No. 25-

IN THE

Supreme Court of the United States

CITY OF HUNTINGTON BEACH, *et al.*,

Petitioners,

v.

GAVIN NEWSOM, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Constitution categorically denies a local government any capacity to invoke it against its State, without first determining—by reference to state law and the nature of the claim—the entity's status within the State's constitutional structure.

2. Whether elected local officials may invoke the First Amendment against the State when state law compels them, in their official roles, to make a public statement they do not believe.

PARTIES TO THE PROCEEDING

Petitioners are the City of Huntington Beach, a California charter city and municipal corporation; the Huntington Beach City Council; Tony Strickland, Mayor of Huntington Beach; and Gracey Van Der Mark, Mayor Pro Tem of Huntington Beach. Petitioners were plaintiffs in the United States District Court for the Central District of California and appellants in the United States Court of Appeals for the Ninth Circuit.

Respondents are Gavin Newsom, in his official capacity as Governor of the State of California; Gustavo Velasquez, in his official capacity as Director of the California Department of Housing and Community Development; the California Department of Housing and Community Development; and the Southern California Association of Governments. Respondents were defendants and appellees below.

STATEMENT OF RELATED PROCEEDINGS

Supreme Court of the United States

City of Huntington Beach, et al., v. Gavin Newsom, et al., No. 25A12 (orders dated July 7, 2025, and August 13, 2025, extending the time to file petition for a writ of certiorari) (Kagan, Circuit Justice).

United States Court of Appeals for the Ninth Circuit

City of Huntington Beach, et al., v. Gavin Newsom, et al., No. 23-3694 (judgment affirming, issued October 30, 2024; order denying petition for rehearing en banc, issued April 21, 2025).

United States District Court for the Central District of California

City of Huntington Beach, et al., v. Gavin Newsom, et al., No. 8:23-cv-00421-FWS-ADS (judgment entered on November 13, 2023).

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PETITION FOR A WRIT OF CERTIORARI

The City of Huntington Beach, et al., respectfully petition this Court for a writ of certiorari to the Ninth Circuit below in Case No. 23-3694.

OPINIONS BELOW

The Ninth Circuit's judgment is unreported but available at 2024 WL 462589 and reproduced at (Apx.1a-4a.). The Ninth Circuit's order denying rehearing en banc is reported at 134 F.4th 1025 and reproduced at (Apx.27a-28a.). The district court's final judgment is unreported but available at 2023 WL 8043846 and reproduced at (Apx.5a-26a.).

JURISDICTION

The Ninth Circuit issued its judgment affirming the district court on October 30, 2024. (Apx.1a.) It issued its order denying rehearing en banc on April 21, 2025. On July 7, 2025, Justice Kagan granted the petitioners an extension to file their petition for a writ of certiorari through August 20, 2025. On August 13, 2025, Justice Kagan granted the petitioners a second extension to file their petition through September 18, 2025. (No. 25A12). This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent constitutional and statutory provisions are reproduced in the appendix.

U.S. Constitution

- U.S. Const., art. I, sec. 8 (Commerce Clause).

  > The Congress shall have Power . . . To regulate Commerce . . . among the several States . . . .

- U.S. Const. amend. I (Free Speech Clause).

  > Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

- U.S. Const. amend. XIV, §1 (applicability to the States).

  > Section 1
  >
  > All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall

> make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Background of the State-Compelled Speech

Huntington Beach is a California charter city organized under article XI of the California Constitution. The State's housing framework requires the City to adopt a housing element incorporating a large quota of higher-density units. Preparing or amending a housing element triggers environmental review under CEQA, the State's environmental-quality law. When the environmental impact report identifies "significant and unavoidable" harms, approval may proceed only if the City adopts a Statement of Overriding Considerations declaring that the project's purported benefits outweigh those harms. Cal. Code Regs. tit. 14, §15093.

The City's environmental review found significant impacts. The Council concluded it could not truthfully adopt a Statement that declared that those harms were outweighed by the benefits of high-density housing. Forcing the Council and Councilmembers to adopt that affirmative policy Statement is compelled speech barred by the First Amendment (incorporated through the Fourteenth).

B. Proceedings Below

Petitioners sued State officials and the Southern California Association of Governments in the Central District of California, asserting constitutional claims—including compelled speech—arising from the State-mandated "Statement of Overriding Considerations" requirement tied to the high-density housing mandate. The district court granted motions to dismiss, holding that under Ninth Circuit precedent local governments may not bring Constitutional claims against their State. *City of South Lake Tahoe v. California Tahoe Reg'l Plan. Agency*, 625 F.2d 231 (9th Cir. 1980).

A Ninth Circuit panel affirmed in an unpublished memorandum on October 30, 2024. The panel held that the City's claims are "foreclosed by" *South Lake Tahoe*, which forbids local governments—which the Ninth Circuit labels "political subdivisions"—and their officials from challenging the constitutionality of state statutes in federal court," and that the court has "consistently applied that rule ever since." The panel also stated that the City's federal "standing does not turn on the intricacies of California law," and treated charter cities as subordinate bodies within the *South Lake Tahoe* rule. The panel also rejected the councilmembers' claims, characterizing their objections to the Statement of Overriding Considerations as "personal dilemmas" that cannot support standing under *South Lake Tahoe*. The panel did not reach the First Amendment merits.

Petitioners sought rehearing en banc; the court of appeals denied rehearing on April 21, 2025. (Apx.6a.)

C. This Petition

This case cleanly presents a recurring threshold question: whether a federal court may apply a categorical rule that bars a constitutionally chartered local government from invoking the Constitution against state officials without first determining the entity's status under state constitutional law (and whatever the nature of the federal claim), a rule the Ninth Circuit applied to end the case at the pleading stage. (Apx.2a.)

INTRODUCTION

The courts of appeals are divided on whether and how local governments may invoke the Constitution against their States. Some courts adjudicate municipal claims on the merits—especially in preemption cases—and this Court has repeatedly done so in First and Fourteenth Amendment cases. Other circuits hedge, allowing preemption while foreclosing individual-rights theories. The Ninth Circuit stands alone in applying a categorical bar. The result is a split, and an absence of a standard.

This case presents a clean vehicle to restore the Court's state-law-first method and supply a uniform rule. The rule is straightforward: local governments have capacity to invoke the Constitution unless the State has clearly withdrawn that capacity. Where state law is unclear or silent, courts should weigh common considerations: the entity's status under the State's constitution; its corporate autonomy and powers; the degree of State control; and the fit between the claim and the entity's corporate interests and mission.

Adopting this clear-statement presumption and factor test replaces categorical bars, respects State constitutional design, and aligns the Ninth Circuit with this Court's method.

REASONS FOR GRANTING THE WRIT

This case presents the entrenched, outcome-determinative split just described, and the Ninth Circuit stands alone in adopting a categorical bar that skips the required state-law classification. The Court should resolve the split now and restore the state-law-first method.

I. There is an entrenched circuit split.

Three approaches have emerged. Most recent decisions adjudicate municipal suits (typically preemption) and reject a categorical bar, though methods vary. Comprising the second group is the Ninth Circuit, alone in imposing a categorical disability, even in preemption cases. The third group consists of the jurisdictions that remain unsettled or have not reaffirmed older statements. This landscape underscores the need for a uniform state-law-first standard, and the groups below show the divide.

A. Group 1—No categorical bar; Supremacy Clause suits allowed.

- **Second:** *Tweed-New Haven Airport Auth. v. Tong*, 930 F.3d 65, 72–76 (2d Cir. 2019) (preemption allowed; reaffirms separate circuit bar on Fourteenth Amendment suits).

- **Third:** *Ocean Cnty. Bd. of Comm'rs v. Att'y Gen.*, 8 F.4th 176, 180–88 (3d Cir. 2021) (preemption allowed; merits reached).

- **Fifth:** *Rogers v. Brockette*, 588 F.2d 1057, 1068–71 (5th Cir. 1979) (preemption allowed; *Hunter*/*Trenton* are not "standing" cases).

- **Sixth:** *South Macomb Disposal Auth. v. Washington Twp.*, 790 F.2d 500, 504–05, 511 (6th Cir. 1986) (no per-se bar; municipality is a § 1983 "person"; Fourteenth Amendment claims fail on the merits).

- **Tenth:** *Branson Sch. Dist. RE-82 v. Romer*, 161 F.3d 619, 628–31 (10th Cir. 1998) (Supremacy Clause route allowed; individual-rights theories fail on the merits).

- **Eleventh:** *United States v. Alabama*, 791 F.2d 1450, 1455 (11th Cir. 1986) ("no per se rule applies in this Circuit").

Claim-type practice in the circuits: Courts that reject a categorical bar often do so in Supremacy Clause suits while disposing of Fourteenth Amendment theories as unavailable or failing on the merits. Yet this Court has repeatedly reached municipal First and Fourteenth Amendment claims on the merits, confirming that a categorical door-closer is incompatible with its practice.

