

App. No. _____

IN THE SUPREME COURT OF THE UNITED STATES

**JOSHUA BAKER, in his official capacity as Director, South Carolina Department
of Health and Human Services,
Applicant/Petitioner,**

v.

**PLANNED PARENTHOOD SOUTH ATLANTIC; JULIE EDWARDS,
on her behalf and on behalf of all others similarly situated,
Respondents.**

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

**PETITIONER'S APPLICATION TO EXTEND TIME TO FILE
PETITION FOR WRIT OF CERTIORARI**

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To the Honorable John G. Roberts, Jr., as Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

Pursuant to Supreme Court Rules 13.5, 22, 30.2, and 30.3, Applicant Joshua Baker, in his official capacity as Director, South Carolina Department of Health and Human Services, respectfully requests that the time to file a petition for writ of certiorari in this case be extended for sixty days, to and including Monday, March 30, 2020. The United States Court of Appeals for the Fourth Circuit issued its opinion on October 29, 2019. *Planned Parenthood South Atlantic v. Baker*, No. 18-2133 (4th Cir. 2019) (attached as Exhibit 1). Absent an extension of time, the petition for writ of certiorari would be due on January 27, 2020. In accord with Rule 13.5, this application is being filed more than 10 days before that date. See S. Ct. R. 13.5. The Court has jurisdiction to review the Fourth Circuit's judgement under 28 U.S.C. § 1254.

BACKGROUND

Planned Parenthood South Atlantic (PPSAT) and Julie Edwards, on her own behalf and that of a purported class, sued under 42 U.S.C. § 1983 seeking to secure rights allegedly bestowed on the Plaintiffs by the Medicaid Act (Title XIX of the Social Security Act) and the Fourteenth Amendment of the United States Constitution. Plaintiffs requested injunctive relief and a declaratory judgment that Defendant violated the Medicaid Act and the Fourteenth Amendment by terminating PPSAT's enrollment with the South Carolina Department of Health and Human Services (SCDHHS) as a Medicaid provider following the directive in South Carolina Governor Henry McMaster's Executive Order 2018-21 that abortion clinics and affiliated physicians are deemed unqualified to participate in the South Carolina Medicaid program. App. 7, 13, 18-20. Joshua Baker is the Director of SCDHHS. SCDHHS is the single-state agency responsible for the administration in South Carolina of a program of Medical Assistance under Title XIX of the Social Security Act; it makes all final decisions and determinations regarding the administration of the

Medicaid program. A temporary restraining order and preliminary injunction is currently in place which ordered SCDHHS to allow PPSAT to enroll as a Medicaid provider during the pendency of this suit.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant respectfully requests a 60-day extension of time within which to file a petition for a writ of certiorari seeking review of the decision of the Fourth Circuit Court of Appeals in this case, up to and including Monday, March 30, 2020. The time to file a petition for writ of certiorari should be extended for the following reasons:

1. This case presents a substantial issue of law that has split the federal courts of appeal: whether individual Medicaid recipients have a private right of action under 42 U.S.C. § 1396a(a)(23) to challenge the merits of a state's disqualification of a Medicaid provider. In answering that question yes, the Fourth Circuit noted its disagreement with the Eighth Circuit, which has expressly held that § 1396a(a)(23) does *not* create a private right of action, *Does v. Gillespie*, 867 F.3d 1034, 1037, 1041, 1046 (8th Cir. 2017), and its agreement with five other circuits that have held the exact opposite, *Planned Parenthood of Kan. & Mid-Mo. v. Anderson*, 882 F.3d 1205, 1224 (10th Cir. 2018); *Planned Parenthood of Gulf Coast, Inc. v. Gee*, 862 F.3d 445, 457 (5th Cir. 2017); *Planned Parenthood Ariz. Inc. v. Betlach*, 727 F.3d 960, 965-66 (9th Cir. 2013); *Planned Parenthood of Ind., Inc. v. Comm'r of Ind. State Dep't of Health*, 699 F.3d 962, 968, 972-74 (7th Cir. 2012); and *Harris v. Olszewski*, 442 F.3d 456, 461 (6th Cir. 2006). See Exhibit 1 at 15.

2. Even those circuits reaching the same conclusion have been unable to agree on the reason why. The Sixth Circuit, for example, believes that this Court's decision in *O'Bannon v. Town Court Nursing Center*, 447 U.S. 773 (1980), supports the holding that § 1396a(a)(23) creates

enforceable, substantive rights. *Harris*, 442 F.3d at 462. The Seventh Circuit, like the Fourth Circuit here, believes that *O'Bannon* is irrelevant to the question. *Planned Parenthood of Indiana*, 699 F.3d at 977. And the Ninth Circuit did not discuss *O'Bannon* at all. So even among circuits that agree on how the question presented should be answered, there is conflict as to why that conclusion is correct.

3. The Fifth Circuit, in the *Gee* case out of Louisiana, denied rehearing en banc by a 7-7 vote. But the Fifth Circuit, on its own initiative, has since ordered rehearing en banc involving the identical issue in a Texas case. *Planned Parenthood of Greater Tex. Fam. Plan. & Preventative Health Servs, Inc v. Smith*, 913 F.3d 551, 554 (5th Cir. 2019), *reh'g granted*, (5th Cir.). En banc oral argument was held on May 14, 2019. It is anticipated that the en banc Fifth Circuit will issue a decision a merits decision any day now, and that en banc opinion and any dissents will provide further insight for the parties and allow refinement of legal arguments in the petition.

4. The practical consequences of these conflicting decisions are considerable. More than 70 million individuals are enrolled in Medicaid. It cannot be that Medicaid recipients in some states can bring a private right of action in federal district court when their state disqualifies a provider or (as here) makes a decision impacting a pool of qualified providers, while recipients in other states have no federal judicial remedy.

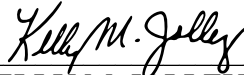
5. Petitioner's counsel requires the additional requested time to prepare an appropriate petition for consideration by this Court in such a substantial matter. In addition to this case, Petitioner's Counsel of Record has numerous recently concluded and upcoming matters, including: *Reynolds v. Carolina Health Centers, Inc.*, No. 8:18-CV-00177 (D.S.C.), which is subject to being called for trial beginning January 6, 2020, among many other things.

6. A 60-day extension will not prejudice Respondents, as Applicant has been preliminarily enjoined from terminating any Medicaid provider agreement with Planned Parenthood South Atlantic.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that this Court grant an extension of 60 days, up to and including Monday, March 30, 2020, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,



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