

No. \_\_\_\_\_

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

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CLARENCE COCROFT; and TRU SOURCE MEDICAL CANNABIS, L.L.C.,

*Applicants,*

v.

CHRIS GRAHAM, in his official capacity as the Commissioner of the Mississippi Department of Revenue, RILEY NELSON, in his official capacity as the Chief of Enforcement of the Mississippi Alcoholic Beverage Control Bureau; DOCTOR DANIEL P. EDNEY, in his official capacity as State Health Officer for the State of Mississippi Department of Health,

*Respondents.*

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

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To the Honorable Samuel Alito, as Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

In accordance with this Court’s Rules 13.5, 22, 30.2, and 30.3, Applicants Clarence Cocroft and Tru Source Medical Cannabis, L.L.C., respectfully request that the time to file their petition for a writ of certiorari be extended for 30 days, which would have the petition due Monday, March 24, 2025. The Fifth Circuit issued its opinion on November 22, 2024 (Exhibit A). Absent an extension of time, the petition would be due on February 20, 2025. The jurisdiction of this Court is based on 28 U.S.C. 1254(1). Respondents consent to the requested extension.

### **Judgment Sought to Be Reviewed**

This case implicates a novel First Amendment question—whether and to what extent this Court’s *Central Hudson* factors apply to commercial speech uttered by state-legal medical marijuana businesses. Plaintiffs-Applicants Clarence Cocroft and Tru Source Medical Cannabis, L.L.C., are a state-licensed medical marijuana dispensary in Mississippi. And Clarence would like to advertise Tru Source Medical Cannabis to eligible medical marijuana patients in Mississippi. But because Clarence operates a state-licensed medical marijuana dispensary, Mississippi law prohibits him from doing that.

Under Mississippi law, licensed medical-marijuana dispensaries are barred from engaging in virtually all variants of commercial speech. See Code Miss. R. 15-22:3.2.1. Clarence may not advertise Tru Source in “[b]roadcast or electronic media”—including but not limited to, radio, television, internet pop-up advertising, and social

media. *Id.* at -3.2.1(1). He may not advertise Tru Source in “[p]rint media,” including, but not limited to, newspapers. *Id.* at -3.2.1(2). Indeed, Clarence cannot advertise in any “media” at all—a term broadly defined by state law as “the communication channels through which we disseminate news, movies, education, promotional messages, and other data,” *id.* at -3.1.2(7), as well as “physical and online newspapers and magazines, television, radio, billboards, telephone, internet, fax, social media and billboards.” *Id.* Nor may Clarence promote Tru Source via text or email or through reviews, testimonies, or endorsements. *Id.* at -3.2.1(2). In sum, the Mississippi Department of Health imposes a complete prohibition on all forms of advertising not explicitly and specifically permitted by the Mississippi Medical Marijuana Act. Compare *id.* at -3.3.1–3.3.2, with Miss. Code Ann. § 41-137-41(1)(d)(x). All of this while the federal government has disavowed any enforcement of the Controlled Substances Act’s to state-legal medical marijuana businesses. See, *e.g.*, Consolidated Appropriations Act of 2024, Pub. L. No. 118-42, § 531, 138 Stat. 25, 174.

Clarence sued Mississippi’s regulators, alleging that the state’s near-categorical prohibition on commercial speech violates the First Amendment under this Court’s four-part *Central Hudson* test. The district court granted the Respondents’ motion to dismiss, and the Fifth Circuit affirmed. In its ruling, the Fifth Circuit concluded that “the most natural reading of *Central Hudson*’s first prong makes quick work of this case: Marijuana transactions are illegal in every state by virtue of federal law, so no commercial speech proposing such transactions ‘concern[s] lawful

activity.” Slip op. at 6 (quoting *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557, 566 (1980)).

Under the panel’s application of *Central Hudson*, whether Mississippi may ban commercial speech from medical-marijuana businesses—even as it created and operates a state-regulated marketplace to facilitate medical-marijuana transactions—was “constitutionally irrelevant.” *Id.* at 9. As the court reasoned, *Central Hudson*’s first prong—which asks whether a commercial transaction is legal—is unconcerned with the transaction’s legality in the jurisdiction regulating the commercial speech at issue. Rather, the panel treated *Central Hudson*’s first prong as “a status-based inquiry,” *id.* at 6–9, and cited marijuana’s nominally illegal status under *federal* law. Identifying this as a “threshold” determination, *id.* at 2, 5, the court thus concluded that Mississippi’s ban was (categorically) permissible, as the *Central Hudson* inquiry ought not advance to the remaining prongs.

Applicants moved for an extension of time to submit a petition for rehearing, but the motion was denied. Accordingly, no petition for rehearing was filed.

### **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. In addition to this case, undersigned counsel at the Institute for Justice have pressing obligations that are pending, including litigation in:

- *Martinez v. City of Lantana*, Fla. 4th Dist. Ct. App. No. 4D2024-1187;
- *Wilson v. Midland County, Texas*, S. Ct. No. 24-672;
- *Bowers Development, LLC v. Oneida County Industrial Development Agency, et al.*, S. Ct. No. 24-670;

- *Opternative, Inc. v. South Carolina Board of Medical Examiners, et al.*, S.C. Sup. Ct. No. 2024-001321.

Applicants have not previously sought an extension of time from this Court, and the application is being filed more than 10 days before the petition is due.

### **Conclusion**

Applicants request that the time to file a petition for writ of certiorari in the above-captioned case be extended 30 days to and including Monday, March 24, 2025.

January 16, 2025

Respectfully submitted,



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