No. 25-337

IN THE

Supreme Court of the United States

CITY OF HUNTINGTON BEACH, CALIFORNIA, *et al.*,

Petitioners,

v.

GAVIN NEWSOM, GOVERNOR OF CALIFORNIA, *et al.*,

Respondents.

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

BRIEF OF AMICI CURIAE CITY OF RIVERSIDE AND CITY OF PORTERVILLE IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

1. Do public entities automatically, uniformly lack standing to challenge the constitutionality of state statutes in federal court, as the Ninth Circuit held—or is standing determined on a case-by-case basis in light of state law and the nature of the claim, as multiple other circuits have held?

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Page

Cited Authorities

Statutes

IDENTITY AND INTEREST OF AMICUS CURIAE

The City of Riverside and the City of Porterville ("Amici Cities") are charter cities located in California. Like other cities, Amici Cities are directly impacted by the first issue presented in the City of Huntington Beach's petition for certiorari, i.e., whether a city can challenge the constitutionality of state laws in federal court.[1]

This issue has immediate, concrete consequences for the Amici Cities. The Ninth Circuit doctrine at issue in the petition bars them from suing the State of California to challenge overreaching, unconstitutional statutes adopted by the State that tie local entities' hands when it comes to regulating local criminal activities that impact residents, homelessness abatement, and other issues. Yet other federal circuits impose no such bar: Amici Cities *would* be able to mount constitutional challenges to overreaching statutes that trample local entities' and their residents' rights if they were instead located in New York, New Jersey, Colorado, or the many other states within the Second, Third, Fifth, Sixth, Tenth or Eleventh Circuit.

Amici Cities support the City of Huntington Beach's petition for review so that this Court can resolve this split and bring the Ninth Circuit into consistency with the majority of circuits that do not prohibit such challenges.

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1. Pursuant to this Court's Rule 37.2, counsel of record for all parties received notice of intent to file this amicus brief 10 days before the due date for the brief. Pursuant to this Court's Rule 37.6, amici curiae affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation of submission of this brief. No person other than amici curiae or their counsel made a monetary contribution to the brief's preparation or submission.

SUMMARY OF ARGUMENT

In the underlying case, the City of Huntington Beach sued the State of California in the Central District of California to challenge the State's high-density housing mandate. The district court dismissed the case based on *City of South Lake Tahoe v. California Tahoe Regional Planning Agency*, 625 F.2d 231 (9th Cir. 1980), which held that political subdivisions of the state lack standing to assert federal constitutional challenges against the state. The Ninth Circuit affirmed.

The Ninth Circuit's opinion, and the *South Lake Tahoe* decision driving it, conflict with the law in numerous other circuits that *do not* impose a per se bar on constitutional challenges by political subdivisions, but that instead address standing on a case-by-case basis. The *South Lake Tahoe* rule that the Ninth Circuit applied is also at odds with this Court's more recent precedents modernizing the standards for a party to secure Article III standing in federal court.

Certiorari is necessary to bring the Ninth Circuit into conformance with other circuits and with this Court's current approach to standing, and to free political subdivisions in the Ninth Circuit from a 45-year-old *per se* rule preventing them from challenging unconstitutional state action.

ARGUMENT

I. The Ninth Circuit's *Per Se* No-Standing Rule Conflicts With This Court's Modern Approach To Standing.

For 45 years, the Ninth Circuit has stood by a *per se* rule that political subdivisions lack standing to challenge State action as unconstitutional in federal court. Meanwhile, this Court's standing jurisprudence has advanced into modern times. Certiorari is necessary to bring the Ninth Circuit into alignment with that more modern jurisprudence.

The Ninth Circuit first outlined its per se rule in *South Lake Tahoe*, in 1980. As the Ninth Circuit later observed, *South Lake Tahoe* "offered no independent reasoning for its per se standing rule."[2] Rather, it merely "cited Supreme Court and Second Circuit decisions that rejected cities' constitutional challenges to state law, characterizing political subdivisions as 'creature[s]' and states as their 'creators.'"[3] *South Lake Tahoe* extrapolated from those principles a rule that cities, counties, school districts, and other subdivisions of the State lack standing to bring a constitutional challenge to a State statute or action under the Fourteenth Amendment.[4]

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2. *City of San Juan Capistrano v. California Public Utilities Commission*, 937 F.3d 1278, 1280 (9th Cir. 2019).

