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

SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Under this Court's political subdivision standing doctrine, municipal corporations and other political subdivisions "ha[ve] no privileges or immunities under the Federal Constitution which [they] may invoke in opposition to the will of [their] creator"—i.e., their parent states. *Williams v. Mayor & City Council of Baltimore*, 289 U.S. 36, 40 (1933); see also *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907); *City of Trenton v. New Jersey*, 262 U.S. 182 (1923).

The question presented here is whether this Court should review the Ninth Circuit's unpublished memorandum disposition applying the political subdivision doctrine to bar Petitioners' First Amendment, Fourteenth Amendment, and Commerce Clause claims attempting to challenge state housing law provisions, even though the Ninth Circuit's decision conflicts with no decision of this Court, and conflicts with no decision by any other Court of Appeals.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Constitutional Provisions

State Statutes

INTRODUCTION

Petitioners—a California charter city, its City Council, and two of its elected officials—seek review of an unpublished memorandum disposition by the Ninth Circuit holding that Petitioners may not invoke the First Amendment, the Fourteenth Amendment, or the Commerce Clause to challenge California statewide housing laws. Applying its longstanding decision in *City of South Lake Tahoe v. Cal. Tahoe Reg'l Planning Agency*, 625 F.2d 231 (9th Cir. 1980) ("*South Lake Tahoe*"), the Ninth Circuit concluded that Petitioners' claims are foreclosed by this Court's political subdivision doctrine, under which political subdivisions, like Petitioners, are subordinate entities of their State and, therefore, may not challenge State law on federal constitutional grounds.

The Petition tries to recast this straightforward application of precedent as part of a supposed circuit split. But the Courts of Appeals are in uniform agreement as to the question presented here: whether political subdivisions may bring these federal constitutional claims against their states. Indeed, Petitioners' claims would be barred by all Circuits that have considered such issues.

The cases Petitioners cite to as evidence of a supposed circuit split involve a qualitatively different category of claims: those based on the Supremacy Clause, where a political subdivision does not seek enforcement of alleged constitutional rights, but merely alleges that an instance of state law conflicts with federal law and thereby violates the Supremacy Clause. Several circuits have allowed political subdivisions to assert such claims. Others have

suggested they might. Though such claims are barred in the Ninth Circuit, numerous judges within the circuit—including a judge on the panel that affirmed the decision below—have opined that, when the appropriate case presents itself, the circuit should consider whether to carve out an exception for Supremacy Clause claims, as some other circuits have.

But this case does not involve a Supremacy Clause claim, and nothing the Ninth Circuit did here conflicts with decisions by other circuits or this Court. Even the Second and Tenth Circuits—upon whose decisions Petitioners heavily rely—have explained that *all* circuits agree: political subdivisions lack independent federal constitutional rights such that they may not sue their states via the types of claims that Petitioners press forward here.

Because their claims would be barred in all circuits, Petitioners do not ask the Court to adopt a rule from any of the other circuits. Instead, Petitioners invite the Court to entirely disregard the Court's political subdivision doctrine—again, under which political subdivisions simply don't have any constitutional rights against their states—and fashion an entirely novel approach that has never been discussed, much less applied, by any circuit, to now recognize such rights. Petitioners' proposal borrows characteristics from Eleventh Amendment sovereign immunity jurisprudence and other areas of federal law not at issue here, which would require district court judges to engage in the sort of fact-intensive analysis courts employ to determine if an entity is in effect an arm of the state in order to extend sovereign immunity to that entity. But this is not a sovereign immunity case. No circuit court has ever discussed or adopted

such an approach in the context of this Court's political subdivision doctrine. Indeed, such a test is simply inconsistent with the political subdivision doctrine, which does not recognize that political subdivisions have any constitutional rights in the first instance.

