

CPC Files Amicus Brief in *Huntington Beach v. Newsom*

The California Policy Center filed an *amicus* brief in support of the City of Huntington Beach’s petition for rehearing *en banc* in the City’s challenge to California’s unconstitutional housing mandates (*Huntington Beach v. Newsom*, Case No. No. 23-3694).

Rehearing *en banc* means a larger panel of judges—eleven in this case—will hear the case and issue a decision, vacating that of the smaller three-judge panel. An *en banc* panel has the ability to overturn Ninth Circuit precedent.

On October 30, 2024, a Ninth Circuit panel consisting of three judges ruled against Huntington Beach, finding that plaintiffs lack standing to raise federal constitutional claims against State respondents based on the Ninth Circuit’s *South Lake Tahoe* rule. The *South Lake Tahoe* rule forbids political subdivisions and their officials from challenging the constitutionality of state statutes in federal court, and has been called into question repeatedly by district court and Ninth Circuit judges.

Overturing the *South Lake Tahoe* rule is critical to protecting the interests of cities, school districts, and their constituents throughout California. State directives to local governments sometimes conflict with federal laws and state and federal constitutions. The *South Lake Tahoe* rule means these conflicts cannot be litigated.

For example, Assembly Bill 1955 (“AB 1955”) and the State’s guidance on AB 1266—establishing confidentiality between students and school districts and prohibiting districts from providing records to parents—violates the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S. Code § 1232g. FERPA requires school districts to provide educational records to parents, but does not include a private right of action to parents to enforce the law. School districts challenging AB 1955 under the Supremacy Clause are denied relief due to lack of standing under the *South Lake Tahoe* rule.

The Southern District of California invoked the *South Lake Tahoe* rule when it denied plaintiffs’ proposed amendment to add Lakeside Union School District as a plaintiff to the *Mirabelli v. Olson* lawsuit, stating “political subdivisions lack standing to challenge state law on constitutional grounds in federal court,” and noting that it is not within the purview of the district court to follow dissents and criticisms of the *South Lake Tahoe* rule.

The Eastern District of California is also likely to dismiss school district plaintiffs from AB 1955 lawsuit *Chino Valley Unified School District v. Newsom* on the same grounds. The hearing on defendants’ motion to dismiss that case is scheduled for December 19, 2024.

The California Policy Center funds strategic litigation to restore sanity and prosperity to Californians. Its efforts are hamstrung by the Ninth Circuit prohibition against cities and school

districts suing state defendants in federal court. Accordingly, California Policy Center is very much invested in overturning the *South Lake Tahoe* rule.