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

BRIEF *AMICUS CURIAE* OF THE INDEPENDENT CITIES ASSOCIATION, FREEDOM FOUNDATION, AND THE CITIES OF CARSON, DOWNEY, IRWINDALE, LAWNDALE, NORCO, PALOS VERDES ESTATES, PLACENTIA, SEAL BEACH, TORRANCE AND WHITTIER IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

1. Should the Court overrule *Hunter v. City of Pittsburgh,* 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151 (1907) which has now created a circuit split in which some circuits have opened the door to cities to sue their own states while the Ninth Circuit finds that all cities lack standing to sue "sovereign states", thereby creating a *per se* bar to such suits in federal court?

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IDENTITY AND INTEREST OF *AMICI CURIAE*

The Independent Cities Association (ICA) is composed of forty cities in California.[1] A list of the forty city members of the ICA is attached as Appendix A. In addition, the Cities of Carson, Downey, Irwindale, Lawndale, Norco, Palos Verdes Estates, Placentia, Seal Beach, Torrance, and Whittier are cities located in Los Angeles County, Orange County, or Riverside County. Like other charter cities and general law cities, these cities are directly impacted by whether any city, charter or otherwise, can constitutionally challenge actions taken by the State of California in federal court.

All of these cities have local general plans and local zoning ordinances for housing that are directly impacted by a comprehensive state statutory scheme mandating cities to plan for and zone housing density necessary to meet the so-called Regional Housing Needs Allocation (RHNA). This statute, as interpreted by a state agency, the California Department of Housing and Community Development (HCD), now overrides local control and policies related to housing and zoning—at times to a level violative of the U.S. Constitution by compelling speech from individual council members and the Cities themselves. Yet, this and other State directives cannot now be challenged under any federal Constitutional theory by any city or association of cities under Ninth Circuit precedent that is now at issue.

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1. These amici parties gave notice of the intent to file this amicus brief to the parties of record more than 10 days in advance pursuant to Rule 37.2. No counsel for a party authored any portion of this brief in whole or in part, nor did any party or their respective counsel make a monetary contribution toward this brief. No other party outside of amici made any monetary contribution toward this brief.

Separately, Freedom Foundation (Foundation) is a nonprofit, nonpartisan organization incorporated in Texas with an office in California advocating for the right of public employees to decide for themselves whether to join a union and authorize dues payments. In furtherance of this mission, the Foundation has regularly filed and joined amicus curiae briefs in cases then pending before this Court.

On behalf of a California county and an individual employee, the Foundation is currently litigating constitutional challenges to California laws which restrain public employers from communicating to their employees that they have a First Amendment right to refrain from union membership dues payments. See Cal. Gov't Code § 3550 (viewpoint-based prohibition on public employers deterring or discouraging union membership). These laws are collectively known as the Prohibition on Public Employers Deterring or Discouraging Union Membership ("PEDD"). Like California's Regional Housing Needs Allocation (RHNA) law, the PEDD unconstitutionally restrains and compels the speech of local public officials.[2]

The Foundation thus has an interest in the Court accepting review of the instant case and clarifying whether and under what circumstances a political subdivision can sue its parent state.

2. Not all municipalities participating in this brief support the Freedom Foundation's positions in other matters; but all agree on the need for the Court to overrule *Hunter v. City of Pittsburgh*.

SUMMARY OF ARGUMENT

"Time with its tides brings new conditions which must be cared for by new laws." *Williams v. Mayor and City Council of City of Baltimore*, 289 U.S. 36, 46, 53 S.Ct. 431, 434, 77 L.Ed. 1015 (1933).

The larger question posed by the underlying case involves the evolving nature of the modern American city and changing times. Once deemed a mere appendage to a specific state, cities in today's world have different policies than a parent state, exercise vast economic and political rights beyond mere state boundaries in an international world, and enjoy not just national but international recognition. To take but one example, the Port of Los Angeles, a division of the City of Los Angeles, ranks first in the Western Hemisphere for container cargo and 16th in the world overall as of 2024. *See Facts and Figures*, The Port of Los Angeles (Oct. 20, 2025)https://www.portoflosangeles.org/business/statistics/facts-and-figures.) Like the City of San Francisco and other older California cities, Los Angeles was not created by the state of California. Rather, it was a city of its own and originally, part of an entirely different nation, first Spain and later Mexico. Los Angeles was later incorporated as a city within the U.S., but, that incorporation came five months *before* California was admitted to statehood. *See* County of Los Angeles, *Cities Within Los Angeles County* at 1, (last visited Oct. 21, 2025) https://redistricting.lacounty.gov/wp-content/uploads/2021/01/1043530_09-10CitiesAlpha.pdf [3]

3. This Los Angeles County webpage also specifies which cities in that County are either charter cities or are general law cities.

