
In the Supreme Court of the United States

CITY OF HUNTINGTON BEACH, et al.,
Applicants,

v.

GAVIN NEWSOM, et al.,
Respondents.

**Application for a Further 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**

John M. Reeves
REEVES LAW LLC
7733 Forsyth Blvd.
Suite 1100--#1192
St. Louis, MO 63105
314-775-6985
reeves@appealsfirm.com

Michael J. Vigliotta
Counsel of Record
CITY ATTORNEY—CITY OF
HUNTINGTON BEACH
2000 Main Street, P.O. Box 190
(t) 714-536-5555
(f) 714-374-1590
MVigliotta@surfcity-hb.org

Timothy M. Kowal
KOWAL LAW GROUP, APC
2901 W. Coast Highway,
Suite 200
Newport Beach, CA 92663
(949) 676-9989
tim@kowallawgroup.com

Counsel for Applicants City of Huntington Beach, et al.

**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 for a further 30-day extension of time—up to and including September 19, 2025—in which to file their 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)¹. The Ninth Circuit denied Applicants’ petition for rehearing en banc on April 21, 2025. (Apx.5a-6a). On June 30, 2025, undersigned counsel sought and was granted an initial 30-day extension of time, up to and including August 20, 2025, to file their petition. This Court’s jurisdiction would be invoked under 28 U.S.C. § 1254(1).

Case Background

1. As explained in the initial application, 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

¹ All record references are to the appendix filed with the first application for an extension of time.

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. Brockett*, 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.)

Basis for a Second Extension

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. As noted above, Justice Kagan on July 7, 2025, granted them a 30-day extension of time, up to and including August 20, 2025. Applicants' principal appellate counsel, Timothy M. Kowal, fulfilled and continues to fulfill substantial appellate obligations in July 2025 and through the current due date of August 20, 2025. Just before a prepaid family vacation from July 28 through August 1, Mr. Kowal substantially revised the Appellant's Opening Brief in *Gurovich v. West Hills Surgical Center*, no. B342789 (Cal. Ct. App.) filed July 22, 2025; and the Appellant's Opening Brief in *Ossur Americas, Inc. et al. v. Lasso et al.*, no. G065028 (Cal. Ct. App.) filed on July 23, 2025. Even during his family vacation, Mr. Kowal continued to work on this case, drafting the Appellant's Opening Brief in the related state court appeal in *People of California ex rel. Rob Bonta et al. v. City of Huntington Beach et al.*, no. D084749 (Cal. Ct. App.) filed on July 31, 2025. Mr. Kowal is also scheduled to give oral argument for Applicants in the further related state appellate court writ proceedings in *People of California ex rel. Rob Bonta et al. v. City of Huntington Beach et al.*, no. D085237 (Cal. Ct. App.) on August 13, 2025, at 9:00 a.m. in San Diego. Mr. Kowal is also lead appellate counsel in the Covid vaccine-mandate case *Amosun Akala, et al., v. Los Angeles Unified Sch. Dist.*, no. B340852 (Cal. Ct. App.), in which the Appellant's Opening Brief is due in August 2025.

4. Appellants' special Supreme Court counsel, John M. Reeves, who did not

participate in the proceedings below, also has substantial appellate obligations between now and the current due date of August 20, 2025. Specifically, Mr. Reeves just filed a merits brief in the Eighth Circuit case of *Nsheiwat v. Walmart*, No. 25-1506, on August 6, 2025; and an amicus brief in the Missouri Court of Appeals, Eastern District, case of *Graham v. Givaudan*, No. ED113318, on August 5, 2025. Mr. Reeves also has a reply appellate brief due on August 13, 2025, in the Missouri Court of Appeals, Eastern District, case of *State v. Townsend*, No. ED113093; a reply appellate brief due on August 14 in the Missouri Court of Appeals, Southern District, case of *State v. Cook*, No. SD38766; and a reply brief due on August 15, 2025, in the Missouri Court of Appeals, Eastern District, case of *Chu v. Nanna*, No. ED1133078. Mr. Reeves also anticipates filing, no later than August 15, 2025, an amicus brief in support of an upcoming motion to stay pending a petition for rehearing en banc in the Ninth Circuit case of *Epic v. Google*, No. 24-6256, as well as an amicus brief in support of the petition for rehearing in the same matter no later than August 25, 2025. In addition, Mr. Reeves has a merits brief due on August 20, 2025, in the Illinois Court of Appeals, Fifth District, case of *Statia v. Orlet*, No. 5-25-0133. Extending the time up to and including September 19, 2025, will enable counsel to devote the time necessary to writing and filing the petition.

Accordingly, Applicants respectfully request a further extension of time up to and including September 19, 2025, in which to file their petition for a writ of certiorari.

Respectfully submitted,

/s/ Michael J. Vigliotta

Michael J. Vigliotta
Counsel of Record
CITY ATTORNEY—CITY OF
HUNTINGTON BEACH
2000 Main Street, P.O. Box 190
(t) 714-536-5555
(f) 714-374-1590
MVigliotta@surfcity-hb.org

Timothy M. Kowal
KOWAL LAW GROUP, APC
2901 W. Coast Highway,
Suite 200
Newport Beach, CA 92663
(949) 676-9989
tim@kowallawgroup.com

Counsel for Applicants City of Huntington Beach, et al.

Date: August 7, 2025