Court of Appeal of the State of California
Fourth Appellate District, Division 3

No. G065816

NEWPORT BEACH STEWARDSHIP ASSOCIATION,

Plaintiff and Appellant,

v.

CITY OF NEWPORT BEACH,

Defendant and Respondent.

On Appeal from the Superior Court of Orange County
No. 30-2024-01428295 (Hon. Melissa McCormick)

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Date: January 7, 2026

Navi S. Dhillon
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INTRODUCTION

Like most municipalities in California, the City of Newport Beach is required by state law to revise its local housing and zoning plans every eight years. Among other things, the revised plans must address the City's share of housing needs in the region by providing for the development of a specified number of new residential units within Newport Beach. In the most recent round of revisions, the California Department of Housing and Community Development and the Southern California Association of Governments determined that the City would need to account for 4,845 new units in its local zoning laws by February 2025.

In February 2022, after lobbying from interested parties (including private developers who stand to gain from the construction of new units), the Newport Beach City Council proposed changes that went far beyond anything required by state law—authorizing 8,174 new units, nearly 70% more than the City's assigned allotment. At the same time, the City Council recognized that its proposal would have to be approved by a majority of local voters under Section 423 of the Newport Beach City Charter, which gives the electorate (rather than the City Council) final approval over land use changes that would

significantly alter housing density or intensity in Newport Beach. The City Council therefore indicated that it would submit the changes to the voters by March 2024, leaving ample time to make any necessary modifications and hold another vote before a February 2025 state-law deadline if the first proposal was not approved.

But it eventually became clear that the City Council had other plans. After dragging its feet for nearly two years, the City Council announced in July 2024 that it no longer intended to submit its proposal for final approval by the broader electorate. The reason? The City Council maintained that because of city officials' own delay in holding the vote, a rejection of the proposed changes by the voters would not leave enough time to make revisions before the February 2025 rezoning deadline (such as, for example, bringing the number of new units closer to the 4,845 that were required). Because that deadline was set by state law, the City Council argued that it preempted the municipal Charter's requirement to obtain voter approval for major land use changes. Conveniently, that meant that the City Council itself would have final say over the controversial changes it had proposed more than two years earlier.

Deprived of the right to participate in local decision-making at the ballot box, two local civic organizations turned to the courts for assistance. But rather than put a stop to the City Council's naked power grab, the trial court instead endorsed it in a decision with remarkably broad implications. In the trial court's telling, it made no difference whether, as a factual matter, Newport Beach could have held one or even two votes of the electorate before the February 2025 deadline. For preemption purposes, the court found, it was enough that there was a *possibility* that the voters would refuse to approve land use changes satisfying the City's allocated housing responsibilities by one of many state-law deadlines.

That decision cannot be allowed to stand. California courts presume that the Legislature does not intend to preempt local laws related to land use absent a "clear indication of preemptive intent." (*T-Mobile W. LLC v. City & Cnty. of San Francisco* (2019) 6 Cal.5th 1107, 1116.) That presumption is particularly strong in the context of local initiative or referendum requirements, where courts are careful to ensure that local voters' power to reserve ultimate approval authority to themselves is "not improperly annulled." (*Voters for Responsible Ret. v. Bd. of Supervisors* (1994) 8 Cal.4th 765, 776-777 [citation

omitted].) Here, though, neither the trial court nor the City pointed to any indication—let alone a clear indication—that the Legislature intended its creation of routine state-law deadlines for municipalities to preempt municipal charter provisions that allocate approval authority between city officials and the voters themselves.

If endorsed by this Court, the decision below would mean that voters can *never* have a direct role in approving land use amendments at the local level, contrary to decades of practice in other municipalities and Newport Beach itself. That would deprive voters of "one of the most precious rights of our democratic process." (*Associated Home Builders of Greater Eastbay, Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591 [citation omitted].) This Court should instead reaffirm the importance of voter initiatives to municipal lawmaking, reverse the decision below, and order the City to hold a vote on the amendments at issue.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

This appeal sits at the intersection of California's constitutionally defined governance structure and state housing laws. Appellant Newport Beach Stewardship Association ("NBSA") begins with a summary of key constitutional principles, followed by an overview of

relevant state housing laws, a discussion of the local Greenlight Initiative enshrined in the Charter of the City of Newport Beach, and a summary of the events leading up to (and including) the instant litigation.

A. Constitutional Principles: Local Police Power And Home Rule Authority

Under the California Constitution, a "county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7.) That authority is commonly referred to as the local police power. (See *Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1181.) "It is from this fundamental power that local governments derive their authority to regulate land through planning, zoning, and building ordinances, thereby protecting public health, safety and welfare." (*Ibid.*) "Under the police power granted by the Constitution, counties and cities have plenary authority to govern, subject only to the limitation that they exercise this power within their territorial limits and subordinate to state law. Apart from this limitation, the 'police power [of a county or city] . . . is as broad as the police power exercisable by the Legislature itself.'" (*Ibid.* [quoting *Candid Enterprises, Inc. v. Grossmont Union High Sch. Dist.* (1985) 39 Cal.3d 878, 885].)