B. Group 2—Categorical bar (explicit—extends even to preemption).

- **Ninth:** *City of S. Lake Tahoe v. Cal. Tahoe Reg'l Planning Agency*, 625 F.2d 231, 233 (9th Cir. 1980)[1]; *City of San Juan Capistrano v. CPUC*, 937 F.3d 1278, 1280–82 (9th Cir. 2019) (reaffirming per-se bar; R. Nelson, J., concurring, urging reconsideration); *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1362–63 (9th Cir. 1998) (preemption claim barred).

C. Group 3—Unsettled or not reaffirmed in modern, reasoned decisions.

- **First:** No controlling precedent.

- **Fourth:** *City of Charleston v. Pub. Serv. Comm'n*, 57 F.3d 385, 391–92 (4th Cir. 1995) (calls doctrine "unclear"; assumes jurisdiction; decides merits).

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1. The Court denied certiorari in *City of South Lake Tahoe v. Cal. Tahoe Reg'l Planning Agency*, 449 U.S. 1039 (1980). A denial of certiorari "imports no expression of opinion upon the merits." *Hohn v. United States*, 524 U.S. 236, 251 (1998); *Maryland v. Baltimore Radio Show*, 338 U.S. 912, 917–19 (1950) (Frankfurter, J., respecting denial). The Ninth Circuit has repeatedly reaffirmed the *South Lake Tahoe* bar. *Burbank-Glendale-Pasadena Airport Auth.*, 136 F.3d at 1362–63 (preemption claim barred); *Palomar Pomerado Health Sys. v. Belshe*, 180 F.3d 1104, 1107–09 (9th Cir. 1999) (political subdivision lacks standing to bring constitutional and preemption claims against the State); *City of San Juan Capistrano v. Cal. Pub. Utils. Comm'n*, 937 F.3d 1278, 1280–82 (9th Cir. 2019) (reaffirming per-se bar; R. Nelson, J., concurring, urging reconsideration). *(Cf. Sato v. Orange Cnty. Dep't of Educ.*, 861 F.3d 923, 930–33 (9th Cir. 2017) (Eleventh-Amendment "arm of the State" analysis, not a political-subdivision capacity rule).)

- **Seventh:** *Vill. of Arlington Heights v. Reg'l Transp. Auth.*, 653 F.2d 1149, 1152–53 (7th Cir. 1981) (rejects Fourteenth Amendment claims by subdivisions; no modern treatment of preemption).

- **Eighth:** *Delta Special Sch. Dist. No. 5 v. State Bd. of Educ.*, 745 F.2d 532, 533–34 (8th Cir. 1984) (rejects Fourteenth Amendment claim; no modern treatment of preemption).

D. Summary

Recent, reasoned authority thus runs against a blanket rule. The Ninth alone expressly declares one, while other "bar" jurisdictions are unsettled or silent in modern decisions.

E. The Court should adopt a clear, state-law-first standard that replaces categorical bars.

This case presents a clean vehicle to resolve not only the split but the absence of a governing standard. The Court should hold that local governments have capacity to invoke the Constitution against the State in federal court unless the State has clearly withdrawn that capacity in its own law. Where state law is unclear or silent, courts should be guided by a common set of considerations: (1) the entity's status under the State's constitution (including home-rule or charter entrenchment); (2) its corporate autonomy and powers (treasury, property, taxation, "sue and be sued," and who bears judgments); (3) the degree of State control over its officers and finances; and (4) the fit between the claim and the entity's corporate interests and mission—including whether the suit protects the entity's proprietary or enforcement interests, or resists

intergovernmental interference with locally conferred authority. This is a clear-statement presumption: ambiguity in state law is resolved in favor of capacity. And once capacity is established (or not clearly withdrawn), courts should not impose categorical claim-type bans. The proper limiter is claim-to-mission fit, as reflected in the factors above.

This standard honors the Court's state-law-first method of public-entity classification before affixing federal consequences, and it accords with the Court's own practice of adjudicating municipal First and Fourteenth Amendment claims on the merits.[2] This standard also gives lower courts a workable framework in the many States where the political branches or courts have not spoken. A categorical bar like the Ninth Circuit's, on the other hand, is incompatible with both method and practice. The Court should adopt this standard, vacate the judgment, and remand for application of the state-law-first inquiry.

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2. *E.g.*, Morris, *The Case for Local Constitutional Enforcement*, 47 Harv. C.R.-C.L. L. Rev. 1 (2012) (arguing Hunter's freestanding federal rule has been eclipsed and that capacity should turn on state law, with federal courts giving effect to local constitutional status and corporate interests); Rosenthal, *Romer v. Evans as the Transformation of Local Government Law*, 31 Urban Lawyer 257 (1999) (explaining Romer's implications for state efforts to foreclose local governance); Sellers & Scharff, *Preempting Politics*, 72 Stan. L. Rev. 1361 (2020) (identifying values that structure state–local disputes); Su, *Intrastate Federalism*, 66 Stan. L. Rev. 1699 (2014/2016) (describing local invocation of federalism claims); Garrett, *Local Evidence in Constitutional Interpretation*, 74 Vand. L. Rev. 1023 (2018); Clopton & Shoked, *The City Suit*, 72 Emory L.J. 1351 (2023).

II. This Court's method requires a state-law-first classification.

The approach outlined in this Court's cases involving local government suits begins with state law first. That method—not a categorical label—governs how local status bears on federal questions.[3]

This is what the Court did in *Hess v. Port Authority Trans-Hudson Corp.*, looking first to the states' structuring of a bi-state agency to decide whether it shared state sovereign immunity. 513 U.S. 30, 43–51 (1994). The Court "presume[d]" that an interstate entity is not immune "unless there is good reason to believe that the States structured the entity to arm it with the States' own immunity." *Id.* at 43–44. In each instance, the classification turned on the entity's character under state law, not on an atextual federal label. Neither New York nor New Jersey bore legal or practical liability for the

3. Recent structural decisions concerning state legislative power confirm the same premise: state constitutions define a State's institutions and allocate lawmaking authority, and federal adjudication must respect that allocation. *See Moore v. Harper*, 600 U.S. 1, 32–39 (2023) (rejecting the independent-state-legislature theory; recognizing state-court enforcement of state-constitutional limits on a legislature's Elections Clause power); *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 808–17 (2015) (holding that "Legislature" in the Elections Clause refers to the State's lawmaking process as structured by its constitution, including a voter-created commission). These decisions address state legislative power under the Elections Clause, not municipal capacity or standing. They are cited to illustrate the same state-law-first method: federal law looks to state constitutions to identify who speaks for the State and how authority is allocated before attaching federal consequences.

Port Authority's debts, so the Authority was financially self-sufficient. Because the States were neither legally nor practically obligated to pay the entity's debts, the Court held the Port Authority was not an arm of the State, as the Eleventh Amendment's core concern was not implicated. *Id.* at 47–51.

Again, the classification hinged on the entity's character under state law—in *Hess*, the absence of state treasury liability—rather than any general federal characterization of the Authority.

The Court's more recent decisions reaffirm this state-law-first approach. In *Regents of the University of California v. Doe*, the Court emphasized that determining whether an entity is an arm of the State requires examining "the provisions of state law that define the agency's character." 519 U.S. 425, 429 n.5 (1997). And in *McMillian v. Monroe County*, the Court underscored that the inquiry into a government official's or entity's status "is dependent on an analysis of state law," not a one-size-fits-all federal rule. 520 U.S. 781, 786–95 (1997). In *McMillian*, the Court refused to assume that a county sheriff must always be a county official for §1983 purposes; instead, it examined Alabama's Constitution and statutes, which placed county sheriffs in the State's executive department and treated them as state officers. Given that state law vested sheriffs with state-level authority (and even deemed lawsuits against sheriffs as suits against the State itself), the Court held that the sheriff acted on behalf of Alabama, not the county. These cases all illustrate that a government entity's ability to invoke constitutional rights or immunities turns on the entity's character under state

law, not on any automatic federal general-law label. In other words, the Court's doctrine makes state law status a threshold inquiry in classifying an entity's role in our federal system.

The Ninth Circuit's approach in this case cannot be reconciled with that settled doctrine. The panel below imposed a categorical bar on municipal constitutional claims "regardless of state law classification," refusing even to consider how California's law defines a charter city's status. In the decision below, the Ninth Circuit declared that "[n]o matter how California categorizes charter cities, they remain subordinate political bodies, not sovereign entities." (Apx.3a.)

