

No. 26-

IN THE
Supreme Court of the United States

MIKE BARRY, TRPMOI FAMILY TRUST, ROYAL
HOSPITALITY GROUP, INC., DOING BUSINESS AS
MIRAGE HOSPITALITY GROUP, INC.,

Petitioners,

v.

CITY OF LOS ANGELES,
A MUNICIPAL CORPORATION,

Respondent.

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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QUESTION PRESENTED

The Petitioners' transient hotel in the City of Los Angeles was declared a residential hotel pursuant to the City's Residential Hotel Unit Conversion and Demolition Ordinance. They were cited in 2023 by the City for allegedly operating the hotel as a transient hotel. They exercised their choice of forum by filing a lawsuit in federal court under 42 U.S.C. § 1983, alleging a regulatory taking of in violation of the Fifth Amendment, and seeking just compensation, costs, and attorneys' fees and a pendent state claim petition for writ of mandate concerning the citation. The federal court abstained from deciding the state writ petition and stayed Petitioners' federal civil rights takings claim under *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), pending the state court's determination of the writ claim.

The question presented is:

Whether federal courts in invoking the *Pullman* abstention doctrine in a Fifth Amendment takings claim filed under 42 U.S.C. § 1983, requiring plaintiffs to first litigate their pendent claims in state court imposes an unjustifiable burden on plaintiffs that conflicts with this Court's decision in *Knick v. Township of Scott, Pennsylvania*, 588 U.S. ____ 139 S.Ct. 2162 (2019) and the Court's takings jurisprudence.

**PARTIES TO THE PROCEEDINGS AND
RULE 29.6**

Petitioners Mike Barry, TRPMOI Family Trust, Royal Hospitality Group, Inc., doing business as Mirage Hospitality Group, Inc. were the plaintiffs and appellants below.

Respondent City of Los Angeles was the defendant and appellee below.

CORPORATE DISCLOSURE STATEMENT

None of the parties has a parent corporation and no companies are publicly traded or own 10% or more of the company's stock.

RELATED PROCEEDINGS

None.

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PETITION FOR A WRIT OF CERTIORARI

Mike Barry, TRPMOI Family Trust, Royal Hospitality Group, Inc., doing business as Mirage Hospitality Group, Inc. respectfully petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The decision of the Ninth Circuit Court of Appeals is unpublished and reprinted at Pet.App.1a. The decision of the district court for the Central District of California is unpublished and reprinted at Pet.App.6a.

JURISDICTION

The lower courts had jurisdiction over this case under the Fifth Amendment to the United States Constitution, 42 U.S.C. § 1983, 28 U.S.C. § 1331 (district court), and 28 U.S.C. § 1291 (Ninth Circuit). The Ninth Circuit entered final judgment on May 26, 2026, Pet.App.6a, This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The Fifth Amendment to the U.S. Constitution provides in relevant part, “nor shall private property be taken for public use, without just compensation.” U.S. Const. amend. V.

42 U.S.C. § 1983 provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

28 U.S.C. § 1331 provides, “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

STATEMENT OF THE CASE

Petitioners are the legal owners and operators of a hotel commonly known as the H by H HOSPITALITY (“Hotel”) located in Los Angeles, CA. In 2008, after this Court decided *the San Remo Hotel, L.P. v City and County of San Francisco*, 545 U.S. 323 (2005), the City of Los Angeles (“City”) adopted a residential hotel conversion ordinance (“Ordinance”) claiming to adopt the Ordinance in order to convert various transient hotels in the City to residential hotels in order to provide alternative sources of affordable long term housing.

Under the Ordinance, the City first makes an initial determination of whether a hotel operated as transient by renting a majority of its units on a transient basis on a designated date of October 11, 2005, and then on this basis

determines if such a hotel is to be designated residential or not.

If a hotel is designated as residential pursuant to the Ordinance, the Ordinance then requires that the City provide the hotel owner and operator with an administrative appeal hearing prior to the original designation of residential hotel status becoming administratively final and judicially reviewable.

Prior to the adoption of the Ordinance and until the present, the City, pursuant to the City municipal code and charter, issued transient occupancy tax (“TOT”) licenses to the Hotel, which under the City’s TOT ordinance requires that the Hotel charge and collect from the public a transient occupancy tax for the right of occupancy for the first thirty (30) days of occupancy.

Pursuant to the TOT licenses issued to the Hotel, the Petitioners have charged and collected from occupants the TOT, and paid the City on a monthly basis, the TOT collected from the public which the City has accepted. Such a TOT is prohibited from being collected by the TOT ordinance from occupants residing at residential properties and apartments.

Pursuant to *California Civil Code* Section 1940(b)(1), the California Landlord-Tenant Law generally applicable to residential occupancy in the State of California, is specifically exempted for “[t]ransient occupancy in a hotel, motel, residence club, or other facility when the transient occupancy is or would be subject to tax under Section 7280 of Revenue and Taxation Code,” reflecting a statewide policy that such properties subject to the TOT

are transient occupancy properties and not residential properties in which Landlord-Tenant law is applicable.

California Penal Code Section 602(s) makes it a misdemeanor crime for an occupant in a hotel or motel to not pay their rent and occupy such a unit within the first thirty (30) days of occupancy, in contrast to residential housing in the State of California which imposes no such criminal penalty.

The City's zoning ordinances further reflect that long term permanent occupancy in residential units at residential properties must meet minimum housing requirements such as cooking and space requirements for multi-individual occupancy, which is specifically exempted for transient occupancy hotels and motels such as the Hotel, in order to prevent such occupancy from becoming a public health hazard or nuisance.