Further, California's home rule doctrine recognizes that the California Constitution provides charter cities like the City with increased powers of self-governance over issues of "municipal affairs." (Cal. Const., art. XI, § 5, subd. (a); see *State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 555-557.) Matters concerning local land use and planning have long been considered municipal affairs. (See *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 774, 782.) Under the home rule doctrine, local legislation concerning municipal affairs may be preempted by state law only if the laws present an "actual" or "inimical" conflict. (*State Building & Construction Trades Council of California*, *supra*, 54 Cal.4th at p. 556; *AIDS Healthcare Foundation v. Bonta* (2024) 101 Cal.App.5th 73, 86.) And even then, state law controls only if it addresses a matter of statewide or regional concern, is "reasonably related" to addressing that concern, and is "narrowly tailored" to "avoid unnecessary interference in local governance." (*State Building & Construction Trades Council of California*, *supra*, at p. 556 [citation omitted].)

B. General Plans And The Housing Element Law

In 1967, the Legislature enacted the Planning and Zoning Law, Government Code section 65000, *et seq.* The law was intended to provide an "effective planning process" to inform "decisions involving the future growth of the state, most of which are made and will continue to be made at the local level." (Gov. Code § 65030.1.) Among other things, the law requires that all local governments adopt and periodically update "a comprehensive, long-term general plan for the physical development of the county or city." (*California Building Indus. Ass'n v. City of San Jose* (2015) 61 Cal.4th 435, 444 [citation omitted].) A General Plan must include at least eight "elements" (chapters) on topics such as land use, transportation, conservation, safety, and—as discussed in more detail below—housing. The General Plan serves as the local government's "'constitution' for future development" and provides a blueprint for achieving its long-term vision for growth. (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540; Gov. Code § 65300.) All local land use decisions, including zoning ordinances, must be consistent with the local government's adopted General Plan. (Gov. Code § 65860.)

In 1980, the Legislature enacted the Housing Element Law, "a separate, comprehensive statutory scheme that substantially strengthened the requirements of the housing element component of local general plans." (*California Building Indus. Ass'n*, *supra*, 61 Cal.4th at p. 445.) At the most general level, a Housing Element explains how the jurisdiction will meet the current and future housing needs of its population across all income levels. (See Gov. Code §§ 65583, 65580, subd. (d).) It must identify and analyze various topics, including sites available for housing development, local goals and policies to address housing affordability, and methods to ensure adequate housing supply and equitable access to housing opportunities. (*Ibid*.) State law requires that most local governments update their Housing Elements on an eight-year cycle. (See Gov. Code § 65588.)

One of the core purposes of a Housing Element is to "encourage, promote, and facilitate the development of housing to accommodate the entire regional housing need." (Gov. Code § 65584, subd. (a)(2).) Identifying and accommodating the regional housing need is a multi-year process involving state agencies, regional associations of governments, and local governments themselves. The first step is for the California Department of Housing and Community Development

("HCD") to determine, in consultation with each regional "council of governments," the "projected need for housing for each region" of the state. (Gov. Code §§ 65584.01, 65584, subd. (a).) Each regional council—in the City's case, the Southern California Association of Governments—then develops, in consultation with HCD, a methodology for allocating the regional housing needs across individual local governments. (Gov. Code § 65584.04.) The allocation for an individual jurisdiction, commonly known as the Regional Housing Needs Allocation or RHNA (see *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 223), includes a share of housing needs for each income level (very low income, low income, moderate, and above moderate). (Gov. Code § 65583.)

Once the RHNAs are set, local governments must begin preparing updates to their Housing Elements. (Gov. Code §§ 65584, 65588.) Consistent with a local government's "plenary authority" over land-use planning (*Fonseca*, *supra*, 148 Cal.App.4th at p. 1181), state law acknowledges that local governments are best positioned to determine how their General Plans should be amended to accommodate their RHNAs, subject to compliance with basic procedural requirements and substantive guidelines (see Gov. Code §§ 65581,

subd. (c), 65300.9). Nowhere does the Housing Element Law purport to displace local governments' traditional police power or their discretion to determine how best to structure their General Plans and land-use planning practices to comply with state law.

In addition to respecting the discretion of local governments, the Housing Element Law prohibits local governments from ignoring established local laws or procedures when preparing or adopting updates to their Housing Elements. Rather, local governments must develop housing strategies that establish appropriate "land use and development controls" (e.g., zoning rules and permitting processes). (Gov. Code § 65583, subd. (c).) And while local governments are encouraged to remove "constraints" that may impede the development of housing (e.g., development standards and zoning restrictions), they may do so only "where appropriate and legally possible." (Gov. Code § 65583, subd. (c)(3).)