In other words, the court brushed aside California's constitutional distinction between charter cities and the State Legislature, instead treating the City as a mere appendage of the State for all Constitutional purposes. That ipso facto rule is directly at odds with this Court's requirement that courts first examine the State's own laws to determine an entity's nature and relationship to the State. The Ninth Circuit's categorical bar conflicts with the Supreme Court's state-law-first classification methodology. This Court's precedents make clear that a charter city's ability to invoke constitutional protections cannot be foreclosed without first asking what state law says about the city's governmental character and autonomy. The decision below flouts that foundational principle, warranting this Court's intervention to restore the proper, state-law-grounded analysis.

III. *Hunter*'s broad dicta do not authorize a categorical no-entitlement rule.

Hunter is not a categorical door-closer. First, *Hunter* was a boundary-and-tax case and did not adopt a categorical bar on municipal constitutional claims. Second, *Trenton* and *Gomillion* confine *Hunter*, and they direct courts to respect state constitutional allocations before attaching federal consequences. Third, this Court's practice is to reach municipal First and Fourteenth Amendment claims on the merits.

A. What *Hunter* decided—and what it did not.

Hunter v. City of Pittsburgh arose from consolidation of municipalities and disputes over municipal property. 207 U.S. 161, 174–79 (1907). The opinion uses familiar language describing municipalities as "political subdivisions of the state." *Id.* at 178. But it also cautioned federal courts to "have nothing to do with the interpretation of the Constitution of the state" when reviewing a State's internal organization. *Id.* at 176. A categorical rule that limits all local governments to the role of mere "political subdivisions" violates *Hunter*'s rule of non-interference with States' internal organization.

B. *Trenton* and *Gomillion* confine *Hunter*.

Trenton qualifies *Hunter*: where a State's constitution safeguards local self-government, courts must honor those provisions. *City of Trenton v. New Jersey*, 262 U.S. 182, 186–87 (1923). The emphasis falls on what the State's own constitution secures. *Gomillion v. Lightfoot* is to the same effect. Legislative control of municipalities "lies within

the scope of relevant limitations imposed by the United States Constitution," and the "seemingly unconfined dicta of *Hunter* and kindred cases" do not recognize "plenary power to manipulate in every conceivable way." 364 U.S. 339, 344–45 (1960). Together, those decisions foreclose treating *Hunter* as a categorical rule that bypasses state constitutional structure or federal limits.

C. This Court's merits practice confirms there is no categorical bar.

When local governments and local officials have brought constitutional claims, the Court has adjudicated them. It has done so in First Amendment and Fourteenth Amendment cases without invoking *Hunter* as a threshold bar. *See Bd. of Educ. v. Allen*, 392 U.S. 236, 240–48 (1968) (school board's Establishment Clause challenge decided on the merits); *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 462–63 (1982) (school district's Equal Protection challenge decided on the merits); *Papasan v. Allain*, 478 U.S. 265, 274–90 (1986) (local school officials' Due Process and Equal Protection claims addressed on the merits; case partly dismissed on immunity grounds, not a *Hunter* bar). *See also Romer v. Evans*, 517 U.S. 620, 625–36 (1996) (cities among plaintiffs; state constitutional amendment struck under Equal Protection). Scholarship surveying the docket captures the pattern: since *Williams v. Mayor of Baltimore*, 289 U.S. 36 (1933), this Court has not used *Hunter* to bar a local constitutional challenge wholesale, and has repeatedly reached municipal First and Fourteenth Amendment issues. Kathleen S. Morris, *The Case for Local Constitutional Enforcement*, 47 Harv. C.R.-C.L. L. Rev. 1, 3–5, 16–18 (2012). The Ninth Circuit's categorical bar rests instead on its own early case. And

even there the court has recognized that *City of South Lake Tahoe*, 625 F.2d 231, offered little independent reasoning and leaned on earlier Supreme Court decisions that are context-bound. *City of San Juan Capistrano*, 937 F.3d at 1280.

The lesson is straightforward. *Hunter* does not supply the categorical door-closer the panel invoked. That practice reflects *Trenton*'s instruction to respect state constitutional allocations and *Gomillion*'s recognition that federal limits bind States even in the municipal context.

IV. State constitutional structure confirms why the State-law inquiry must come first.

Precedent requires a state-law classification first (see Part II). What follows shows why that threshold step matters under California's Constitution and practice. First, this Court requires a state-law-first classification before affixing federal consequences to a governmental entity. Second, California's constitutional design and decisions show why that threshold step matters for charter cities. The Ninth Circuit category rule skips both steps.

A. A clear-statement presumption prevents forum-closing by silence.

Requiring the State to speak clearly if it wishes to withdraw a local entity's capacity to sue its creator aligns with familiar state-law clear-statement principles in the home-rule context and prevents ambiguous statutes from foreclosing federal adjudication. When a State constitutionally entrenches local self-government—or when state law confers corporate autonomy—federal courts should not infer a capacity bar from silence.

B. California's Constitution directly authorizes charter cities.

California's constitution grants charter cities authority over municipal affairs and was adopted "to emancipate municipal governments from the authority and control formerly exercised over them by the Legislature." *Johnson v. Bradley*, 4 Cal. 4th 389, 395 (1992) (quotation marks omitted). The source is constitutional. Charters are adopted and amended by the local electorate under state constitutional authorization. *See* Cal. Const. art. XI. That design is part of the classification inquiry the federal method requires.

C. California decisions consistently recognize that design.

California courts apply that method in practice and reach the merits. *Star-Kist Foods, Inc. v. County of Los Angeles* criticized the Ninth Circuit's categorical approach as providing "little guidance" and allowed a Commerce Clause claim by a county to proceed. 42 Cal. 3d 1, 7–10 (1986). *Haytasingh v. City of San Diego* explained that a city "may be considered a 'subdivision'" in some senses, but "is not necessarily so for all purposes," and read *Hunter*'s phrasing as descriptive rather than as a universal legal definition. 66 Cal. App. 5th 429, 435 (2021). *City of Redondo Beach v. Padilla* recognized the distinct constitutional footing of charter cities and undertook a state-law analysis of status and function rather than treating the city as a mere appendage for all purposes. 46 Cal. App. 5th 902, 909–14, 918 (2020). These decisions reflect what *Regents* and *McMillian* require: status is a question of state law and function, not a categorical label.

D. Application

The panel applied a categorical bar and refused to consider California's constitutional structure for charter cities. That is the legal error. The required first step is classification under state law. Only then may federal consequences follow. *See Regents*, 519 U.S. at 429 n.5; *McMillian*, 520 U.S. at 786–95.

A current illustration points the same way. This Term, the Court granted certiorari in consolidated cases to decide whether New Jersey Transit is an arm of the State of New Jersey for interstate sovereign-immunity purposes, a classification question that—like *McMillian* and *Regents*—turns on state law. *See N.J. Transit Corp. v. Colt*, Nos. 24-1021 & 24-1113 (U.S. July 3, 2025) (granting certiorari; limited to whether NJ Transit is an arm of the State for interstate sovereign-immunity purposes).

V. Exceptional national consequences are at stake.

The Ninth Circuit is the nation's largest court of appeals—covering nine States and two territories with 29 authorized judgeships. 28 U.S.C. §§ 41, 44(a). Within that footprint, a state-law-blind categorical bar guarantees that recurring state–local disputes are dismissed at the threshold, while sister circuits reach the merits under ordinary rules.

The examples below—immigration-enforcement "sanctuary" disputes, transportation infrastructure and federal preemption, school-district finance and governance, equal-protection challenges to state limits

on local anti-discrimination measures, and municipal advocacy chilled by state preemption penalties—are recurrent and were treated on the merits outside the Ninth Circuit. In the Ninth Circuit, however, each would confront the fatal categorical bar.

A. Immigration "Sanctuary" and State–Local Cooperation Mandates

- **Fifth Circuit (merits adjudication).** Texas cities and counties challenged SB4—which prohibited "endorsement" of sanctuary policies—under the First Amendment, Fourth Amendment, and Supremacy Clause. The court reached the merits and held SB4's "endorsement" prohibition unconstitutional as applied to elected officials under the First Amendment. *City of El Cenizo v. Texas*, 890 F.3d 164, 178–83 (5th Cir. 2018).

- **Eleventh Circuit (no categorical disability).** Municipal and organizational plaintiffs challenged Florida's anti-"sanctuary" law under the Equal Protection Clause. The court vacated the injunction on ordinary Article III standing/traceability grounds after trial; it did not apply a categorical municipal bar. *City of S. Miami v. Governor*, 65 F.4th 631 (11th Cir. 2023).

Significance for the Ninth. Similar state-local conflicts regularly arise in Western States. Under *South Lake Tahoe*'s categorical rule, such municipal claims would be turned away at the threshold rather than decided on the merits.

B. Transportation and Infrastructure (Federal Preemption)

- **Second Circuit (merits adjudication).** A city-created airport authority, joined by the City of New Haven, challenged a state runway-length cap as preempted by federal aviation law. The court held the statute preempted and rejected the idea that a local government could not sue the State. *Tweed-New Haven Airport Auth.*, 930 F.3d at 70–78, 81–88.