The City in adopting its Ordinance did not amend the City's zoning laws to reflect an exemption for long term occupancy at hotels and motels and pursuant to the City's zoning ordinances, any long term occupancy at originally designated transient occupancy hotels and motels such as the Hotel, so designated many years prior to the adoption of the Ordinance, is a "nuisance per se" under generally applicable California law.

The City designated the Hotel as a residential hotel in 2011, prior to the Petitioners' owning or operating the Hotel.

Petitioners purchased the Hotel in 2016 and since such time until the present, the Hotel has been issued TOT

licenses and petitioners have collected from the public the TOT and paid it to the City.

The Petitioners were never cited by the City for operating the Hotel as a transient occupancy hotel in violation of the Ordinance until 2023 when Pro Publica began writing a series of stories online that claimed that the City was underenforcing the Ordinance.

Subsequently, the Petitioners, and many other designated residential hotels in the City, were cited and fined by City for violating the Ordinance by renting their hotels on a transient basis.

After Mayor Karen Bass was elected in 2022, the City adopted a program that allows it to enter into contracts with hotels and motels in the City in order to place low income and “homeless” individuals for occupancy at such properties (called the “Inside Safe Program”), in which the City, or their designated service providers, operate the hotels and motels under contract for short term transient occupancy.

The City’s policy in implementing the Inside Safe Program is to not permit low income and “homeless” individuals for occupancy at such hotels and motels in the City to obtain permanent renter status that would give such individuals habitability rights and landlord-tenant eviction protections pursuant to California Civil Code Section 1940, and this policy by the City is to allow the City to operate the hotels and motels so contracted only for transient, not permanent occupancy.

Under the Inside Safe Program, the City has entered into lease contracts with hotels designated as residential hotels.

On July 20, 2023, the City Los Angeles Housing Department (“LAHD”) sent MV a notice of order to comply (“Notice”), alleging that the Petitioners were violating the Ordinance by unlawfully renting the Hotel units on a transient basis.

The Petitioners filed a timely appeal of the notice, and were provided an administrative appeal hearing on October 31, 2023.

At the appeal hearing the Petitioners argued that the Hotel had a TOT license to operate as a transient hotel and had, and was collecting TOT on behalf of the City under the TOT ordinance and license, which the City has always accepted since their purchase of the Hotel.

Petitioners also argued that the TOT ordinance and license subjects the Petitioners to criminal and civil penalties, if they do not collect and remit it to the City from transient occupants at the hotel.

Petitioners further contended that the City had never previously cited them for doing so or for renting on a transient occupancy basis, and that they had invested millions of dollars in both purchasing and renovating the Hotel with City building permits recognizing their transient occupancy status.

At the appeal hearing, the Petitioners contended that the Notice and the Ordinance, both on its face and as

applied to them, violated the First Amendment Petition and Grievances Clause, the evidence gathered violated the Fourth Amendment Search and Seizure Clause, violated the Fifth Amendment Takings Clause, and the substantive and procedural components of the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

In raising their Fifth Amendment Takings claim, the Petitioners argued that even as new buyers in 2016, after the Hotel's initial designation as a residential hotel in 2011, that under this Court's holding in *Palazzolo v Rhode Island*, 533 U.S. 606 (2001), the petitioners did not waive their right to challenge the Ordinance as an uncompensated regulatory taking.

Petitioners further argued that under *Penn Central Transportation Co. v New York City*, 438 U.S. 104 (1978), applying the Ordinance to their Hotel constituted an uncompensated regulatory taking.

On November 17, 2023, the City issued a written decision ("Decision") denying the appeal, and the Decision stated that the hearing officer did not have the legal authority to decide the constitutional challenges raised by the petitioners at the appeal hearing.

On February 12, 2024, the Petitioners filed this case against the City for violation of their federal civil rights under 42 U.S.C. Section 1983, and the complaint included a state supplemental claim under 28 U.S.C. Section 1367 for an administrative writ of mandamus of the Decision under *California Code of Civil Procedure* Section 1094.5.

The section 1983 claims include a Fifth Amendment regulatory takings claim.

On March 5, 2024, the City filed a motion to dismiss the complaint pursuant to *Federal Rule of Civil Procedure* 12(b)(1), 12(b)(6) and 12(e).

On April 15, 2024, the district court, after hearing oral argument and taking the motion under submission, entered an order requesting further briefing by the parties whether *Pullman* abstention is affected by Petitioners' election under *England v Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1968) to reserve and not present their federal constitutional claims as part of the writ of mandamus process in state court ("England Reservation")

The Petitioners argued in their supplemental brief that *Pullman* abstention should not be exercised by the district court,

On February 5, 2025, the district court filed an order exercising *Pullman* abstention and dismissed without prejudice the state supplemental claim for an administrative writ of mandamus, and stayed the Section 1983 claims pending review by the Los Angeles Superior Court. Pet.App.1a.

On February 18, 2025, the Petitioners appealed the district court's *Pullman* abstention order to the Ninth Circuit.

On May 26, 2026, the Ninth Circuit affirmed the district court's decision exercising *Pullman* abstention. Pet.App.1a.

REASONS FOR GRANTING THE PETITION

Pullman abstention is an impediment that frequently prevents property owners, from seeking vindication of their Fifth Amendment Takings Clause constitutional rights in federal court.

This case requests that the Court address a *Pullman* abstention issue that frequently prevents property owners, but rarely victims of other constitutional violations, from seeking vindication of their constitutional rights in federal court. *See Knick*, 139 S.Ct. at 2170 (overturning state court exhaustion requirement for federal takings claims to “restor[e] takings claims to the full-fledged constitutional status”); *Pakdel*, 141 S.Ct. at 2230 (Civil Rights Act provides a “guarantee” of “a federal forum for claims of unconstitutional treatment at the hands of state officials.”) (cleaned up).