The issue here, however, is whether an overly broad statement of law issued by this Court in 1907 about the limited role of cities as mere appendages of "creating" states can withstand scrutiny in the modern era. Various Courts of Appeal (indirectly) and legal scholars (directly) agree: the doctrine of "State is Sovereign" espoused in *Hunter v. City of Pittsburgh*, 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151 (1907) (*Hunter)* is outdated and inconsistent with both this Court's modern jurisprudence and that of various Courts of Appeal outside of the Ninth Circuit. The specific issue—whether a city in today's world can have standing to sue its putative "creator"—its jurisdictional state—must be addressed by a grant of the petition for certiorari filed by the City of Huntington Beach.

Municipal entities outside of the Ninth Circuit either have direct standing to sue or have not encountered specific per se barriers to their suits. Moreover, even within the Ninth Circuit municipal entities, including cities, can sue in federal court against state regulatory impositions done under the guise of federal Clean Water Act, and have recently litigated just such a case before this Court. *See City and County of San Francisco v. EPA*, 604 U.S. 334, 145 S.Ct. 704, 221 L.Ed.2d 166 (2025). Notably, the California Supreme Court rejects a per se bar on municipal entities suing the State. *See, e.g., E. Bay Asian Loc. Dev. Corp. v. State of California*, 24 Cal.4th 693, 700 (2000) (analyzing the City and County of San Francisco's First Amendment establishment clause claim on merits); *Star-Kist Foods, Inc. v. County of Los Angeles*, 42 Cal. 3d 1, 6-9, 719 P.2d 987,992 (1986) (rejecting a per se bar on cities and counties suing the State on dormant Commerce Clause basis).

Indeed, this Court's recent jurisprudence on standing under Article III beginning with *Lujan v. Defenders of Wildlife,* 504 U.S. 555,112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) focuses on an individual (or entity's) actual direct impact, and whether that alleged impact will be redressable by the particular suit. These recent Court decisions do not focus on the class or category of the entity bringing the suit, but rather focus on a case-specific inquiry as to the actual claimed harms.

Yet, in the Ninth Circuit any city, whether or not endowed with separate constitutional powers by its state as a charter city, is barred from such suits. The underlying case of *City of Huntington Beach, et al. v. Newsom, et al.* involves the City of Huntington Beach, a California charter city, having filed suit in the Central District against the State of California (the "State") to challenge the State's efforts to compel speech of the City and its council members and thereby dictate the State's pre-determined outcome. Yet the Ninth Circuit's per se rule applies to all cities—whether charter cities or general law cities under state law criteria.

All of this muddle about the legal basis for cities to sue their state[4]—starts with a poorly reasoned case of almost

4. Some scholars note that other state-created entities, such as corporations, have sufficient "personhood" to assert constitutional rights. *See Santa Clara County v. Southern Pacific R. Co.,* 118 U.S. 394, 6 S.Ct. 1132, 30 L.Ed. 118 (1886) (Fourteenth Amendment claim). This contrasts with the Ninth Circuit rule against cities based on the reasoning that cities were created by states. Bernard Bell, *Notice & Comment: Adjudicating Internecine Quarrels*, Yale Journal on Regulation (July 29, 2019), https://www.yalejreg.com/nc/adjudicating-internecine-quarrels/.

100 years ago, *Hunter*. It is time to overrule *Hunter* and instruct all Courts of Appeal that standing to sue as to a specific city should be analyzed under the *Lujan* standard which requires a case-by-case inquiry.

The ICA, the Freedom Foundation, and the Cities of Carson, Downey, Irwindale, Lawndale, Norco, Palos Verdes Estates, Placentia, Seal Beach, Torrance and Whittier (collectively, "Amici") file this Amicus Brief to challenge the Ninth Circuit's primary holding to insist upon a *per se* standing rule that precludes municipal access to the federal courts for constitutional violations.[5] For this proposition the Ninth Circuit ultimately rests upon 100-year old *dicta* in *Hunter* about state "sovereignty" over all cities—no matter what. That case and its progeny should now be overruled.