In recognition of the significant discretion vested in local governments and the unique issues that they face, the Housing Element Law anticipates that some local governments will fail to take all necessary actions in time to meet the deadlines established by state law. But the Housing Element Law does not strip local governments of

discretion if they miss state-imposed deadlines; rather, the law imposes certain consequences while the state-law requirements remain unmet. For example, HCD "may" revoke the "substantial compliance" status of a local government that misses the deadline for adopting a compliant housing element amendment (Gov. Code §§ 65583, subd. (c)(1), 65585, subd. (i)), thereby triggering the so-called "Builder's Remedy" that limits a local government's ability to deny or impose conditions on certain affordable housing projects (Gov. Code § 65589.5, subd. (d)). HCD also "may" notify the Attorney General of such noncompliance to initiate an enforcement action. (Gov. Code § 65585, subds. (i)-(j).)

Similarly, state law anticipates that some jurisdictions will fail to take steps necessary for the timely *implementation* of an adopted Housing Element, such as the amendment of zoning ordinances. (Gov. Code §§ 65583, subd. (g), 65583.4, subd. (a).) And it establishes consequences for such inaction: if a jurisdiction fails to timely implement the rezoning contemplated in an adopted Housing Element, the local government may not, except in narrow circumstances, disapprove or impose conditions that would render "infeasible" a discrete category of housing development projects that (i) are located on a site that is proposed to be rezoned under the Housing Element, and

(ii) comply with "applicable, objective general plan and zoning standards and criteria" described in the adopted Housing Element. (Gov. Code § 65583, subd. (g)(1).)

C. The Greenlight Initiative

In November 2000, Newport Beach voters overwhelmingly approved the so-called "Greenlight Initiative," a local measure that added Section 423 to the City Charter. (6AA860.) As adopted, Section 423 requires that voters provide final approval for any amendment to the City's General Plan that would "significantly increase[]" the density or intensity of development in Newport Beach. (4AA504.) Section 423 provides, in relevant part:

> Voter approval is required for any major amendment to the Newport Beach General Plan. A "major amendment" is one that significantly increases the maximum amount of traffic that allowed uses could generate, or significantly increases allowed density or intensity. "Significantly increases" means over 100 peak hour trips (traffic), or over 100 dwelling units (density), or over 40,000 square feet of floor area (intensity) . . . .
>
> "Voter approval is required" means that the amendment shall not take effect unless it has been submitted to the voters and approved by a majority of those voting on it. . . .

(*Ibid.*) Further reflecting voters' desire for input on all "major amendment[s]" to the City's General Plan, Section 423 does not contain a general exception for major amendments that are necessary to bring Newport Beach into compliance with state law. Instead, Section 423

provides that voter approval is required unless "state or federal law precludes a vote of the voters on the amendment." (*Ibid.*)

From 2000 to 2014, the City successfully complied with the Greenlight Initiative when satisfying its obligations under the Housing Element Law. In 2006, the City adopted a comprehensive update to its General Plan calling for the addition of 1,166 new housing units to satisfy its RHNA obligation. (4AA607.) That amendment was submitted to the voters pursuant to Section 423, and the voters approved the measure. (*Ibid*.) In 2014, the City again amended its General Plan but was able to satisfy its RHNA obligations without a significant increase in new housing, thereby avoiding any need for voter approval under Section 423.

The City is not the only local government that must obtain voter approval of major land-use decisions; other municipalities throughout the State have similar requirements, which they (like Newport Beach) have implemented in harmony with state housing laws. (See, e.g., City of Santee, Measure N (2020); City of Santee, General Plan Policies 12.1-12.4 (2020); City of Costa Mesa, Measure Y (2016); City of Cosa Mesa, Code of Ordinances, art. 22; City of Sierra Madre, Measure V (2007); City of Sierra Madre, Code of Ordinances, ch. 17.35; City of

Solana Beach, Proposition T (2000); City of Solana Beach, General Plan, § 4.3.) In November 2024, for example, voters in the City of Cypress approved a measure (Measure S) to allow rezoning of a portion of the city to accommodate the city's RHNA, and for which voter approval was required under a prior voter initiative. (NBSA's Req. for J. Notice, Ex. B at 32-33.) Similarly, in November 2024, voters in the City of Yorba Linda authorized a ballot measure (Measure JJ) that allowed rezoning to meet Yorba Linda's RHNA obligations. (NBSA's Req. for J. Notice, Ex. A at 4-7.) That approval followed an earlier vote in Yorba Linda that had disapproved a proposed rezoning plan, prompting municipal leaders to gather community input and revise the city's housing strategy to meet voters' concerns. (*Id.* at 5.)

D. The City's Sixth Cycle Housing Element

Newport Beach is currently in its sixth cycle of housing element amendments. (See 4AA556.) Under Government Code 65583.4(a), the deadline for completion of any rezonings necessary to implement that housing element was February 12, 2025. (9AA1434.)

In September 2022, roughly two and a half years before the deadline, the Newport Beach City Council voted in favor of the proposed housing element relevant here (the "Housing Element").