In *Knick*, Chief Justice Roberts, writing the opinion for the majority of the Court, stated that the preclusion trap as demonstrated in *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323 (2005), “should tip us off that the that the state-litigation requirement rests on a mistaken view of the Fifth Amendment.” *Id.*, 139 S.Ct. at 2167. As *Chief Justice Roberts* explained, a state court litigation exhaustion requirement places a plaintiff in a Catch 22 situation. “He cannot go to federal court without going to state court first, but if he goes to state court and loses, his claim will be barred in federal court.” *Id.*, 139 S.Ct. at 2167.

While the Civil Rights Act of 1871 “guarantees a federal forum for claims of unconstitutional treatment at the hands of state officials, and the settled rule is

that exhaustion of state remedies is not a prerequisite to an action under [42 U.S.C.] § 1983,” *Id.*, 139 S.Ct. at 2167, *Knick* held that a state court litigation exhaustion requirement rather than guaranteeing a plaintiff who asserts a Fifth Amendment Takings claim a federal forum to litigate his claims, “hand[s] authority over federal takings claims to state court.” *Id.*, 139 S.Ct. at 2169.

In the *Pullman* abstention context, a similar but less obvious Catch 22 situation arises for a plaintiff who is required to litigate his pendent claims first in state court before his federal takings claim is decided in federal court.

While an *England* reservation under *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 may preclude subsequent claim preclusion of the takings claim in federal court, it will not prevent issue preclusion, which is no less a guarantee to be decided in a § 1983 takings claim action, and can lead to a similar preclusion trap as was found by *Knick* to be the case under the *Williamson County Regional Planning Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1983) state litigation exhaustion requirement. *Id.*, 139 S.Ct. at 2167.

As the Pacific Legal Foundation has noted, *Pullman* abstention is one of “several tools,” that municipalities use, “including abstention, “to try to force claims, in whole or in part, back into state courts.” Laura D. Beaton & Matthew D. Zinn, *Knick v. Township of Scott: A Source of New Uncertainty for State and Local Governments in Regulatory Takings Challenges to Land Use Regulation*, 47 Fordham Urb. L.J. 623, 625 (2020).” See Petition for Writ of Certiorari, *Thomas Gearing, et al. v. City of Half Moon Bay*, United States Supreme Court Docket No. 22-1191 (citing *Axon Enterprise, Inc. v. Federal Trade*

Comm’n, 143 S.Ct. 890, 911 (2023) (Gorsuch, J., concurring in judgment) (28 U.S.C. § 1331, providing that district courts “*shall*” have jurisdiction over civil actions arising under the Constitution, “is as clear as statutes get.”). As Sixth Circuit Judge Kethledge observed: “Federal courts have a ‘virtually unflagging’ obligation to exercise the jurisdiction that Congress has given them. Congress has given us jurisdiction to hear these takings claims. Our constitutional order would be better served, I respectfully suggest, if we simply adjudicated them.” *Lumbard v. City of Ann Arbor*, 913 F.3d 585, 592 (6th Cir. 2019) (Kethledge, J., concurring) (citation omitted)).

The Court is respectfully requested to decide this important recurring issue that prevents Plaintiffs from litigating their Fifth Amendment takings claims in federal court.

ARGUMENT

A. *Pullman* Abstention Creates A “Preclusion Trap” Similar To What The Court Held Was The Case Under The *Williamson County* State Court Litigation Exhaustion Requirement

In *Knick*, the Court explained that “[t]he general rule is that plaintiffs may bring constitutional claims under § 1983 without first bringing any sort of state lawsuit, even when state court actions addressing the underlying behavior are available” (citations omitted). *Id.*, 139 S.Ct. at 2167; *Pakdel*, 141 S.Ct. at 2230.

In *Knick*, the Court reversed its earlier rule in *Williamson County* that a property owner could not bring a federal takings claim under section 1983 until a state

court had denied his claim for just compensation under state law. *Id.*, at 2167-68. *Knick* held that in doing so, it “effectively establish[ed] an exhaustion requirement” for section 1983 takings claims, *Williamson County* created an untenable “Catch-22.” *Id.*, 139 S.Ct. at 2167, 2173. A takings plaintiff could not “go to federal court without going to state court first,” but if he went to state court and lost, his claims would be “barred in federal court” by preclusion doctrines. *Id.*, at 2167.

The same is true under *Pullman* abstention.

In *San Remo*, a reservation of federal claims under *England* could not shield a plaintiff from the preclusive effect of a state court judgment, when his state law takings claims are inextricably bound with the federal issues he seeks to reserve for federal court.

The Ninth Circuit is quite clear that “[a] proper *England* reservation may prevent claim preclusion,” *Los Altos El Granada Investors v. City of Capitola*, 583 F.3d 647, 686 n. 3 (9th Cir. 2009), but not issue preclusion. notwithstanding that a plaintiff must litigate in state court pursuant to *Pullman*. See *San Remo Hotel, L.P. v. City and County of San Francisco*, 364 F.3d 1088, 1096 (9th Cir. 2004). This is true even where litigants have reserved federal claims under *England*. *Id.*, at 1096-98.

The Ninth Circuit also holds that a state mandamus action, as was filed in this case, can have a preclusive effect on federal claims. See *Manufactured Home Communities, Inc. v. City of San Jose*, 420 F.3d 1022, 1031 n. 12 (9th Cir. 2005).

Regulatory taking challenges require a balancing of factors under *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978); the factors being the economic impact of the regulation on the claimant, and particularly the extent to which the regulation has interfered with distinct investment-backed expectations, and the character of the 30 governmental action. *Id.*, 438 U.S. at 124. The Court in *Penn Central* referred to the analysis of these factors as “essentially ad hoc factual inquiries.” *Id.*, 438 U.S. at 124 (emphasis added).

