No.

In the Supreme Court of the United States

HEATHER SWANSON AND ONEIDA HEALTH, LLC,

Petitioner(s),

v.

MIKE HILGERS, NEBRASKA ATTORNEY GENERAL, ET AL.,

Respondent(s).

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

APPLICATION TO THE HONORABLE BRETT MICHAEL KAVANAUGH FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF NEBRASKA

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

Pursuant to Supreme Court Rule 13.5, Petitioners Heather Swanson and Oneida Health, LLC, respectfully request an extension of time of **30 days** to file their Petition for Writ of Certiorari in this Court up to and including **December 20, 2025**. Pursuant to Supreme Court Rule 29.6, Petitioners state that Oneida Health, LLC, has no parent corporations and no publicly held corporation holds any stock in the Petitioner.

Petitioners will seek review of a judgment of the United States Court of Appeals for the Eighth Circuit, filed August 22, 2025, attached as Exhibit 1. Petitioners did not seek rehearing. This means a Petition is presently due on November 20, 2025. This application for an extension of time is filed more than ten days prior to that date. This Court has jurisdiction under 28 U.S.C. § 1254.

This case involves a Fourteenth Amendment challenge to Nebraska's Certified Nurse Midwifery Practice Act, which makes it a felony offense for a certified nurse midwife (CNM) to attend a home birth in Nebraska. Thus, a woman who wishes to give birth at home in Nebraska must do so alone, plainly making the process riskier than it would be with a midwife present. Petitioner Heather Swanson, Doctor of Nursing Practice, is a CNM who lives and practices midwifery in Nebraska. Despite her decades of midwifery experience, she is forbidden from attending home births in her state, under threat of criminal prosecution. This prohibition is especially troubling for religious minorities—Dr. Swanson lives in a heavily Amish area, and she

regularly turns her neighbors away for midwifery services. Those women, due to their personal preferences and religious beliefs, go on to labor and give birth at home without any medical assistance.

Dr. Swanson, along with her company Oneida Health, filed suit in the District Court of Nebraska challenging the provision. The District Court found that the regulation survived rational basis review. It referenced a supervision requirement for CNMs that was previously upheld as rationally connected to improving the quality of midwifery care, and it said "[t]hat same logic applies here." It did not explain or address how both a supervision standard and a complete ban on care could advance a safety interest in the same way.

The Eighth Circuit affirmed, with similarly sparse reasoning, devoting only two sentences to how the law was rationally related to state interests. First, it stated that the law could further an interest in making sure "back-up assistance and emergency facilities" are available for newborn care. But recall that the law not only allows but *encourages* women to give birth at home without any medical assistance at all—by outlawing any other home birth option. The Eighth Circuit did not address this. Second, the court stated that the requirement that midwives perform duties under the supervision of a physician could rationally further an interest in patient safety. But again, it did not address that midwives are barred from home births *even with a supervising physician present*.

The District Court and Eighth Circuit's brusque dismissals of the challenge of a law that endangers women as "rationally related" to safety shows the impossible

standard that rational basis cases face. Even when applying the laxest formulations of rational basis review, the Court has still required a logical connection between a stated interest and the challenged law. *Cf. Romer v. Evans*, 517 U.S. 620, 632 (1996) ("[E]ven in the ordinary equal protection case calling for the most deferential of standards, we insist on knowing the relation between the classification adopted and the object to be attained."). But neither court here addressed Dr. Swanson's argument that the connection between the stated health interests and the law is not rational. Both lower courts erred when they dismissed—at the more lenient 12(b)(6) phase—Dr. Swanson's case without truly engaging in the merits of her argument.

Good cause exists for the requested extension. Petitioners' counsel has a substantial workload between now and the current due date of the petition. The obligations of counsel include a petition for writ of certiorari at this Court, substantial discovery obligations, and various work-related cross-country travel. Further, Petitioners' counsel is employed by a nonprofit public interest foundation where the caseload is high and the resources are limited. Petitioners therefore request an extension to allow counsel to fully research the issues presented and draft an appropriate petition for writ of certiorari for the Court. The 30-day extension will work no hardship on any party, and no action is pending that could be adversely affected by the requested extension of time. Petitioners have requested no previous extension from this Court.

For the foregoing reasons, Petitioners request that the Court grant an extension of 30 days, up to and including **December 20, 2025**, within which to file a Petition for Writ of Certiorari.

DATED: October 9, 2025.

Respectfully submitted,

/s/ Joshua Polk

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CERTIFICATE OF SERVICE

A copy of this application was served via email and U.S. Mail to counsel listed below in accordance with Supreme Court Rules 22.2 and 29.3:

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