(*Ibid.*) Among other things, the Housing Element included a strategy to substantially exceed Newport Beach's RHNA requirement: Although the City was required to add only 4,845 units pursuant to its RHNA, the City Council-approved proposal would add 8,174 units (nearly 70% more than necessary). (7AA980.) The City Council recognized, however, that under "Section 423 of the Charter . . . voter approval . . . will be required to implement the 6th Cycle Housing Element." (4AA566.) Consistent with that recognition, city officials indicated that they would hold a Section 423 vote by March 2024 in order to ensure that there was ample time to hold a second vote before the rezoning deadline if voters did not approve the City Council's first proposal. (5AA721-722.)

Following the City Council vote in September 2022, Newport Beach submitted its proposed Housing Element to HCD for review and certification. (See 3AA443.) In October 2022, HCD certified that the proposed Housing Element was "in full compliance with [the] State Housing Element Law," and indicated that the City should "continue timely and effective implementation" of all identified programs and actions. (*Ibid.*) Importantly, HCD directed city officials to comply

with applicable requirements of the City Charter, including "[i]nitiating a Ballot Measure for a Charter Section 423 Vote." (*Ibid.*)

E. City Officials Implement The Housing Element And Commit To A Section 423 Vote

Following HCD's approval, city officials began taking steps to bring the Housing Element into effect. Implementation required identifying areas for potential zoning changes. (4AA566; 5AA720-763.) It also required several major land-use approvals, including amendments to the City's General Plan Land Use Element, Zoning Ordinance, and Local Coastal Program. (4AA581–5AA717.) City officials referred to those approvals collectively as the "Housing Element Implementation Program Amendments." (2AA204.)

In August 2023, city officials released initial versions of the Housing Element Implementation Program Amendments for public input. (2AA212-213.) They then revised and re-released amended versions for public review on January 16, 2024, and March 29, 2024. (*Ibid.*) City officials also began taking steps to comply with the California Environmental Quality Act, releasing a draft Environmental Impact Report for public review on February 12, 2024. (*Ibid.*)

While they worked to implement the Housing Element, city staff and officials continued to acknowledge their obligation to present the

General Plan amendments to a vote under Section 423. For instance, the Staff Report for the April 18, 2024, Planning Commission meeting, which recommended various actions to implement the proposed Housing Element Implementation Program Amendments, stated that the proposed General Plan amendment "would not take effect unless it has been submitted to the voters and approved by a majority of those voting on it." (2AA212.) That same Staff Report noted that although a vote would not be held by March 2024 as originally planned, "the City has been working to bring the matter to a ballot vote as part of the November 5, 2024 General Election." (*Ibid.*) The Planning Commission itself then confirmed at its April 18, 2024 meeting that the Housing Implementation Program Amendments would "individually and/or collectively require a majority vote of the electorate" pursuant to Section 423. (1AA54-55.) And several months later, then-Mayor and Newport Beach Councilmember Will O'Neill confirmed that a Section 423 public vote would be held: "In November [2024], our residents will have the choice whether to approve [the City Council's

proposed] approach when the land use element of our city's general plan (implementing the housing element) is in front of them."[1]

F. City Officials Reverse Course And Try To Avoid A Vote

In July 2024, the City Council and municipal staff abruptly changed course. After repeatedly acknowledging for over two years that local voters would need to approve the proposed amendments to the General Plan Land Use Element in order for those amendments to take effect, the City Council decided instead to attempt to implement the proposed amendments unilaterally. Specifically, at its July 2024 meeting, the City Council adopted Resolution No. 2024-51, which purports to provide final authorization for amendments to the Land Use Element that would enable development of the full 8,174 new housing units that the City Council had proposed back in 2022—again, nearly 70% more than the 4,845 units required under Newport Beach's RHNA. (1AA63.) Immediately thereafter, the City Council adopted Resolution No. 2024-58 to "initiate a narrowly focused amendment to the adopted and certified statutorily compliant 6th Cycle Housing Element of the General Plan to remove the reference to a vote of the

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[1] Mayor Will O'Neill, *Mayor's Corner*, Newport Beach Living (June 2024), https://perma.cc/A5RB-72CZ.

electorate pursuant to Charter Section 423 as a constraint or as an implementing action." (1AA86.)

A few days later, city officials released a proposed amended Housing Element for public comment. (3AA314.) As directed by the City Council, the amended version eliminated previous statements requiring a public vote under Section 423. (*Ibid.*) Instead, it asserted that a "Charter Section 423 vote is precluded, and the City will move forward with implementing the Housing Element without a Charter Section 423 vote." (3AA329.) The City's Planning Commission duly recommended that the City Counsel "remove the requirement for a vote of the electorate pursuant to Charter Section 423." (3AA300.) And on September 24, 2024, the City Council voted to do so. (See 1AA163-175.) Abandoning its prior representations that the City would comply with Section 423 by submitting the proposed amendments for approval by the voters, the City Council thus purported to establish *itself* as the final decisionmaker for Newport Beach on major amendments to the General Plan.