In sum, this case is a poor vehicle to review the Ninth Circuit's political subdivision rule under *South Lake Tahoe*. The case presents no Supremacy Clause claim and any opinion from this Court on this Supremacy Clause issue would thus be advisory and make no difference to Petitioners' claims that were actually brought in this matter.

The Petition for a Writ of Certiorari should be denied.

STATEMENT OF THE CASE

I. Factual Background

California's Regional Housing Needs Allocation ("RHNA") laws were enacted in 1982 as part of a statewide response to the housing crisis and fueled by both supply and affordability concerns. Cal. Gov't Code § 65589.5(a). To address those concerns, the RHNA statutes establish a coordinated framework in which state, regional, and local governments share responsibility for identifying and planning to accommodate projected housing needs across all income levels.

Under this framework, the California Department of Housing and Community Development ("HCD") uses population and household data supplied by the State's Department of Finance to determine the

total number of additional housing units needed in each region of the State over a given planning period. See Cal. Gov't Code § 65588.

For the six-county Southern California region (Los Angeles, Orange, Riverside, San Bernardino, Ventura, and Imperial Counties), the Legislature has designated Respondent Southern California Association of Governments ("SCAG")—a joint powers authority and council of governments formed under the Joint Exercise of Powers Act, Cal. Gov't Code § 6500 et seq.—as the entity responsible for allocating HCD's regional housing need to the individual cities and counties within its jurisdiction. Pet. App. 12a. In that capacity, SCAG does not legislate local land use or adopt local general plans; rather, it applies state-law criteria to distribute the State-assigned regional housing total among its member jurisdictions, including Petitioner City of Huntington Beach, producing each jurisdiction's RHNA "housing need" number for the relevant planning cycle. Pet. App. 12a.

Once SCAG has adopted the regional allocation, state law places the implementation responsibility on local governments. Each city must periodically review and update the housing element of its general plan so that, together with other local land use regulations, it accommodates and complies with the targeted RHNA number assigned to that jurisdiction. See Cal. Gov't Code § 65588. The current planning period, known as the "6th RHNA Cycle," covers the years 2021 through 2029. In connection with this 6th RHNA Cycle, SCAG in 2021 adopted its regional housing allocation numbers among its member jurisdictions. Pet. App. 12a. The City of Huntington Beach, like other jurisdictions, was required to update its housing

element by October 15, 2021, to plan for that assigned need.

II. Procedural Background

The City of Huntington Beach, the City Council, and two elected city officials (the mayor and mayor pro tem) filed this action in federal district court against the Governor, state housing officials, HCD, and SCAG. The First Amended Complaint asserted eleven causes of action, including federal constitutional claims under the First Amendment, the Fourteenth Amendment (due process and equal protection), and the Commerce Clause, and various state-law claims. Pet. App. 13a.

The federal claims asserted (i) that the RHNA laws violate due process, equal protection, and the Commerce Clause; and (ii) that the City was being compelled to adopt a statement of overriding considerations under California's Environmental Quality Act ("CEQA"), allegedly in violation of the First Amendment rights of both the City and individual City Councilmembers. Pet. App. 11a-13a.

The district court dismissed the federal claims, holding that under the Ninth Circuit's decisions in *South Lake Tahoe* and its progeny, the City and its officials could not bring federal constitutional claims against their State and fellow political subdivision SCAG. Pet. App. 14a-22a. It declined to exercise supplemental jurisdiction over the state-law claims and denied further leave to amend as futile given this binding circuit precedent. Pet. App. 22a-26a.

The Ninth Circuit affirmed in an unpublished memorandum. The panel explained that *South Lake*

Tahoe "forbids political subdivisions and their officials from challenging the constitutionality of state statutes in federal court" and rejected Petitioners' attempt to distinguish charter cities from other political subdivisions. Pet. App. 2a-4a. The Ninth Circuit went on to find that whether California labels Huntington Beach a "charter city" was not relevant: federal standing is a question of federal law, and charter cities are still "subordinate political bodies" of the State under this Court's precedents. Pet. App. 3a.