Significance for the Ninth. Transportation and energy projects in the West often hinge on state-local allocations. In the Ninth Circuit, a categorical bar would foreclose this federal preemption adjudication at the outset. The same merits posture recurs beyond transportation and preemption.

C. Other Recurring Settings

The same pattern appears across school-finance and governance, equal-protection limits on state suppression of local protections, and state penalty regimes that chill municipal advocacy. In education, this Court reached the merits of a school district's Equal Protection challenge to a statewide initiative, *Washington v. Seattle School District No. 1*, 458 U.S. 457, 467–87 (1982) (later limited on a different point by *Schuette v. Coalition to Defend Affirmative Action*, 572 U.S. 291 (2014) (plurality)); the Tenth Circuit likewise allowed school-district plaintiffs to proceed in a structural challenge to Colorado's TABOR amendment, rejecting a categorical "political-subdivision" bar, *Kerr v. Polis*, 20 F.4th 686, 694–99 (10th Cir. 2021) (en banc); and it reached the merits where federal

constraints governed state management of school-land-trust revenues, *Branson Sch. Dist. RE-82 v. Romer*, 161 F.3d 619 (10th Cir. 1998); see also *Rogers*, 588 F.2d at 1057 (merits adjudication where state policy conflicted with federal program requirements). Equal-protection challenges to state limits on local anti-discrimination measures likewise reached the merits in *Romer*, 517 U.S. at 620 (municipal plaintiffs among challengers). And state preemption penalty regimes that chill municipal advocacy recur, *see Fried v. State*, 355 So. 3d 899, 902–03 (Fla. 2023) (upholding penalties but illustrating frequency and stakes). The Court's docket likewise reflects the recurring salience of municipal-speech and structural allocation disputes, *see Shurtleff v. City of Boston*, 596 U.S. 243 (2022) (municipal-speech forum), and its willingness to clarify state-law-first questions with federal consequences. *See Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787 (2015).

Outside the Ninth Circuit, courts adjudicate these disputes under ordinary rules; inside the Ninth, *South Lake Tahoe*'s categorical bar would screen out comparable federal questions at filing.

VI. This case is an ideal vehicle.

The judgment rests entirely on a categorical bar. The district court dismissed on that ground. The court of appeals affirmed on the same ground and refused to conduct any state-law classification. There is no merits ruling, alternative holding, or factual dispute.

The question was pressed and passed upon at every stage. The posture is final. The parties are proper. The City seeks prospective relief against state officials. There

are no jurisdictional trapdoors, no mootness concerns, and no waiver issues.

The issue is purely legal: whether a federal court may impose a categorical rule that forecloses a constitutionally chartered local government from invoking the Constitution against its State without first determining the entity's status under state law. A remand to apply the required state-law-first inquiry would follow.

The conflict is entrenched and outcome-determinative. Sister circuits reject a categorical disability and assess capacity by reference to state law and the nature of the claim. The Ninth Circuit applies a categorical bar across the board. This case presents that divide cleanly, in the nation's largest circuit, with nothing to complicate review. A grant would permit the lower courts to apply the required state-law-first inquiry on remand.

VII. Elected officials' compelled statements are protected speech; *Carrigan* is limited to votes.

This subsidiary question is narrow. *Nevada Commission on Ethics v. Carrigan* treats a legislator's vote as an official act, not personal speech. 564 U.S. at 125–27. It does not authorize the State to compel officials to utter statements of belief they reject. Compelled official statements trigger classic First Amendment protections. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943); *Wooley v. Maynard*, 430 U.S. 705, 714–15 (1977); *Janus v. AFSCME*, 138 S.Ct. 2448, 2463–66 (2018); *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 213–21 (2013). Other courts adjudicate similar claims on the merits. *El Cenizo*, 890 F.3d 164, 178–83 (5th

Cir. 2018); *Boquist v. Courtney*, 32 F.4th 764, 774–75 (9th Cir. 2022).

A. *Carrigan* addresses voting as an official act, not compelled speech.

In *Nevada Commission on Ethics v. Carrigan*, the Court described a legislator's vote as "the commitment of his apportioned share of the legislature's power," a power that "belongs to the people." 564 U.S. at 125–26. On that footing, a vote is an official act, not the legislator's personal expression. *Id.* at 126–27. The Court did not decide broader questions about legislators' speech. Justice Kennedy emphasized that the case did "not…consider a free speech contention" beyond the act of voting and cautioned that limits on "what undoubtedly is speech" in legislative deliberation would raise different issues. *Id.* at 131–32 (Kennedy, J., concurring).

That line controls here. Prohibiting or conditioning a vote is categorically different from forcing officials to speak. *Carrigan* does the former. It does not do the latter.

B. Compelled official statements trigger the core compelled-speech rule, and elected officials retain First Amendment protection.

Forcing a public official to profess support for a contested policy is compelled speech. The First Amendment "does not tolerate" government prescribing orthodoxy or compelling affirmation of belief. *W. Va. State Bd. of Educ.*, 319 U.S. at 642. The government may not "require an individual to participate in the dissemination of an ideological message." *Wooley*, 430 U.S.

at 713–15. Compelled notices and pledges are content- and viewpoint-based, and trigger heightened scrutiny. *Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S.Ct. 2361, 2371–75 (2018) ("*NIFLA*"); *Janus*, 138 S.Ct. at 2463–66; *Agency for Int'l Dev.*, 570 U.S. at 213–21.

Elected officials do not surrender these protections. The Court has held that legislators "are entitled to speak out on public issues," and that "the manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy." *Bond v. Floyd*, 385 U.S. 116, 135–36 (1966). That principle includes the right not to avow a State-scripted rationale. A mandated, public "statement of overriding considerations," for example, is speech—not a vote—and compels viewpoint. See, e.g., Cal. Pub. Res. Code § 21081(b) (illustrative).

Nor does government-speech doctrine rescue compelled avowals by elected officials. The State may speak in its own name. *Pleasant Grove City v. Summum*, 555 U.S. 460, 467–69 (2009); *Walker v. Tex. Div., Sons of Confederate Veterans*, 576 U.S. 200, 207–08 (2015). But it may not conscript individual officeholders to affirm personal belief as the price of compliance. And public-employee cases do not control. *Garcetti v. Ceballos*, 547 U.S. 410, 421–22 (2006), governs employee speech under official duties; it does not strip elected officials of protection against compelled ideology. *See Lane v. Franks*, 573 U.S. 228, 236–39 (2014).

C. Other courts reach similar claims on the merits, not via categorical bars.

Courts have treated analogous disputes as merits questions or under ordinary Article III principles—not as categorically barred. *Bond v. Floyd*, 385 U.S. 116, 132–36 (1966) (elected legislators retain First Amendment rights; State may not impose a stricter standard); *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 476–80 (2022) (recognizing elected officials' speech; verbal censure not actionable). The Ninth Circuit has itself recognized that *Carrigan* is limited to official acts like voting. When a state senator challenged sanctions for his statements to the press, the court allowed the First Amendment claim to proceed, distinguishing *Carrigan* because the speech was not an exercise of legislative power. *Boquist*, 32 F.4th at 774–75.

Local officials' speech claims also proceeded to the merits in *City of El Cenizo v. Texas*, 890 F.3d at 178–83. There, the Fifth Circuit adjudicated a First Amendment challenge to an "endorsement" restriction and held it unconstitutional as applied to elected officials.

These cases confirm the line: limits on how officials vote or perform official acts are one thing; compelled affirmation of belief is another. Compelled avowals are treated as speech and adjudicated on the merits.

D. Application

The State conditioned compliance on elected councilmembers' adoption of an official statement endorsing a contested policy rationale. That is speech, not a vote. It falls outside *Carrigan* and within compelled-speech doctrine. See *Barnette*, 319 U.S. at 642; *Wooley*, 430 U.S. at 714–15; *NIFLA*, 138 S.Ct. at 2371–75.

E. This subsidiary question warrants review.

Compelled official statements recur in modern governance—through mandated justifications, certifications, and "one-voice" rules—and courts are already adjudicating adjacent disputes on the merits. See *El Cenizo*, 890 F.3d at 178–83; *Boquist*, 32 F.4th at 774–75; cf. 595 U.S. at 477–81 (narrow holding on symbolic censure, reserving broader questions).[4] Clarifying that *Carrigan* is limited to votes and does not permit compelled avowals by elected officials will preserve the First Amendment's core protection for dissent in representative government, while leaving *Carrigan*'s vote-as-conduct rule intact.

4. *Wilson* did not involve any compelled statement and the Court explicitly reserved questions about more severe intrusions on an official's speech rights.

