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League of California Cities

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

CITY OF REDONDO BEACH, A CALIFORNIA CHARTER CITY; CITY OF CARSON, A CALIFORNIA CHARTER CITY; CITY OF TORRANCE, A CALIFORNIA CHARTER CITY; CITY OF WHITTIER, A CALIFORNIA CHARTER CITY,

Petitioners/Plaintiffs,

v.

ROB BONTA, IN HIS OFFICIAL CAPACITY AS CALIFORNIA ATTORNEY-GENERAL, STATE OF CALIFORNIA; AND DOES 1 THROUGH 50, INCLUSIVE,

Respondents/Defendants.

Case No. 22STCP01143

BRIEF OF AMICUS CURIAE LEAGUE OF CALIFORNIA CITIES

The Hon. Mary H. Strobel
Dept. 82

Action Filed: March 29, 2022
Trial Date: May 25, 2023

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AMICUS CURIAE BRIEF

I. INTERESTS OF AMICUS CURIAE

Amicus Curiae League of California Cities ("Cal Cities") is an association of 477 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, composed of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities and identifies those cases that have statewide or nationwide significance. The Committee has identified this as such a case.

This case concerns Senate Bill ("SB") 9, which was enacted in 2021 and took effect in January 2022. This bill generally allows for up to four homes on lots zoned single-family residential and overrides cities', including charter cities', zoning authority. In effect, the bill eliminates single-family-only zoning.

Cal Cities and its member cities have a substantial interest in the outcome of this case because it raises important questions about the Legislature's power to preempt charter-city authority. Cal Cities represents land-use regulators, charged with planning and zoning for housing, commercial, and other land uses across California, within legal bounds, to promote and maintain the health, safety, and welfare of their constituents. Cal Cities believes charter city voters and city councils are best suited to make those land use decisions, as is reflected in our state Constitution. And as our Supreme Court has held, the Legislature cannot interfere with those decisions unless it clearly articulates a statewide concern and chooses means reasonably related to achieving that concern that are no broader than necessary.

II. INTRODUCTION

There is no dispute California suffers from a housing crisis.

However, as Cal Cities has regularly asserted in its advocacy, the solution to the crisis is as multi-pronged as its causes. Despite the Legislature's attempt to lay blame for the state's lack of housing solely on city land-use practices, this overly simplistic view ignores that the lack of housing has many causes, most of which are well beyond cities' powers to address. The crisis has much more to do with a lack of construction than with land-use planning.

SB 9 is based on two flawed premises: (1) there are not enough sites to accommodate the housing need; and (2) land-use practices prevent the construction of housing. These premises are wholly unsupported. In fact, the Department of Housing and Community Development ("HCD") determines the statewide need for new housing units, and after that determination is made, state law *already* requires each city to identify adequate sites in the housing element of its general plan and to zone those sites to accommodate its share of the regional housing need.[1] Once cities have identified these sites, the onus is on others to build the housing. Cities do not build housing. But cities, with the support of Cal Cities, are working to secure funding and provide other support to increase the supply of affordable housing statewide.[2]

For over 100 years, Article XI, Section 5 of the Constitution has guaranteed charter cities the supreme authority to make and enforce local laws concerning municipal affairs. Local land use and zoning are quintessential municipal affairs, and thus, according to Supreme Court of California precedent, state law cannot interfere with these affairs unless the law is reasonably related and narrowly tailored to address a matter of statewide concern.

SB 9 deprives charter cities of their home-rule authority. Under the guise of addressing the housing crisis, SB 9 imposes a "one size fits all" approach to single-family residences that strips charter cities of their powers over zoning and subdivisions. SB 9 is not reasonably related or narrowly tailored to the Legislature's goals; it applies even when cities have identified sites to accommodate their state-determined share of the housing need.

Cal Cities believes charter city voters and city councils are best suited to determine under what other circumstances and in what other locations housing units beyond its share of the statewide need should be constructed. Because SB 9 unconstitutionally infringes on charter cities' home-rule

[1] Each city's share of the regional housing need is developed in accordance with certain factors, including: (a) the existing and projected jobs and housing relationship; (b) opportunities and constraints to the development of additional housing in that jurisdiction such as lack of sewer or water service; (c) the distribution of household growth; (d) the rate of overcrowding; and (d) the housing needs of individuals and families experiencing homelessness. (Gov. Code, § 65584.04, subd. (e).)