Amici request that this Court grant the Petitioners' Petition for Certiorari and clarify the plethora of individual Court of Appeal rulings and permit standing to cities to sue their own state governments for constitutional malfeasance in federal court.

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5. The Ninth Circuit separately held in its Memo. Opinion that city councilmembers also lacked standing to sue. The amici join in the discussion of this secondary holding provided in the City of Huntington Beach's Petition for Certiorari and pretermit further discussion of that issue in this brief.

ARGUMENT

I

THE NINTH CIRCUIT'S PER SE BAN ON CITY SUITS IS FOUNDED ON A FATALLY FLAWED INTERPRETATION OF *HUNTER*

A. The Ninth Circuit's Categorical Exclusion of Any Constitutional Claims by Cities is Based on *Hunter*

Forty-five years ago the Ninth Circuit considered a constitutional suit brought by the City of South Lake Tahoe. In that suit, the city, its mayor, and city council members alleged that land use regulations adopted by an intergovernmental agency, the Tahoe Regional Planning Agency, were unconstitutional.[6] The district court dismissed the case, and the Ninth Circuit affirmed, citing in part to *Supreme Court cases derived from Hunter. City of South Lake Tahoe v. California Tahoe Regional Planning Agency,* 625 F.2d 231 (9th Cir. 1980),*cert. denied,* 449 U.S. 1039, 101 S.Ct. 619, 66 L.Ed.2d 502 (1980) (*South Lake Tahoe*).

In their dissent from the denial of certiorari in the *South Lake Tahoe* case Justices White and Marshall wrote:

> The Court of Appeals also held that the city had no standing because a political subdivision of a State may not raise constitutional objections to

6. *City of South Lake Tahoe v. California Tahoe Regional Planning Agency*, *supra*, 625 F.2d at 232.

> the validity of a state statute, citing, *Williams v. Mayor of Baltimore*, 289 U.S. 36, 40, 53 S.Ct. 431, 432, 77 L.Ed. 1015 (1933) [other citations omitted]. *Such a per se rule is inconsistent with Allen, in which one of the appellants was a local board of education.* Furthermore, there is a conflict in the Circuits over the validity of such a rule. *Cf. Rogers v. Brockette*, 588 F.2d 1057, 1067-1071 (CA5 1979), and *City of New York v. Richardson*, *supra*.

City of South Lake Tahoe v. California Tahoe Regional Planning Agency, 449 U.S. 1039, 1041-42, 101 S.Ct. 619, 621, 66 L.Ed.2d 502 (1980) (White J., with whom Marshall J. joins, dissenting from denial of certiorari) (emphasis added).

Thereafter, the Ninth Circuit expanded its ruling in *South Lake Tahoe* to apply to any type of city—whether it be a charter city or not. Even the Ninth Circuit recognizes that its rule is a per se rule, admitting of no exceptions. *See Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank,* 136 F.3d 1360, 1363 (9th Cir. 1998), *cert. denied,* 525 U.S. 873, 119 S.Ct. 173, 142 L.Ed.2d 141 (1998) ("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."). This expansion is confirmed by the decision challenged in this petition. In *City of Huntington Beach v. Newsom, et. al.,* Mem. Order dated October 30, 2024 (excerpted in Petition, Ex. A at 2a (*Huntington Beach*), the Ninth Circuit once again cited a successor case to *Hunter*, to the effect that cities have no independent role in federal court, citing to *Williams, supra,* 289 U.S. at 40, 53 S.Ct. at 432, 77 L.Ed.

1015 ("A municipal corporation . . . has no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of its creator.")

Although *South Lake Tahoe* cited *Williams, supra,* it is clear that the original line of cases suggesting some type of bar to municipal lawsuits originates with *Hunter. See, e.g.*, Zachary D. Clopton and Nadav Shoked, *The City Suit*, 72 Emory L.J. 1351, 1360 (2023) (referencing *Hunter* as the "foundational 1907" case commonly cited by courts and commentators for the proposition that cities lack powers to sue).

