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

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

The decision below rests on a single threshold methodological error. The Ninth Circuit did not ask whether federal courts should consider state law in determining a local government's capacity to invoke federal constitutional protections. Instead, it applied a state-law-blind rule of decision that treats all local governments as categorically disabled from suing their parent States—regardless of how state law structures authority, allocates power, or defines the entity before the court. That approach short-circuits the analysis before it begins, and it is the question presented here.

Petitioners do not ask this Court to resolve any disputed question of California law or to decide the merits of their constitutional claims. The point is more basic. When federal courts decide whether a local government has the capacity to assert a federal claim, state law cannot be treated as irrelevant. A rule that refuses even to look at how a State has constituted a local government is not neutral—it is state-law-blind by design.

Such indifference to state law is difficult to reconcile with *Hunter*'s non-interference principle. *Hunter* held that federal courts do not supervise or disregard a State's internal allocation of power (*Hunter v. Pittsburgh*, 207 U.S. 161, 176 (1907)), and *Gomillion* clarified that *Hunter* does not impose "a per se bar on political subdivision suits." *Ocean Cnty. Board of Commissioners v. Attorney General of State of New Jersey*, 8 F.4th 176, 180 (3d Cir. 2021), citing *Gomillion v. Lightfoot*, 364 U.S. 339, 344–45 (1960).

Respondents' insistence that Petitioners would lose under any analysis only underscores the problem. When courts disagree about the governing framework, outcome predictions are beside the point. The antecedent question is methodological: what is the correct rule of decision?

The practical consequences of this methodological divide are concrete. Outside the Ninth Circuit, federal courts adjudicate constitutional challenges brought by local governments without imposing a categorical, state-law-blind bar. In *City of El Cenizo v. Texas*, for example, the Fifth Circuit resolved a First Amendment challenge brought by cities, counties, and local officials against a state statute—without treating municipal status as a threshold disqualification. 890 F.3d 164, 185–187 (5th Cir. 2018). Under the Ninth Circuit's rule, that case would have been dismissed at the courthouse door.

This case cleanly presents that methodological error. The Ninth Circuit dismissed at the threshold based solely on its categorical rule and expressly declined to address abstention, the merits, or any alternative doctrine. (Pet. App. 4a.) Because the court below resolved the case on that single ground alone, this Court may review the validity of the Ninth Circuit's state-law-blind rule of decision without entanglement in issues the panel never reached. If that rule is rejected, the ordinary course is vacatur and remand.

ARGUMENT

I. This case cleanly presents the validity of the Ninth Circuit's categorical, state-law-blind rule of decision.

This Court's cases confirm that federal constitutional doctrine does not proceed by ignoring state governmental structure. In *McMillian v. Monroe County*, the Court held that whether a governmental actor is properly treated as state or local for federal constitutional purposes "is dependent on an analysis of state law." 520 U.S. 781, 786 (1997). The Court rejected categorical federal characterizations, emphasizing that the inquiry must be "specific" and "grounded in state law," not abstract labels. *Id.* at 785–786. The Ninth Circuit's state-law-blind rule does the opposite, treating all local governments as interchangeable "political subdivisions" without regard to how state law allocates authority or capacity.

Respondents' attempt to treat that dismissal as an unremarkable application of Article III standing only underscores the need for review. As Judge Ryan Nelson explained, *South Lake Tahoe*'s "standing" terminology was imported from *Williams v. Mayor*, 289 U.S. 36 (1933) and *Coleman v. Miller*, 307 U.S. 433 (1939), when "standing was not seen as a preliminary or threshold question" in the modern sense; that older line did not apply injury-in-fact, causation, and redressability analysis at all. *City of San Juan Capistrano v. Cal. Pub. Utils. Comm'n*, 937 F.3d 1278, 1282–1283 (9th Cir. 2019) (Nelson, J., concurring). Yet the Ninth Circuit continues to apply that inherited label "as if it holds our modern understanding of the word—that of a jurisdictional prerequisite." *Id.* at

1283. The Ninth Circuit has also acknowledged the rule's categorical character: "This [C]ourt . . . 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." *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank,* 136 F.3d 1360, 1363 (9th Cir. 1998) (Kozinski, J., concurring).

