No. _____

In the Supreme Court of the United States

HICKORY HEIGHTS HEALTH AND REHAB, LLC; CENTRAL ARKANSAS NURSING CENTERS, INC.; NURSING CONSULTANTS, INC.; AND MICHAEL MORTON,

Applicants,

v.

YASHIKA WATSON, AS GUARDIAN OF THE PERSON AND ESTATE OF ZEOLA ELLIS III.

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Eighth Circuit:

1. Pursuant to Supreme Court Rule 13.5, Applicants respectfully request a 60-day extension of time, to and including November 2, 2025, within which to file a petition for a writ of certiorari. The Arkansas Court of Appeals issued an opinion on November 13, 2024. A copy of that opinion is attached as Exhibit A. On February 26, 2025, the Court of Appeals granted rehearing, withdrew its November 13 opinion, and issued a substitute opinion. A copy of the substitute opinion is attached as Exhibit B. The Arkansas Supreme Court denied review over the dissent of Justices Brionni and Wood on June 5, 2025. A copy of the dissenting opinion from denial of Petition for Review is attached as Exhibit C. This Court's jurisdiction would be invoked under 28 U.S.C. § 1257(a).

2. Absent an extension, a petition for a writ of certiorari would be due on September 3, 2025. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This case presents exceptionally important questions about the correct interpretation of the Federal Arbitration Act and Spending Clause legislation. At stake is whether, unless Congress unambiguously provides otherwise, a law enacted pursuant to Congress's spending power operates solely as a condition on the receipt of federal funds enforceable, by the federal government, and not as an exercise of sovereign authority. The answer to that question has sweeping implications for the enforceability of arbitration agreements in the long-term care context, for the correct interpretation of Spending Clause legislation more broadly, and for the balance of authority between federal agencies, private parties, and the courts.

4. In 2015, CMS initiated notice-and-comment rulemaking to revise the requirements for LTC facilities to participate in the Medicare and Medicaid programs. *See* Reform of Requirements for Long-Term Care Facilities, 80 Fed. Reg. 42,168, 42,168–69 (proposed July 16, 2015). The reforms were intended to "improve the quality of life, care, and services in LTC facilities, optimize resident safety, reflect current professional standards, and improve the flow of the regulations" in light of "evidence-based research . . . [that] enhanced [CMS's] knowledge about resident safety, health outcomes, individual choice, and quality assurance and performance improvement." *Id.* at 42,169. While acknowledging the potential benefits of arbitration, CMS expressed concern that LTC facilities' "superior bargaining power could result in a resident feeling coerced into signing

the agreement," that residents might waive judicial remedies without full understanding, and that the prevalence of pre-dispute arbitration agreements "could be detrimental to residents' health and safety." *Id.* at 42,211. CMS therefore proposed limits on the use of arbitration agreements, including requirements that facilities explain them in an understandable manner and refrain from making them a "condition of admission, readmission, or the continuation of [one's] residence." *Id.* It also solicited comments on whether binding arbitration agreements should be prohibited altogether for nursing home residents. *Id.*

5. On October 4, 2016, after an extended comment period, CMS issued the final version of the rule, which prohibited LTC facilities from entering into pre-dispute binding arbitration agreements with residents or their representatives. *See* Reform of Requirements for Long-Term Care Facilities, 81 Fed. Reg. 68,688, 68,690 (Oct. 4, 2016). Northport Health Services of Arkansas, LLC, and other LTC facilities challenged the rule as unlawful, arguing in part that it violated the FAA, 9 U.S.C. § 1 *et seq.*, by prohibiting arbitration agreements expressly permitted by the statute.

6. The Eighth Circuit rejected that challenge. In *Northport Health Services v. HHS*, the Eighth Circuit held that CMS's arbitration rule does not conflict with the FAA because it "does not invalidate or render unenforceable any arbitration agreement" but instead merely "establishes the conditions for receipt of federal funding through the Medicare and Medicaid programs." *Northport Health Servs. of Ark., LLC v. U.S. Dep't of Health & Hum. Servs.*, 14 F.4th 856, 868 (8th Cir. 2021).

7. In the proceedings below, the Arkansas courts broke sharply with the Eighth Circuit. In *Hickory Heights Health & Rehab v. Watson*, the Arkansas Court of Appeals held that an arbitration agreement obtained in violation of the CMS rule is "illegal" and therefore unenforceable. *Hickory Heights Health & Rehab, LLC v. Watson*, 2025 Ark. App. 133, 10-11, *reh'g denied* (Apr. 2, 2025), *review denied*, 2025 Ark. 111 (2025). The Arkansas Supreme Court denied review, but in dissent Justice Bronni (joined by Justice Wood) stressed that the Court of Appeals' approach "badly misapplies federal law and creates a circuit split that, absent this court's correction, is likely to be resolved by the United States Supreme Court." *Watson*, 2025 Ark. 111, at 1 (Bronni, J., dissenting from denial of review).

8. Applicants respectfully request an extension of time to file a petition for a writ of certiorari. The undersigned counsel was very recently retained on this matter. A 60-day extension would allow counsel sufficient time to fully examine the decision's consequences, research and analyze the issues presented, and prepare the petition for filing.

Wherefore, Applicants respectfully request that an order be entered extending the time to file a petition for a writ of certiorari to and including November 2, 2025.

Dated: August 22, 2025

Respectfully submitted,

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Applicants make the following disclosures:

Hickory Heights Health and Rehab, LLC is not a publicly held corporation and no publicly held corporation has any interest in it.

Central Arkansas Nursing Centers, Inc. is not a publicly held corporation and no publicly held corporation has any interest in it.

Nursing Consultants, Inc. is not a publicly held corporation and no publicly held corporation has any interest in it.

Dated: August 22, 2025

Andrew T. Tutt

Counsel for Applicants