

In the Supreme Court of the United States

No. 22A_____

74 PINEHURST, LLC, ET AL., APPLICANTS

v.

STATE OF NEW YORK, ET AL.

**APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR
A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

To the Honorable Sonia Sotomayor
Associate Justice of the U.S. Supreme Court
and Circuit Justice for the Second Circuit

Pursuant to Rules 13.5 and 30.2 of this Court, counsel for applicants 74 Pinehurst LLC, 141 Wadsworth LLC, 177 Wadsworth LLC, Dino Panagoulis, Dimos Panagoulis, Vasiliki Panagoulis, and Eighty Mulberry Realty Corporation (“Applicants”) respectfully request a 30-day extension of time, to June 7, 2023, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case. The Court of Appeals entered judgment on February 6, 2023, and absent an extension, the time within which to file a petition for a writ of certiorari will expire on May 8, 2023. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. This case presents important questions about the application of this Court’s Takings Clause precedents to laws that restrict the ability of an owner of rental housing to occupy, use, and exclude others from their property—for example by

recovering possession and use of the property following expiration of a tenant's lease. The Court has held that laws that compel property owners to submit to physical occupation of their property by the government or third parties effect *per se* takings of property requiring compensation. *E.g.*, *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2074 (2021). However, this Court suggested in *Yee v. City of Escondido*, 503 U.S. 519, 527–28 (1992), that at least some laws granting tenure protections to tenants do not constitute a physical taking when the tenancy began through a voluntary agreement and the owner retains the ability to “change the use of [their] land.” “A different case,” the Court observed, “would be presented were the statute, on its face or as applied, to compel a landowner over objection to rent his property or to refrain in perpetuity from terminating a tenancy.” *Id.* at 528.

Some courts, including most recently the Eighth Circuit, have held that a law that prevents an apartment owner from regaining possession of the apartment after the tenant's lease expires can effect a physical or *per se* taking. *Heights Apts., LLC v. Walz*, 30 F.4th 720, 733 (8th Cir. 2022); *Cwynar v. City and County of San Francisco*, 90 Cal. App. 4th 637, 653-59 (2001). Other courts have instead read this Court's decision in *Yee* to mean that when a property owner voluntarily leases the property to a tenant, a law that prevents the owner from recovering possession of the property following expiration of the lease—for example, by requiring the owner to renew the lease or forbidding the owner from evicting the tenant—does not effect a physical taking. *See, e.g.*, *Kagan v. City of Los Angeles*, No. 21-55233, 2022 WL 16849064 (9th Cir. Nov. 10, 2022), *pet. for cert. filed*, No. 22-739 (U.S.).

2. In the decision below, the Second Circuit held that Applicants—owners of apartment housing in New York City—could not state a claim that provisions of New York’s Rent Stabilization Law effected uncompensated physical takings of their properties. Applicants contended that the Rent Stabilization Law, as amended in 2019, inflicts physical takings by, *inter alia*, requiring them to renew existing tenants’ leases indefinitely, and extending similar occupancy and renewal rights to a broad range of successor tenants. In that regard, Applicants argued that this is the “different case” contemplated by *Yee*. The Second Circuit disagreed, concluding that Applicants have not stated a claim because they initially chose to rent to the tenants and because the Rent Stabilization Law permits eviction of tenants for nonpayment of rent and on certain other enumerated grounds over which the property owners have no control. App. 9; *see also Comm. Housing Improvement Progr. v. City of New York*, 59 F.4th 540, 551-52 (2d Cir. 2023) (*CHIP*). Applicants intend to seek this Court’s review of that decision, as well as the Second Circuit’s related decision that Applicants failed to state regulatory-takings claims.

3. There is good cause to grant a 30-day extension of Applicants’ time to file a petition for a writ of certiorari. *First*, Appellants’ counsel have numerous filing deadlines in other matters, including (i) a reply brief due in the California Supreme Court on May 2, 2023; (ii) a response brief due in the U.S. District Court for the Northern District of California on May 4, 2023; (iii) an opening brief due in the U.S. Court of Appeals for the Third Circuit on May 25; (iv) a summary-judgment reply brief due in the U.S. District Court for the District of Columbia on May 26, 2023; and

(v) an opening brief due in the U.S. Court of Appeals for the District of Columbia Circuit on May 26, 2023. *Second*, a 30-day extension would allow this Court to consider together several cases that raise similar issues and in which petitions of certiorari have been filed or are likely to be filed, including *Kagan v. City of Los Angeles*, No. 22-739 (U.S.) (responses to petition for writ of certiorari due by May 3, 2023), *CHIP*, 59 F.4th 540 (petition for certiorari due by May 8, 2023), and *335-7 LLC v. City of New York*, No. 21-823 (2d Cir.) (petition for certiorari due by May 30, 2023). An extension would thus also benefit other parties and the Court's consideration of the important issues presented in the *74 Pinehurst* case.

CONCLUSION

For the reasons stated above, Applicants respectfully request that the time to file a petition for writ of certiorari be extended 30 days to and including June 7, 2023.

Respectfully submitted,

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April 28, 2023

CORPORATE DISCLOSURE STATEMENT

Applicants 74 Pinehurst LLC, 141 Wadsworth LLC, 177 Wadsworth LLC, and Eighty Mulberry Realty Corporation have no parent corporations, and no publicly held company owns 10% or more of the stock of any of these companies' stock.

April 28, 2023

/s/ Kevin F. King
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