G. Procedural History

NBSA commenced this action that same day. (1AA10-26.) NBSA sought a writ of mandate directing the City Council to set aside

its purported adoption of amendments to the Land Use Element (Resolution No. 2024-51), and its decision to initiate amendments to the Housing Element to remove reference to a Section 423 vote (Resolution No. 2024-58), on the ground that those approvals violated Section 423. (1AA21-22, 1AA25-26.) NBSA also sought a judicial declaration that the City could not bypass Section 423 in connection with the aforementioned approvals, and that (i) the City would remain in substantial compliance with state housing laws while it takes steps to hold a Section 423 vote on the proposed amendments to the Land Use Element, or (ii) the City could reject builder's remedy applications while it takes steps to hold a Section 423 vote on proposed amendments to the Land Use Element. (1AA22-26.)

On October 24, 2024, the trial court related NBSA's action with another mandamus action filed by local community group Still Protecting Our Newport ("SPON") that likewise challenged the City Council's decision to forego a Section 423 vote. (1AA27.) The City took the position—over NBSA's opposition—that an administrative record ("AR") was required for both cases even though neither NBSA nor SPON pleaded an administrative mandamus cause of action. (1AA28-29.) And the City relied on its purported need to prepare the

AR to delay filing a responsive pleading until January 21, 2025, nearly four months after NBSA filed its complaint. (4AA456-477.)

NBSA filed a motion for judgment on December 4, 2024. (1AA30-33; 4AA478-494.) Four and a half months later, the City filed its opposition. (AA536-552.) The trial court then held a hearing on NBSA's motion on June 17, 2025, and issued a decision in favor of the City the following day. (9AA1430-1446.)

The trial court observed that a state law like the Housing Element Law can supersede a local law like Section 423 in limited circumstances, including where the local law "contradicts or is inimical to the state law." (9AA1440 [citation omitted].) "The 'contradictory and inimical' form of preemption does not apply," the court continued, "unless the ordinance directly requires what the state statute forbids or prohibits what the state enactment demands." (*Ibid.* [citation omitted].) "Thus, no inimical conflict will be found where it is reasonably possible to comply with both the state and local laws." (*Ibid.* [citation omitted].)

The trial court found Section 423 to be preempted under that standard. In the court's view, Government Code 65583.4(a) "required the City to complete any required rezonings by" February 12, 2025—and thereby "provide[d] the City no discretion whether to comply"—

whereas "Section 423 . . . provided the electorate discretion to decide whether the City must comply with the mandatory state law." (9AA1441.) Given that inconsistency, the court concluded, "section 423 contradicted and was inimical to—and thus conflicted with—the Housing Element Law." (*Ibid.*)

The trial court further concluded that it did not matter that the City could have complied with both Section 423 and Government Code 65583.4(a) by holding a vote more promptly (as the City Council had originally indicated in the proposed Housing Element that it would). According to the court, all that mattered was that "the City was required to comply with the statute." (*Ibid.*; see 9AA1442 ["The contradiction between section 423 as applied here and the Housing Element Law was that section 423 provided the electorate discretion to decide whether the City would comply with a mandatory state law."].) Accordingly, "it was not reasonably possible for the City to comply with both the state and local laws, because the state law forbids (discretion to comply) what the local ordinance permitted (discretion to comply)." (*Ibid.* [internal quotation marks and citation omitted].)

The trial court entered judgment in favor of the City on July 2, 2025. (9AA1448-1449.)

H. The Responsible Housing Initiative

Shortly after filing this action, NBSA began preparing a local initiative to amend the City's General Plan in a manner that fully complies with the Housing Element Law. Titled the "Responsible Housing Initiative," the proposal would require that the City (i) properly account for all new housing units that will be provided by currently entitled projects ("pipeline units") and count those units towards the City's RHNA obligations; and (ii) rezone only to the extent necessary to meet the City's remaining RHNA obligations, plus a small buffer. (NBSA's Req. for J. Notice, Ex. D at 81-83.) SPON is a key supporter of the Responsible Housing Initiative.

On April 30, 2025, NBSA submitted the Responsible Housing Initiative to obtain a title and summary from the City Attorney. (Elections Code §§ 9202, 9303.) NBSA subsequently submitted sufficient signatures from local voters to qualify the Responsible Housing Initiative for a local election. On November 18, 2025, the City Council set the Responsible Housing Initiative for a vote at the next general City Municipal Election, on November 3, 2026. (NBSA's Req. for J. Notice, Ex. D at 75-79.)

STATEMENT OF APPEALABILITY

NBSA appeals from the trial court's decision, dated July 2, 2025, entering judgment in favor of the City. (9AA1430-1446; 9AA1448-1449.)

STATEMENT OF THE ISSUE

Does the mere existence of a state-law deadline for certain land use actions preempt municipal charter provisions requiring that local voters, rather than a city council, provide final approval for major amendments to a General Plan?