The panel likewise rejected the City Councilmembers' effort to characterize their objections to adopting a statement of overriding considerations as personal First Amendment injuries, explaining that their claims were entirely derivative of the City's, and further that their asserted "personal dilemmas" did not create standing distinct from the City's own barred constitutional claims. Pet. App. 4a. The panel did not reach the merits of Petitioners' First Amendment claims. *Ibid*. Thereafter, Petitioners sought review of the decision by seeking rehearing en banc before the Ninth Circuit, which was denied. Pet. App. 28a.

THE PETITION SHOULD PROPERLY BE DENIED

I. The Decision Below Conflicts with No Other Circuit on the Claims at Issue

The decision below does not create or implicate any split among the Circuits on the claims presented in this case: a charter city and its officials' attempts to assert First Amendment, Fourteenth Amendment (due process and equal protection), and Commerce Clause claims against their State and SCAG (another state

political subdivision). On that question, the circuits are uniform, based on long-standing Supreme Court precedent: Petitioners' claims are barred.

Indeed, for more than a century, this Court has explained that political subdivisions are "creatures" or "departments" of the State that "ha[ve] no privileges or immunities under the Federal Constitution which [they] may invoke in opposition to the will of [their] creator." *Williams v. Mayor & City Council of Baltimore*, 289 U.S. 36, 40 (1933); see also *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907); *City of Trenton v. New Jersey*, 262 U.S. 182 (1923).[1] That principle applies regardless of how a State classifies or characterizes its subdivisions under state law, because importantly, such political subdivisions of States—"counties, cities, or whatever"—have never been "considered as sovereign entities" under the federal constitution with independent rights that they may invoke against their parent. *Reynolds v. Sims*, 377 U.S. 533, 575 (1964); *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 362-63 (2009). These holdings reflect the basic federalist constitutional structure—local governments only exercise the authority first granted to them by the State; they are not independent sovereigns.

Following this Court's decisions above, every circuit to address the question has concluded that political subdivisions may not generally invoke federal constitutional rights against their parent States. The

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[1] This principle is commonly referred to by federal courts and commentators as the "political subdivision doctrine" or the "political subdivision standing doctrine." See *City of Hugo v. Nichols (Two Cases)*, 656 F.3d 1251, 1255 (10th Cir. 2011).

result reached by the Ninth Circuit here—to bar Petitioners' First Amendment, due process, equal protection, and Commerce Clause claims—is the same result that would be reached in every other Circuit Court. Petitioners and their amici do not point to any cases in other circuits in which political subdivisions have been permitted to assert the constitutional claims at issue here.

The Petition attempts to manufacture a conflict between the circuits by sorting them into different groups based on whether they embrace a "categorical bar" against the assertion by political subdivisions against their state of any federal constitutional claim, or whether they have allowed or considered the possibility of permitting the assertion of only Supremacy Clause claims. Pet. App. 6-9. But even in the cases cited by Petitioners, there is no circuit split concerning any of the claims at issue here.

For example, some circuits, like the Second, Fifth, and Tenth, have recognized Supremacy Clause suits in carefully defined circumstances. *See, e.g.*, *Tweed-New Haven Airport Auth. v. Tong*, 930 F.3d 65 (2d Cir. 2019); *Rogers v. Brockette*, 588 F.2d 1057 (5th Cir. 1979); *Branson Sch. Dist. RE-82 v. Romer*, 161 F.3d 619 (10th Cir. 1998). These circuits have permitted political subdivisions to sue their parent state under the Supremacy Clause to enforce federal law, notwithstanding the general prohibition under the political subdivision doctrine. The underlying rationale for this exception is that a preemption claim is not an assertion of the political subdivision's own independent federal constitutional right against the state, but rather a declaration that the state law is already void because it conflicts with, or is preempted

by, a superior federal statute. *Tweed-New Haven Airport Auth.*, 930 F.3d at 73.

