tangible medium of expression. 17 U.S.C. 102(a).

If a copyright owner does not deposit copies of a work after publication (and if suitable copies have not otherwise been delivered to the Office through registration), the Copyright Office may make a written demand for the deposit upon the publisher or the copyright owner. If a demand has been made, the copyright owner or publisher has three months to comply before it is subject to fines and costs for the Library to purchase the work. 17 U.S.C. 407(d).

2. Respondent Valancourt Books is a book publisher in Richmond, Virginia. In June 2018, the Copyright Office sent an email to respondent requesting deposit of 341 published books.

C.A. App. 122-123, 126-132. The request included specific notices for deposit of each work, and stated that if respondent was unable to supply any individual book, it should return the relevant notice with a written explanation. Id. at 122-123. Respondent responded to the demand stating that it did not keep excess physical copies of its books because it relied on a print-on-demand business model and that printing and shipping the books would be cost-prohibitive. Id. at 123, 133-135. Respondent also stated that it had provided some of the works to the Library in connection with a voluntary deposit program. Id. at 133-135. The Copyright Office later sent respondent a new letter with a revised demand reducing the number of requested works and setting new dates for compliance. Id. at 141.

Respondent subsequently filed this suit in the United States District Court for the District of Columbia. Respondent alleged that the requirement to deposit copies of new copyrightable works is an unconstitutional taking of private property under the Fifth Amendment and a burden on freedom of speech in violation of the First Amendment. The district court rejected respondent's arguments, granting summary judgment for applicants on the ground that the Copyright Act confers a statutory benefit that is conditioned on the receipt of two copies of the work and thus does not run afoul of the Constitution. C.A. App. 185. The court explained that "[p]ublishers are not required to make the deposit in order to print books or to sell them; the obligation is a

condition of the receipt of the governmental benefit of copyright protection.” Id. at 187. The district court also rejected respondent’s First Amendment claim. Id. at 198.

3. The court of appeals reversed. App., *infra*, 1a-28a. The court held that the mandatory deposit requirement violates the Just Compensation Clause because it allows “the government [to] directly appropriate[] private property for its own use.” Id. at 13a (quoting Tyler v. Hennepin Cty., 143 S. Ct. 1369, 1376 (2023)). The court rejected the government’s argument that the deposit requirement represents a “voluntary exchange for a government benefit.” Id. at 14a. The court also rejected the government’s argument that the mandatory deposit requirement was permissible because copyright owners can “disavow copyright protection and thereby avoid the deposit requirement.” Id. at 20a. Because the court of appeals found that the mandatory deposit requirement violates the Just Compensation Clause, it did not address respondent’s First Amendment claim.

4. The Solicitor General has not yet determined whether to file a petition for a writ of certiorari in this case. Additional time is needed for further consultation within the Department of Justice and with the Copyright Office and Library of Congress regarding the potential legal and practical ramifications of the court of appeals’ decision. Additional time is also needed, if a petition is authorized, to permit its preparation and printing.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

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