STANDARD OF REVIEW

The trial court's decision turned entirely on its resolution of questions of law. This Court accordingly reviews the trial court's judgment de novo. (See *Kavanaugh v. W. Sonoma Cnty. Union High Sch. Dist.* (2003) 29 Cal.4th 911, 916.)

SUMMARY OF ARGUMENT

The right of California citizens to govern themselves by initiative is "one of the most precious rights of our democratic process." (*Associated Home Builders of Greater Eastbay, Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591 [citation omitted].) Section 423 codifies that right by requiring voter approval for any amendment to the City's General Plan that "significantly increases allowed density."

(4AA504.) The trial court held, however, that the City must cut voters out of the Housing Element amendment process because state law required the City to complete any necessary rezonings by a particular deadline. In the trial court's view, Section 423 "contradicted and was inimical to" that deadline because it "provided the electorate discretion to decide whether the City must comply." (9AA1441.)

That decision was wrong in multiple respects. First, the court misunderstood the role that voter initiatives play in municipal decision-making. Section 423 is not some external obstacle confronting the City's legislative process, but is instead a core part of that process. While the Housing Element Law penalizes municipalities for failing to meet certain deadlines, it does not thereby prohibit municipalities from following internal procedures that might result in noncompliance. If it did, then the City would be precluded from subjecting Housing Element amendments not just to a Section 423 vote, but to *any* vote—including a vote by the City Council—because any vote might result in those amendments being rejected.

The trial court also failed to recognize that the purported inability to comply with both Section 423 and the state-imposed deadline was purely the result of the City's own delay. As the City Council

recognized in the proposed Housing Element amendment itself, and as HCD confirmed in approving that amendment, there was ample time to hold an initial Section 423 vote in March 2024, with a second vote to follow in the event that the first one failed. Other cities have successfully implemented such a two-step process, which allows voters to provide feedback on proposed Housing Element amendments while still meeting state-imposed deadlines. It was particularly important for city officials to solicit voter feedback here, as the proposed Housing Element would add thousands more units than are required to comply with the City's RHNA.

Finally, even setting aside city officials' responsibility for failing to hold a timely vote, the trial court erred in finding a conflict between state and local law because Newport Beach could have complied with its deadlines if voters had approved the Housing Element amendment. The Supreme Court has said that state law does not preempt local law "where it is reasonably possible to comply with both the state and local laws." (*City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729, 743.) Such a reasonable possibility existed here. The trial court reached a contrary conclusion because voters might not have approved the amendment, but precedent makes

clear that courts "should not presume . . . that the electorate will fail to do the legally proper thing." (*DeVita*, *supra*, 9 Cal.4th at pp. 792-793.)

ARGUMENT

California courts presume that the Legislature does not intend to preempt local land use regulations (particularly those involving direct participation by the voters) absent a clear legislative indication to the contrary. No such indication exists here. The Legislature's creation of state-law deadlines for municipalities to take certain actions was not intended to preempt internal municipal rules about which body (e.g., the city planning commission, city council, or local electorate as a whole) has final responsibility for achieving compliance. And where those rules vest responsibility in the voters, city officials should not be permitted to hijack that power by engineering delays in the vote that might make it difficult for a city to achieve timely compliance.

A. California Courts Apply A Strong Presumption Against Preemption Of Local Laws, Especially Those Enacted By Initiative

The governing legal standard here is well established. "California courts will presume . . . that [local] regulation is not preempted by state statute." (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149 [emphasis omitted].) Accordingly,

"[t]he party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption" by establishing "a clear indication of preemptive intent from the Legislature." (*Ibid.*; see *T-Mobile W. LLC v. City & Cnty. of San Francisco* (2019) 6 Cal.5th 1107, 1116 ["When local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume the regulation is not preempted unless there is a clear indication of preemptive intent." (internal quotation marks, citation, and alteration omitted)]; *State Building & Construction Trades Council of California v. City of Vista*, (2012) 54 Cal.4th 547, 555-557 [describing charter cities' increased powers of self-governance over issues of municipal affairs].)

Under that standard, a given state statute has preemptive force only if "[l]ocal legislation . . . is inimical thereto." (*Big Creek Lumber Co.*, *supra*, 38 Cal.4th at p. 1150.) A conflict between state and local law is inimical, in turn, only if local law "mandates what state law expressly forbids, or forbids what state law expressly mandates." (*Id.* at p. 1161 [citation and alterations omitted].) Where, by contrast, "it is reasonably possible to comply with both the state and local laws," no

inimical conflict exists. (*City of Huntington Beach v. Becerra* (2020) 44 Cal.App.5th 243, 270 [citation omitted].)