Other circuits, like the Sixth and Eleventh, although not having directly examined a Supremacy Clause claim, have stated in dicta that such claims may be permissible. *See, e.g.*, *South Macomb Disposal Auth. v. Washington Twp.*, 790 F.2d 500 (6th Cir. 1986); *United States v. Alabama*, 791 F.2d 1450 (11th Cir. 1986).

Although the Ninth Circuit has adhered more strictly to this Court's political subdivision precedents, and makes no exception for a Supremacy Clause claim, individual judges within the Ninth Circuit have suggested that a Supremacy Clause exception might warrant en banc consideration when the appropriate case presents itself for consideration, in which the Ninth Circuit can fully explore the relevant issues that such claims implicate. *See, e.g., Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364-65 (9th Cir. 1998) (Kozinski, J., concurring); *City of San Juan Capistrano v. Cal. Pub. Utils. Comm'n*, 937 F.3d 1278, 1283-84 (9th Cir. 2019) (Nelson, J., concurring); *Palomar Pomerado Health Sys. v. Belshe,* 180 F.3d 1104, 1110 (9th Cir. 1999) (Hawkins, J., concurring).

But this case does not present a Supremacy Clause claim. Petitioners do not allege that California's housing laws are preempted by federal statutes or regulations; their claims are based solely on the First Amendment, the Fourteenth Amendment, and the Commerce Clause. As Judge Nelson—one of the three-panel Ninth Circuit judges who affirmed the district court's decision below—noted in the course of

discussing potential reconsideration of the Ninth Circuit's jurisprudence in this area in another matter, "this case does not warrant en banc review because all circuit courts and the Supreme Court bar [the claims at issue]" by political subdivisions against their States. *City of San Juan Capistrano*, 937 F.3d at 1284 (Nelson, J., concurring).

Because a Supremacy Clause claim is not at issue here, any discussion from this Court about political subdivision capacity to bring such claims would be purely advisory. *Herb v. Pitcairn*, 324 U.S. 117, 126 (1945) ("We are not permitted to render an advisory opinion, and if the same judgment would be rendered… after we corrected [the lower court's] views of federal laws, our review could amount to nothing more than an advisory opinion."); *North Carolina v. Rice*, 404 U.S. 244, 246 (1971) ("[T]he Court is not empowered to decide… abstract propositions."); *Muskrat v. United States,* 219 U.S. 346, 362 (1911) (emphasizing that the Court cannot render "opinions in the nature of advice" which fail to decide "cases or controversies arising between opposing parties.")

II. The Decision Below Does Not Conflict with Any Supreme Court Precedent

The Ninth Circuit applied a straightforward rule that is firmly rooted in this Court's precedents: political subdivisions of a State—"created by a state for the better ordering of government"—do not possess federal constitutional rights they may invoke against their creator. *Williams,* 289 U.S. at 40.

Most recently, in *Ysursa,* 555 U.S. at 353, the Court reaffirmed this line of authority in rejecting a

First Amendment challenge to Idaho legislation that withdrew from local governments the authority to provide payroll deductions for political activities. The Court emphasized that political subdivisions of the State "never were and never have been considered as sovereign entities." *Id*. at 363. Nothing in the decision below departs from these bedrock principles. To the contrary, the Ninth Circuit's rule that political subdivisions lack standing, and therefore generally may not assert federal constitutional claims against their creator State is exactly what this Court's decisions in *Hunter*, *Trenton*, *Williams*, and *Ysursa* dictate.