3. *Id.*

4. *South Lake Tahoe*, 625 F.2d at 233.

But this Court's decisions cited in *South Lake Tahoe* date back to the 1920s and 1930s.[5] This Court's standing case law has evolved significantly since then—somewhat in decisions that pre-dated *South Lake Tahoe* but that *South Lake Tahoe* did not address, and even more so in post-*South Lake Tahoe* decisions.

For example, in dissenting from the denial of certiorari in *South Lake Tahoe*, Justice White criticized *South Lake Tahoe* for not following *Board of Education of Central School District No. 1 v. Allen*, 392 U.S. 236 (1968), which held that school board members had standing to sue the state regulator on the ground that certain textbooks violated the First Amendment's free exercise clause. [6] Justice White observed that "If the *Allen* doctrine is to be reconsidered, it should be done by this Court, and not by the various Courts of Appeals."[7]

And in the years since *South Lake Tahoe*, this Court's standing jurisprudence has continued to evolve in ways that make *South Lake Tahoe* even more anachronistic.

In 1992, *Lujan v. Defenders of Wildlife* established the modern three-part test for standing: (1) a plaintiff must have suffered an injury in fact, i.e. the invasion of a legally protected interest that is both concrete and

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5. *Id.*, citing inter alia *City of Trenton v. State of New Jersey*, 262 U.S. 182, 189 (1923) and *Williams v. Mayor & City Council of Baltimore*, 289 U.S. 36 (1933).

6. *City of South Lake Tahoe v. California Tahoe Regional Planning Agency*, 449 U.S. 1039 (1980) (White, J., dissenting from denial of certiorari).

7. *Id.*

particularized, as well as actual or imminent, not merely hypothetical; (2) there must be a causal connection between the injury and the conduct complained of, i.e. the injury must be fairly traceable to the challenged action and not the result of independent action taken by a third party not before the court; and (3) it must be likely that the injury can be redressed by a favorable decision from the court, not merely speculative.[8]

More recently, in 2016 and 2021, *Spokeo, Inc. v. Robins* and *TransUnion v. Ramirez* confirmed that intangible injuries can still fulfill the concrete injury portion of the three-part *Lujan* test.[9] Both cases also clarified that in determining whether an intangible harm constitutes an injury in fact, it is important to consider whether the intangible harm has a close relationship to a harm that has traditionally been recognized as providing a basis for lawsuits in American courts, which may also include harms specified by the U.S. Constitution itself.[10]

The Ninth Circuit's per se *South Lake Tahoe* rule ignores the three-part standing test: It treats as irrelevant whether local public entities have a "personal stake in the outcome," as well as causation and redressability—instead, it automatically slams the courthouse doors on local entities' constitutional challenges to state statutes. The Court should grant certiorari to bring the Ninth

8. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

9. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016); *TransUnion v. Ramirez*, 594 U.S. 413, 425 (2021).

10. *Spokeo, Inc.*, 578 U.S. at 340-41; *TransUnion*, 594 U.S. at 425.

Circuit's standing analysis into line with the principles set forth by this Court.

II. The Ninth Circuit's Per Se No-Standing Rule Conflicts With The Case-Specific Analysis Adopted By Numerous Other Federal Circuits

Not only is *South Lake Tahoe* misaligned with this Court's current standing case law, it also conflicts with the approach of other circuits around the country.

We are not aware of *any* other circuit that categorically bars local public entities from challenging the constitutionality of state statutes. Rather, all of the other circuits to have considered his issue have concluded that there is no categorical bar, and instead have adopted more nuanced standing analyses depending on the specific facts presented.

Second Circuit. The Second Circuit *rejected* a per-se standing bar for political subdivisions, in the 2019 decision *Tweed-New Haven Airport Authority v. Tong*. There, authority that operated a local airport sued the Connecticut Attorney General, seeking a declaratory judgment invalidating a Connecticut state statute limiting the length of airport runways.[11] The State argued that the airport authority lacked standing because it was a political subdivision of the State.[12] The Second Circuit disagreed in light of *Gomillion v. Lightfoot*, an 1960 decision in which this Court rejected the State of Alabama's assertion that a

11. *Tweed-New Haven Airport Authority v. Tong*, 930 F.2d 65, 68 (2d. Cir. 2019).