Courts are particularly reluctant to find such a conflict in cases that involve the local initiative process. Article II, section 11 of the California Constitution guarantees "the local electorate's right to initiative and referendum." (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 775.) California "courts have described the initiative and referendum as articulating 'one of the most precious rights of our democratic process.'" (*Associated Home Builders of Greater Eastbay, Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591 [citation omitted].) And the Supreme Court has accordingly explained that it "will presume, absent a clear showing of the Legislature's intent to the contrary, that legislative decisions of a city council or board of supervisors are subject to initiative and referendum." (*DeVita*, *supra*, 9 Cal.4th at p. 775 [citation and alteration omitted]; see *Voters for Responsible Ret. v. Bd. of Supervisors* (1994) 8 Cal.4th 765, 776-777 ["It has long been our judicial policy to apply a liberal construction to this power whenever it is challenged in order that the right be not improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it." (citation and alteration omitted)].)

When the Legislature intends to preempt local voter initiatives, therefore, it must do so through clear and unambiguous language. In *AIDS Healthcare Foundation v. Bonta* (2024) 101 Cal.App.5th 73, for example, the court held that the "Legislature clearly showed and definitely indicated its intent to displace local housing density caps adopted through local voter initiative" by passing a law that "explicitly grants local legislative bodies the power to 'adopt an ordinance to zone a parcel for up to 10 units of residential density per parcel' '[n]otwithstanding any local restrictions . . . including . . . *restrictions enacted by local initiative*.'" (*Id.* at p. 90 [citation omitted].) And in *Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491 (*COST*), the Supreme Court held that legislative delegations to Orange County's "board of supervisors," and to the "city council" of any city therein, "g[ave] rise to a strong inference that the Legislature intended to preclude exercise of the statutory authority by the electorate." (*Id.* at p. 505.) Absent such specificity, however, courts cannot presume that the Legislature intended to preempt local voter initiatives. Indeed, even "most mandatory procedures imposed on local governing bodies generally cannot be taken to prohibit the right of initiative" without a

showing of express legislative intent. (*DeVita*, *supra*, 9 Cal.4th at p. 787.)

B. No Inimical Conflict Exists Between The Housing Element Law's Deadlines And Section 423's Requirement That Newport Beach Voters Provide Final Approval For Certain Land-Use Changes In The City

Evaluated under that well-accepted standard, the Housing Element Law does not preempt Section 423 of the Newport Beach Charter. Contrary to the trial court's understanding, no conflict exists between a state law that sets deadlines for a city to act and a municipal charter provision that simply establishes the internal procedures necessary to complete the required action. Nor can city officials manufacture such a conflict by dragging out the process of holding a vote. And in any event, no legal basis exists for presuming that Newport Beach voters would have prevented the City from meeting its state-law deadline.

1. State-Imposed Deadlines Are Not "Inimical" To Charter Provisions Requiring That Local Voters, As Opposed To The City Council, Provide Final Approval For Certain Decisions

The central question in this case is whether the California Legislature preempted Section 423 through its adoption of Government

Code 65583.4(a), which provides that "a local government shall have three years and 120 days from the statutory deadline . . . for adoption of the housing element to complete any rezonings."[2] The clear answer to that question is, "No." Government Code 65583.4(a) establishes a deadline for action by California cities, but it does not dictate—let alone preempt—the internal procedures that a city must follow in order to comply with that deadline.

In requiring a covered "local government" to comply with the deadline for rezonings, Government Code 65583.4(a) imposes an obligation on the *entire* local government, including (where applicable) local voters who play a direct role in that local government's decision-making through the referendum or approval process. Indeed, in California in particular, direct and representative democracy coexist as forms of government at the local level. (See Tracy M. Gordon, *The Local Initiative in California* iii (2004).) As the Supreme Court has explained, "the local electorate's right to initiative and referendum . . . is generally co-extensive with the legislative power of the local governing body." (*DeVita*, *supra*, 9 Cal.4th at p. 775.) And although

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[2] The statutory deadline for the City to adopt its Housing Element was October 15, 2021. (8AA1282.) The deadline to complete any necessary rezonings was therefore February 12, 2025. (9AA1434.)

the Legislature may specify that it intends for only a particular body—such as the local "legislative body" (i.e., a board of supervisors or the city council)—to exercise certain powers or bear certain responsibilities, it did not so specify in Government Code 65583.4(a) or elsewhere. (*COST*, *supra*, 45 Cal.3d at p. 505.)

Here, the Newport Beach Charter assigns local voters a direct role in the Housing Element amendment process. Under Section 423, authority to provide final municipal approval for "any major amendment to the Newport Beach General Plan" rests not (as with most city decisions) with the City Council, but rather with the electorate itself. (4AA504.) Indeed, any such amendments "shall not take effect" *unless* they are approved by voters. (*Ibid.*) In order to comply with Government Code 65583.4(a), therefore, a majority of participating Newport Beach voters had to approve General Plan amendments necessary to complete the rezonings that implement the Housing Element that HCD had approved.

