No. 25A-__

IN THE

Supreme Court of the United States

VILLAGE OF SCARSDALE, NEW YORK,

Applicant,

v.

BESSENT, ET AL.,

Respondents.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

TO THE HONORABLE SONIA SOTOMAYOR, ASSOCIATE JUSTICE AND CIRCUIT JUSTICE FOR THE SECOND CIRCUIT:

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, applicant Village of Scarsdale, New York, respectfully requests a 60-day extension of time, to and including January 10, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case. Rule 13.5 requires an application for extension of time to be filed with the Clerk "at least 10 days before the petition is due, except in extraordinary circumstances." Extraordinary circumstances are present here; the undersigned counsel of record suffered an unexpected death of a close family member on October 25, 2025, delaying the filing of this Application.

The Second Circuit entered judgment on August 13, 2025. Unless extended, the time to file a petition for a writ of certiorari will expire on November 11, 2025. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). Copies of the lower court's opinion and its order entering judgment are attached as Exhibits A and B, respectively.

1. From its 1954 codification until June of 2019, donors were not required to reduce their Section 170 deductions by any amount of federal, state, or local tax incentives. The courts agreed—including the Supreme Court—as did Congress, Treasury, and the IRS.

Relying upon well settled case law, the fact that Section 170 had been amended myriad times without relevant change, and the presence of over 100 similar state programs that had been established across the country, Village of Scarsdale enacted its charitable gifts reserve fund and authorized a related real property tax credit for taxpayers contributing to the fund. Any owner of real property located within Scarsdale who makes an unrestricted charitable monetary contribution to the Scarsdale Fund may claim a credit against their Scarsdale property tax equal to 95 percent of the donation to the Scarsdale Fund. The remaining five percent of the contribution, no matter how large in amount, remains freely available for Scarsdale to use. As an example, a Scarsdale resident who owes $10,000 in Scarsdale property tax and contributes $10,000 to the Scarsdale Fund will end up paying $10,500 to Scarsdale ($10,000 in charitable contributions to the Scarsdale Fund plus $500 in property taxes after accounting for property tax credits). The additional $500

represents more revenue to Scarsdale that it can use to provide public services to its residents. Residents who made a charitable contribution to the Scarsdale Fund in 2018 were entitled to a $10,000 federal charitable deduction under Section 170. 26 U.S.C. § 170(a), (c)(1). This federal charitable deduction could potentially reduce the resident's taxable income and resulting federal tax burden. In 2018, the Scarsdale Fund received over $500,000 in charitable contributions. As a result, Scarsdale collected additional revenue of $25,000 that it would not have collected absent the Fund.

2. The IRS, however, disliked how contributions to Scarsdale's fund, as well as contributions to other similar state and municipal funds, interacted with a 2017 revision to a completely different, recently-amended provision of the Internal Revenue Code—Section 164. Anticipating litigation, the IRS proposed and then finalized a fighting regulation—the 2019 Final Rule—purporting to interpret Section 170 as denying a deduction attributable to certain, but not all, tax benefits that a donor may receive, notwithstanding that Congress made no relevant changes to Section 170 when it amended Section 164. The IRS did so hoping that courts could be persuaded of some "ambiguity" in Section 170 that would require judicial deference to the IRS's new interpretation under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

Scarsdale challenged the 2019 Final Rule under the Administrative Procedure Act ("APA"), arguing that the regulation finalized by the IRS was contrary to Section

170 and arbitrary and capricious. The district court relied on *Chevron* to find that the 2019 Final Rule was valid.

But *Chevron* has been overruled, and judicial deference to agency interpretations of statutes, a "judicial invention that required judges to disregard their statutory duties[,]" is no longer the law. *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2249 (2024) (overruling *Chevron*); *see also id.* at 2261 (holding that "agency interpretations of statutes—like agency interpretations of the Constitution—are *not* entitled to deference.") (emphasis in original). Instead, "in an agency case as in any other . . . even if some judges might (or might not) consider the statute ambiguous, there is a best reading all the same—the reading the court would have reached if no agency were involved." *Id.* at 2266 (cleaned up).