[2] *See* Carolyn Coleman, *How to Spur Housing Production in California*, Cal Matters (Feb. 25, 2022) https://bit.ly/3VpQ58b.

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authority, Cal Cities joins the Petitioners in requesting the court grant their petition for a writ of mandate.

III. FACTUAL AND LEGAL BACKGROUND

A. Senate Bill 9

SB 9 was enacted in 2021 and became effective on January 1, 2022. The bill is named the California Housing Opportunity and More Efficiency, or "HOME," Act. It enacts two new sections into the Government Code. These sections are codified respectively in the State Planning and Zoning Law (Gov. Code, § 65000 *et seq.*) and Subdivision Map Act (*id.* § 66410 *et seq.*).

A single-family zone typically accommodates one single family home on each lot.[3] Subject to certain conditions, SB 9 requires urbanized cities to approve two single-family homes to be built on any single-family residential lot "by right"—i.e., without discretionary review. (Gov. Code, § 65852.21, subd. (a).) This means two units must now be allowed and cities may only impose "objective zoning, subdivision, and design review standards," provided these do not limit the development of two units of at least 800 square feet. (*Id.*, § 65852.21, subd. (b).) City authority to impose setbacks and parking requirements for such units is significantly limited. Cities may only deny the development when their building officials make written findings that the approvals would have specific adverse impacts upon public health and safety or the physical environment for which there is no feasible method to avoid or mitigate the impacts. (*Id.*, § 65852.21, subd. (d).) Thus, even after a city has successfully navigated the complex HCD-administered regulatory process of identifying sites to satisfy its share of the State-determined regional housing need, each city is now required by SB 9 to provide additional sites for a legislatively unquantified housing need.

The new section codified in the Subdivision Map Act is Government Code section 66411.7. This section generally requires cities to ministerially approve the creation of two lots on any single-family residential parcel. (*Id.*, § 66411.7, subd. (a).) As with the preceding section, the authority under this section is subject to certain limitations. After division, the resultant lots must be at least

[3] Under certain circumstances and conditions, a local agency may also be required to adopt an ordinance permitting an accessory dwelling unit on a lot zoned for single-family residential use. (*See* Gov. Code, § 65852.2).

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1,200 square feet in size. (*Id.*, § 66411.7, subd. (a)(2)(A).) Cities may only apply "objective" standards to the divided lots, and are generally prohibited from requiring right-of-way dedications, offsite improvements, or setbacks of more than four feet. (*Id.*, § 66411.7, subds. (b)(3), (c)(1)-(3).)

Notably, the benefits of both the new Government Code sections may be combined. A property owner may subdivide a single lot into two lots and build two housing units on each lot. Thus, under SB 9, it is possible for one single-family residential lot to be converted into two lots on which four housing units are built.

B. Charter Cities and Matters of Municipal Versus Statewide Concern

Article XI, section 7 of the California Constitution authorizes cities to "make and enforce within [their] limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." Charter cities have additional powers to regulate municipal affairs, free from state interference. Article XI, section 5, subdivision (a) of the Constitution states:

> "It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and *with respect to municipal affairs shall supersede all laws inconsistent therewith*." (Emphasis added).

The Constitution guarantees charter cities, like Petitioners here, plenary "home rule" authority regarding their "municipal affairs." (*State Bldg. & Const. Trades Council of Cal. AFL-CIO v. City of Vista* (2012) 54 Cal.4th 547, 555 (*Vista*) ["Charter cities are specifically authorized by our state Constitution to govern themselves, free of state legislative intrusion, as to those matters deemed municipal affairs."].) Home rule "was intended to give municipalities the sole right to regulate, control, and govern their internal conduct independent of general laws, and this internal regulation and control by municipalities form those 'municipal affairs' spoken of in the constitution." (*Fragley v. Phelan* (1899) 126 Cal. 383, 387.) Charter-city control of municipal affairs reflects the Constitution's recognition that local officials of each charter city best understand what that municipality needs for its governance.