Even with an *England* reservation, in the’ Fifth Amendment regulatory takings context, issue preclusion can result that “[t]hat the federal [takings] claim dies aborning.” *Knick*, 139 S.Ct. at 2167.

In effect, *Pullman* abstention results in the same preclusion problems that *Williamson County’s* state remedy exhaustion requirement entailed.

The Court should grant the petition.

CONCLUSION

For all the foregoing reasons, Petitioners respectfully request that the Petition be granted.

Dated: August 21, 2026

Respectfully submitted,

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**APPENDIX A — MEMORANDUM OF THE
UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT, FILED MAY 26, 2026**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 25-1038
D.C. No. 2:24-cv-01189-JAK-JPR

MIKE BARRY; TRPMOI FAMILY TRUST; ROYAL
HOSPITALITY GROUP, INC., DOING BUSINESS
AS MIRAGE HOSPITALITY GROUP, INC.,

Plaintiffs-Appellants,

v.

CITY OF LOS ANGELES,
A MUNICIPAL CORPORATION,

Defendant-Appellee,

DOES 1-10, INCLUSIVE,

Defendant.

Filed May 26, 2026

MEMORANDUM*

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

Appendix A

Appeal from the United States District Court for the
Central District of California

John A. Kronstadt, District Judge, Presiding

Submitted May 21, 2026**
Pasadena, California

Before: LEE, BUMATAY, and SUNG, Circuit Judges.

Mike Barry, Trpmoi Family Trust, and Royal Hospitality Group, Inc. (collectively, “Barry”) appeal the district court’s order dismissing Barry’s state-law claims and deferring his federal claims under the abstention doctrine of *R.R. Comm’n of Tex. v. Pullman Co.*, 312 U.S. 496, 497 (1941). We have appellate jurisdiction over orders of abstention. 28 U.S.C. § 1291; *Confederated Salish v. Simonich*, 29 F.3d 1398, 1407 (9th Cir. 1994). We review de novo whether the elements for abstention are met and then for abuse of discretion as to the district court’s ultimate decision to abstain. *Gearing v. City of Half Moon Bay*, 54 F.4th 1144, 1147 (9th Cir. 2022). We affirm.

A federal court may abstain under the *Pullman* doctrine only if “(1) the case touches on a sensitive area of social policy upon which the federal courts ought not enter unless no alternative to its adjudication is open, (2) constitutional adjudication plainly can be avoided if a definite ruling on the state issue would terminate the controversy, and (3) the proper resolution of the possible

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appendix A

determinative issue of state law is uncertain.” *Am. Encore v. Fontes*, 152 F.4th 1097, 1122 (9th Cir. 2025).

First, this case involves a sufficiently “sensitive area of social policy” because it arises out of the City of Los Angeles’s land-use planning. “We have long held that land use planning is a sensitive area of social policy that meets the first requirement for *Pullman* abstention.” *Gearing*, 54 F.4th at 1150 (simplified). For example, we have held a city ordinance was a prototypical example of land-use planning justifying *Pullman* abstention when it restricted short-term hotel occupancy in favor of long-term residential units. *San Remo Hotel v. City & County of San Francisco*, 145 F.3d 1095, 1105 (9th Cir. 1998). Here, Barry challenges an ordinance that classifies hotel units as either for transient occupants or for residential tenants. Thus, just like in *San Remo Hotel*, Barry’s suit touches on land-use planning and meets the first element for *Pullman* abstention.

Second, a federal constitutional issue may be avoided by a definitive state-court ruling because if Barry succeeds on his state-law claim for a writ of mandate, the federal issues in the case will be mooted or narrowed considerably. *See Sinclair Oil Corp. v. County of Santa Barbara*, 96 F.3d 401, 409 (9th Cir. 1996); *Gearing*, 54 F.4th at 1150–51 (holding that this requirement was satisfied where a state-court ruling would “likely narrow the federal litigation”). Barry does not dispute that at least some of his federal claims would be “narrowed” were a state-law writ of mandate granted. For instance, although Barry raises a variety of First, Fourth, Fifth, and Fourteenth

Appendix A

Amendment challenges, a favorable state-court resolution would likely moot (at minimum) his as-applied Due Process Clause and Takings Clause challenges. This is sufficient to “narrow” his federal claims were he to return to federal court, even though most of his claims concern the federal Constitution. *See, e.g., Pearl Inv. Co. v. City & County of San Francisco*, 774 F.2d 1460, 1464 (9th Cir. 1985) (holding Pullman abstention was appropriate even though the plaintiff raised no independent state-law claims).

Third, the proper determination of state law is uncertain because whether Barry’s hotel can or should be classified as “residential” is a fact-specific inquiry under state law. In land-use cases, because of the “localized and complex nature of land-use regulations,” the uncertainty requirement is met when the state-law claims turn on how the challenged policy applies to specific property. *See Gearing*, 54 F.4th at 1151. For instance, in *San Remo Hotel*, the “entire case . . . hinge[d] on the designation of [the plaintiff’s] hotel as ‘residential,’” an inquiry which necessarily raised difficult questions about conflicting zoning laws and hotel-use ordinances. 145 F.3d at 1105. Here, as in *San Remo Hotel*, Barry’s “entire case . . . hinges” on whether the hotel was properly designated a transient hotel and thus similarly meets the third requirement for *Pullman* abstention. *See id.*

Finally, the district court did not abuse its discretion in deciding to abstain. Pullman abstention is particularly appropriate in land-use cases. *See, e.g., Kollsman v. City of Los Angeles*, 737 F.2d 830, 836–37 (9th Cir. 1984) (holding that a district court abused its discretion by *not* abstaining

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Appendix A

in a case involving a denied application for a permit to build a subdivision which implicated state environmental laws and local ordinances). Because this case involves archetypal issues of land-use policy, there was no abuse of discretion in abstaining.