The Second Circuit, however, misapplied this Court's dictate in *Loper Bright* to find the "best reading" of the statute at issue—here, Section 170. The Second Circuit affirmed the district court's decision upholding the 2019 Final Rule.

3. The petition for a writ of certiorari will demonstrate that the Second Circuit misapplied traditional tools of statutory interpretation as well as this Court's dictate in *Loper Bright*. While the Second Circuit paid lip service to *Loper Bright*, the court ended up fighting the plain language of Section 170 instead of determining the "best reading." The Second Circuit acknowledged Section 170 does not define "contribution or gift," then imported an "implicit quid pro quo principle" to treat state credits as consideration that vitiates donative intent. *Loper Bright* insists that courts identify the statute's fixed meaning at enactment. Recognizing this problem, the

Second Circuit tried to draw a distinction between the types of tax benefits that one can receive in exchange for a charitable contribution, but nothing in Section 170's text draws the line between tax credits or tax deductions. *Loper Bright* rejects adopting "permissible" constructions that rest on pragmatics rather than the statute's language and structure. Even though the Second Circuit recognized that its review "begins with the bedrock principle that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress," the Second Circuit ignored whether Section 170 delegates authority to the IRS to issue the regulation that Scarsdale challenged.

The Second Circuit's decision in this case reveals a circuit split in how courts are applying the mandate of *Loper Bright*. Some circuits (like the Second Circuit) have afforded deference to agency interpretations without independently determining the best reading of the statute. *See Lopez v. Garland*, 116 F.4th 1032 (9th Cir. 2024); *Tennessee v. Becerra*, 131 F.4th 350 (6th Cir. 2025); *United Natural Foods, Inc. v. NLRB*, 138 F.4th 937 (5th Cir. 2025). Other circuits have independently determined the best reading of the statute, and proceeded to either uphold the agency's determination as meeting that reading, or overturned the agency if its determination did not meet the standard. *See 3M Co. v. Commissioner*, _ 4th _, 2025 U.S. App. LEXIS 25418 (8th Cir. Oct. 1, 2025); *Vanda Pharmaceuticals, Inc. v. FDA*, 123 F. 4th 513 (D.C. Cir. 2024).

4. Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. Undersigned counsel has, and has had, several other

matters with proximate due dates, including: a pretrial memorandum in *Harness Rock, LLC v. Commissioner*, United States Tax Court Dkt. No. 29331-21, on August 18, 2025; motions in limine in *Harness Rock*, on August 27, 2025; a status report in *Arden Row Assets, LLC v.* Commissioner, United States Tax Court Dkt. No. 3817-23, on August 29, 2025; a response to a motion for partial summary judgment in *Quorum Holdings, LLC v.* Commissioner, United States Tax Court Dkt. No. 20908-21, due August 29, 2025; responses to motions in limine in *Harness Rock*, due September 2, 2025; a weeklong trial in the U.S. Tax Court in *Harness Rock*, beginning September 8, 2025; a response to a motion to take deposition in *Spade Rock, LLC v. Commissioner*, United States Tax Court Dkt. No. 20950-21, et al., due October 1, 2025; a response to a motion to consolidate in *Spade Rock*, due October 7, 2025; a response to a motion to take deposition in *Spade Rock*, due October 24, 2025; a status report in *Spade Rock* due November 24, 2025; a deadline to file dispositive motions and to identify expert witnesses in *Spade Rock*, on December 8, 2025; a deadline to file opening expert reports in *Spade Rock*, on December 19, 2025; an opening brief in *Harness Rock*, due January 30, 2026; a pretrial memorandum in *Spade Rock* due February 20, 2026; a pretrial memorandum in *The Gap, Inc. v. Commissioner*, United States Tax Court Dkt. No. 19960-24, due March 2, 2026; a trial in *Spade Rock* beginning March 16, 2026; and a trial in *The Gap* beginning March 23, 2026.

For the foregoing reasons, the application for a 60-day extension of time, to and including January 10, 2026, within which to file a petition for a writ of certiorari in this case should be granted.

November 5, 2025

Respectfully submitted.

/s/ Daniel A. Rosen
DANIEL A. ROSEN
Counsel of Record
Baker & McKenzie LLP
452 Fifth Avenue
New York, NY 10018
(212) 626-4272