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IN THE
Supreme Court of the United States

COMMISSIONER, INDIANA STATE DEPARTMENT OF HEALTH, *et al.*,

Petitioners,

v.

PLANNED PARENTHOOD OF INDIANA AND KENTUCKY, INC., *et al.*,

Respondents.

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

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**To the Honorable Justice Elena Kagan, as Circuit Justice for the
United States Court of Appeals for the Seventh Circuit:**

Petitioners, Commissioner, Indiana State Department of Health, in his official capacity, Lake County Prosecutor, in his official capacity, Marion County Prosecutor, in his official capacity, Monroe County Prosecutor, in his official capacity, Tippecanoe County Prosecutor, in his official capacity, and Members of the Indiana Medical Licensing Board, in their official capacities, respectfully request a 28-day extension of time, to and including October 22, 2018, to file a petition for writ of certiorari. In support of this application, Petitioner states as follows:

1. The United States Court of Appeals for the Seventh Circuit issued its panel decision on April 19, 2018. This decision is attached. Petitioner timely filed a petition for rehearing *en banc*, and the Seventh Circuit granted that petition on June 8, 2018. That decision is also attached. Then, on June 25, 2018, the Seventh Circuit issued another order denying rehearing *en banc*. This decision is also attached. Absent an extension of time, the petition for writ of certiorari would therefore be due on September 24, 2018. Petitioner files this application at least ten days before the petition's due date. *See* Sup. Ct. R. 13.5.

2. The Court to which certiorari would be directed is the United States Court of Appeals for the Seventh Circuit. This Court would have jurisdiction to review the judgment of the United States Court of Appeals for the Seventh Circuit under 28 U.S.C § 1254.

3. The State seeks a 28-day extension for two reasons: other cases requiring the attention of undersigned counsel of record, and the complexity of the issue presented for review.

4. First, undersigned counsel has been engaged in other litigation matters that have interfered with counsel's ability to research and prepare an adequate petition by the current due date of September 24, 2018. Those matters include:

- *Newton v. Indiana*, No. 17-1511 (U.S.) (concerning the application of *Miller v. Alabama*, 567 U.S. 460 (2012), to a juvenile sentenced to life

without parole): State's brief in opposition to certiorari filed on August 3, 2018.

- *Sherwin-Williams Co. v. California*, No. 18-86 (U.S.) (involving Due Process limits on public nuisance law): State's amicus brief in support of certiorari filed on August 17, 2018.
- *Planned Parenthood of Ind. & Ky. v. Comm'r, Ind. State Dep't of Health*, No. 17-1883 (7th Cir.) (concerning constitutional challenge to Indiana's 18-hour ultrasound statute): State's petition for rehearing *en banc* filed on August 22, 2018.
- *Neal v. Baer*, No. 17A1377 (U.S.) (habeas case concerning ineffective assistance of counsel): State's petition for writ of certiorari filed on August 31, 2018.
- *Virginia Uranium v. Warren*, No. 16-1275 (U.S.) (concerning whether Virginia's ban on uranium mining is preempted by the 1959 Amendments to the Atomic Energy Act): State's amicus brief filed on September 4, 2018.
- *Lopez-Aguilar v. Marion County Sheriff's Dep't*, No. 18-1050 (7th Cir.) (concerning State's right to intervene to defend state law and whether consent decree violates state law): Oral argument held on September 7, 2018.

- *City of Hammond v. Herman & Kittle Properties*, No. 49A04-1612-PL-02784 (Ind.) (concerning state constitutional challenge to rental housing registration fees): Oral argument held on September 13, 2018.
- *Franchise Tax Board v. Hyatt*, No. 17-1299 (U.S.) (concerning whether sovereign immunity prevents one State from being sued in the Courts of another State): States' merit-stage amicus brief due September 18, 2018.
- *Common Cause v. Lawson*, No. 18-2491 (7th Cir.) (concerning whether crosscheck system for voter registration violates the Voting Rights Act): Appellant's brief due October 1, 2018.
- *Timbs v. Indiana*, No. 17-1091 (U.S.) (concerning whether the Excessive Fines Clause of the Eight Amendment has been incorporated to the States): Respondent's brief due October 4, 2018.

5. Second, the issue presented in this case is factually and procedurally complex. Planned Parenthood challenged multiple provisions of House Enrolled Act 1337: the Non-Discrimination Provision, Ind. Code ch. 16-34-4, which prevents a doctor from performing an abortion if the doctor knows that the woman's sole reason for seeking an abortion is the race, sex, or disability of the fetus; the Information-Sharing Provision, Ind. Code § 16-34-2-1.1(a)(1)(K), which requires doctors to inform patients that Indiana does not allow a fetus to be aborted solely because of the fetus's race, sex, or disability; and the Fetal Disposition Provision, Ind. Code § 16-34-3-4, which requires that aborted fetuses be buried or cremated as human remains. The district court

granted summary judgment to Planned Parenthood and enjoined all three provisions.

On April 19, 2018, a panel of the Seventh Circuit affirmed the district court, holding that HEA 1337 violated the First and Fourteenth Amendments. Judge Manion dissented to the panel's decision. The State petitioned for rehearing *en banc*, and the Seventh Circuit granted the State's petition on June 8, 2018. Then, on June 25, 2018, after one judge decided to recuse himself, an equally-divided Seventh Circuit issued a new order denying rehearing *en banc*. Judge Eaterbrook, joined by Judges Sykes, Barrett, and Brennan, dissented from the court's denial.

In its petition for writ of certiorari, the State intends to ask the Court to review whether the State may, consistent with the First and Fourteenth Amendments, prohibit women from having abortions solely because of the race, sex, or disability of the fetus, require doctors to inform women of this prohibition, and require fetal remains to be buried or cremated in the same manner as other human remains.

6. A 28-day extension of time is necessary so that the State can devote adequate time and attention to its petition in this matter. No meaningful prejudice would arise from a 28-day extension.

CONCLUSION

Petitioners, Commissioner, Indiana State Department of Health, in his official capacity, Lake County Prosecutor, in his official capacity, Marion

County Prosecutor, in his official capacity, Monroe County Prosecutor, in his official capacity, Tippecanoe County Prosecutor, in his official capacity, and Members of the Indiana Medical Licensing Board, in their official capacities, respectfully request a 28-day extension of time, to and including October 22, 2018, to file a petition for writ of certiorari.

Respectfully submitted,

/s/ Thomas M. Fisher

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September 14, 2018