12. *Id*. at 72.

state's power over its political subdivisions is unrestricted by the Constitution.[13] *Tweed* asserted that "[i]f the Supremacy Clause means anything, it means that a state is not free to enforce within its boundaries laws preempted by federal law."[14] It then undertook a traditional Article III standing analysis, and concluded that the airport authority could pursue its Supremacy Clause challenge because it had suffered an injury-in-fact.[15]

Additionally, the Second Circuit in *Aguayo v. Richardson* held that a New York City Commissioner of the Department of Social Services had standing in federal court to challenge the constitutionality of New York's new state work relief programs.[16] Similarly to *Allen*, the Second Circuit ruled that the commissioner had standing to file the constitutional challenge because he also faced a conflict between his oath to support the U.S. Constitution and his duty to carry out New York state projects.[17]

In a related case entitled *City of New York v. Richardson*, the Second Circuit also found that city officials have standing to file constitutional challenges in their individual official capacities due to the same conflict they experience between their oath to the U.S.

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13. *Id.*

14. *Tweed-New Haven Airport Authority*, *supra*, 930 F.2d at 73.

15. *Id.* at 73-75.

16. *Aguayo v. Richardson*, 473 F.2d 1080 (2d Cir. 1973).

17. *Id.* at 1100.

Constitution and their duty to carry out New York's unconstitutional program, the subject of the suit.[18]

Third Circuit. The Third Circuit has ruled in a similar fashion as well. In its 2021 decision in *Ocean Cnty. Bd. of Comm'rs v. Att'y Gen.*, various counties and county agencies sued the New Jersey Attorney General, arguing that the Attorney General's Immigrant Trust Directive violated the U.S. Constitution, state law, and was preempted by federal statutes.[19] In essence, the directive limited the ability of counties and law enforcement to cooperate with federal immigration authorities.[20]

New Jersey argued that political arms of the state lack standing to bring constitutional claims in federal court against the state that created them.[21] The Third Circuit rejected that per-se approach, citing decisions from the Second, Fifth, and Tenth Circuits in holding that the modern rule is that a political subdivision is not *per se* barred from asserting standing in federal court and suing its creator state.[22]

Fifth Circuit. The Fifth Circuit long ago rejected a per-se no-standing rule for local public entities, in *Rogers*

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18. *City of New York v. Richardson*, 473 F.2d 923 (2d Cir. 1973).

19. *Ocean Cnty. Bd. of Comm'rs v. Att'y Gen.*, 8 F.4th 176 (3d Cir. 2021).

20. *Id*.

21. *Id*. at 180.

22. *Id*. at 181.

v. Brockette. There, a school district claimed that state policy conflicted with a federal school meal program, and that under the Supremacy Clause, a federal statute can give a political subdivision a cause of action.[23]

The State of Texas cited a series of older cases decided by this Court which seemed to hold that a municipality cannot sue the state that created it, including *Trenton v. New Jersey*, one of the decisions cited in *South Lake Tahoe*, and *Hunter v. Pittsburgh*, 207 U.S. 161, (1907).[24] The Fifth Circuit rejected Texas's absolutist position. Citing *Gomillion*, the Fifth Circuit explained that "a correct reading of the seemingly unconfined dicta of *Hunter* and kindred cases is not that the State has plenary power to manipulate…the affairs of its municipal corporations, but rather that the State's authority is unrestrained by the particular prohibitions of the Constitution considered in those cases."[25]

Thus, the Fifth Circuit concluded that *Hunter* and its progeny are "substantive interpretations of the constitutional provisions involved," not *per se* bars on whether a municipality has standing to sue the state it is an arm of.[26] It held that there is no *per se* rule that prevents municipalities from suing state entities.[27]

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23. *Rogers v. Brockette*, 588 F.2d 1057, 1068-69 (5th Cir. 1979).

24. *Hunter v. Pittsburgh*, 207 U.S. 161, (1907); *Trenton v. New Jersey*, 262 U.S. 182 (1923).