Petitioners and amici claim that the Ninth Circuit's approach, enunciated in *South Lake Tahoe* and which uses the term "standing," diverges from this Court's precedent, insofar as it is inconsistent with the Court's modern "standing" jurisprudence—such as *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), under which Article III standing is determined by analyzing whether a party has established injury in fact, causation, and redressability. *Id*. at 560. However, this contention ultimately turns on a matter of semantics that is not outcome determinative here. Although some courts, such as the Ninth Circuit, have employed the term "standing" within the context of the political subdivision doctrine, those courts also recognize that *Hunter* and its progeny could be described as "'substantive holdings that the Constitution does not interfere in states' internal political organization'" rather than actually concerning "standing" as defined under this Court's *Lujan* formulation. *Palomar*, 180 F.3d at 1109 (Hawkins, J., concurring) (citing *Rogers v. Brockette*, 588 F.2d 1057, 1069 (5th Cir. 1979) ("In speaking of 'standing,' cases

in the *Hunter* and *Trenton* line meant only that, on the merits, the municipality had no rights under the particular constitutional provisions it invoked.")[2]

Accordingly, whether the political subdivision doctrine should be correctly referred to as a matter of "standing," versus a substantive rule under which political subdivisions simply lack Constitutional rights vis-à-vis their states in the first instance—is an insufficient basis to revisit the Ninth Circuit's decision here, as it does not yield a different result. See *Nat'l R.R. Passenger Corp. v. Nat'l Ass'n of R.R. Passengers*, 414 U.S. 453, 467 (1974) (Douglas, J., dissenting) (observing that whether a "right of action" exists versus whether "standing" exists is often a matter of semantics). Indeed, the Ninth Circuit has previously discussed this very issue in the context of en banc review—that the meaning of "standing" has changed since *South Lake Tahoe* was originally decided—and nonetheless still declined to suggest reconsideration on this basis alone, given that the substantive constitutional rights at issue were unavailable to the political subdivision regardless, such as is the case here. See *San Juan Capistrano*, 937 F.3d at 1283 (Nelson, J., concurring).

Petitioners next contend that three of this Court's decisions—*Bd. of Educ. v. Allen*, 392 U.S. 236 (1968), *Wash. v. Seattle Sch. Dist. No. 1*, 458 U.S. 457

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[2] The Ninth Circuit's application of the political subdivision doctrine as an issue of standing is reasonable, given that *Lujan* and its progeny require not just an "injury in fact," but a "legally cognizable" injury. *Lujan*, 504 U.S. at 578. And political subdivisions cannot establish that kind of injury when they sue their parent states on federal constitutional grounds.

(1982), and *Gomillion v. Lightfoot*, 364 U.S. 339 (1960)—implicitly recognized federal constitutional rights of political subdivisions adverse to their States and thus conflict with the Ninth Circuit's rule. However, this contention is inaccurate.

Neither *Allen* nor *Seattle* presented or decided the question of whether a political subdivision possesses its own federal constitutional rights against the State. In both cases, the Court simply assumed jurisdiction and then proceeded directly to the merits of claims brought in part by local entities, without ever addressing the question at issue here.

For instance, in *Allen*, a local school board and its members challenged a state textbook-loan statute on Establishment Clause grounds. 392 U.S. at 238-39. The Court did not ask whether the school board, as a political subdivision, could assert federal constitutional rights against the State. Instead, in a brief footnote, the Court observed only that "[a]ppellees do not challenge the standing of appellants to press their claim in this Court." Nothing in *Allen* suggests that the Court reconsidered, much less overruled, *Hunter*, *Trenton*, or *Williams*.

Seattle likewise does not hold that school districts enjoy federal constitutional rights enforceable against their States. The case arose from a state-wide initiative that curtailed a local school district's voluntary desegregation plan, in which private parties were also plaintiffs. 458 U.S. at 461-66. The Court's merits analysis focused on the equal protection rights of minority voters and schoolchildren affected by the initiative. See *Seattle*, 458 U.S. at 470-82. The Court did not discuss whether the school district itself

possessed federal constitutional rights against its State.

