

In the Supreme Court of the United States

CITY OF COSTA MESA

Petitioner,

v.

SOCAL RECOVERY, LLC, ET AL.,

Respondents.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.2 of the Rules of this Court, petitioner City of Costa Mesa respectfully requests a 58-day extension of time, to and including July 21, 2023, within which to file a petition for a writ of certiorari. The court of appeals entered its judgment on January 3, 2023, and denied rehearing en banc on February 23, 2023. Therefore, unless extended, the time within which to file a petition for a writ of certiorari will expire on May 24, 2023. This application is being filed at least 10 days before that date. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1). The opinion of the court of appeals (App. A, *infra*) is reported at 56 F.4th 802. The court's order denying rehearing (App. B, *infra*) is unreported.

Background

1. This case is one of an increasing number of cases across the country challenging municipal zoning regulations on the grounds they amount to disability discrimination against residents of group homes, particularly those offering transitional housing for individuals who have just left short-term alcohol and drug treatment. *See, e.g., Sailboat Bend Sober Living, LLC v. City of Fort Lauderdale*, 46 F.4th 1268, 1270-71 (11th Cir. 2022); *His House Recovery Residence, Inc. v. Cobb County*, 806 F. App'x 780, 781-82 (11th Cir. 2020) (per curiam); *Cornerstone Residence, Inc. v. City of Clairton*, 754 F. App'x 89, 90-91 (3d Cir. 2018).

2. The petition will raise an important question: When an entity that serves alcoholics and drug abusers sues the government claiming discrimination against the entity's clients on the basis of disability or handicap under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 *et seq.*, or the Fair Housing Act (FHA), 42 U.S.C. § 3601 *et seq.*, what proof must the entity present to establish that its clients are actually disabled?

Reasons for Granting an Extension of Time

The time to file a petition for a writ of certiorari should be extended for 58 days for the following reasons:

1. *This case presents an issue of nationwide importance on which the circuits disagree.* The ADA and the FHA define disability or handicap in nearly identical terms. One basis for establishing disability or handicap is to show that a physical or mental impairment substantially limits one or more of an individual's major life

activities. 42 U.S.C. §§ 3602(h)(1), 12102(1)(A). This Court has held repeatedly that an individual plaintiff suing for discrimination must establish this substantial limitation of major life activities on an individualized basis. *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555, 567 (1999); *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 483 (1999), *superseded by statute on other grounds*, ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553; *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 198 (2002), *superseded by statute on other grounds*, ADA Amendments Act of 2008, *supra*. This rule has frequently been applied when individuals directly claim disability discrimination on the basis of alcoholism or drug abuse. *See, e.g., Ames v. Home Depot U.S.A., Inc.*, 629 F.3d 665, 670-71 (7th Cir. 2011); *Burris v. Novartis Animal Health U.S., Inc.*, 309 F. App'x 241, 249-51 (10th Cir. 2009); *Bailey v. Ga.-Pac. Corp.*, 306 F.3d 1162, 1167-68 (1st Cir. 2002).

2. This Court has never addressed the question of what an entity that serves alcoholics or drug abusers suing for discrimination based on its clients' alleged disabilities needs to show to establish that its clients' impairments substantially limit their major life activities. In this vacuum, the circuits have taken inconsistent approaches, none of them compliant with this Court's holdings in *Albertson's*, 527 U.S. at 567; *Sutton*, 527 U.S. at 483; and *Toyota*, 534 U.S. at 198. *See, e.g., Harmony Haus Westlake, L.L.C. v. Parkstone Prop. Owners Ass'n*, 851 F. App'x 461, 463-65 (5th Cir. 2021) (per curiam) (relying on direct testimony by some of the entity's clients); *Lakeside Resort Enters., LP v. Bd. of Supervisors of Palmyra Twp.*, 455 F.3d 154, 156 n.5 (3d Cir. 2006) (citing, inter alia, *United States v. S. Mgmt. Corp.*, 955 F.2d 914,

920-23 (4th Cir. 1992), which held that alcoholics and drug abusers are automatically considered to be handicapped). In the present case, the Ninth Circuit held that individualized proof is not required for a group home plaintiff:

Appellants need not provide individualized evidence of the “actual disability” of their residents. Rather, they can meet their burden by proffering admissible evidence that they have policies and procedures to ensure that they serve or will serve those with actual disabilities and that they adhere or will adhere to such policies and procedures.

App. A, *infra*, 56 F.4th at 814-15.

3. *The present case presents an ideal vehicle to address the question.* The Ninth Circuit overturned summary judgments granted for the City where plaintiffs had refused to produce in discovery, or to present in opposition to summary judgment, individualized evidence showing substantial limitation of their clients’ major activities. The case therefore presents, as a pure issue of law, what proof an entity must present, on summary judgment or at trial, to establish this type of disability discrimination claim.

4. *Additional time is needed to prepare the petition.* A 58-day extension would allow counsel sufficient time to fully examine the decision’s consequences, research and analyze the issues presented, prepare the petition for filing, and allow the client (including the city attorney and city council) sufficient time to review and comment on the draft petition. Counsel also have several other pending matters that will interfere with their ability to prepare and file the petition by May 24, 2023. In particular, the attorney with principal responsibility for researching and drafting significant portions of the petition has two other major appellate briefs due near the end of

May, and has a prior professional obligation to be out of the country from May 15 to 20.

Conclusion

For the foregoing reasons, the time to file a petition for a writ of certiorari in this matter should be extended for 58 days to and including July 21, 2023.

Respectfully submitted,



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May 3, 2023