CONCLUSION

This case presents a recurring, outcome-determinative question that has split the circuits and departs from this Court's state-law-first method. California's charter-city design entrenches local self-government in municipal affairs. Huntington Beach is a charter city with corporate powers and locally elected officers. The State's direction here regulates core municipal processes—compelling the City Council to adopt State-authored positions and procedures—implicating the City's corporate interest in resisting intergovernmental interference, and the fit is direct. Under the proposed rule, capacity is presumed, nothing in California law clearly withdraws it, and the factors independently confirm capacity (constitutional status; autonomy; local accountability; corporate-interest fit). That is why the Ninth Circuit's categorical bar is wrong twice over: it skips the state-law-first classification and forecloses merits review the Court's cases allow.

Leaving the Ninth Circuit's categorical bar in place denies a federal forum when state commands collide with constitutional constraints—even where the local entity's authority flows directly from the state constitution. The Court should grant certiorari, adopt the clear-statement presumption and factor test described above, and vacate and remand for application of that standard.

September 18, 2025

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED OCTOBER 30, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-3694
D.C. No. 8:23-cv-00421-FWS-ADS

CITY OF HUNTINGTON BEACH, A CALIFORNIA CHARTER CITY AND MUNICIPAL CORPORATION; HUNTINGTON BEACH CITY COUNCIL; TONY STRICKLAND, MAYOR OF HUNTINGTON BEACH; GRACEY VAN DER MARK, MAYOR PRO TEM OF HUNTINGTON BEACH,

Plaintiffs-Appellants,

v.

GAVIN NEWSOM, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF CALIFORNIA; GUSTAVO VELASQUEZ, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE STATE OF CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT; CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT; DOES, 1-50, INCLUSIVE; SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENT,

Defendants-Appellees.

Appendix A

Appeal from the United States District Court
for the Central District of California
Fred W. Slaughter, District Judge, Presiding

Argued and Submitted October 21, 2024
Pasadena, California

Before: TALLMAN, R. NELSON, and BRESS, Circuit Judges.

MEMORANDUM*

The City of Huntington Beach and several City officials sued to challenge the constitutionality of certain California housing laws. The district court dismissed their complaint, holding that under circuit precedent, each Plaintiff lacked standing to raise federal constitutional claims against the state. *See City of S. Lake Tahoe v. Cal. Tahoe Reg'l Plan. Agency*, 625 F.2d 231 (9th Cir. 1980). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. The City's claims are foreclosed by our decision in *South Lake Tahoe*, which forbids political subdivisions and their officials from challenging the constitutionality of state statutes in federal court. 625 F.2d at 233-34, 238. We have consistently applied that rule ever since. *See, e.g.*, *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998) ("This court . . . has not recognized any exception to the per se [standing bar], and the broad language of *South Lake Tahoe* appears to foreclose the possibility of our doing so.").

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

We are not persuaded by the City's efforts to differentiate *South Lake Tahoe*. The City argues that our standing bar does not apply because Huntington Beach is a charter city, which it claims is not a "political subdivision." Yet our precedent has applied *South Lake Tahoe*'s standing rule to California's charter cities. *See Burbank*, 136 F.3d at 1364. And recent California appellate decisions interpreting the term "political subdivision" in specific state statutes do not undermine *Burbank*'s analysis. *See, e.g., City of Redondo Beach v. Padilla*, 46 Cal. App. 5th 902, 912-13, 260 Cal. Rptr. 3d 263 (2020).

In any case, the City's federal standing does not turn on the intricacies of California law. *Hollingsworth v. Perry*, 570 U.S. 693, 715, 133 S. Ct. 2652, 186 L. Ed. 2d 768 (2013) ("[S]tanding in federal court is a question of federal law, not state law."). No matter how California categorizes charter cities, they remain subordinate political bodies, not sovereign entities. *See Reynolds v. Sims*, 377 U.S. 533, 575, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964). That subsidiary status brings charter cities within the rule of *South Lake Tahoe*, which relied on Supreme Court precedent holding that municipal corporations such as the City of Huntington Beach lack federal constitutional rights against their parent states. 625 F.2d at 233 (citing *Williams v. Mayor & City Council of Balt.*, 289 U.S. 36, 40, 53 S. Ct. 431, 77 L. Ed. 1015 (1933) ("A municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of its creator.")).

2. The City officials also lack standing. Under *South Lake Tahoe*, public officials cannot assert claims in federal court based on "private constitutional predilections." 625 F.2d at 238. The City officials' objections to the Statement of Overriding Considerations are the kinds of "personal dilemmas" that *South Lake Tahoe* rejected as the basis for individual standing. *Id.* at 237. Moreover, Plaintiffs do not explain how they suffered a constitutional injury absent their roles as local officials. *See Thomas v. Mundell*, 572 F.3d 756, 760-61 (9th Cir. 2009). So while the City officials retain personal free speech rights, *see, e.g.*, *Lindke v. Freed*, 601 U.S. 187, 196, 144 S. Ct. 756, 218 L. Ed. 2d 121 (2024), they cannot invoke those rights to avoid executing "laws within their charge," *South Lake Tahoe*, 625 F.2d at 238.

Because each Plaintiff lacks standing, we need not consider whether abstention is proper under *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971).

AFFIRMED.[1]

1. We grant Appellants' motion for judicial notice, Dkt. 13, of the Petition for Writ of Mandate filed in the California Court of Appeal. *See U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

APPENDIX B — MINUTE ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, FILED NOVEMBER 13, 2023

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 8:23-cv-00421-FWS-ADS
Date: November 13, 2023
Title: City of Huntington Beach *et al.* v. Gavin Newsom *et al.*

Present: **HONORABLE FRED W. SLAUGHTER, UNITED STATES DISTRICT JUDGE**

Melissa H. Kunig	N/A
Deputy Clerk	Court Reporter

PROCEEDINGS: ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS [44], [45]

Before the court are two motions to dismiss: (1) a motion to dismiss filed by Defendant Southern California Association of Governments ("Defendant Southern California Association") (Dkt. 44); and (2) a motion to dismiss filed by Defendants Gavin Newsom, in his official capacity as Governor of the State of California, and individually; Gustavo Velasquez, in his official capacity as Director of the State of California Department of Housing and Community Development, and individually; and the California Department of Housing and Community Development (collectively, "State Defendants") (Dkt. 45).[1]

1. The two motions to dismiss will be referred to collectively as the "Motions."

The State Defendants' Motion is supported by a request for judicial notice and exhibits thereto. (Dkt. 45-1.)

On June 6, 2023, Plaintiffs City of Huntington Beach, Tony Strickland, the Huntington Beach City Council, and Gracey Van Der Mark (collectively, "Plaintiffs") filed an opposition to both Motions ("Opposition" or "Opp."). (Dkt. 50.) Plaintiffs' Opposition is supported by the declarations of Mayor Tony Strickland ("Strickland Decl."), Mayor Pro Tem Gracey Van der Mark ("Van der Mark Decl."), exhibits attached thereto, and a request for judicial notice. (Dkts. 50-1; 50-2; and 51.) On the same day, Plaintiffs also opposed the State Defendants' request for judicial notice. (Dkt. 52.) On June 22, 2023, Defendant Southern California Association and the State Defendants filed replies. (Dkts. 59, 61.) On the same day, Defendant Southern California Association and the State Defendants filed objections to the declarations submitted by Plaintiffs in support of the Opposition. (Dkts. 60, 62.) On June 22, 2023, the State Defendants filed a reply to Plaintiffs' opposition to the State Defendants' request for judicial notice. (Dkt. 63.) On June 26, 2023, Plaintiffs filed the signature pages for the declarations of Mayor Tony Strickland and Mayor Pro Tem Gracey Van der Mark. (Dkt. 64.) On July 25, 2023, the court took the matters under submission. (Dkt. 66.) After the matters were taken under submission, Plaintiffs filed a supplemental request for judicial notice. (Dkt. 71.) Based on the state of the record, as applied to the applicable law, the Motions are **GRANTED**.[2]

2. The parties request that the court take judicial notice of various exhibits regarding parallel state proceedings, the City of Huntington Beach's charter, and the implementation of the RHNA

Appendix B

I. Legal Standards

a. Motion to Dismiss Under Federal Rule of Civil Procedure 12(b)(1)

Under Federal Rule of Civil Procedure 12(b)(1), a party may move to dismiss a case for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). "Federal courts are courts of limited jurisdiction, possessing only that power authorized by Constitution and statute." *Gunn v. Minton*, 568 U.S. 251, 257, 133 S. Ct. 1059, 185 L. Ed. 2d 72 (2013) (citation and internal quotation marks omitted); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998) ("The requirement that jurisdiction be established as a threshold matter 'spring[s] from the nature and limits of the judicial power of the United States' and is 'inflexible and without exception.'") (citation and internal quotation marks omitted).