In *Gomillion*, the issue was whether individual African American citizens could state a claim against a city under the Fifteenth Amendment due to allegedly unconstitutional redistricting by a city pursuant to state law, which the Court answered in the affirmative. In reaching this conclusion, the Court observed that the city could not defeat such a claim by invoking the broad power of the state to manipulate political subdivisions. *Gomillion*, 364 U.S. at 344. *Gomillion* never held that political subdivisions can sue their states for constitutional claims, nor was that question at issue.

This Court has repeatedly cautioned that such unexamined assumptions about jurisdiction do not create binding precedent on questions that were neither argued nor decided. *United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38 (1952) (explaining that a prior exercise of jurisdiction is not controlling when the jurisdiction of the court was not in question and was passed sub silentio); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 91 (1998) (warning that "drive-by jurisdictional rulings" of that sort "have no precedential effect."). Applying those teachings, the Ninth Circuit has correctly recognized that *Allen* and *Seattle*—where the political subdivision question was neither raised nor resolved—cannot be read to silently abrogate the explicit rule announced in *Hunter*, *Trenton*, and *Williams*. *See, e.g.*, *Indian Oasis–Baboquivari Unified Sch. Dist. No. 40 v. Kirk*, 91 F.3d 1240, 1243 (9th Cir. 1996) on reh'g en banc, 109 F.3d 634 (9th Cir. 1997) (quoting *Tucker*).

Because the Ninth Circuit's unpublished memorandum disposition does not conflict with any precedent set by this Court, the Petition presents no issue warranting review and should be denied.

III. Petitioners' Proposed Novel "Test" Turns the Political Subdivision Doctrine On Its Head

Petitioners ask this Court to discard the political subdivision doctrine found in *Hunter*, *Trenton*, *Williams*, (and more recently recognized in *Ysursa* and *Reynolds*), and replace it with a test Petitioners refer to as a "state law first" test, cobbled together from unrelated areas of federal law such as the Court's "arm of the state" analysis used in Eleventh Amendment sovereign immunity jurisprudence, and the "personhood" analysis used in Section 1983 litigation. Pet. App. 9-13. Although under this Court's political subdivision doctrine, political subdivisions simply have no federal constitutional rights against their states, according to Petitioners' proposed approach, political subdivisions of a state would be presumed to have such rights under the federal constitution against their states unless state law "clearly" withdraws them. Then, federal district courts would weigh a variety of supposed factors—the entity's status under its state constitution, corporate autonomy, degree of state control, and the fit between the lawsuit and the entity's interests—before allowing or barring suit. *Ibid*. Petitioners argue that this multi-factor, state-law-first test is "required" by this Court's Eleventh Amendment and Section 1983 jurisprudence. *Ibid*.

Petitioners' proposal to create a "test" to determine whether a political subdivision may or may

not assert independent federal constitutional rights against its parent state fundamentally misunderstands the nature of the political subdivision doctrine, which is based on the premise that the federal Constitution does not confer such federal rights upon municipal corporations enforceable against the State in the first place. Thus, there is simply *no need* or appropriate function for a supposed "test" to analyze if a political subdivision is "independent enough" to wield federal constitutional rights against its state.

Petitioners briefly attempt to justify their proposed "state law first" test by arguing that the City of Huntington Beach, as a charter city, falls outside the political subdivision doctrine, as it was not "created" by the California legislature, but rather authorized by local voters under the California constitution. Pet. App. at 17. This distinction is unavailing: it confuses the California State legislature with the State of California as a sovereign. The California Constitution is the supreme law of the State of California. When local voters adopt a charter under authority permitted by the State Constitution (Cal. Const. art. XI, § 5), they are exercising delegated State power to organize a subdivision of the State's government, *not* creating a new sovereign entity independent of California; all of the charter city's authority still flows from the "State." Indeed, that California voters could abolish charter cities via amendment of the California Constitution underscores that charter cities, like any other political subdivision, derive their authority from, and remain a part of, the State of California, and are not independent entities. See Cal. Const. art. XVIII, §§ 1-2 (authorizing several methods of amendment to the California Constitution).