While it is true that the Legislature has authority to preempt charter cities' home-rule powers, it may do so only if it articulates a statewide concern justifying a uniform rule—fit for application

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from San Diego all the way to Eureka—and if the rule is reasonably related and narrowly tailored to addressing that articulated concern. (*Vista*, 54 Cal. 4th at 556; *Cal. Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 13, 17-24.) Distilling a century of decisional law, the Supreme Court of California held the distinction between municipal affairs and matters of statewide concern is a legal question. (*Cal. Fed. Savings*, 54 Cal. 3d at p. 17.) The Court observed:

> "By requiring, as a condition of state legislative supremacy, a dimension demonstrably transcending identifiable municipal interests, the phrase ["statewide concern"] resists the invasion of areas of intramural concern only, preserving core values of charter city government."

(*Ibid.*) *California Fed. Savings* established a four-part test for that question, requiring the following for a statute to preempt charter-city regulation: (1) The city charter or ordinance regulates a "municipal affair;" (2) there is an actual conflict between the city regulation and state law; (3) the state law addresses a statewide concern; and (4) the state law is reasonably related and narrowly tailored to resolve the statewide concern. (*Vista*, 54 Cal. 4th at 556; *Cal. Fed. Savings*, 54 Cal. 3d at pp. 16-24.) In announcing this four-part test, the State Supreme Court continued:

> "If … the court is persuaded that the subject of the state statute is one of statewide concern and that the statute is reasonably related to its resolution [and not unduly broad in its sweep], then the conflicting charter city measure ceases to be a 'municipal affair' pro tanto and the Legislature is not prohibited by article XI, section 5(a), from addressing the statewide dimension by its own tailored enactments."

(*Cal. Fed. Savings*, 54 Cal. 3d at p. 17.)

As a Court of Appeal has very recently observed, "a charter city's law is not preempted simply because it conflicts with a state law." (*Cultiva La Salud v. State* (2023) 89 Cal.App.5th 868, *3.) This is true "even when the Legislature explicitly intends preemption." (*Id.*) In this regard, charter cities are distinct from counties and general-law cities. Their authority is preempted only when *all* the prongs of the *Cal. Fed. Savings* test are established. (*Id.*)

C. Land-Use Regulation Is a Municipal Affair

Cities' constitutional power to regulate land use is well established. (*E.g.*, *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, 737–738 [acknowledging broad police power to determine permitted land uses]; *Big Creek Lumber Co. v.*

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County of Santa Cruz (2006) 38 Cal.4th 1139, 1151 [recognizing that land-use regulation is within local governments' constitutional police power].) California cities hold broad authority to frame local land-use regulations under their police powers and as regulated (to the extent of the State's authority to do so as to charter cities) by the Planning and Zoning Law under Government Code section 65000 *et seq.* (Cal. Const., art XI, §7; *Schroeder v. Mun. Court* (1977) 73 Cal.App.3d 841, 848 [describing the breadth of localities' police power]; *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1195 [describing courts' deferential review of land-use legislation].)

Zoning exists to:

> "Regulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes." (Gov. Code, § 65850, subd. (a).)

Cities use zoning to regulate many subjects, including:

> "(1) The location, height, bulk, number of stories, and size of buildings and structures[;] (2) The size and use of lots, yards, courts, and other open spaces[;] (3) The percentage of a lot which may be occupied by a building or structure[; and] (4) The intensity of land use." (*Id.*, § 65850, subd. (c)(1)-(4).)

Thus, determining where within a city housing should be placed, as opposed to other land uses, and determining what kinds of regulations should be imposed on proposed development projects, are municipal affairs. (*E.g., Ruegg & Ellsworth v. City of Berkeley* (2021) 63 Cal.App.5th 277, 311 ["[Z]oning [is] recognized to be a local matter"]; *Ctr. for Cmty. Action & Envtl. Justice v. City of Moreno Valley* (2018) 26 Cal.App.5th 689, 704–705 [acknowledging "municipal nature" of planning and zoning laws]; *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 782 ["The Legislature, in its zoning and planning legislation, has recognized the primacy of local control over land use."]; *IT Corp. v. Solano Cty. Bd. of Supervisors* (1991) 1 Cal.4th 81, 89 ["The Legislature has specified certain minimum standards for local zoning regulations … but has carefully expressed its intent to retain the maximum degree of local control."].)