Under Rule 12(b)(1), a defendant's challenge to subject matter jurisdiction may be either facial or factual. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A facial attack "accepts the truth of plaintiff's allegations

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Laws. (Dkts. 45-1, 50-1, 51, 71.) The parties have also filed objections to each other's requests for judicial notice. (Dkts. 52, 60, 62, 63.) The court **DENIES** the parties' requests for judicial notice and **DENIES AS MOOT** the parties' respective objections because the court finds these materials are not relevant to deciding the Motions. *See Bryan v. City of Carlsbad*, 297 F. Supp. 3d 1107, 1115 (S.D. Cal. 2018) (declining to take judicial notice of documents that "do not provide any additional relevant information, even if they would otherwise be the proper subject of judicial notice") (citing *Adriana Int'l Corp. v. Thoeren*, 913 F.2d 1406, 1410 n.2 (9th Cir. 1990)).

but asserts that they 'are insufficient on their face to invoke federal jurisdiction.'" *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (quoting *Safe Air for Everyone*, 373 F.3d at 1039). By contrast, a factual attack "contests the truth of the plaintiff's factual allegations, usually by introducing evidence outside of the pleadings." *Id.*

"In resolving a factual attack on jurisdiction, the district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment." *Safe Air for Everyone*, 373 F.3d at 1039 (citation omitted). The court need not presume the truthfulness of the plaintiff's allegations. *Id.* "Once the moving party has converted the motion to dismiss into a factual motion by presenting affidavits or other evidence properly brought before the court, the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter jurisdiction." *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039 n. 2 (9th Cir. 2003) (citation omitted). Where "the jurisdictional disputes [are] not intertwined with the merits of the claim" and "the existence of jurisdiction turn[s] on disputed factual issues," the court may "resolve those factual disputes" where necessary. *See Friends of the Earth v. Sanderson Farms, Inc.*, 992 F.3d 939, 944 (9th Cir. 2021) (citation and internal quotation marks omitted); *Kingman Reef Atoll Invs., L.L.C. v. United States*, 541 F.3d 1189, 1195 (9th Cir. 2008).

b. Motion to Dismiss Under Federal Rule of Civil Procedure 12(b)(6)

Rule 12(b)(6) permits a defendant to move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To withstand a motion to dismiss brought under Rule 12(b)(6), a complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). While "a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations," a plaintiff must provide "more than labels and conclusions" and "a formulaic recitation of the elements of a cause of action" such that the factual allegations "raise a right to relief above the speculative level." *Id.* at 555 (citations and internal quotation marks omitted); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (reiterating that "recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice").

"Establishing the plausibility of a complaint's allegations is a two-step process that is 'context-specific' and 'requires the reviewing court to draw on its judicial experience and common sense.'" *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 995-96 (9th Cir. 2014) (quoting *Iqbal*, 556 U.S. at 679). "First, to be entitled to the presumption of truth, allegations in a complaint . . . must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party

to defend itself effectively." *Id.* at 996 (quoting *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011)). "Second, the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." *Id.* (quoting *Starr*, 652 F.3d at 1216); *see also Iqbal*, 556 U.S. at 681.

Plausibility "is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. 544, 556, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). On one hand, "[g]enerally, when a plaintiff alleges facts consistent with both the plaintiff's and the defendant's explanation, and both explanations are plausible, the plaintiff survives a motion to dismiss under Rule 12(b)(6)." *In re Dynamic Random Access Memory (DRAM) Indirect Purchaser Antitrust Litig.*, 28 F.4th 42, 47 (9th Cir. 2022) (citing Starr, 652 F.3d at 1216). But, on the other, "'[w]here a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief.'" *Eclectic Props. E., LLC*, 751 F.3d at 996 (quoting *Iqbal*, 556 at U.S. 678). Ultimately, a claim is facially plausible where "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *See Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 at 556); *accord Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012).

Appendix B

In *Sprewell v. Golden State Warriors*, the Ninth Circuit described legal standards for motions to dismiss made pursuant to Rule 12(b)(6):

> Review is limited to the contents of the complaint. All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party. The court need not, however, accept as true allegations that contradict matters properly subject to judicial notice or by exhibit. Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.

266 F.3d 979, 988 (9th Cir. 2001) (citations omitted).

II. Summary of Allegations in the First Amended Complaint

This action concerns the enforcement of California's Housing Accountability Act, Cal. Gov. Code § 65585, *et seq.* and its provisions mandating building new housing units. (*See generally* Dkt. 38 ("FAC").) In sum, Plaintiffs seek declaratory and injunctive relief to invalidate and prevent the enforcement of the State of California's Regional Housing Needs Allocation Laws ("RHNA Laws"), Cal. Gov. Code Sections 65583, *et seq.* (*Id.*) Plaintiffs allege the State of California passed SB 1333 in 2018, which requires charter cities to comply with planning and land use laws in a manner violative of the California Constitution. (*Id.*

¶ 3.) Plaintiffs allege SB 1333 deprives charter cities like the City of Huntington Beach of their historical authority to control municipal affairs. (*Id.*)

Per the RHNA Laws, each city and county must adopt a "Housing Element" that demonstrates how the jurisdiction will accommodate its assigned RHNA units through its current zoning or potential rezoning program. (*Id.* ¶ 74.) If a local government fails to submit a compliant Housing Element within the required timeframe or is found to be noncompliant with its RHNA requirements, it can face penalties, including being subject to a shortened housing element review cycle, losing the ability to disapprove housing development projects, and losing eligibility for certain state or federal grant funds. (*Id.* ¶ 79.)

Plaintiffs allege Defendants determined in 2021 that the City of Huntington Beach must rezone property to permit the development of 13,368 units of high-density RHNA Units, with little or no ability for the City of Huntington Beach to control the development of the units. (*Id.* ¶ 19.) Although the City of Huntington Beach appealed the RHNA determination to Defendant Southern California Association of Governments, this appeal was unsuccessful. (*Id.* ¶ 120.)

Plaintiffs allege the RHNA Laws impede the City of Huntington Beach's independent legislative authority, do not allow for judicial review, are vague and ambiguous, and rely on a flawed process. (*Id.* ¶¶ 21, 22.) Plaintiffs

allege building 13,368 units of new housing during the current planning cycle would double the size of the City of Huntington Beach, making it impossible for the City of Huntington Beach to provide municipal services. (*Id.* ¶ 28.) Plaintiffs further allege Defendants will punish the City of Huntington Beach if it does not zone for 13,368 new units of housing. (*Id.* ¶ 29.) Finally, Plaintiffs allege Defendants will compel the City Council to make statements that it does not approve of, such as that "the benefits of the proposed high-density housing outweigh the negative impacts on the City's environment." (*Id.* ¶ 17.)

Based on these allegations, Plaintiffs assert eleven causes of action against Defendants: (1) compelled speech in violation of the First Amendment; (2) violation of the Fourteenth Amendment right to procedural due process; (3) violation of the Fourteenth Amendment right to substantive due process; (4) violation of the Commerce Clause; (5) violation of Article XI of the California Constitution; (6) violation of California Government Code §§ 65583 *et. seq.*; (7) violation of the California Constitution's separation of powers; (8) an illegal bill of attainder in violation of the California Constitution; (9) violation of the California Environmental Quality Act, Public Resources Code §§ 21000 *et. seq.*; (10) violation of Article IV, Section 16 of the California Constitution; and (11) fraud. (FAC ¶¶ 121-241.) Each cause of action is asserted against each Defendant. (*Id.*)

III. Discussion

a. Plaintiffs Lack Standing to Assert their Federal Constitutional Claims

As a threshold matter, Defendants argue Plaintiffs lack Article III standing to challenge the RHNA Laws on constitutional grounds because cities, as political subdivisions of the state, cannot assert violations of constitutional rights against the state. (Dkt. 44 at 5-8; Dkt. 45 at 9-11.) Plaintiffs Mayor Tony Strickland, Mayor Pro Tem Gracey Van der Mark, and the Huntington Beach City Council argue they have Article III standing because "[e]very individual is protected by the U.S. Constitution to his or her free speech" and are "elected by the people of the City pursuant to the City's Charter." (Dkt. 50 at 13-15.) Plaintiff the City of Huntington Beach argues it also has Article III standing to challenge the constitutionality of the RHNA Laws because a chartered city, unlike a general law city, is not a political subdivision of the state. (*Id.* at 15-19.)

"[T]o establish standing, a plaintiff must show (i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203, 210 L. Ed. 2d 568 (2021) (citation omitted). "At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). "An allegation of future injury may suffice if the threatened

injury is 'certainly impending,' or there is a 'substantial risk' that the harm will occur.'" *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158, 134 S. Ct. 2334, 189 L. Ed. 2d 246 (2014) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5, 133 S. Ct. 1138, 185 L. Ed. 2d 264 (2013)).