AFFIRMED.

**APPENDIX B — CIVIL MINUTES OF THE
UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA,
FILED FEBRUARY 5, 2025**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 2:24-01189-JAK (JPRx)

MIKE BARRY, *et al.*

v.

CITY OF LOS ANGELES, *et al.*

Filed February 5, 2025

CIVIL MINUTES – GENERAL

Present: John A. Kronstadt, United States District Judge

**Proceedings: (IN CHAMBERS) ORDER RE
DEFENDANT’S MOTION TO
DISMISS (DKT. 10)**

I. Introduction

On February 12, 2024, Mike Barry (“Barry”), TRPMOI Family Trust (the “Trust”) and Royal Hospitality Group, Inc. (collectively, “Plaintiffs”) brought this action against the City of Los Angeles (“City” or “Defendant”) and Does 1 through 10. Dkt. 1. The Complaint advances two causes of action—violation of 42 U.S.C. § 1983 and a petition of writ of mandate. *Id.* ¶¶ 42–79.

Appendix B

On March 5, 2024, Defendant filed a motion to dismiss (the “Motion”), with a corresponding request for judicial notice (the “RJN”). Dkt. 10. The Motion seeks the following alternative relief: (1) dismissal of Plaintiffs’ claims pursuant to Fed. R. Civ. P. 12(b)(6); (2) an order requiring Plaintiffs to provide a more definite statement of their claims pursuant to Fed. R. Civ. P. 12(e); or (3) a stay of these proceedings pending Plaintiffs’ exhaustion of available remedies in state court. *Id.* On March 26, 2024, Plaintiffs filed an opposition to the Motion (the “Opposition”). Dkt. 14. On April 2, 2024, Defendant filed a reply in support of the Motion (the “Reply”). Dkt. 16.

A hearing on the Motion was held on April 15, 2024. Dkt. 18. On the same date, an order issued directing the parties to file supplemental briefing on or before May 7, 2024. *Id.* On May 7, 2024, Defendant filed its supplemental brief (“Defendant’s Supplemental Brief”). Dkt. 20. On May 10, 2024, Plaintiffs filed their supplemental brief (“Plaintiffs’ Supplemental Brief”). Dkt. 22.¹ Based on a review of those submissions, it has been determined that no further hearing is necessary as to the Motion. Accordingly, it has been taken under submission, and is addressed by this Order. For the reasons stated in this Order, the Motion is **GRANTED IN PART** and **DEFERRED IN PART**.

1. Plaintiffs’ Supplemental Brief was not timely filed. *See* Dkt. 18. Because the arguments that it presents do not alter the analysis of the Motion, Defendant will not be prejudiced by its consideration. Therefore, Plaintiffs’ Supplemental Brief is accepted. However, Plaintiffs are ordered to comply with all orders issued by the Court in the future. A failure to do so may result in the imposition of sanctions.

*Appendix B***II. Background****A. The Parties**

It is alleged that Plaintiffs are the owners and operators of real property commonly known as the H by H Hospitality (the “Hotel”), located at 3200 West 8th Street, Los Angeles, California. Dkt. 1 ¶ 1. It is alleged that Plaintiffs are real estate and hotel and motel developers who have operated the Hotel since purchasing it in 2016. *Id.* ¶¶ 4, 8.

It is alleged that Defendant is an incorporated municipality in Los Angeles County, California, that is duly formed under the laws of California. *Id.* ¶ 2.

B. Factual Background**1. City Ordinances**

It is alleged that, in 2008, the City adopted a residential hotel conversion ordinance intended to convert designated transient hotels and motels to residential hotels to provide alternative sources for affordable long-term housing (the “RHO”). *Id.* ¶ 6. It is alleged that, on October 11, 2005, the City made initial determinations pursuant to the RHO as to whether each hotel or motel would be designated as transient—functioning primarily as a hotel or motel for short-term guests—or residential—functioning primarily as a source of housing for long-term guests. *Id.* ¶ 7. It is alleged that, as of the same date, for all hotels or motels designated as residential, the City determined the number of units that could still operate as transient units. *Id.*

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¶ 9. It is alleged that the City was required to provide affected hotel or motel owners and operators with an administrative hearing on this issue. *Id.*

It is also alleged that, prior to the adoption of the RHO until the present, the City has maintained an ordinance requiring that hotel and motel operators charge and collect from occupants a transient occupancy tax (the “TOT tax”) for the right of occupancy for the first 30 days of occupancy (the “TOT Ordinance”). *Id.* ¶ 10. It is alleged that the City provides hotel and motel operators with TOT licenses and also sets up TOT accounts and account numbers so that operators can make and track required TOT payments. *Id.* ¶ 11. Under the TOT Ordinance, owners and operators allegedly may not collect the TOT tax from residential occupants residing at designated residential hotel and motels. *Id.* ¶ 12.

2. The Hotel

It is alleged that, in 2016, Plaintiffs purchased the Hotel. *Id.* ¶ 8. It is alleged that, upon doing so, Plaintiffs were not provided a hearing as to whether or to what extent they were subject to the RHO. *Id.* It is also alleged that, upon purchasing the Hotel, Plaintiffs were provided with TOT licenses and accounts pursuant to the TOT Ordinance. *Id.* ¶¶ 10–11. It is alleged that Plaintiffs have complied with the TOT Ordinance by regularly paying the City the TOT tax they collect from occupants. *Id.* ¶ 12.