That is precisely the kind of doctrinal misclassification and methodological confusion that warrants this Court's intervention. This Court has likewise cautioned that "standing" labels can mislead by obscuring what the court is actually deciding. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126–127 & n.4 (2014) (explaining that misnamed "prudential"/"statutory standing" inquiries are not jurisdictional standing in the Article III sense).

A. The judgment is based solely on the per se bar; *Younger* was not decided below.

Next, the State argues that *Younger* abstention makes this an unsuitable vehicle because the State's enforcement action provides a suitable alternative forum for adjudicating Petitioners' claims. But this is not a vehicle defect because *Younger* was not decided below. The Ninth Circuit expressly declined to consider *Younger* because it held Petitioners lack standing. (Pet. App. 4a.)

Respondents' *Younger* argument is therefore, by definition, an unreached alternative ground, not an impediment to cert review of the only rule that produced the judgment. This Court's regular practice is to decide the threshold question actually decided below and remand for consideration of alternative arguments not

passed upon. *See Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (declining to consider defenses not addressed below because this Court is "a court of review, not of first view"). That practice is particularly appropriate here because Respondents' *Younger* theory is case-specific, while the Ninth Circuit's categorical bar is a recurring rule of general applicability.

Younger, if applicable, can be addressed on remand; it does not justify a categorical threshold bar.

In short, the judgment below rests on a single, categorical threshold rule, and nothing else. The Ninth Circuit did not decide *Younger*, did not reach the merits, and did not engage in any state-law analysis. Those are not vehicle defects; they are the very reason this case cleanly presents the Question Presented. If the Court rejects the Ninth Circuit's state-law-blind categorical rule, the ordinary course is vacatur and remand for application of the proper framework in the first instance.

B. The panel decision is unpublished precisely because the categorical rule is already entrenched in the Ninth Circuit.

Respondents note that the decision below is an unpublished memorandum disposition. But that characterization proves too much. The unpublished posture does not create vehicle noise; it underscores entrenchment. The Ninth Circuit resolves cases like this without publication precisely because its categorical bar acts as a mechanical, threshold dismissal rule. A recurring categorical jurisdictional rule in the nation's largest circuit does not become cert-proof because the court can dispose of applications via short memoranda.

C. Respondents' "state-law complexity" argument underscores, rather than defeats, certworthiness.

Respondents' contention that Petitioners seek an "exercise in California-specific local-government law" gets the direction of travel backwards. Petitioners do not ask this Court to resolve any California home-rule question; the only point is methodological: a federal circuit cannot adopt a categorical rule that *refuses, as a matter of doctrine,* to consult state law on whether the plaintiff is the kind of "political subdivision" to which the doctrine applies.

California law does not create an intractable thicket; it supplies a straightforward premise the Ninth Circuit declared irrelevant. California courts have long treated "political subdivision" as a contextual term, often distinguishing charter cities from counties and general-law cities, and requiring clear statements before treating charter cities as included. *See Abbott*, 50 Cal.2d at 467–468; *Otis*, 52 Cal.App.2d at 611–612; *Redondo Beach*, 46 Cal.App.5th at 912–913. That contextual state-law reality makes the panel's state-law-blind categorical rule less defensible, not more.

The State argues that a state-law-informed framework would force federal courts into novel, resource-intensive questions of charter-city status and state control, and it invokes *McKesson* to caution against deciding constitutional questions on uncertain state-law premises. (State BIO 12–13.) But the State's contention goes to the merits, not certworthiness—the State is arguing what it believes is the *correct test.* This is not a vehicle defect, and not a reason to deny cert. The Ninth Circuit did not

engage in any "intricacies of California law" that could make this case messy; it did the opposite. It adopted a categorical, state-law-blind door-closer and expressly refused to consider state constitutional structure at all.

Whether federal courts may adopt that sort of state-law-blind categorical bar is a pure federal question squarely presented by the court of appeals' reasoning. And the Court can resolve that federal rule-of-decision issue without adjudicating any contested question of California home-rule doctrine.