25. *Gomillion*, *supra*, 364 U.S. at 344.

26. *Rogers*, *supra*, 588 F.2d at 1068.

27. *Donelon v. Louisiana Div. of Admin. Law ex rel. Wise*, 522 F.3d 564, 567, n.6 (5th Cir. 2008).

Sixth Circuit. The Sixth Circuit held that the Akron Board of Education had standing to sue the State Board of Education of Ohio for injunctive relief in order to prevent alleged school segregation in violation of the Fourteenth Amendment while carryout out a State Board of Education policy.[28] The Sixth Circuit declared that *Allen* was authoritative in this case, and that the Akron Board of Education could challenge Ohio's allegedly unconstitutional state programs because its own board members were charged with carrying out said state programs.[29]

Ultimately, the Sixth Circuit concluded that instead of a *per se* bar being the insurmountable hurdle that would prevent the Board to challenge the state programs, the Board sufficiently proved standing because they had sufficient facts to prove a case or controversy under a traditional Article III standing analysis; namely, loss of territory and tax dollars and asserted rights of their pupils and parents.[30]

Tenth Circuit. *Branson Sch. Dist. RE-82 v. Romer*, decided by the Tenth Circuit, involved various Colorado school districts and public school students suing to enjoin enforcement and implementation of terms of the Colorado Enabling Act relating to a trust over school lands granted to Colorado.[31] The State attempted to argue

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28. *Akron Bd. of Ed. V. State Bd. of Ed. of Ohio*, 490 F.2d 1285 (6th Cir. 1974).

29. *Id*. at 1291.

30. *Id*. at 1290.

31. *Branson School Dist. v. Romer*, 161 F.3d 619, 625-27 (10th Cir. 1998);

that as political subdivisions and creatures of the State of Colorado, the school districts lacked the legal power to sue in this matter.[32]

However, the Tenth Circuit concluded that the school districts have standing because the older holdings of this Court in *Williams v. Mayor & City Council of Baltimore* and *Trenton* "stand only for the limited proposition that a municipality may not bring a constitutional challenge against its creating state *when the constitutional provision that supplies the basis for the complaint was written to protect individual rights, as opposed to collective or structural rights.*"[33]

The Tenth Circuit concluded that no case from the *Williams* and *Trenton* line of cases, nor any other case from this Court, has held that a political subdivision is barred from asserting the Supremacy Clause in a lawsuit against its creating state.[34]

Eleventh Circuit. In *United States v. Alabama* decided by the Eleventh Circuit, the federal government sued the State of Alabama, state educational authorities, and four-year universities.[35] Alabama State University and black citizens eligible to attend or become employed there were allowed to intervene.[36] The intervenors filed for an

32. *Id*. at 628.

33. *Id*. (Emphasis added).

34. *Id*. at 629.

35. *U.S. v. State of Alabama*, 791 F.2d 1450, 1453-54 (11th Cir. 1986).

36. *Id*.

injunction to prevent the state and its Board of Education members from refusing to recertify teacher education programs in universities pending resolution of the case.[37]

Ultimately, the Eleventh Circuit determined that Alabama State University lacked standing to seek such an injunction, but notably *not* because of a *per se* categorical bar. Citing to *Gomillion* and *Rogers* decided by the Fifth circuit, the Eleventh Circuit concluded that "no per se rule applies in this Circuit."[38]

First, Fourth, Seventh and Eighth Circuits. The First, Fourth, Seventh, and Eighth Circuits have all punted on this issue, having declined to adopt a *per se* rule, but also declining to adopt the approach used by the above-listed circuits.

For example, the Fourth Circuit in *City of Charleston v. Pub. Serv. Comm'n* cited to *South Lake Tahoe*, *Gomillion*, and other similarly situated cases, yet concluded that "whether the cities have standing to bring this suit is unclear."[39] Instead, the Fourth Circuit refused to resolve this question, and instead judged that the involved cities' claim failed on the merits.[40]

Similarly, the Seventh Circuit and Eighth Circuits have not undergone the same breadth of analysis

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37. *Id.*

38. *Id.* at 1455.

39. *City of Charleston v. Pub. Serv. Comm'n*, 57 F.3d 385, 390 (4th Cir. 1995).