It is then alleged that, on or about July 20, 2023, the Los Angeles Housing Department (“LAHD”) sent

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Plaintiffs a notice and order to comply and complaint inspection notice (the “Notice”). *Id.* ¶ 22. The Notice allegedly stated that Plaintiffs had violated the RHO by unlawfully converting residential units to transient occupancy within a designated residential hotel. *Id.* It is alleged that Plaintiffs refused an inspection of the Hotel by the LAHD and, on August 24, 2023, timely appealed the Notice. *Id.* ¶ 23. It is then alleged that the City and LAHD unilaterally, and without Plaintiffs’ prior consent or knowledge, appointed Beth Rosen-Prinz, an outside hearing officer, to conduct a hearing on Plaintiffs’ appeal (the “Hearing”). *Id.* ¶ 24.

It is next alleged that, on October 31, 2023, Plaintiffs appeared with their counsel at the Hearing. *Id.* ¶ 25. Plaintiffs allegedly made the following statements at the Hearing: (1) Plaintiffs had a TOT license to operate as a transient hotel and had been regularly collecting and transmitting TOT taxes to the City pursuant to the TOT Ordinance; and (2) Plaintiffs had never been cited for collecting the TOT tax or for renting on a transient occupancy basis. *Id.* ¶¶ 26–27. It is further alleged that Plaintiffs stated that the Notice and the RHO violated California state law and federal law and that each was unconstitutional on its face and as applied to Plaintiffs. *See id.* ¶¶ 28–31.

It is then alleged that, on November 17, 2023, Rosen-Prinz, the City and LAHD issued a written decision denying Plaintiffs’ appeal of the Notice (the “Decision”). *Id.* ¶ 32. The Decision allegedly stated that Rosen-Prinz did not have the legal authority to decide Plaintiffs’

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constitutional challenges raised at the Hearing. *Id.* The Decision further allegedly stated that it was a final administrative decision and that any further challenges or appeals must be made in a court. *Id.* ¶ 33. It is alleged that, since the issuance of the Decision, the City has demanded that Plaintiffs permit the inspection of the Hotel, without a warrant or Plaintiffs' consent, in order to determine whether Plaintiffs have complied with the Notice. *Id.* ¶ 34. It is also alleged that the City has threatened Plaintiffs to induce them to permit an inspection. *Id.* ¶ 39.

III. Request for Judicial Notice**A. Legal Standards**

Fed. R. Evid. 201(b) provides that a “court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” A court may take judicial notice of a wide range of matters, including public records, government documents, judicial opinions, municipal ordinances, newspaper and magazine articles and the contents of websites. *See, e.g., Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 259 n.2 (9th Cir. 2013); *Tollis, Inc. v. County of San Diego*, 505 F.3d 935, 938 n.1 (9th Cir. 2007); *United States v. Chapel*, 41 F.3d 1338, 1342 (9th Cir. 1994); *Heidelberg USA, Inc. v. PM Lithographers, Inc.*, No. 17-CV-02223, 2017 WL 7201872, at *2 (C.D. Cal. Oct. 19, 2017); *United States, ex rel. Modglin v. DJO Glob. Inc.*, 114 F. Supp. 3d 993, 1008 (C.D. Cal. 2015), *aff’d sub*

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nom. United States v. DJO Glob., Inc., 678 F. App'x 594 (9th Cir. 2017).

B. Application

The City requests judicial notice of the following public documents: (1) Exhibit 1, which is the City's Residential Hotel Unit Conversion and Demolition Ordinance, as codified by Los Angeles Municipal Code ("LAMC") § 47.70, *et seq.*; (2) Exhibit 2, which is the City of Los Angeles General Manager Hearing Officer's Decision dated November 17, 2023; (3) Exhibit 3, which is the Certificate of Interested Parties filed in this action by Plaintiffs; (4) Exhibit 4, which is a copy of Cal. Code Civ. Proc. § 1094.6; and (5) Exhibit 5, which is a copy of LAMC § 21.7.6. Dkt. 10-1 at 2.

Exhibits 1 and 5 are subject to judicial notice because each is a publicly available government document, whose authenticity is not disputed. *See Japanese Vill., LLC v. Fed. Transit Admin.*, 843 F.3d 445, 454 (9th Cir. 2016). Exhibit 3 is subject to judicial notice because Plaintiffs incorporated its contents into the Complaint (Dkt. 1 ¶¶ 24–33) and do not dispute its authenticity. *See Branch v. Tunnell*, 14 F.3d 449, 453–54 (9th Cir. 1994), *overruled on other grounds by Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002). Judicial notice of Exhibit 2 is unnecessary because it was already filed by Plaintiffs on the docket for this action. Judicial notice of Exhibit 4 is unnecessary because it is a statute that can be reviewed in the ordinary process. Therefore, the RJN is **GRANTED** as to Exhibits 1, 3 and 5, but denied as to Exhibits 2 and 4.

*Appendix B***IV. Analysis****1. Legal Standards**

Federal courts have a “virtually unflagging obligation . . . to exercise the jurisdiction given them.” *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). A “narrow exception” to this obligation is the “*Pullman* abstention doctrine,” which refers to *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941). *C–Y Dev. Co. v. City of Redlands*, 703 F.2d 375, 376–77 (9th Cir. 1983). Under this doctrine, a court may postpone “the exercise of federal jurisdiction when ‘a federal constitutional issue . . . might be mooted or presented in a different posture by a state court determination of pertinent state law.’” *Id.* (quoting *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 189 (1959)).

