

No. _____

**In The
Supreme Court of the United States**

ELIZABETH BROKAMP,
Applicant,

v.

LETITIA JAMES, in her official capacity as Attorney General of the State of
New York, *ET AL.*

Respondents.

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

JEFFREY H. REDFERN
Counsel of Record
ROBERT J. MCNAMARA
INSTITUTE FOR JUSTICE
901 North Glebe Road, Suite 900
Arlington, Virginia 22203
(703) 682-9320
jredfern@ij.org

ROBERT E. JOHNSON
INSTITUTE FOR JUSTICE
16781 Chagrin Boulevard, #256
Shaker Heights, Ohio 44120
(703) 682-9320

Counsel for Applicant

To the Honorable Sonia Sotomayor, as Circuit Justice for the United States Court of Appeals for the Second Circuit:

In accordance with this Court's Rules 13.5, 22, 30.2, and 30.3, Applicants respectfully request that the time to file their petition for a writ of certiorari be extended for 60 days, which, adjusting for the weekend, would have the petition due Monday, October 30, 2023. The Court of Appeals issued its opinion on April 27, 2023 (Appendix A) and denied a petition for rehearing on June 1, 2023 (Appendix B). Absent an extension of time, the petition would be due on August 30, 2023. This application is being filed more than 10 days before the petition is due. The jurisdiction of this Court is based on 28 U.S.C. § 1254(1). This request is unopposed.

Background

This is a case brought on behalf of Dr. Elizabeth Brokamp, a Virginia-based and licensed professional counselor whose practice is exclusively online and who wishes to provide talk therapy to clients located in New York. She cannot do so because New York makes such cross-border practice a felony unless Dr. Brokamp first obtains a New York license. Dr. Brokamp cannot practically become licensed in every state where her clients might visit or relocate, as maintaining so many licenses would be both costly and time-consuming. As a result, she was forced to terminate her relationship with a client who moved to New York, and she was unable to work with another former client who reached out to her seeking to resume therapy after moving to New York. Because New York's licensing law burdens Dr. Brokamp's ability to talk to her clients over the internet, Dr. Brokamp brought this

First Amendment lawsuit seeking declaratory and injunctive relief against the enforcement of the law.

The district court dismissed this case on the pleadings, and the Second Circuit affirmed. In its opinion, the Second Circuit assumed that talk therapy was “speech” rather than “conduct.” App. A. at 22. The court then determined that the correct level of scrutiny was intermediate because, under this Court’s recent decision in *City of Austin v. Reagan National Advertising*, 142 S. Ct. 1464 (2022), regulations of speech are not content-based so long as they define speech according to its purpose rather than its content. App. A. at 24–25; 30–31. The court went on to hold that the challenged law survives intermediate scrutiny on the basis of “the record,” by which the court meant legislative history, the accuracy of which Dr. Brokamp had disputed. App. A. 32.

Reasons Why an Extension of Time Is Warranted

Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case because counsel have conflicting obligations during the relevant time period:

- Summary judgment briefing in South Carolina and Pennsylvania state trial courts, as well as the District of Columbia federal court;
- Motion to dismiss briefing in California and District of Columbia federal courts;
- Depositions in Georgia, South Carolina, and Delaware throughout August;
- Briefing on a Ninth Circuit appeal in September;
- An amicus brief due September 20;

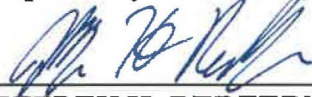
- Vacations: August 4–20, August 11–18, August 23–27, September 21–22, and September 25–October 3

Conclusion

Applicant requests that the time to file a petition for writ of certiorari in the above-captioned case be extended 60 days to and including Monday, October 30, 2023.

August 4, 2023

Respectfully submitted,



JEFFREY H. REDFERN

Counsel of Record

ROBERT J. MCNAMARA

INSTITUTE FOR JUSTICE

901 North Glebe Road, Suite 900

Arlington, Virginia 22203

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(703) 682-9320

Counsel for Applicant