



June 1, 2022

Hon. Scott S. Harris
Clerk of the Court
Supreme Court of the United States
One First Street, N.E.
Washington, DC 20543-0001

Re: No. 21-1431, *Kerr v. Planned Parenthood South Atlantic, et al.*

Dear Mr. Harris:

I write in response to the letter that Respondents submitted earlier today to request a 31-day extension of time within which to file their brief in opposition. Although counsel for Petitioner routinely consents to such requests, Petitioner respectfully opposes this request for the reasons explained below.

On May 6, Petitioner Robert Kerr filed his petition for a writ of certiorari as well as a motion to expedite consideration of the petition. Expedited consideration of the petition is appropriate because, four days before the filing of the petition, the Court granted certiorari in *Health and Hospital Corporation of Marion County v. Talevski*, No. 21-806, to answer a question very similar to the first question presented here. Petitioner respectfully suggests that it would be appropriate to grant the present petition, set a briefing schedule for this case that mirrors the briefing schedule in *Talevski*, and schedule oral arguments for both cases on the same day this fall.

As explained at greater length in the motion to expedite, such consolidation is warranted. The instant petition raises the same underlying private-right-of-action question as *Talevski* but, unlike *Talevski*, implicates a 5-2 circuit split on an acknowledged, “important and recurring” question: whether individual Medicaid recipients have a privately enforceable right to demand a provider of their choice. *Gee v. Planned Parenthood of Gulf Coast, Inc.*, 139 S. Ct. 408, 409 (2018) (Thomas, J., dissenting from denial of certiorari). The instant petition also involves an important question on which the lower courts are squarely split 3-1 and which may remain unresolved after *Talevski*: the meaning of the Court’s decision in *O’Bannon v. Town Court Nursing Center*, 447 U.S. 773, 785 (1980). For these reasons, six amicus briefs—including one submitted by 128 Members of Congress and another on behalf of 16 states—were filed in support of this Court granting the petition and hearing this case at the same time as *Talevski*.

Hon. Scott S. Harris
June 1, 2022
Page 2

The Court distributed Petitioner's motion to expedite for consideration at the Conference that will take place tomorrow, June 2, 2022. Petitioner then filed an amended motion to expedite consideration on May 27, 2022, requesting that the Court distribute the petition for consideration at the June 23, 2022 Conference immediately upon receipt of Respondents' brief in opposition on or before June 10, 2022.

Now, only one day before the Conference where the Court will consider Petitioner's request to expedite, Respondents request a 31-day extension of time in which to file their brief in opposition. Granting that request would thwart the Court's ability to consider whether this case and *Talevski* should be considered together, as such an extension would result in Respondents filing their brief after the Court adjourns for the summer months.

Respondents will not be prejudiced by having to file their brief in opposition on June 10, 2022. After all, they will have had the full allotted time in which to file their brief, and this petition raises substantially the same issues and arguments raised the last time this case came before the Court in an appeal from the district court's preliminary injunction. *Baker v. Planned Parenthood S. Atl.*, 141 S. Ct. 550 (2020) (No. 19-1186). Accordingly, Petitioner respectfully requests that the Court summarily deny Respondents' request to delay the brief in opposition.

Sincerely,

John J. Bursch
Counsel for Petitioner

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