Outside the Ninth Circuit's unique per se rule, federal courts already adjudicate municipal suits without any epidemic of municipality-versus-state litigation overwhelming the federal docket. The asymmetry is also doctrinally destabilizing. Cities can be sued and held liable in federal court for enforcing state regimes later found inconsistent with federal law, yet the Ninth Circuit's categorical bar prevents cities from even testing the constitutionality of those same state directives in a federal forum. *See Owen v. City of Independence*, 445 U.S. 622, 647–648 (1980) (municipal liability); *Golden State Transit Corp. v. City of Los Angeles* (1986) 475 U.S. 608 (preemption-based municipal liability context).

II. Respondents' "no split" argument rests on outcome predictions, not the rule of decision presented.

A. Respondents conflate uniform outcomes with a uniform rule.

Respondents' primary submission is that certiorari should be denied because "the circuits are uniform"

in rejecting the City's First Amendment, Fourteenth Amendment, and dormant Commerce Clause claims against the State. (SCAG BIO 6–7.) In their view, the only meaningful disagreement among the circuits concerns Supremacy Clause preemption suits; and because Petitioners pleaded no Supremacy Clause claim, Respondents insist this case would "reach the same result" in every other circuit. (SCAG BIO 2; State BIO 10–11.) Respondents therefore accuse Petitioners of attempting to "manufacture a conflict" by describing a split in methodology (categorical dismissal versus approaches that examine claim type and state-law status). (SCAG BIO 8.)

That framing fails for a simple reason: it substitutes a different question for the one presented. Question 1 asks whether a federal court may apply a categorical, state-law-blind bar against a constitutionally chartered local government without first determining—by reference to state law and the nature of the claim—whether the entity is a "political subdivision" for this doctrine. (Pet. i.) The Ninth Circuit answered yes, holding that standing "does not turn on the intricacies of California law" and that "No matter how California categorizes charter cities," they remain "subordinate political bodies." (Pet. App. 3a.) That categorical state-law refusal—not any prediction about how another circuit might ultimately rule—makes this case certworthy.

B. Respondents' own concessions show the doctrine is claim- and state-law-dependent.

The State's principal "vehicle" attack is that, outside Supremacy Clause preemption, the circuits are essentially uniform that political subdivisions may not sue their parent

States on Fourteenth Amendment or similar grounds. On this view, even if the Ninth Circuit is "strict," it is not an outlier on these claims—and the absence of a Supremacy Clause theory supposedly makes this case the wrong vehicle for addressing any broader disagreement.

But that argument depends on redefining the Question Presented. Petitioners are not asking this Court to decide whether the City ultimately wins on the First or Fourteenth Amendment. Instead, QP1 asks whether a federal court may impose a categorical incapacity/standing[1] bar "without first determining—by reference to state law and the nature of the claim—the entity's status within the State's constitutional structure." That is a doctrine-and-method question, and this case presents it unusually cleanly because the Ninth Circuit refused to perform the very inquiry Respondents now say would be required.

Unwittingly, Respondents' "Supremacy Clause only" framing actually undermines the Ninth Circuit's per se rule: if a municipality's ability to invoke federal law turns on claim type (e.g., preemption), then a categorical rule

1. The cases—including the Ninth Circuit *South Lake Tahoe* precedent in question—refer to the issue as one of "standing," but the issue is more accurately treated as one of "incapacity." *See Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 (2014) (""[T]he absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction, *i.e.*, the court's statutory or constitutional power to adjudicate the case."") The imprecision in the cases treating the "political subdivision" question as one of standing—widespread throughout the circuits and in this Court—underscores that the question has long-evaded careful doctrinal examination.

that ignores claim type is overbroad. But if the doctrine is truly categorical and jurisdictional (as the Ninth Circuit treats it), then other circuits' willingness to adjudicate a range of municipal suits—especially without treating them as nonjusticiable at the threshold—confirms that lower courts are not applying a uniform rule in the first place. Either way, the case is an excellent vehicle to clarify what the governing framework is and whether state-law classification has any role at all.