B. *Hunter* was poorly reasoned and is unpersuasive.

This Court considers several factors in deciding whether to overrule precedent, including "the quality of [the precedent's] reasoning, the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision." *Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, 585 U.S. 878, 917, 138 S.Ct. 2448, 2478, 201 L.Ed.2d 924 (2018). Each of these factors supports overruling *Hunter* and its progeny (including *South Lake Tahoe* and the instant case).

The Ninth Circuit's decision in *South Lake Tahoe*, attempted to cast *Hunter* as grounded in federal Article III standing. Yet a close reading of *Hunter* does not support this characterization. Indeed, the Court in *Hunter* specifically recognized the plaintiffs' standing to sue in a broad sense, finding that there were "two questions [in the case] which are within our jurisdiction." Those claims asserted by citizens of the then-separate city of Alleghany involved: "claims

of rights under the Constitution of the United States …" *Hunter, supra,* 207 U.S. at 176, 28 S.Ct. at 45, 52 L.Ed. 151.

The Court in *Hunter* then went on to address those claims on their merits , characterizing one as a claim of impairment of contractual rights under Article I, Sec. 9 of the Constitution, and the other as a claim of deprivation of due process by virtue of the fact that the state-approved consolidation of the cities of Pittsburgh and Alleghany would impose increased taxes on residents of Alleghany after the consolidation. *Hunter, supra,* 207 U.S. at 177, 28 S.Ct. at 46, 52 L.Ed. 151. Again, before deciding the substantive issues, the Court reiterated its prior position that the issues were justiciable: "The precise question thus presented has not been determined by this Court. It is important, and, as we have said, *not so devoid of merit as to be denied consideration*, although its solution … is not difficult." (*Id*., emphasis added).

The Court then rejected the two constitutional claims on the merits, essentially holding that: "Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them." *Hunter, supra,* 207 U.S at 178, 28 S.Ct. at 46, 52 L.Ed. 151. Therefore, per the Court, no claim under the federal Constitution was validly asserted. Although the Court in *Hunter* did cite a number of earlier cases to support this broad decree, it did not conduct a separate analysis of either those cases or the instant issue of city consolidation to support its conclusion.

The rule in *Hunter* finds no grounding in either the Constitution or federal statute. Instead, the decision reflects a now-discredited practice of coining general

rules of federal common law. *See* Kathleen S. Morris, *The Case for Local Constitutional Enforcement*, 47 Harv. C.R.-C.L. L. Rev. 1, 6, 18 (2012). Following the Court's 1938 decision in *Erie Railroad Co. v. Tompkins*, federal courts have no authority to define the internal distribution of power between states and their subdivisions as a matter of federal common law. 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938). Rather, the relationship between a state and its cities—including whether a charter city may be compelled to adopt the positions of a state agency—is a matter of state constitutional and statutory design. Accordingly, Hunter's freestanding federal rule that cities have no constitutional interests or standing against their states is irreconcilable with the Court's well-established[7] jurisprudence.

There are strong policy reasons for rejecting the rule in *Hunter.* As Professor Bernard Bell observed: "States should not be free to adopt and enforce laws that are preempted under the Supremacy Clause or otherwise violate the U.S. Constitution. Permitting state subdivisions and instrumentalities to sue states in federal courts may be a particularly efficacious means of insuring that such invalid state laws are promptly overturned." Bernard Bell, *Notice & Comment: Adjudicating Internecine Quarrels* Yale Journal on Regulation (July 29, 2019) https://www.yalejreg.com/nc/adjudicating-internecine-quarrels/.

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7. The understanding of constitutional "standing" under Article III has changed over time. *See* B. Keenan, *Subdivisions, Standing and the Supremacy Clause: Can a Political Subdivision Sue its Parent State under Federal Law?* 103 Mich. L. Rev. 1899, 1909 (2005)(noting that the Ninth Circuit's reliance on the word "standing" mistakes the fact that that term did not have the same jurisprudential meaning when *Hunter* and other early cases were decided).

The Ninth Circuit's Memorandum opinion in this case suggests that its decision, like the earlier decision in *South Lake Tahoe*, is founded on Article III "standing." *Huntington Beach, supra,* Mem. Order at p.3 ("In any case, the City's federal standing does not turn on the intricacies of California law.") (excerpted in Petition, Ex. A at 3a). To that extent, the Ninth Circuit opinion in this case is clearly incorrect. *Hunter* did not turn on Article III standing; there is nary a mention of the key words "case" or "controversy" in *Hunter*, and the Court itself recognized that it had "jurisdiction" over two of the constitutional claims.