The court is mindful that "[c]onstitutional challenges based on the First Amendment present unique standing considerations." *Ariz. Right to Life Pol. Action Comm. v. Bayless*, 320 F.3d 1002, 1006 (9th Cir. 2003). As such, "the Supreme Court has endorsed what might be called a 'hold your tongue and challenge now' approach rather than requiring litigants to speak first and take their chances with the consequences." *Id.* (citing *Dombrowski v. Pfister*, 380 U.S. 479, 486, 85 S. Ct. 1116, 14 L. Ed. 2d 22 (1965) and *Bland v. Fessler*, 88 F.3d 729, 736-37 (9th Cir. 1996)). However, a "chilling of First Amendment rights can constitute a cognizable injury" only "so long as the chilling effect is not based on a fear of future injury that itself is too speculative to confer standing." *Index Newspapers LLC v. United States Marshals Serv.*, 977 F.3d 817, 826 (9th Cir. 2020) (cleaned up).

Yet, in *City of S. Lake Tahoe v. California Tahoe Reg'l Plan. Agency*, 625 F.2d 231 (9th Cir. 1980), the Ninth Circuit squarely addressed the question of whether political subdivisions of a state may challenge the validity of a state statute on constitutional grounds. Per *City of S. Lake Tahoe*, "[i]t is well established that political subdivisions of a state may not challenge the validity of a state statute under the Fourteenth Amendment." *Id.* at 233 (citations and internal quotation marks omitted). "This is true whether the defendant is the state itself or another

of the state's political subdivisions." *Id.* Lack of standing similarly bars constitutional challenges asserted by public officials tasked with enforcing allegedly unconstitutional state laws. In *City of S. Lake Tahoe*, the Ninth Circuit held that public officials who wish not to enforce a statute due to "private constitutional predilections" lack standing to assert constitutional claims for the following reasons:

> [C]onstitutional principle divorced from concrete injury may suffice to generate a spirited legislative or public debate, but will not support a federal case. This is not to denigrate constitutional principle, nor to urge upon public officials the violation of their consciences. But the difficulty with abstract constitutional grievances is that they lack the specificity and adversarial coloration that transmute vague notions of constitutional principle into a form historically viewed as capable of judicial resolution . . . *To confer standing on public officials because they wish not to enforce a statute due to private constitutional predilections, or because their decision not to enforce the statute may result in criminal liability, would convert all officials charged with executing statutes into potential litigants, or attorneys general, as to laws within their charge* . . . We hold, therefore, that the councilmembers' interest here is official rather than personal . . . the councilmembers' claim to standing is deficient.

Id. at 238 (emphasis added).

Subsequent Ninth Circuit decisions have affirmed and extended the holding of *City of S. Lake Tahoe*. In *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998), the Ninth Circuit clarified that Supremacy Clause challenges brought by a political subdivision of a state are similarly barred. *See id.* at 1364 ("This court, however, has not recognized any exception to the per se rule, and the broad language of *South Lake Tahoe* appears to foreclose the possibility of our doing so . . . Indeed, the complaint in *South Lake Tahoe* included a Supremacy Clause claim, as well as violations of the Fifth and Fourteenth Amendments . . . . Accordingly, we must reject the contention that we should create such an exception at this point."). In *City of Burbank*, the Ninth Circuit further clarified that whether a city is a charter city or general law city has no bearing on the question of standing. *Id.* at 1364 (rejecting the argument that "Burbank is a charter city, rather than a general law city, it is not a political subdivision of the state for purposes of its ability to challenge a state statute" because "charter cities in California generally are defined as political subdivisions along with other governmental entities").

In addition to *City of Burbank*, the Ninth Circuit has repeatedly reaffirmed the holding of *City of S. Lake Tahoe* in various contexts, including suits brought by school districts and suits asserting constitutional challenges to state regulations and administrative divisions. *See Palomar Pomerado Health Sys. v. Belshe*, 180 F.3d 1104, 1108 (9th Cir. 1999) ("Palomar Pomerado is a political subdivision of the State of California. As such, it lacks standing to bring an action against the state in federal court—at least to the extent that its action challenges the

validity of state regulations on due process and Supremacy Clause grounds."); *City of San Juan Capistrano v. Cal. Pub. Utilities Comm'n*, 937 F.3d 1278, 1281 (9th Cir. 2019) ("We reject the proposition that *South Lake Tahoe* bars only facial challenges to a statute or regulation. *South Lake Tahoe* and our later cases do not suggest that the standing analysis was dependent on a facial challenge to a statute or regulation rather than an administrative decision."); *Okanogan Sch. Dist. # 105 v. Superintendent of Pub. Instruction*, 291 F.3d 1161, 1163 (9th Cir. 2002) ("We agree that the school districts lack standing under *City of South Lake Tahoe* . . . . School districts are a political subdivision of the state, and political subdivisions of a state may not challenge the validity of a state statute in federal court.").

The Ninth Circuit has also made clear that an action against a state official seeking to restrain state action should be construed as an action against the state. *See Palomar*, 180 F.3d at 1108 ("Here, the purpose of the injunction and other orders [plaintiff] seeks is to restrain the Government from reducing the Medi—Cal payment rates . . . . The result [plaintiff] seeks would interfere with the public administration. As such, [plaintiff's] action falls under the category of actions against state officials that are in fact actions against the state.") (internal quotation marks omitted); *see also Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984) ("[T]he general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter.") (quoting *Hawaii v. Gordon*, 373 U.S. 57, 58, 83 S. Ct. 1052, 10 L. Ed. 2d 191 (1963)).

In this case, although Plaintiffs maintain they each have standing to bring federal constitutional claims challenging the RHNA Laws, the court finds each group of Plaintiffs lacks standing based on Ninth Circuit precedent.

First, as to the standing of Plaintiff Mayor Tony Strickland, Plaintiff Mayor Pro Tem Gracey Van Der Mark, and Plaintiff City Council, these Plaintiffs argue they have standing because they are being forced to make statements in favor of implementing the RHNA Laws. (Dkt. 50 at 13-15.) Specifically, Plaintiff Strickland argues his First Amendment rights are being violated because "the RHNA Laws process forc[e] him, through essentially State-compelled speech, to make Statements of Overriding Considerations in favor of implementing the State-mandated 13,368 high-density RHNA Units of housing in the City against his will and over his objections." (*Id.* at 13-14.) Plaintiff Van Der Mark and Plaintiff City Council raise the same argument. (*Id.* at 14-15.)

The court finds these arguments are squarely precluded by *City of S. Lake Tahoe* and its progeny. Under this line of authority, public officials lack standing to assert constitutional claims that seek to redress "private constitutional predilections." 625 F.2d at 238 ("To confer standing on public officials because they wish not to enforce a statute due to private constitutional predilections, or because their decision not to enforce the statute may result in criminal liability, would convert all officials charged with executing statutes into potential litigants, or attorneys general, as to laws within their charge.") Accordingly, Plaintiff Strickland, Plaintiff Van der Mark, and Plaintiff City Council's arguments that they

are being forced to implement the RHNA Laws over their personal objections are insufficient to confer standing.

Similarly, this precedent precludes political subdivisions of a state like Plaintiff City of Huntington Beach from asserting constitutional challenges to the validity of a state law in federal court. *See City of S. Lake Tahoe*, 625 F.2d at 233 ("It is well established that political subdivisions of a state may not challenge the validity of a state statute under the Fourteenth Amendment."); *City of Burbank*, 136 F.3d at 1364 ("This court, however, has not recognized any exception to the per se rule, and the broad language of *South Lake Tahoe* appears to foreclose the possibility of our doing so . . . . Indeed, the complaint in *South Lake Tahoe* included a Supremacy Clause claim, as well as violations of the Fifth and Fourteenth Amendments . . . ."); *Palomar*, 180 F.3d at 1108 ("Palomar Pomerado is a political subdivision of the State of California. As such, it lacks standing to bring an action against the state in federal court—at least to the extent that its action challenges the validity of state regulations on due process and Supremacy Clause grounds."); *Okanogan Sch. Dist. # 105*, 291 F.3d at 1163 ("We agree that the school districts lack standing under *City of South Lake Tahoe* . . . . [s]chool districts are a political subdivision of the state, and political subdivisions of a state may not challenge the validity of a state statute in federal court.").