40. *Id.*

illustrated by the above-listed circuits, have not cited to other circuits' refusals to adopt a *per se* categorical bar, and at the same time, have not adopted such a bar either.[41]

III. Even Judges Within The Ninth Circuit Have Called For Revising Its Rule, But The Circuit Has Not Heeded The Call

In essence, the Ninth Circuit stands in contrast to the majority position allowing political subdivisions to constitutionally challenge other subdivisions in federal court, and in other circuits, refusing to answer the question entirely. Significantly, the Ninth Circuit is the *only* circuit in the United States that *per se* bars a political subdivision from filing a claim that it could easily file in any other circuit in the country.

Just one year after the *South Lake Tahoe* decision, the Ninth Circuit began to backpedal on its *per se* standing rule, stating in *San Diego Unified Port Dist. v. Gianturco* that "[w]hile there are broad dicta that a political subdivision may never sue its maker on constitutional grounds…we doubt that the rule is so broad."[42]

In fact, many of the Ninth Circuit's own judges have stated that there should be *en banc* reconsideration of

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41. *Vill. of Arlington Heights v. Reg'l Transp. Auth.*, 653 F.2d 1149 (7th Cir. 1981); *Delta Special Sch. Dist. No. 5 v. Stade Bd. of Educ.*, 745 F.2d 532 (8th Cir. 1984).

42. *San Diego Unified Port Dist. v. Gianturco*, 651 F.2d 1306, 1309, n.7 (9th Cir. 1981) (citations omitted).

South Lake Tahoe and its progeny to expressly overturn its *per se* standing rule. In his concurring opinion in *San Juan Capistrano*, Judge Nelson stated that before *Lujan* (when *South Lake Tahoe* was heard), standing was not seen as a preliminary or threshold question.[43] After *Lujan* however, Judge Nelson recommended that the Ninth Circuit "revisit this court's *per se* rule in light of intervening caselaw from other circuit courts and the Supreme Court."[44]

Judge Reinhardt in his dissenting opinion in *Indian Oasis* again mentioned *South Lake Tahoe*, stating that it "made no reference to the usual standing criteria, and its reasoning…appears to be addressed to whether the city possessed a cause of action."[45]

Judge Kozinski in his concurring opinion for *Burbank-Glendale-Pasadena Airport Auth.* stated that "the fact that three other circuits seem to have recognized an exception to the per se rule…might be a reason to reconsider the matter *en banc*."[46]

Additionally, Judge Hawkins in his concurring opinion in *Palomar Pomerado Health Sys.* stated "our en banc

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43. *City of San Juan Capistrano*, *supra*, 937 F.3d at 1282 (Nelson, J., concurring).

44. *Id.*

45. *Indian-Oasis Baboquivari Unified*, *supra*, 91 F.3d at 1246 (Reinhardt, J., dissenting).

46. *Burbank*, *supra*, 136 F.3d at 1364 (Kozinski, J., concurring).

court should take another look at *South Lake Tahoe* and its progeny."[47]

CONCLUSION

The Ninth Circuit's per se rule that political subdivisions lack standing to challenge unconstitutional statutes conflicts with this Court's modern standing precedent, and with the more nuanced, case-by-case analysis used by other circuits.

The same should be the case in the Ninth Circuit. The California Constitution vests charter cities with substantial independence from State control via Home Rule authority. Accordingly, Article XI, Section 5(a) allows charter cities to exercise authority over municipal affairs, meaning charter cities can enact laws and regulations without obtaining prior State approval, so long as these laws do not conflict with State law.[48] Charter cities are additionally considered "persons," adding further authority that charter cities should be allowed the ability to constitutionally challenge State action just as a "person" under the law already can in the Ninth Circuit.[49]

The Court should grant certiorari to clarify that there is no per se standing bar. Doing so would provide cities, counties, and school districts in the Ninth Circuit

47. *Palomar Pomerado Health Sys. v. Belshe*, 180 F.3d 1104, 1109 (9th Cir. 1999) (Hawkins, J., concurring).

48. California Constitution, Article XI, Section 5(a).

49. 42 U.S.C. § 1983.

the ability to challenge overreaching, unconstitutional statutes imposed by the states in which they are located, and would create national uniformity.

Respectfully submitted,

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