

No. _____

In the Supreme Court of the United States

CITY OF OAKLAND, A MUNICIPAL CORPORATION, Petitioner,

v.

WELLS FARGO & CO. AND WELLS FARGO BANK, N.A., Respondents.

**UNOPPOSED APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

**To the Honorable Elena Kagan, Associate Justice of the Supreme Court of
the United States and Circuit Justice to the Ninth Circuit:**

Petitioner City of Oakland, pursuant to Rule 13.5 of the Rules of this Court, hereby requests a 30-day extension of time within which to file a petition for a writ of certiorari up to and including Thursday, January 27, 2022.

The judgment for which review is sought is the en banc decision of the Ninth Circuit in *City of Oakland v. Wells Fargo & Co.*, Case No. 19-15169, 14 F.4th 1030 (9th Cir. 2021) (en banc), issued on September 28, 2021 (attached as Exhibit 1). On November 2, 2021, the Ninth Circuit stayed its mandate pending disposition of a petition for certiorari in the case (attached as Exhibit 2). The case involves an interpretation of the proximate cause pleading requirement of the Fair Housing Act (FHA), 42 U.S.C. § 3601, et seq. The relevant portions of the Act are attached as Exhibit 3.

This Court's jurisdiction over a timely filed petition for certiorari

in this case rests on 28 U.S.C. § 1254(1). Absent the extension sought here, a petition for a writ of certiorari would be due December 28, 2021. As indicated above, this application seeks a 30-day extension of time up to and including Thursday, January 27, 2022. This application is being filed more than 10 days prior to the current due date.

In *Bank of America, Inc. v. City of Miami*, 137 S.Ct. 1296 (2017), this Court asked the lower courts to “define, in the first instance, the contours of proximate cause under the FHA and decide how that standard applies to the City’s claims for lost property-tax revenue.” *Id.* at 1306. In contrast to that decision’s recognition of municipality standing to bring FHA lawsuits over diminished property taxes, as well as a host of other subsequent lower court decisions on the proximate cause issue, including the unanimous holding of the Eleventh Circuit that was subsequently vacated pursuant to *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), the Ninth Circuit’s en banc ruling held that the FHA was not a statute that supports proximate cause for injuries that are “further downstream” from the most directly discriminated against borrowers. *City of Oakland*, 14 F.4th at 1036. It further held that the regression analyses pleaded by the City only showed a likelihood, rather “automatically result[ed] in decreased property values and then in decreased tax revenue, *id.* at 1040, seeming to impose a heightened pleading requirement in FHA cases.

These two holdings present important questions about the ability of municipalities, consistent with congressional intent, to have a role in enforcing the

FHA, which this Court has recognized “was enacted to eradicate discriminatory practices within a sector of our Nation's economy.” *Texas Dep’t of Hous. & Cmtys. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 539 (2015), and held that “plaintiffs similarly situated to the City have a cause of action under the FHA” and that the “the City’s financial injuries fall within the zone of interests that the FHA protects.” *City of Miami*, 137 S. Ct. at 1303, 1304.

A 30-day extension of time is warranted because Counsel of Record is undergoing surgery on December 17, which will significantly limit the time available to complete the petition. In addition, Counsel of Record has the following responsibilities in other cases during the time that would otherwise have been used to prepare this petition:

- Oral argument on a motion for a preliminary injunction took place on November 22, 2021 in *Restoration Association of Florida, Inc. v. Brown*, No. 21-cv-263 (N.D. Fla.);
- a response to a motion to dismiss by one set of defendants was filed on November 26, 2021 and a merits reply brief and a stipulated record was filed on December 3 in *Winnett v. Frank*, No. 1:20-cv-01155 (W.D. Tex);
- an opposition to a motion to vacate was filed on November 29, 2021 in *Merlo v. Pristine Surgery Cntr.*, No. 18CECG03026 (Calif. Super. Ct.);
- a reply brief is due December 13, 2021 in *Brandt v. Pompa*, No. 2021-0497 (Oh. S. Ct.);

- a Brief in Opposition is due December 15, 2021 in *Edward D. Jones & Co. v. Anderson* (U.S. S. Ct.); and,
- an amicus brief is due December 22, 2021 in *City of Hoboken v. Exxon Mobil*, 21-2728 (3d Cir.).

The requested extension will not prejudice any party. Counsel for Respondents, Neal Kumar Katyal, has indicated his clients' consent to the requested extension in an email sent on December 9, 2021.

For the foregoing reasons, the City of Oakland requests a 30-day extension to file its petition for a writ of certiorari in this matter, which would make the petition due no later than January 27, 2021.

December 10, 2021

Respectfully submitted,

/s/ Robert S. Peck

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