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IV. ARGUMENT

SB 9 violates the Constitution because it fails to satisfy the fourth prong of *California Fed. Savings* test. There are two elements to the fourth prong. The first inquiry is whether the state statute is "reasonably related to...resolution" of the identified statewide concern. (*Anderson v. City of San Jose* (2019) 42 Cal.App.5th 683, 699, 716). The second inquiry is whether the statute is "narrowly tailored" to avoid unnecessary interference in local governance. (*Ibid*). At this step, the court considers "the sweep of the state's protection measures [which] may be no broader than its interest." (*Cal. Fed. Savings*, 54 Cal.3d at. p. 25). Put another way, "the state law must be reasonably related to the issue at hand and limit the incursion into a city's municipal interest" (*Lippman v. City of Oakland* (2017) 19 Cal.App.5th 750, 765).

SB 9 does not satisfy the first element of the fourth *California Fed. Savings* prong because the statutory text it enacts fails to promote affordable housing. Importantly, the bill does not mandate that ministerially approved duplexes or lot splits be restricted for affordable housing. The bill appears to be based on the speculation that creating more housing units generally will lower housing prices statewide and thereby increase the stock of affordable housing. But because of the "one size fits all" approach the bill adopts, the bill would most likely benefit developers of larger existing lots, often developing in suburban and exurban communities, where market and above-market housing values prevail. SB 9 may allow more housing, but that will be expensive housing, not affordable housing.

SB 9 equally fails to satisfy the second element of the fourth *California Fed. Savings* prong. The bill is not narrowly tailored to sweep no more broadly than necessary to accomplish the development of affordable housing. The bill may lead to nominal development of housing, but it will not create enough and does nothing to mandate or ensure that any new housing is *actually* affordable. In enacting the bill, the Legislature made no effort to limit its incursion on charter-city authority. The bill strips charter cities of their discretion over where and how to implement the health, safety, and environmental standards they have established for their single-family communities without ensuring that eliminating this discretion will result in the construction of more affordable housing units.

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A. SB 9 is not Reasonably Related to the Resolution of a Statewide Concern.

The first element of the fourth prong of the *California Fed. Savings* test directs courts to determine whether the state demonstrates a "direct, substantial connection between" the statute at issue and the Legislature's stated purpose. (*See Vista*, 54 Cal. 4th at p. 556; *Cal. Fed. Savings*, 54 Cal. 3d at p. 24; *Baggett v. Gates* (1982) 32 Cal.3d 128, 136.) Although the legislative record must be given "great weight" in this analysis, the Legislature's factual findings are not controlling, and the court decides the issue as a matter of law. (*City of Huntington Beach v. Becerra* (2020) 44 Cal.App.5th 243, 255, 272.) Under this standard, the Court should find the State cannot establish the requisite connection between SB 9 and its intended goal.

As a starting point, Cal Cities notes that SB 9 includes scant declarations of legislative intent and fails to clearly articulate a matter of statewide concern that it is intended to address. The new sections SB 9 codifies in the Planning and Zoning Law and Subdivision Map Act contain no declarations of legislative intent. (*See generally* Gov. Code, §§ 65852.21, 66411.7.) The bill appears to recite its intention in only one place, specifically, in a section of the bill that purports to declare that its provisions implicate a matter of statewide concern. There, the bill tersely recites an intention to "ensure access to affordable housing[.]" (*See* Petrs. Request for Jud. Notice, p. 0011 [§ 4].)

This limited reference to SB 9's intention stands in stark contrast to the broad legislative declarations of intent to address a matter of statewide concern that have informed recent appellate court decisions upholding other state statutes against charter-city challenges.[4] But even taking SB 9's singular statement at face value, the conclusion that the bill would *actually* increase affordable housing does not follow. The bill nowhere recites how or why its provisions would increase the

[4] *See, e.g.*, *Ruegg*, 63 Cal.App.5th at p. 315 (noting legislative findings that detail the Legislature's "long history" of SB 35 legislation requiring ministerial approval of certain affordable housing applications); *Huntington Beach*, 44 Cal.App.5th at p. 272 (noting Legislature's "substantial and detailed findings" supporting enactment of the California Values Act); *Anderson*, 42 Cal.App.5th at p. 705 (describing the extensive findings the Legislature made in enacting the Surplus Land Act); *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 798-801 (detailing the express legislative findings supporting the Legislature's enactment of the California Voting Rights Act).

stock of affordable units.[5] It appears to work instead from a simplistic assumption about supply and demand. It appears to assume that simply zoning for more duplexes and lot splits will somehow increase the number of housing units statewide, and the increased housing units will, in turn, lower overall housing prices.