C. *Hunter* has spawned inconsistent applications both with opinions in this Court and in rulings by the Courts of Appeal

Justices White and Marshall noted that the Ninth Circuit's interpretation in *South Lake Tahoe* of the *Hunter* line of cases which created a per se rule was inconsistent with this Court's own precedent and also with other Court of Appeal decisions. *South Lake Tahoe, supra,* 449 U.S. at 1041-1042, 101 S.Ct. at 620-621, 66 L.Ed.2d 502 (White, J., with whom Marshall, J. joins, dissenting from denial of certiorari).

In his dissent to the denial of certiorari, Justice White specifically cited a Supreme Court opinion finding that a school board had standing to challenge a federal constitutional issue (a First Amendment free exercise claim) before the Supreme Court. In *Board of Education of Central School District No. 1 v. Allen*, 392 U.S. 236, 88 S.Ct. 1923, 20 L.Ed.2d 1060 (1968) a local school district sued the state regulator for textbooks under a

claimed violation of the free exercise clause. This Court ultimately affirmed the lower court's rejection of the free exercise clause claim, but significantly, noted in footnote five of its opinion that not only had the New York state court concluded that the school district had successfully established standing to sue that state, but specifically concurring with that state court conclusion: :

> [FN 5] Appellants have taken an oath to support the United States Constitution. Believing s[ection] 701 [of the New York State Education Law] to be unconstitutional, they are in the position of having to choose between violating their oath and taking a step—refusal to comply with s[ection]701—that would be likely to bring their expulsion from office and also a reduction in state funds for their school districts. There can be no doubt that appellants thus have a 'personal stake in the outcome' of this litigation. *Baker v. Carr*, 369 U.S. 186, 204, 82 S. Ct. 691, 703, 7 L.Ed.2d 663 (1962).[8]

Allen, supra, 392 U.S. at 241, n.5.

Since that time, the conflict between both this Court's rulings and those of other Courts of Appeal with the Ninth Circuit's per se rule resting on *Hunter* has only

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8. Professor Bernard Bell explores this "personal stake" or "corporate personhood" as applied to municipal entities and concludes that questions related to whether state subdivisions have rights to assert under particular constitutional claims are "ones of substantive constitutional law, not ones of justiciability (i.e., whether there is a sufficient 'case' or 'controversy.'). B. Bell, supra, *Adjudicating Internecine Quarrels.*

exacerbated. Some courts and litigants find that a city can acts as an independent entity subject to federal law. Not so in the Ninth Circuit. *See* Morris, *supra*, at 18–19 (noting that federal courts are "all over the place" in their application of *Hunter*). Instead, the issue of local government jurisprudence oscillates between treating cities as powerless instruments and as autonomous political actors, yielding a "shadow doctrine" driven by outcomes rather than principle. Richard C. Schragger, *Reclaiming the Canvassing Board: Bush v. Gore and the Political Currency of Local Government*, 50 Buff. L. Rev. 393, 395–96 (2002).[9]

As one commentator noted with respect to the *Hunter* line of cases in this Court: ". . . [I]n *Gomillion v. Lightfoot*, 364 U.S. 339 (1960), Justice Frankfurter, writing for the Court, reevaluated those precedents and interpreted them more narrowly. And since that time the Supreme Court's *sub silento* assumption of jurisdiction in such

9. A full review of conflicts between the Ninth Circuit and other Courts of Appeal is contained in the separately filed Amici Brief of the Cities of Porterville and Riverside. Amicus Brief of City of Riverside and City of Porterville in Doc. No. 25-337 at 6-13 (Oct. 21, 2025). In "Adjudicating Internecine Quarrels"Professor Bell notes that in contracst to the Ninth Circuit's per se rule: "All the other Circuits that have addressed the issue take the position that such suits are permissible, at least in some circumstances. *Branson Sch. Dist. RE-82 v. Romer,* 161 F.3d 619 (10th Cir. 1998); *United States v. State of Alabama,* 791 F.2d 1450, 1455 (11th Cir. 1986); *South Macomb Disposal Authority v. Township of Washington,* 790 F.2d 500, 504 (6th Cir. 1986); *Rogers v. Brockett,* 588 F.2d 1057 (5th Cir.), *cert. denied,* 444 U.S. 827 (1979)."