Pullman abstention is appropriate when three requirements are met:

(1) the case touches on a sensitive area of social policy upon which the federal courts ought not enter unless no alternative to its adjudication is open, (2) constitutional adjudication plainly can be avoided if a definite ruling on the state issue would terminate the controversy, and (3) the proper resolution of the possible determinative issue of state law is uncertain.

Courthouse News Serv. v. Planet, 750 F.3d 776, 783–84 (9th Cir. 2014) (citation omitted). When a court abstains

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under *Pullman*, it “must dismiss the state law claim and stay its proceedings on the constitutional question until a state court has resolved the state issue.” *Cedar Shake & Shingle Bureau v. City of Los Angeles*, 997 F.2d 620, 622 (9th Cir. 1993). Further, at the request of either party, the court may “retain jurisdiction of the federal constitutional issues pending proceedings in the state courts.” *Id.* at 626.

2. Application

Defendant requests an order staying these proceedings until Plaintiffs have exhausted all available judicial remedies in state court. Dkt. 10 at 39. *Pullman* abstention is appropriate only if the requisite three requirements are satisfied. Based on a review of those requirements, *Pullman* abstention is warranted in this action at this time.

a) *Pullman* Abstention Is Warranted

(1) Whether the Complaint Involves a Sensitive Area of Social Policy

The Ninth Circuit has “consistently held that land use planning is a sensitive area of social policy that meets the first requirement for *Pullman* abstention.” *San Remo Hotel v. City & County of San Francisco*, 145 F.3d 1095, 1105 (9th Cir. 1998) (citing *Sinclair Oil Corp. v. County of Santa Barbara*, 96 F.3d 401, 409 (9th Cir. 1996)); see also *Columbia Basin Apartment Ass’n v. City of Pasco*, 268 F.3d 791, 802 (9th Cir. 2001) (“We often have held that land-use planning questions ‘touch a sensitive area

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of social policy’ into which the federal courts should not lightly intrude.”) (citations omitted).

Plaintiffs’ challenge to the RHO, which is a land-use ordinance designed to “convert various transient hotels and motels to residential hotels in order to provide alternative sources of affordable [long-term] housing,” concerns a “sensitive area of social policy” under *Pullman*. Dkt. 1 ¶ 6. *San Remo Hotel* concerned a constitutional challenge to an ordinance “increas[ing] restrictions on the use of hotel rooms for tourists and . . . increas[ing] the expense of converting a hotel room from residential to tourist use.” *San Remo Hotel*, 145 F.3d at 1098. *Sinclair Oil* concerned a challenge to a community zoning plan that “significantly restricted and subject[ed] to severe limitations” land use in zones designated as “environmentally sensitive habitats.” *Sinclair Oil*, 96 F.3d at 404. *Columbia Basin Apartment Association* concerned an ordinance that penalized tenants and landlords for failing to make apartments available for inspection. *Columbia Basin Apartment Ass’n*, 268 F.3d at 795. The Ninth Circuit concluded that each of these matters raised issues in a sensitive area of social policy.

The result is the same here. The RHO designates certain transient hotels and motels as residential, thereby requiring them to provide residential housing options in lieu of transient housing, in order to create more affordable long-term housing in the City. Dkt. 1 ¶ 6; *see* Dkt. 10 at 17–19. The RHO seeks to accomplish this goal, in part, by exempting hotel and motel operators from collecting TOT tax from occupants residing in designated residential

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hotels or units. Dkt. 1 ¶ 12. These social and land-use issues are analogous to the issues in the aforementioned cases. For these reasons, the first *Pullman* requirement is satisfied.

**(2) Whether a State Court Ruling May
Narrow the Constitutional Issues**

The second prong for *Pullman* abstention is met where “[a] state law question . . . has the potential of at least altering the nature of the federal constitutional questions.” *C–Y Dev.*, 703 F.2d at 378; *see also Sinclair Oil*, 96 F.3d at 409 (“For *Pullman* purposes . . . it is sufficient if the state law issues might ‘narrow’ the federal constitutional questions.”). “In land use cases, the Ninth Circuit has frequently found this requirement satisfied where a favorable decision on a state law claim would provide plaintiff with some or all of the relief he seeks.” *VH Prop. Corp. v. City of Rancho Palos Verdes*, 622 F. Supp. 2d 958, 963 (C.D. Cal. 2009). For example, in *Sinclair Oil*, the plaintiff asserted that a community plan that reduced the number of residences to be developed constituted a taking under the federal and state constitutions. *Sinclair Oil*, 96 F.3d at 405. The Ninth Circuit concluded that the second requirement for *Pullman* abstention was satisfied “because, ‘[g]iven [an] opportunity, a state court might avoid the federal constitutional issues by deciding that an illegal taking under the California Constitution ha[d] occurred.’” *Id.* (quoting *Sederquist v. City of Tiburon*, 590 F.2d 278, 282 (9th Cir. 1978)).

Two factors support a determination that a state court ruling may narrow the constitutional issues that

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are presented in this action. *First*, the Complaint seeks mandamus review under Cal. Code Civ. Proc. § 1094.5, a statute pursuant to which an aggrieved person may seek judicial review of a final administrative order or decision. Dkt. 1 at 13; *see id.* ¶¶ 48–52, 79; *see* Cal. Code. Civ. Proc. § 1094.5(a). Specifically, Plaintiffs seek “a writ of mandate vacating and reversing the Notice and denial of Plaintiff’s appeal.” Dkt. 1 at 13. In support of that appeal, Plaintiffs raised various challenges, under both state and federal law, to the RHO and argued that the RHO as well as the Notice, violated LAMC § 161.601. *See id.* ¶¶ 28–29. Abstaining in this matter while Plaintiffs seek mandamus review in a state court proceeding could make the issues moot. Thus, it could result in a writ of mandate directing the County to rescind the Notice. Under these circumstances, mandamus review would “resol[ve] [] one or more of [Plaintiffs’] state questions . . . [and] obviate the need for federal constitutional adjudication.” *Isthmus Landowners Ass’n, Inc. v. State of Cal.*, 601 F.2d 1087, 1091 (9th Cir. 1979). This is sufficient to satisfy the second *Pullman* requirement.