Empirical data compiled since SB 9's enactment shows the bill has not significantly increased the number of housing units statewide. A report published earlier this year found that "[s]ome of the state's largest cities reported that they have received just a handful of applications for either lot splits or new units, while other cities reported none." (David Garcia et al., *California's HOME Act Turns One: Data and Insights from the First Year of Senate Bill 9*, Terner Ctr. For Hous. Innovation (Jan 18, 2023), https://bit.ly/3LpYoMU.)

But even at the time SB 9 was enacted, the Legislature could not reasonably have found the bill would achieve any "direct" and "substantial connection" to increasing affordable housing. The bill adopted a "one size fits all" approach to residential zoning in all of California's nearly 500 cities and 58 counties. Its most glaring omission was the absence of any provision requiring that any of the housing units created by duplexes or lot splits be restricted as affordable. Without imposing an affordability mandate, the Legislature could only have speculated the bill might increase the stock of affordable housing.

SB 9 fails to account, moreover, for the considerable variations in the lot sizes that would be available for duplex development or lot division. As a practical matter, the feasibility of constructing a duplex on or dividing lots is likely to increase the greater the area of the existing lot. Yet, larger lot single-family residences tend to have higher values and tend to be concentrated in suburban and exurban areas. The result is that SB 9 is more likely to lead to duplexes and lot splits in areas where market and above-market housing is already concentrated. In other words, the most likely effect of the bill is to create more unaffordable housing—most likely in wealthier communities.

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[5] For example, the Legislature did not determine that (1) HCD's determination of statewide housing need was flawed; (2) charter cities were not approving applications to construct housing (based upon data from their Annual Planning Reports); (3) there were insufficient single-family zoned lots in charter cities such that charter cities must approve any and all requests to construct additional units on single-family lots; or (4) charter cities' exercise of discretion over adding units in single-family zones is a factor in the state's housing crisis.

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In seeking to promote its illusory goal of increasing the stock of affordable housing, SB 9 strips charter cities of much of their traditional authority over residential zoning and subdivisions. Our Supreme Court has cautioned against construing whole areas of governance to be "municipal" affairs. (*Cal. Fed. Savings*, 54 Cal. 3d at p. 17; *Fielder v. City of Los Angeles* (1993) 14 Cal.App.4th 137, 144.) But, as has been noted, the authority of charter cities over planning and land use matters has long been recognized as deserving of protection. (*See City of Los Angeles v. State of California* (1982) 138 Cal.App.3d 526, 533; *DeVita*, 9 Cal.4th at p. 782.) The Legislature may displace these authorities only when its enactments would have a "direct, substantial connection" with the purposes it seeks to achieve. (*See, e.g.*, *Baggett*, 32 Cal.3d at p. 136-40.)

SB 9 does not establish this causal relationship the way courts have found in other home-rule cases involving land-use matters. In *Ruegg*, the Court of Appeal held that applying a ministerial affordable-housing approval statute to charter cities would reasonably serve the Legislature's goal of "expediting and increasing approvals of affordable housing developments." (*Ruegg*, 63 Cal.App.5th at p. 314.) The court noted the statute was carefully targeted at the "delays and local resistance" that such developments often face. (*Ibid.*)

Similarly, in *Anderson*, the court found that the Surplus Land Act would reasonably serve the goals of increasing the supply of affordable housing when applied to the disposal of lands charter cities no longer need. (*Anderson*, 42 Cal.App.5th at p. 717.) The Court noted the statute was directed toward the very type of city actions that could increase the stock of affordable housing—surplus dispositions of land suitable for residential development. (*Ibid.*) In these and other cases,[6] the Legislature carefully detailed its findings for enacting the challenged statutes and the courts could clearly discern how the statutes would promote their intended purposes.