Nor is the standing analysis any different for a charter city as opposed to a general law city. Although Plaintiff City of Huntington Beach argues it is not a political subdivision of the state because it is a municipal corporation and

charter city rather than a general law city, (Dkt. 50 at 16-19), the Ninth Circuit has previously considered and rejected this argument. As noted, in *City of Burbank*, the Ninth Circuit held that whether a city is a charter city or general law city has no bearing on the question of federal standing. 136 F.3d at 1364. Specifically, the Ninth Circuit held that a California charter city still lacks standing because they "are defined as political subdivisions along with other governmental entities." *Id.; see also Reynolds v. Sims*, 377 U.S. 533, 575, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964) ("Political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions."). Accordingly, the court concludes that Plaintiff City of Huntington Beach lacks standing to bring federal constitutional claims challenging the RHNA Laws.[3]

In summary, per Ninth Circuit precedent, all Plaintiffs lack Article III standing to challenge the RHNA Laws on constitutional grounds. Accordingly,

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3. Plaintiffs point to various cases in support of their position that the City of Huntington Beach should not be considered a political subdivision of the state. (*See* Dkt. 50 at 15-16, 18-19 (citing to *Mitchell v. L.A. Cmty. Col. Dist.*, 861 F.2d 198, 201 (9th Cir. 1988), *Eason v. Clark Cnty. Sch. Dist.*, 303 F.3d 1137, 1144 (9th Cir. 2002), and *Haytasingh v. City of San Diego*, 66 Cal. App. 5th 429, 436, 286 Cal. Rptr. 3d 364 (2021).) The court finds these cases are inapposite because they concern Eleventh Amendment immunity or interpretations of state laws that are not at issue here.

Plaintiffs lack standing to assert their first four claims against Defendants for First Amendment violations, Fourteenth Amendment procedural due process violations, Fourteenth Amendment substantive due process violations, and Commerce Clause violation and the Motions are **GRANTED** as to the first, second, third, and fourth causes of action.[4]

b. The Court Declines to Exercise Supplemental Jurisdiction over Plaintiffs' Remaining State Law Claims

Plaintiffs' remaining claims assert violations of the California Constitution, the California Government Code, and the California Environmental Quality Act, as well as a fraud claim under California law. (FAC ¶¶ 168-241.) In summary, in the absence of the federal claims in this matter, Plaintiffs' only remaining claims are alleged under California law. (*Id.*)

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4. Plaintiffs argue their claims should be permitted to proceed under *Ex Parte Young*, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908). (Dkt. 50 at 19-21.) However, contrary to Plaintiffs' arguments, "*Young* does not provide [a plaintiff] with standing to sue in federal court." *Palomar*, 180 F.3d at 1108. Instead, "*Young* only provides 'a narrow exception to Eleventh Amendment immunity for certain suits seeking declaratory and injunctive relief against unconstitutional actions taken by state officers in their official capacities.'" *Palomar*, 180 F.3d at 1108 (quoting *Rounds v. Oregon State Bd. of Higher Educ.*, 166 F.3d 1032, 1036 (9th Cir. 1999)). Accordingly, the court concludes Plaintiffs' arguments regarding *Ex Parte Young*'s applicability to this action does not address the standing and jurisdictional issues identified above.

Appendix B

The court observes Plaintiffs' remaining claims do not raise federal questions because they assert violations of California law. (*Id.*) Additionally, Plaintiffs' claims are asserted between non-diverse parties. (*Id.* ¶¶ 43-50.) As such, the only remaining hook for the court's jurisdiction over these claims is the supplemental jurisdiction statute, 28 U.S.C. § 1367.

The court finds at least three reasons militate towards declining supplemental jurisdiction over Plaintiffs' state law claims. First, this case "raises [] novel or complex issue[s] of State law." *See* 28 U.S.C. § 1367(c)(1) ("The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if . . . the claim raises a novel or complex issue of State law.") More specifically, Plaintiffs ask the court to determine in the first instance whether recently enacted California statutes violate various provisions of the California Constitution and state statutes. (*See generally* FAC.)

Second, the "court has dismissed all claims over which it has original jurisdiction" on the basis of a lack of Article III standing. *See* 28 U.S.C. § 1367(c)(3) ("The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if . . . the district court has dismissed all claims over which it has original jurisdiction."). Moreover, "in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims."

Sanford v. MemberWorks, Inc., 625 F.3d 550, 561 (9th Cir. 2010) (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7, 108 S. Ct. 614, 98 L. Ed. 2d 720 (1988), *superseded on other grounds by statute*).

Third and finally, the court finds adjudicating the constitutionality of a California statute under the California Constitution, in the absence of a viable federal claim, constitutes "compelling reasons" in "exceptional circumstances" to decline exercising supplemental jurisdiction. *See* 28 U.S.C. § 1367(c)(4) ("The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if . . . in exceptional circumstances, there are other compelling reasons for declining jurisdiction."); *see also City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 174, 118 S. Ct. 523, 139 L. Ed. 2d 525 (1997) (listing as "exceptional circumstances" warranting declining federal jurisdiction "considerations of proper constitutional adjudication, regard for federal-state relations, or wise judicial administration") (quoting *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716, 116 S. Ct. 1712, 135 L. Ed. 2d 1 (1996)).

Accordingly, the court declines to exercise supplemental jurisdiction over Plaintiffs' remaining state law claims and **DISMISSES** the fifth, sixth, seventh, eighth, ninth, tenth, and eleventh causes of action. *See Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1000 (9th Cir. 1997) ("[A] federal district court with power to hear state law claims has discretion to keep, or decline to keep, them under the conditions set out in § 1367(c)."); *O'Brien v. Maui Cnty.*, 37 F. App'x 269, 273 (9th Cir. 2002) ("Under 28 U.S.C. § 1367(c)(3), a

district court may, in its discretion, decline to exercise supplemental jurisdiction over related state law claims once it has dismissed all claims over which it has original jurisdiction.") (internal quotation marks omitted).

IV. Leave to Amend

"A party may amend its pleading once as a matter of course within: [(1)] 21 days after serving it, or [(2)] if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P. 15(a)(1). "In all other cases," pleadings may only be amended with the opposing party's written consent or the court's leave, the latter of which is "freely give[n] when justice so requires." Fed. R. Civ. P. 15(a)(2). "In assessing whether leave to amend is proper, courts consider the presence or absence of undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party and futility of the proposed amendment." *Kroessler v. CVS Health Corp.*, 977 F.3d 803, 814-15 (9th Cir. 2020) (citation and internal quotation marks omitted). Courts may find amendment futile where "no amendment would allow the complaint to withstand dismissal as a matter of law," and "[f]utility of amendment can, by itself, justify the denial of a motion for leave to amend." *Id.* at 815 (citation and internal quotation marks omitted). But "[i]f a complaint does not state a plausible claim for relief, a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly

be cured by the allegation of other facts." *Perez v. Mortg. Elec. Registration Sys., Inc.*, 959 F.3d 334, 340 (9th Cir. 2020) (citation and internal quotation marks omitted).

At this juncture, the court has dismissed Plaintiffs' federal claims for lack of Article III standing, leaving only those claims asserted under California law. The court finds amendment of the federal constitutional claims would be futile under Ninth Circuit precedent, including *City of S. Lake Tahoe* and its progeny. In the absence of the federal constitutional claims, only Plaintiffs' claims under state law remain. Accordingly, the court finds the FAC's allegations dismissed by this Order are futile at this stage and **DENIES** Plaintiffs leave to amend. *See Kroessler*, 977 F.3d at 814-15 (holding that amendment may be futile where "no amendment would allow the complaint to withstand dismissal as a matter of law," and "[f]utility of amendment can, by itself, justify the denial of a motion for leave to amend").

V. Disposition

For the reasons set forth above, the Motions are **GRANTED**. The Clerk of Court is directed to **CLOSE** the matter.

Initials of Deputy Clerk: mku

APPENDIX C — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED APRIL 21, 2025

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-3694
D.C. No. 8:23-cv-00421-FWS-ADS

CITY OF HUNTINGTON BEACH, A CALIFORNIA CHARTER CITY AND MUNICIPAL CORPORATION; HUNTINGTON BEACH CITY COUNCIL; TONY STRICKLAND, MAYOR OF HUNTINGTON BEACH; GRACEY VAN DER MARK, MAYOR PRO TEM OF HUNTINGTON BEACH,

Plaintiffs-Appellants,

v.

GAVIN NEWSOM, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF CALIFORNIA; GUSTAVO VELASQUEZ, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE STATE OF CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT; CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT; DOES, 1-50, INCLUSIVE; SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENT,

Defendants–Appellees.

Filed April 21, 2025

Appendix C

Before: Richard C. Tallman, Ryan D. Nelson, and Daniel A. Bress, Circuit Judges.

ORDER

Judge R. Nelson and Judge Bress voted to deny the petition for rehearing en banc. Judge Tallman recommended denying the petition for rehearing en banc.

The full court was advised of the petition for rehearing en banc. A judge requested a vote on whether to rehear the matter en banc. The matter failed to receive a majority of the votes of the nonrecused active judges in favor of en banc consideration. Fed. R. App. P. 40.

The petition for rehearing en banc, Dkt. 54, is **DENIED**.