C. This Court and other circuits reject a categorical, state-law-blind bar.

Respondents also try to defuse the conflict by dismissing this Court's modern municipal-plaintiff cases as "drive-by" jurisdictional decisions. (SCAG BIO 14; State BIO 8.) But Petitioners cite those cases for a more modest—and more telling—point: this Court has not treated *Hunter/Trenton/Williams* as an automatic Article III disability that forecloses merits review whenever a local governmental plaintiff is involved. Indeed, Justices White and Marshall noted that the same "*per se* rule" in this case "is inconsistent with" *Board of Education v. Allen*, 392 U.S. 236 (1968), which held a school district may sue the State in federal court to vindicate First Amendment rights. *City of South Lake Tahoe v. Cal. Tahoe Reg'l Planning Agency*, 449 U.S. 1039, 1042 (1980) (White, J., joined by Marshall, J., dissenting from denial of certiorari). And multiple circuits have recognized that the doctrine is "unclear" (*City of Charleston v. Pub. Serv. Comm'n of W. Va.*, 57 F.3d 385, 389–390 (4th Cir. 1995)) or that its "judicial support . . . may be waning." *Amato v. Wilentz*, 952 F.2d 742, 754–755 (3d Cir. 1991); *South Macomb Disposal Auth. v. Twp. of Washington*, 790 F.2d

500, 504 (6th Cir. 1986) (capacity of "political subdivision" to sue depends on relationship to the State and nature of the claim). The Ninth Circuit's uniquely categorical, state-law-blind threshold rule remains certworthy regardless of Respondents' attempted merits forecasts.

Respondents' "same result everywhere" contention is thus an outcome prediction that rests on assuming the very predicate the Ninth Circuit refused to analyze: that California's charter cities must be treated as "political subdivisions" for this federal doctrine regardless of the State's constitutional organization. California law, however, does not treat the "subdivision" label as a universal identity tag; a city may be a "subdivision" in some senses but "not necessarily so for all purposes." (Pet. 17 (quoting *Haytasingh v. City of San Diego*, 66 Cal. App. 5th 429, 435 (2021)). And California's Constitution treats charter-city autonomy as a settled structural feature, not a discretionary "intricacy."[2] (Pet. 16–18.)

Nor do Respondents' own briefs support a genuinely uniform federal rule. Respondents concede that many circuits permit Supremacy Clause suits by local governments—i.e., the doctrine is not applied as an across-the-board standing disability everywhere. (SCAG BIO 6–7;

2. California law underscores why the panel's notwithstanding-state-law approach is backwards. California courts have repeatedly distinguished "political subdivisions" from general-law cities, and have consistently held that generic references to "political subdivisions" do not include cities absent express inclusion. *See, e.g., Otis v. City of Los Angeles*, 52 Cal.App.2d 605, 611–612 (1942); *Abbott v. City of Los Angeles*, 50 Cal.2d 438, 467–468 (1958); *Blum v. City & County of San Francisco*, 200 Cal.App.2d 639, 643–644 (1962); *City of Redondo Beach v. Padilla*, 46 Cal.App.5th 902, 912–913 (2020).

State BIO 10–12.) If Respondents believe the doctrine is claim-sensitive, the Ninth Circuit's categorical threshold bar is wrong on its own terms because it forecloses any inquiry into claim type or state-law status. (Pet. App. 2a–4a.) If Respondents instead insist the doctrine is claim-insensitive, their reliance on a Supremacy Clause carveout confirms that the lower courts lack a coherent, uniform framework—precisely the problem warranting this Court's intervention.

III. The individual-standing issue is independently worthy, but in any event warrants review as derivative of the per se standing bar.

SCAG argues QP2 is not certworthy because the councilmembers' claims are "derivative" and because the merits were not reached. (SCAG BIO 19–20.) But again, that is a consequence of the Ninth Circuit's threshold door-closer. The panel rejected the officials' standing on the same categorical theory, calling their compelled-speech objections "personal dilemmas" and stating they could not invoke personal speech rights "to avoid executing 'laws within their charge.'" (Pet. App. 4a.)

If the Court grants review on QP1 and rejects the Ninth Circuit's categorical standing rule, the appropriate disposition is straightforward: vacate and remand for the lower courts to apply the correct framework to both the City and the officials, and to consider any other defenses (including abstention) in the ordinary course. The Court need not decide any First Amendment merits at the cert stage to conclude that the Ninth Circuit's categorical standing dismissal was error and that the question warrants review.

CONCLUSION

The Court should grant this petition for a writ of certiorari.

January 13, 2026

Respectfully submitted,

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