Here, in contrast, SB 9 is based purely on economic guesswork. The bill recites in a single place its intention to promote affordable housing but nowhere details how or why the bill would

[6] *See Huntington Beach*, 44 Cal.App.5th at p. 277 (finding the California Values Act was properly applied to a charter city's police activities because the act would encourage "both immigrants and nonimmigrants to report crimes, work with law enforcement, and serve as witnesses"); *Jauregui*, 226 Cal.App.4th at p. 802 (observing that the California Voting Rights Act would preserve the "right to vote, equal protection and integrity of elections" when applied to a charter city's elections).

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further this goal. (*See Huntington Beach,* 44 Cal.App.5th at p. 272 [stating that legislative findings are to be given appropriate weight but are not controlling on the court].) From this single reference, one must assume that the duplexes and lot-splits the bill allows will lead to more housing, which in turn will lead to more affordable housing. But as noted, these are, at best, shaky assumptions, which have not been borne out by experience.

The court thus should find there is no "direct, substantial connection" between the bill and the purposes it is intended to serve. SB 9 does not meet the first element of the fourth prong of the *California Fed. Savings* test.

B. SB 9 is not Narrowly Tailored to the Resolution of the Statewide Concern of Affordable Housing.

The court should also find SB 9 does not establish the second element of the fourth prong of the *California Fed. Savings* test. This element focuses on whether the state incursion on charter-city authority is "'narrowly tailored' to avoid unnecessary interference in local governance." (*Marquez v. City of Long Beach* (2019) 32 Cal.App.5th 552, 576). In applying this element, courts must be mindful that "'the sweep of the state's protective measures may be no broader than its interest.'" (*Fielder*, 14 Cal.App.4th at p. 146 (citing *Cal. Fed. Savings*, 54 Cal.3d at. p. 12.)) The state statute must "be reasonably related to the issue at hand and limit the incursion into a city's municipal interest." (*Lippman*, 19 Cal.App.5th at p. 765.)

Recent court decisions upholding state statutes from other home-rule challenges demonstrate the extent to which the Legislature has narrowly promoted state concerns while respecting charter city authority. In *Anderson*, the court noted the Surplus Land Act was carefully crafted to apply only to property that a local government deemed "surplus." (*Anderson*, 42 Cal.App.5th at p. 717.) Given that the local government made that initial determination, the court noted the "statute's incursion into the agency's decision-making authority over disposition of the surplus land is much narrower." (*Ibid.*) And in *Ruegg*, the court noted that the ministerial approvals required by the statute at issue applied only to cities whose general plan housing elements did not comply with regional housing needs assessment, or "RHNA," numbers. (*Ruegg*, Cal.App.5th at p. 314.) Other recent cases held

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the challenged statutes exhibited similar respect for charter-city authority.[7]

The Legislature has not shown a similar respect for charter cities through SB 9. Rather than respecting a charter city's authority to approve housing construction consistent with the housing element of its general plan, and circumscribing the process for approving that housing, SB 9 dictates the quantity and location of additional housing and removes the entire discretionary decision-making process. This is more akin to what the California Supreme Court found was impermissible in *County of Riverside v. Superior Court.* In that case, the California Supreme Court upheld a county's authority to disregard a state statutory requirement that counties submit to binding arbitration of economic issues arising in union negotiations because it impermissibly interfered with the county's decision-making autonomy. ((2003) 30 Cal.4th 278, 282, 290-91.) The court explained that regulating labor relations is one thing; depriving the county entirely of its authority to set employee salaries is quite another. (*Id.* at pp. 287-88.)

In SB 9, the Legislature has adopted a "one size fits all" scheme that applies regardless of the nature or characteristics of the communities where single-family homes are concentrated. The Legislature has adopted a wholesale standard that ignores the myriad of unique local conditions that may exist in the state's nearly 500 cities and 58 counties. Although the bill allows these agencies to enforce certain "objective" standards, these ignore the numerous land-use compatibility, environmental, health, and safety concerns for which local discretion is essential. To echo the words of the court in *County of Riverside,* regulating and planning for housing statewide is one thing; depriving a charter city of its authority to determine the location, density, and site characteristics of that housing is quite another.

