

19-A-\_\_\_\_

---

IN THE SUPREME COURT OF THE UNITED STATES

---

HELLIER MANOR APARTMENTS, LTD.,  
*Applicant/Petitioner,*

v.

CITY OF PIKEVILLE, KY,  
*Respondent.*

---

**APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A  
WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY**

---

**APPLICATION TO HON. JUSTICE SONIA SOTOMAYOR AS CIRCUIT JUSTICE**

---

Michael P. Abate  
*Counsel of Record*  
KAPLAN JOHNSON ABATE & BIRD LLP  
710 W. Main St., 4<sup>th</sup> Floor  
Louisville, KY 40202  
(502) 416-1630

*Counsel for Hellier Manor Apartments, Ltd.*

## **RULE 29.6 STATEMENT**

Applicant Hellier Manor Apartments, Ltd. (“Hellier Manor”) is a Kentucky Limited Partnership. It has no parent corporation and no publicly traded corporation owns 10% or more of Hellier Manor’s stock.

## **APPLICATION FOR EXTENSION OF TIME**

Pursuant to Supreme Court Rules 13.5, 22, and 30, Appellant Hellier Manor respectfully requests a 30-day extension of time, up to and including Monday, April 13, 2020, to file a petition for a writ of certiorari to the Kentucky Supreme Court to review the decision in *Hellier Manor Apartments, Ltd. v. City of Pikeville*, 589 S.W.3d 528 (Ky. Ct. App. 2018), *review denied* (Dec. 13, 2019) (copies which are attached hereto as **Exhibit 1**). That state-court decision misapplied federal Housing Development Grant (“HDG”) statutes and regulations, rendering inoperative provisions of federal law that *required* federal housing grant assistance to be forgiven over time if the developer who received the funds remains in compliance with the HDG rules and regulations during a 20-year “compliance period,” as all parties agree Hellier Manor did. In reaching that conclusion, the opinion went into conflict with the only other appellate case to interpret the federal statutory provisions at issue here: *West Michigan Woods Ltd. Dividend Housing Association Ltd. P’ship v. City of Kalamazoo*, 2011 WL 4375248 (Mich. Ct. App. Sept. 20, 2011). Hellier Manor intends to file a petition for review asking this Court to resolve the irreconcilable conflict over the meaning of a federal law that can have only one meaning nationwide. This Court will have jurisdiction over that petition pursuant to 28 U.S.C. § 1257. This application is timely because it has been filed more than ten days prior to the date on which the time for filing the petition is to expire.

1. As noted above, this case concerns an important question of federal law on which two states’ courts have gone into direct conflict. This Court should consider and resolve that conflict before Respondent, the City of Pikeville, KY, is permitted to foreclose upon and sell the apartment

building that Applicants constructed at the federal governments' urging (and with its financial assistance) to meet the needs of a community struggling to create enough low-income housing.

2. The Kentucky Supreme Court denied review of this case on December 13, 2019. Under Supreme Court Rule 13.1, a petition for certiorari is currently due on or before March 12, 2020.

3. A short extension is necessary to allow Hellier Manor and its undersigned counsel to prepare a petition and appendix for this Court's review. Undersigned counsel was recently and unexpectedly away from work due to an unplanned inpatient surgical procedure and the associated recovery time. A brief extension is warranted due to this unplanned absence.

4. Moreover, the press of other business in the time remaining to file the petition also justifies the brief extension requested. Between now and the date on which a petition would otherwise be due, counsel is slated to present oral arguments in two matters presenting important questions of federal law, including a high-profile defamation case brought by a number of high school students involved in a highly publicized confrontation on the National Mall, *see Does 1-10 v. Haaland et.al.* (Kenton Cir. Ct.), and a case presenting important questions of exhaustion, preemption, and exclusive federal court jurisdiction under the Medicare Act, *see Moore v. Servna* (Fleming Cir. Ct.).

5. The brief extension requested will not appreciably delay resolution of this matter.

Dated: February 28, 2020

Respectfully Submitted,

Michael P. Abate  
*Counsel of Record*  
KAPLAN JOHNSON ABATE & BIRD LLP  
710 W. Main St., 4<sup>th</sup> Floor  
Louisville, KY 40202  
(502) 416-1630

*Counsel for Hellier Manor Apartments, Ltd.*