Because the political subdivision doctrine poses a substantive bar to City's claims, Petitioners' proposed "state-law-first" test is a misaligned attempt to create federal causes of action where the federal constitution simply does not recognize such underlying rights in the first instance.

IV. The Individual Councilmembers' First Amendment Claims Provide No Basis for Certiorari

Petitioners' second Question Presented seeks a ruling from this Court relating to the individual Councilmembers' First Amendment claims relating to the City's compliance with the state's housing laws, the merits of which were never reached or considered by the courts below. This is inappropriate for certiorari, which is meant to address fundamental errors of law or resolve conflicts, not to decide unsettled questions on the first pass. *Cutter v. Wilkinson*, 544 U.S. 709, 719 n. 7 (2005) (declining to consider issues not addressed by court of appeals, explaining "[W]e are a court of review, not of first view.")

Huntington Beach's elected councilmembers brought a cause of action alleging that their First Amendment rights were violated because the City's compliance with the State's housing laws (i.e., the RHNA laws) necessitated that the City adopt a statement of overriding considerations in order to comply with the state's environmental laws (i.e., California's Environmental Quality Act or CEQA). Petitioners ask this Court to step in and assess whether this violated their First Amendment rights, namely, whether elected local officials may invoke the

First Amendment against the State when state law compels the city to make certain findings that the elected officials fundamentally disagree within this case as to the provision of housing for all economic segments of the community. Petitioners attempt to frame this as a "compelled speech" issue, distinguishing it from *Nev. Comm'n on Ethics v. Carrigan*, 564 U.S. 117, 125-26 (2011)—which held that a legislator's official vote is not a form of personal speech protected by the First Amendment—by arguing that while a "vote" may be regulated, an official's "speech" may not.

However, as explained above, this Court need not and should not reach this issue, as political subdivisions, including their elected officials acting in their official roles, lack independent federal constitutional rights to challenge state law, including on First Amendment grounds. Accordingly, the merits of Petitioners' First Amendment claims were never reached by the courts below, and instead were rightly dismissed as a threshold matter under the Ninth Circuit's decision in *South Lake Tahoe*.

Indeed, the Ninth Circuit here affirmed the district court's dismissal, on the grounds that the City of Huntington Beach's individual councilmembers' objections to adopting a statement of overriding considerations did not qualify as First Amendment injuries. Instead, they were "personal dilemmas"—*e.g.*, "abstract disagreement[s] with the legislature over land use"—insufficient to confer individual standing. Pet. App. 4a (citing *South Lake Tahoe*, 625 F.2d at 237-38). The Court explained that because the city officials "do not explain how they suffered a constitutional injury absent their roles as local

officials," their asserted injuries were entirely derivative of the City's, and therefore also subject to dismissal under the political subdivision doctrine. Pet. App. 4a. The panel therefore disposed of the councilmembers' claims under the political subdivision doctrine and expressly did not reach the merits of Petitioners' First Amendment claims.[3] *Ibid.*

Because Petitioners' First Amendment claims are barred at the threshold under the political subdivision doctrine, and have not been considered on the merits below, the Court should deny certiorari.

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[3] Petitioners' Second Question raises no novel issues requiring further elaboration by this Court. Indeed, this Court has never held that a City Council is permitted to refuse, on First Amendment grounds, to discharge their lawful duties of office simply because individual councilmembers personally disagree with the policy choices embodied in underlying state law. See also Pet. App. 4a (The Ninth Circuit panel below explaining that "while the City officials retain personal free speech rights… they cannot invoke those rights to avoid executing 'laws within their charge,'" and citing *South Lake Tahoe*, 625 F.2d at 238.)

CONCLUSION

The Petition does not present a conflict among the Circuit Courts on the questions actually at issue, does not implicate any disagreement with this Court's precedent, proposes a new test that would invert established doctrine, and raises no distinct First Amendment issues that are separate from the threshold question concerning political subdivision standing.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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