

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

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

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THOMAS GEARING and  
DANIEL GEARING,

*Petitioners,*

v.

CITY OF HALF MOON BAY,

*Respondent.*

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On Petition for Writ of Certiorari  
to the U.S. Ninth Circuit Court of Appeals

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**UNOPPOSED APPLICATION TO THE HONORABLE ELENA KAGAN  
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE  
A PETITION FOR A WRIT OF CERTIORARI TO  
THE U.S. NINTH CIRCUIT COURT OF APPEALS**

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

Pursuant to Supreme Court Rule 13.5, Petitioners Thomas Gearing and Daniel Gearing respectfully request an extension of time of 45 days to file their Petition for Writ of Certiorari in this Court, up to and including June 1, 2023.

### **JUDGMENT FOR WHICH REVIEW IS SOUGHT**

The judgment for which review is sought is *Gearing v. City of Half Moon Bay*, No. 21-16688 (Dec. 8, 2022) (attached as Exhibit 1). The U.S. Ninth Circuit Court of Appeals denied Petitioners' timely motion for rehearing on January 17, 2023 (attached as Exhibit 2). This means a Petition is presently due on April 17, 2023. This application for an extension of time is filed more than ten days prior to that date.

### **JURISDICTION**

This takings case arises under the Fifth Amendment and 42 U.S.C. § 1983. The federal district court had jurisdiction under 28 U.S.C. § 1331 but abstained under the purported authority of *R.R. Comm'n of Texas v. Pullman Co.*, 312 U.S. 496 (1941), and the Ninth Circuit affirmed. The question to be presented is whether, in light of *Knick v. Township of Scott*, 139 S.Ct. 2162 (2019), federal courts may invoke the prudential *Pullman* abstention doctrine to require takings claimants to pursue state court proceedings in which the federal takings claims are inextricably intertwined. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## REASONS FOR GRANTING EXTENSION OF TIME

Good cause exists for the requested extension. Petitioners' undersigned Counsel of Record did not represent Petitioners in this case in the district court or court of appeals and thus requires sufficient time to be familiarized with the relevant legal issues and record. Undersigned counsel is also on the litigation team for *Tyler v. Hennepin County*, docket no. 22-166, which is currently being briefed and is scheduled for oral argument on April 26, 2023. This is Petitioners' first request for an extension of time. Counsel for Defendant-Appellee below does not oppose this request.

## CONCLUSION

For the foregoing reasons, Petitioners request that this Court grant an extension of 45 days, up to and including June 1, 2023, within which they may file a petition for writ of certiorari.

DATED: February 8, 2023.

Respectfully submitted,



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