

No. 24-8024

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

CUSTODIA BANK, INC.,
Plaintiff-Appellant,

v.

FEDERAL RESERVE BOARD OF GOVERNORS;
FEDERAL RESERVE BANK OF KANSAS CITY,
Defendants-Appellees.

On Appeal from the United States District Court for the District of
Wyoming, No. 1:22-cv-00125-SWS, Hon. Scott W. Skavdahl

**APPELLEES' JOINT MOTION FOR AN EXTENSION OF TIME
TO FILE RESPONSE BRIEFS**

Pursuant to Federal Rule of Appellate Procedure 26(b), appellees Federal Reserve Bank of Kansas City (“FRBKC”) and the Board of Governors of the Federal Reserve System (“the Board of Governors”) respectfully move for a forty-five-day extension, up to and including September 12, 2024, within which to file their response briefs in this case.

1. This appeal arises from a final summary judgment order issued on March 29, 2024, granted in favor of FRBKC against appellant Custodia Bank, Inc. (“Custodia”) on Custodia’s cause of action seeking a writ of mandamus, in favor of the Board of Governors on Custodia’s

petition for review under the Administrative Procedure Act, and in favor of both appellees on Custodia's cause of action for declaratory judgment under the Declaratory Judgment Act.

2. Nearly a month later, on April 26, 2024, Custodia filed its notice of appeal.

3. On May 17, 2024, this Court entered a letter from the Clerk of the Court confirming that transmittal of the district court record was complete and directed Custodia to file its opening brief and appendix by June 26, 2024, forty days after the record was filed.

4. The letter also provided that appellees may submit their response briefs within thirty days after service of Custodia's opening brief.

5. On June 26, 2024, Custodia filed its opening brief. This was 89 days after the final judgment Custodia appeals.

6. On June 27, 2024, this Court entered a letter from the Clerk of Court notifying Custodia that its appendix was deficient and that the time for appellees to file their response briefs would run from the date of service of the corrected appendix.

7. Custodia served the corrected appendix on June 27, 2024. Accordingly, appellees' briefs are currently due July 29, 2024.

8. Appellees respectfully request that the deadline for filing their response briefs be extended by forty-five days, up to and including September 12, 2024.

9. This Court has indicated a willingness to grant thirty-day extensions to file response briefs. *See* United States Court of Appeals for the Tenth Circuit, *Briefing* (last visited June 27, 2024), <https://www.ca10.uscourts.gov/briefing#:~:text=Beyond%20the%20initial%20due%20dates,to%20file%20a%20reply%20brief>.

10. Appellees respectfully request an additional fifteen days, for an extension of forty-five days, to account for the complexity of the case, travel, and attorney conflicts as detailed below.

11. Appellees have not filed any previous motions requesting an extension of time in this appeal.

12. The requested extension is necessary because of the complexity of this appeal. Custodia has raised a wide variety of issues in this appeal, including constitutional claims, the interpretation of multiple statutory provisions, and a factual challenge to the district court's determination that there was no final agency action. Counsel for appellees require the requested extension of time to prepare an adequate response.

13. In addition, counsel for appellees have already been informed that multiple *amicus curiae* briefs will be submitted in support of Custodia. Counsel for appellees may receive notice of additional *amicus* briefs as late as July 3. *See* Fed. R. App. P. 29(a)(6). Counsel for appellees require the requested extension of time to analyze and respond to such briefs as well.

14. The requested extension is also necessary because lead counsel for FRBKC on this appeal, Jeffrey S. Bucholtz, has scheduling conflicts due to other litigation. Mr. Bucholtz is presenting oral argument in the Eleventh Circuit on July 25, 2024, in *United States v. Bell et al.*, No. 22-12750, and in the Fifth Circuit during the week of September 2, 2024, in *Zyla Life Sciences, LLC v. Wells Pharma of Houston, LLC*, No. 23-20533. Mr. Bucholtz will also have limited availability due to previously scheduled international travel from June 25–July 1 and from July 30–August 13.

15. Finally, appellees respectfully submit that their response briefs should be due the same day. As explained above, the complexity of this appeal necessitates an extension of time for both appellees. Furthermore, maintaining the same briefing deadline for both appellees would best

serve the convenience of the Court, the parties, and any *amici* that intend to file briefs in support of appellees.

16. FRBKC informed Custodia on June 12, 2024, well in advance of Custodia's due date, that FRBKC intended to request an extension of time. FRBKC offered to discuss a joint revised briefing schedule if Custodia also required additional time. Custodia declined FRBKC's offer.

17. On June 28, 2024, counsel for FRBKC conferred with Custodia regarding this joint motion. Custodia does not oppose a 30-day extension but opposes any additional extension beyond 30 days.

Date: June 28, 2024

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Respectfully submitted,

/s/

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**CERTIFICATE OF DIGITAL SUBMISSION
AND PRIVACY REDACTIONS**

Under the court's CM/ECF User's Manual, I certify that:

1) all required privacy redactions have been made per 10th Cir. R. 25.5;

2) hard copies of this pleading that may have to be submitted are exact copies of the ECF filing; and

3) the ECF submission has been scanned for viruses with the most recent version of a commercial virus scanning program, Microsoft Defender, Version 1.413.574.0, and, according to the program, is free of viruses.

Date: June 28, 2024

/s/ _____
Jeffrey S. Bucholtz

*Counsel for Federal Reserve
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CERTIFICATE OF COMPLIANCE

I certify this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A), because it contains 748 words, excluding the parts exempted by Fed. R. App. P. 32(f).

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in 14-point, proportionally spaced typeface using Microsoft Word.

Date: June 28, 2024

/s/ _____
Jeffrey S. Bucholtz

*Counsel for Federal Reserve
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CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2024, a copy of the foregoing motion was filed with the Court through the ECF system, which provides electronic service of the filing to all counsel of record who have registered for ECF notification in this matter.

/s/
Jeffrey S. Bucholtz

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