cases suggests that such suits [by cities] are permissible." *See* B. Bell, supra, *Adjudicating Internecine Quarrels.* [10]

The *Hunter* doctrine's unworkability is especially apparent in actions for violation of federal laws under 42 U.S.C. section 1983. That is, cities may be sued for good-faith enforcement of state laws later found unconstitutional pursuant to federal law; yet, cities lack authority to challenge the constitutionality of those same state laws in service of their constituents. *See Golden State Transit Corp. v. City of Los Angeles,* 475 U.S. 608, 106 S.Ct. 1395, 89 L.Ed.2d 616 (1986) (city's conditioning renewal of cab franchise on management's settlement with Teamster's Union held to be pre-empted under National Labor Relations Act); *Owen v. City of Indep., Mo.*, 445 U.S. 622, 647–48, 100 S.Ct. 1398, 1413-1414, 63 L.Ed.2d 673 (1980) (city liable for monetary damages for alleged defamation of former police chief at City Council meeting); David J. Barron, *Why (and When) Cities Have a Stake in Enforcing the Constitution*, 115 Yale L.J. 2218, 2250–52 (2006).

This inconsistency undermines the enforcement of federal rights and frustrates any coherent doctrine of a City's "personhood" to sue and be sued in federal court for constitutional violations. The asymmetry is vividly illustrated in the instant case, where the City of Huntington Beach was denied the right to contest a state

10. Professor Bell cites to a series of cases cited in *Tweed-New Haven Airport Authority v. Tong,* 930 F.3d 65, 73, n.5 (2nd Cir. 2019), *cert. denied,* 140 S.Ct. 2508, 206 L.Ed.2d 463 (2020) (City of New Haven and Airport Authority sued alleging violation of federal Supremacy Clause enforced as federal pre-emption).

housing statutory scheme—the RHNA—on constitutional grounds. In contrast, a separate city, Miami, was deemed to have a right to sue in federal court as an "aggrieved person" for purposes of suing various banks for violation of a *federal housing law. Bank of America Corp. v. City of Miami,* 581 U.S. 189, 193-194,137 S.Ct. 1296, 1300-01, 197 L.Ed.2d 678 (2017).

D. Time has passed and the *Hunter* era of limited City Involvement is Outdated

The implicit premise underlying *Hunter*—that cities are mere "arms" of the state and have no independent existence outside of their "creator"—was a historic mistake of historic proportions. That the City of New Amsterdam, later New York, had no existence before the creation of the state of New York is simple historical nonsense. The same can be said of a number of California cities, such as San Francisco, Santa Barbara, and Los Angeles, all of which were created before California was admitted into the Union.

Beyond historical misstatement, however, the premise of *Hunter* is yet more demonstrably incorrect today. Cities such as Los Angeles bid for presenting the Olympics and (if lucky) are awarded the right to create Olympic venues. While the State of California may contribute funds to assist, it is cities that host the Olympics and bear the ultimate financial gain or loss—not the State. *See* Zeynep Onur, *From Paris to Los Angeles: The Costs of Hosting the Olympic Games,* Howard University College of Arts & Sciences Post (2025) https://coascenters.howard.edu/paris-los-angeles-cost-hosting-olympic-games. Cities participate in affairs far beyond the state jurisdictional boundaries with other cities and even delegations to other

countries. Carson's Mayor, for example, just returned from a trip to Japan to visit a "Sister City" there. As noted above, the City of Los Angeles through its port has a disproportional influence on world shipping through the now universal use of cargo containers—something that goes beyond State largess.

In today's world, and certainly in the region influenced by the Ninth Circuit, the relationship between a city and its jurisdictional state is heavily dependent on *state* law. In California, for example, the state Constitution provides an express and exclusive hybrid form of government: The State is supreme in certain areas, but, if a City elects to become a charter city, then the City has exclusive powers over its own "home rule." Cal. Constit. Article XI, Sec. 5(a); *see Bishop v. City of San Jose,* 1 Cal. 3d 56, 61 (1969) ("At all times since adoption of the [Cal.] Constitution in 1879, section 11 of article XI has specified that 'Any county City, town, or township may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws.' (Italics added.)"), *overruled on other grounds by subsequent statutory enactment*; *Comm. of Seven Thousand v. Super. Ct. (City of Irvine),* 45 Cal.3d 491 (1988).