For instance, some cities in high wildfire areas have enacted "defensible space" requirements to ensure structures are optimally separated from a fire-safety standpoint. Because of the very limited setbacks SB 9 allows, these cities may not enforce these requirements.[8] Additionally, many

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[7] *See Huntington Beach*, 44 Cal.App.5th at p. 278 (noting the several policing activities that were not affected by the California Values Act); *Jauregui,* 226 Cal.App.4th at p. 802 (observing that charter cities were required to implement district elections under the California Voting Rights Act only when vote dilution was found to exist in their elections).

[8] SB 9 does require that the proposed development not be located on very high fire severity

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cities have severe parking shortages. But under SB 9, their authority to require on-site parking to lot splits and duplexes is severely limited. Residential areas may also have unique water, sewer, or drainage conditions that require separations between residential structures. Yet because of SB 9's severe limitations on setback requirements, cities may not be able to enforce even objective setback requirements due to the minimum lot and building sizes the bill allows.

In allowing a single residential lot to effectively be converted to allow four houses, SB 9 hamstrings charter cities in ensuring areas zoned single-family residential meet their public health, safety, and welfare standards. But critically, the bill does not mandate *any* of the four houses be deed- or otherwise-restricted as affordable. The bill simply allows more houses to be built in communities that may already be fully built—even when that would not lead to the creation of more affordable housing. As noted, the bill would, if anything, lead to the creation of *more* unaffordable housing in pricy neighborhoods where large lot sizes can accommodate expensive duplexes.

SB 9 also does not prioritize where within city jurisdictions additional housing units will be built. Planning trends in California have in recent decades favored the development of "in-fill" and "transit-oriented" housing, allowing houses to be built where public services, infrastructure, and transportation resources may most efficiently be utilized. But under SB 9, ministerial duplex- and lot-split approvals are equally required in suburban and exurban communities, contrary to the policies underlying many growth- or urban-limitation charter cities have adopted. These policies are adopted to combat sprawl and the attendant traffic, circulation, air-quality, climate, and public services impacts that come with such "leapfrog" development. The effect of the bill may thus be to exacerbate these adverse impacts in communities where only market and above-market rate housing could feasibly be built.

These incursions on charter cities sweep far too broadly. SB 9 is not narrowly tailored to promote the goal of building more *affordable* housing in a manner that respects charter-city

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zones as established by the Department of Forestry Fire Protection. (Gov. Code, § 65852.21, subd. (a)(2), incorporating the provisions of *id.*, § 65913.4, subd. (a)(6)(D).) But many cities have adopted "defensible space" fire-safety standards for properties outside of these state-designated areas. Under SB 9, cities would not be able to enforce these standards as development proposed within them would require ministerial approvals.

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authority. The bill mandates, rather, that charter cities allow *any* single-family housing— regardless of value—through the surrender of their discretion over local health, safety, and welfare standards. The Legislature could have enacted a bill mandating that additional lots or housing units be built only for persons at low- or moderate-income levels. It chose instead to enact a bill that is far likelier to result in more market- and above-market rate houses being built in communities where affordable housing does not exist.

SB 9 thus sweeps much too broadly and does not meaningfully result in the development of affordable housing. In this regard, the bill fails to meet the fourth prong of the *California Fed. Savings* test.

V. CONCLUSION

For the above reasons, Cal Cities requests that the court grant the writ of mandate the Petitioners seek.

Dated: May 3, 2023

COLE HUBER LLP

By: _____

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PROOF OF SERVICE

City of Redondo Beach, et al. v. Bonta, et al.
Los Angeles Superior Court Case No. 22STCP01143

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Placer, State of California. My business address is 2281 Lava Ridge Court, Suite 300, Roseville, CA 95661.

On May 5, 2023, I served true copies of the following document(s) described as

BRIEF OF AMICUS CURIAE LEAGUE OF CALIFORNIA CITIES

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address kmorris@colehuber.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 5, 2023, at Roseville, California.

/s/ Kirsten Morris
Kirsten Morris

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SERVICE LIST
City of Redondo Beach, et al. v. Bonta, et al.
Los Angeles Superior Court Case No. 22STCP01143

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