

App No. _____

In The
Supreme Court of the United States

DIPENDRA TIWARI; KISHOR SAPKOTA; GRACE HOME CARE, INC.,

Applicants,

v.

ERIC FRIEDLANDER, in his official capacity as Secretary of the Kentucky Cabinet for Health and Family Services; ADAM MATHER, in his official capacity as Inspector General of Kentucky,

Respondents,

KENTUCKY HOSPITAL ASSOCIATION,

Intervenor-Respondent.

On Application for an Extension of Time to File a Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

Andrew H. Ward

Counsel of Record

INSTITUTE FOR JUSTICE
901 North Glebe Road, Suite 900

Arlington, VA 22203

Tel: (703) 682-9320

Email: andrew.ward@ij.org

April 14, 2022

Counsel for Applicants

Corporate Disclosure Statement

Pursuant to Supreme Court Rule 29.6, Applicant Grace Home Care, Inc., states that it has no parent corporation and that no publicly held company owns 10% or more of its stock.

To the Honorable Brett Kavanaugh, as Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

In accordance with this Court's Rules 13.5, 22, 30.2, and 30.3, Applicants Dipendra Tiwari, Kishor Sapkota, and Grace Home Care, Inc., respectfully request that the time to file their petition for a writ of certiorari be extended for 60 days, up to and including Thursday, July 14, 2022. The Court of Appeals issued its opinion on February 14, 2022 (Exhibit A). Without an extension of time, the petition would be due on May 16, 2022. The jurisdiction of this Court is based on 28 U.S.C. 1254(1).

Background

This case presents an important question of constitutional law: whether the Fourteenth Amendment requires meaningful scrutiny of laws restricting economic liberty. Although this Court has consistently held that challenges to such laws are reviewed under the rational-basis test, it has described that test inconsistently. As a result, the lower courts are divided over how to apply the test.

Applicant Grace Home Care is a would-be home health agency in Louisville. Grace was founded by Applicants Tiwari and Sapkota to provide same-language care to Louisville's sizable Nepali-speaking community. But Grace is legally prohibited from operating by Kentucky's Certificate of Need Law. Under the law, Grace must prove its services are needed before it can open, which it cannot do because the state has calculated that there are already enough home health providers. Kentucky defends this law because it is protectionist. The theory is that having fewer home health agencies will lead to cheaper, better, and more accessible care.

In December 2019, Grace sued various Kentucky officials in the Western District of Kentucky, challenging the law as irrational under the Due Process and Equal Protection clauses of the Fourteenth Amendment, and under the Privileges or Immunities Clause. Judge Walker denied a motion to dismiss. Upon reassignment (due to Judge Walker's appointment to the D.C. Circuit), the court granted summary judgment against Grace. Grace then appealed to the Sixth Circuit, which affirmed. Writing for the circuit, Judge Sutton acknowledged that Grace had "ample evidence" and a "powerful case," and that "the current deferential approach to economic regulations may amount to an overcorrection" but, ultimately, explained that "recalibration of the rational-basis test ... is for the U.S. Supreme Court." Applicants intend to petition so that the Court may consider whether such recalibration or other clarification is warranted.

Reason For Granting an Extension of Time

Counsel requires an extension of time because of the press of business on other matters. Substantial commitments of counsel of record during the relevant time include:

- Oral argument on a dispositive issue in the Eastern District of Virginia on May 13, the business day before the petition is currently due, *see Carey v. Land*, 1:21-cv-1090 (E.D. Va. filed Sept. 28, 2021);
- Discovery in a constitutional challenge in the Southern District of Texas, *see Hines v. Quillivan*, 1:18-cv-00155 (S.D. Tex. Oct. 2, 2018);
- The anticipated defense of an enforcement proceeding before a federal administrative agency;
- Assisting with the preparation of an anticipated lawsuit in the District of Maryland;

and other obligations.

Conclusion

Applicants request that the time to file a petition for a writ of certiorari in this case be extended 60 days, to and including July 14, 2022.

Dated this 14th day of April, 2022.

Respectfully submitted,



Andrew H. Ward
Counsel of Record
INSTITUTE FOR JUSTICE
901 North Glebe Road, Suite 900
Arlington, VA 22203
Tel: (703) 682-9320
Email: andrew.ward@ij.org

Counsel for Applicant