The Ninth Circuit attempted to avoid what it terms this state law 'intricacy' by stating that federal standing is a different doctrine based on federal principles. *See Huntington Beach, supra,* Mem. at 3 (Petition, Ex. A at 3A). This does not work. *Hunter* was not a case grounded on standing principles, nor was *Williams. Williams v. Mayor and City Council of City of Baltimore*, 289 U.S. 36, 53 S.Ct. 431, 77 L.Ed. 1015 (1933).

In today's era, stifling the voice of cities comes at a heavy cost to the soundness of America's overall system of checks and balances. Rendering municipalities "constitutionally invisible" muffles the distinct voices of cities represent, depriving courts of opportunities to test constitutional doctrines against a variety of perspectives. See Dave Fagundes & Darrell A.H. Miller, *The City's Second Amendment*, 106 Cornell L. Rev. 677, 697 (2021).

E. No Reliance Interest Supports Continuing *Hunter*

Moreover, no significant reliance interests justify retaining *Hunter*. States have broad authority over their political subdivisions independent of *Hunter*, and nothing prevents them from structuring local authority as they see fit. The 1907 decision confers no settled rights or expectations on private actors, and overruling *Hunter* would not alter state law or enlarge municipalities' substantive rights: rather, it would simply remove an obsolete federal barrier to constitutional litigation.

All five factors in *Janus* point toward one ineluctable conclusion: *Hunter* is poorly reasoned, offends modern public policy favoring an efficacious way to limit unconstitutional state laws, and is unworkable, inconsistent with later precedent, overtaken by legal and factual change, and devoid of reliance interests. It stands as an orphaned relic of pre-*Erie* federal common law.

Accordingly, this Court should formally overrule *Hunter* and acknowledge that municipalities may assert federal constitutional claims against their states.

F. Legal Scholars Have Questioned *Hunter*

Legal scholars have also questioned the viability of *Hunter*. Kathleen Morris noted that after 1933 "the Court dropped the *Hunter* doctrine sub silentio." K. Morris, supra, *The Case for Local Constitutional Enforcement*. She explicitly calls for overruling of *Hunter*. (Id.) Other scholars such as Professor Gerken join this position, albeit from a prospective of promoting greater democracy. Heather K. Gerken, *Dissenting by Deciding*, 57 Stanford L. Rev. 1745, 1759 (2005) (arguing that courthouse battles between various governmental levels should not surprise, but rather: "[I]t can contribute to the marketplace of ideas, engages electoral minorities in the project of self-governance and facilities self-expression.").

Yet other scholars argue for a form of local autonomy which is described as a type of "constitutional home rule." *See*, Richard C. Schragger, *Cities as Constitutional Actors: The Case of Same-Sex Marriage*, 21 J. L. & Pol. 147, 167-77 (2005). Yet other constitutional scholars have tentatively concluded that "so long as the government entity is making a substantively cognizable claim of a constitutional . . .right, there seems to be little reason to prevent status subdivision and instrumentalities from suing the state of which it is nominally a part." Bernard Bell, supra, *Adjudicating Internecine Quarrels.*

Whatever else might be said of this variety of views, one conclusion emerges peradventure: Among those who have recently considered *Hunter*, they all reject some or all of that doctrine.

CONCLUSION

For the reasons stated above, the Petition for Writ of Certiorari should be granted and *Hunter* should be overruled.

DATED: October 23, 2025

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — LIST OF CITIES THAT ARE MEMBERS OF THE INDEPENDENT CITIES ASSOCIATION (ICA)

NAMES OF ICA CITIES
Alhambra
Azusa
Bell Gardens
Beverly Hills
Cerritos
Commerce
Compton
Covina
Culver City
Downey
El Monte
El Segundo
Gardena
Glendale
Glendora
Hawaiian Gardens
Hawthorne
Hermosa Beach
Huntington Park
Inglewood
Irwindale
Long Beach
Los Angeles

Appendix A

NAMES OF ICA CITIES
Lynwood
Manhattan Beach
Montebello
Monterey Park
Placentia
Pomona
Redondo Beach
San Fernando
San Gabriel
Santa Fe Springs
Santa Monica
South El Monte
South Gate
South Pasadena
Torrance
Vernon
Whittier