Second, even if Plaintiffs were not pursuing a writ of mandate, a state court ruling could narrow the federal constitutional issues by resolving certain overlapping state law challenges brought by Plaintiffs. This consideration remains relevant notwithstanding Plaintiffs’ stated intention “not [to] expose their federal constitutional claims” through mandamus proceedings and to “preserve their federal constitutional claims . . . by way of an *England* reservation.” Dkt. 1 ¶ 51. Plaintiffs’ election to file an *England* reservation would ensure that state court

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proceedings “would not terminate the case” or “act as res judicata or claim preclusion of the federal claims.” Dkt. 22 at 2; *see also* Dkt. 14 at 11.

Plaintiffs do not dispute that they raised certain state statutory and/or constitutional challenges to the Notice and the RHO in the context of their agency proceedings. *See* Dkt. 1 ¶ 50 (“The City violated its duties both under California state law and federal law.”). If Plaintiffs were to raise those state law challenges in state court, to the extent that they overlap with the federal constitutional challenges that Plaintiffs raise in this action, allowing the state court to act initially to review those challenges would “ha[ve] the potential of at least altering the nature of [Plaintiffs’] federal constitutional questions.” *C–Y Dev.*, 703 F.2d at 378; *see, e.g., Sederquist*, 590 F.2d at 282 (“Since the state and federal constitutional prohibitions against uncompensated takings are highly similar . . . it is ‘particularly appropriate that the California courts be afforded the initial opportunity of interpreting the constitution of their own state in relation to the (Sederquists’) complaint.’”) (quoting *Newport Investments, Inc. v. City of Laguna Beach*, 564 F.2d 893, 894 (9th Cir. 1977)).

For these reasons, the second *Pullman* requirement is satisfied.

(3) Whether Resolution of the State Law Issues Is Uncertain

For purposes of *Pullman* abstention, “[r]esolution of an issue of state law might be uncertain because the

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particular statute is ambiguous, or because the precedents conflict, or because the question is novel and of sufficient importance that it ought to be addressed first by a state court.” *Pearl Inv. Co. v. City & County of San Francisco*, 774 F.2d 1460, 1465 (9th Cir. 1985); *see also Sinclair Oil Corp. v. County of Santa Barbara*, 96 F.3d 401, 409 (9th Cir. 1996). “[T]he Ninth Circuit has required only a minimal showing of uncertainty to satisfy the third *Pullman* factor in land use cases.” *VH Prop. Corp.*, 622 F. Supp. 2d at 964.

The outcome of the adjudication of Plaintiffs’ state law claims is uncertain. “The [RHO] is a comprehensive land use scheme, and its application to [Plaintiffs’] [h]otel turns on the peculiar facts of this case.” *Patel v. City of Los Angeles*, 455 F. App’x 743, 745 (9th Cir. 2011). Further, Plaintiffs have raised several constitutional challenges to both the Notice and the RHO whose outcome in the state courts is not clear. Finally, Plaintiffs do not dispute that their claims present uncertainty. *See* Dkt. 14 at 11. Therefore, the third *Pullman* requirement is satisfied. *Patel*, 455 F. App’x at 745; *but see Vaghashia v. City of Los Angeles*, No. 20-cv-3257, 2021 WL 6102469, at *3 (C.D. Cal. Aug. 20, 2021) (declining similar invitation to abstain under *Pullman* due to failure to satisfy third *Pullman* requirement).

b) Effect of *Pullman* Abstention

Because all three *Pullman* requirements are satisfied, *Pullman* abstention is appropriate. Therefore, Plaintiffs’ state law claim is dismissed. *See Cedar Shake & Shingle*

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Bureau, 997 F.2d at 622 (9th Cir. 1993). The dismissal of this claim, which Plaintiffs may refile in state court, does not constitute a determination on the merits on any of the grounds advanced in the Motion.

Plaintiffs' federal Section 1983 claim is stayed until a state court resolves the state issues raised by this case. *See Patel v. City of Los Angeles*, No. 09-cv-5978, 2010 WL 11537589, at *2 (C.D. Cal. Feb. 11, 2010). The Court elects to "retain jurisdiction of the federal constitutional issues pending proceedings in the state courts." *Cedar Shake & Shingle Bureau*, 997 F.2d at 626. Therefore, a ruling on the Motion as to Plaintiffs' federal constitutional claims is deferred pending the completion of the proceedings in the California courts.

V. Conclusion

For the reasons stated in this Order, the Motion is **GRANTED IN PART** and **DEFERRED IN PART**. It is **GRANTED** with respect to the motion to abstain. It is **DEFERRED** with respect to the motion to dismiss and the motion for more definite statement.

Plaintiffs' second cause of action is **DISMISSED** for resolution in California courts. Plaintiffs' first cause of action is **STAYED**. This action is placed on the Court's inactive calendar. Counsel shall file a joint report on the earlier of every 90 days, with the first report due on May 5, 2025, or within 10 days of the conclusion of the state court proceedings. Each joint report shall set forth the parties' respective and/or collective positions as to the

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status of the state court proceedings, and whether the stay of this action should be lifted. Following a review of each report, a determination will be made as to what appropriate actions, if any, should be taken in this action.

IT IS SO ORDERED.