No. _____

In the Supreme Court of the United States

CITY OF HUNTINGTON BEACH, et al.,
Applicants,

v.

GAVIN NEWSOM, et al.,
Respondents.

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

To the Hon. Elena Kagan, Circuit Justice for the Ninth Circuit

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PARTIES TO THE PROCEEDINGS AND RULE 29.6 DISCLOSURE STATEMENT

Applicants are the (1) City of Huntington Beach, a California Charter City and Municipal Corporation; (2) the Huntington Beach City Council; (3) Tony Strickland, the Mayor of Huntington Beach; and (4) Gracey Van Der Mark, the Mayor Pro Tem of Huntington Beach. Applicants were the plaintiffs in the district court and the appellants in the Ninth Circuit. None of the applicants are private corporations.

Respondents are (1) Gavin Newsom, in his official capacity as Governor of the State of California; (2) Gustavo Velasquez, in his official capacity as Director of the State of California Department of Housing and Community Development; (3) the California Department of Housing and Community Development; (4) Does, 1-50, inclusive; and (5) the Southern California Association of Governments. Respondents were the defendants in the district court and the appellees in the Ninth Circuit.

TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE OF THE NINTH CIRCUIT:

Pursuant to Rule 13.5, Applicants the City of Huntington Beach, et al., respectfully request a 30-day extension of time—up to and including August 20, 2025—in which to file its petition for a writ of certiorari to review a judgment of the United States Court of Appeals for the Ninth Circuit issued on October 30, 2024 (Apx.1a-4a). The Ninth Circuit denied Applicants' petition for rehearing en banc on April 21, 2025. (Apx.5a-6a) In the absence of an extension, Applicants have up to and including July 21, 2025, to file their petition. *See* S. Ct. Rules 13.3, 30.1. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

1. This case presents a question on which the Ninth Circuit has split with at least five other federal appellate courts. That question is whether a political subdivision, like a city, is an "arm of the state" for purposes of sovereign immunity and standing, and if so, is a per se rule barring a city from suing the State consistent with this Court's precedent, or rather must courts adopt a functional analysis looking to the relevant state law on political subdivisions and how that state law classifies the governmental function at issue? The Ninth Circuit below (Apx.1a-4a) continued to follow the per se rule it first set forth 45 years ago in *City of South Lake Tahoe v. California Tahoe*, 625 F.2d 231 (9th Cir. 1980), concluding that because the City of Huntington is a municipality, that automatically makes it an arm-of-the-state, and consequently unable to sue California Governor Gavin Newsom and other state actors in their official capacity. By contrast, the First, Second, Fifth, and Sixth Circuits have refused to adopt such a per se rule, instead opting for a functional analysis based on state law. *See, e.g., Exeter-West Greenwich Reg'l Schl. Dist. v. Pontarelli*, 788 F.3d 41 (1st Cir. 1986) (allowing a local public school district to bring First Amendment claims against the State); *Tweed-New Haven Airport authority v. Tong*, 930 F.3d 65, 72 (2d Cir. 2019) ("The view that subdivisions were broadly prevented from suing a state [has been] put to rest . . . ."); *Rogers v. Brockette*, 588 F.2d 1057, 1068 (5th Cir. 1979) (refusing to "hold that a municipality never has standing to sue the state of which it is a creature."); *South Macomb Disposal Authority v. Township of Washington*, 790 F.2d 500, 504 (6th Cir. 1986) (allowing a political subdivision to bring Fourteenth Amendment claims against a city); *United States v. State of Alabama*, 791 F.2d 1450 (11th Cir. 1986) (holding that a state university could bring Fourteenth Amendment

claims against the State). Moreover, the Ninth Circuit's holding cannot be squared with at least two of this Court's own precedents applying a functional test based on state law to whether a political subdivision is an arm-of-the-state. *See Regents of Univ of Cal. v. Doe*, 519 U.S. 425, 429 n.5 (1997) ("[The] federal question can only be answered after considering the provisions of state law that define the agency's character."); *McMillan v. Monroe Cty., Ala.*, 520 U.S. 781, 784-86 (1997) (applying a similar functional test in determining whether a county sheriff acted on behalf of the State or a political subdivision in performing certain duties under state law).

2. This case involves an attempt by the State of California to prefer a generalized policy preference for high-density housing over concrete local harms, evidenced by civil-engineer experts, to water supplies, air quality, protected wetlands, and the character of the City's beach community. California has enacted a high-density housing statutory scheme in its Regional Housing Needs Allocation (RHNA) Laws. These RHNA Laws require the City of Huntington—which has a protected coastline of unique wetlands—to increase its 81,000 units of housing stock by approximately 50% (or 40,000 new units) in just the next few years. The City Applicants recognize that untold environmental harms would result from applying these laws. But even worse, California regulations mandate that both Huntington and the other applicants make a public statement that they agree with these RHNA Laws and that the State's high-density housing goal justifies Huntington incurring these significant environmental harms. Applicants brought suit against Respondents alleging, among other things, violations of the First Amendment. The district court dismissed on the basis of *South Lake Tahoe*, and the Ninth Circuit affirmed. (Apx.1a-

4a.)

In affirming, the Ninth Circuit rejected the City's argument that it was not a political subdivision for purposes of standing. (Apx.2a.) Adhering to its per se analysis, and without any acknowledgement of this Court's or the other circuit's precedents mandating a functional analysis based on state law, it held that "[n]o matter how California categorizes charter cities, they remain subordinate political bodies, not sovereign entities." (Apx.3a). The Ninth Circuit then denied Applicants' petition for rehearing en banc, with at least one judge on the court requesting a vote on the matter. (Apx.6a.)

3. Applicants intend to file a petition for a writ of certiorari to resolve the circuit conflict and correct the Ninth Circuit's erroneous per se rule. Because the Ninth Circuit denied rehearing en banc on April 21, 2025, Applicants currently have up to and including July 21, 2025, to file their petition. They respectfully ask for a 30-day extension of time. Since the April 21, 2025 denial of rehearing en banc, undersigned counsel for the City Applicants have been engaged in substantive briefing in the California Court of Appeal in the City Applicants' related state court case. On May 5, 2025, Applicants filed their return to the State's and intervenor's petitions for writ of mandate in case nos. D085237 and D085238. And on July 1, 2025, the Applicants' appellant's opening brief is due in case no. D084747. Undersigned counsel John Reeves, furthermore, is presently preparing a brief to be filed in the Supreme Court of Missouri on July 9, 2025, in the case of *Apperson v. Kaminsky*, No. SC101020. A 30-day extension of time will enable counsel to devote the time necessary to filing the petition.

Accordingly, Applicants respectfully request an extension of time up to and including August 30, 2025, in which to file their petition for a writ of certiorari.

Respectfully submitted,

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