As with requirements of majority approval by *any* body, the requirement of majority approval by the voters in Section 423 creates the possibility that Newport Beach will miss a state-law deadline if the voters withhold approval. But it does not follow that there is a "clear"

and "inimical" conflict between the Housing Element Law's deadlines and the Newport Beach Charter's voter-approval requirement. (*DeVita*, *supra*, 9 Cal.4th at p. 775 [citation omitted]; *Big Creek Lumber Co.*, *supra*, 38 Cal.4th at p. 1150.) Instead, the two laws simply address different things: the relevant provision of the Housing Element Law concerns the *timing* of action by the City as a whole, while Section 423 of the Charter addresses the *procedures* for the City's internal decision-making. And because they address distinct subjects, there is no clear indication that the Legislature intended its timing prescription to displace local voting requirements like Section 423. (See *DeVita*, *supra*, 9 Cal.4th at p. 775 [explaining that courts must "presume, absent a clear showing of the Legislature's intent to the contrary, that legislative decisions of a city council or board of supervisors are subject to initiative and referendum" (citation and alteration omitted)].)

To hold that state-law deadlines for municipalities preempt any local decision-making procedures that might cause a city not to comply would have radical implications. Cities like Newport Beach are required to undertake numerous actions in conjunction with updates to their housing elements. Among others, they must adopt a proposed housing element, submit that proposed housing element to HCD for

review, and then—following approval—complete any necessary rezonings by the statutorily imposed deadline. (Gov. Code §§ 65583, 65583.4, 65585.) At each step, municipal rules establish internal processes that must be completed for a city to act, such as a vote by a city planning commission or by the city council itself. And at each step, a failure to follow those internal processes could mean that a city misses a state-law deadline. If a municipal voting requirement is preempted whenever it could (or actually does) cause a municipality to miss a state-law deadline, then the City Council's authority to vote on proposed housing element amendments would be categorically preempted as well. After all, like the electorate, there is always a *possibility* that a majority of the City Council would vote against amendments that are necessary to comply with state law.[3] No one would seriously contend, however, that the Legislature's mere adoption of deadlines for action by municipalities was intended to preempt the role of a city council in voting on what actions a given city will or will not take.

[3] See, e.g., Ryan Burns, *Flouting State Guidance, Blue Lake City Council Votes Not to Adopt Its Own Updated Housing Element*, Lost Coast Outpost (Mar. 28, 2025), https://perma.cc/D9PL-DJEE.

Section 423 is logically no different. Contrary to the implicit assumption of the trial court, the Section 423 vote is an integral part of the City's internal legislative process, not an external obstacle to that process that a court can remove. The Housing Element Law itself acknowledges that "each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal." (Gov. Code § 65581, subd. (c).) And while it is of course true that the City's legislative process can fail in many ways that result in noncompliance with the Housing Element Law—whether because the City Council or the electorate fails to approve amendments by the deadline, or for some other reason altogether—the consequence is not that the process is preempted. Rather, the Housing Element Law includes mechanisms to incentivize or mandate compliance, such as potential regulatory action or the builder's remedy. (See Gov. Code §§ 65585, subd. (i), 65589.5.) Indeed, the Housing Element Law is rife with mandatory procedures and consequences for municipalities' noncompliance. (See *Kennedy Com. v. Superior Ct.* (2025) 114 Cal.App.5th 385, 402.) That comprehensive system would make little sense if municipal processes that presented a risk of noncompliance were preempted from the outset.

The Housing Element Law is no different in that respect from other laws that set deadlines by which government officials must act. Administrative agencies, for example, often must promulgate regulations by a certain date. (See, e.g., *POET, LLC v. State Air Res. Bd.* (2013) 218 Cal.App.4th 681, 697.) And in promulgating those regulations, they often must comply with various substantive and procedural requirements. (*Ibid.*) If an agency fails to comply with the applicable requirements by the deadline, it may be in violation of state law. (See *id.* at p. 698.) But that does not mean the agency is excused from complying with the antecedent requirements. (*Ibid.*) Rather, the agency may still be required to comply, even if the deadline has passed. (*Id.* at p. 697 [directing agency to comply with procedural requirements that it failed to satisfy by statutory deadline].) The same is true with respect to city officials' failure to hold a Section 423 vote here.

2. City Officials Cannot Create A Conflict By Delaying A Vote Until The Eve Of The Rezoning Deadline

In addition to arguing as a general matter that the Housing Element Law preempts local initiatives, the City argued below that state law preempted a Section 423 vote here for the more specific reason that, "once the City adopted the Housing Element in 2022 and the Housing

Element implementation program in July 2024, the only way for the City to guarantee it would be in compliance [with] the Housing Element Law on February 12, 2025, would be to ***not*** hold a vote under Section 423." (4AA548.) That was the case, according to the City, because "if the vote failed, the City would not meet the February 12, 2025, deadline because there was inadequate time to go back through the process of getting HCD approval of a modified Housing Element and going through another vote of the people in that time period." (*Ibid.*)

The City's purported conflict, however, is purely one of city officials' own creation. The City's proposed Housing Element contemplated that the City would initiate a ballot measure in September 2023 for a Section 423 vote in March 2024, and that the City would amend the Housing Element and hold a second Section 423 vote if the first Section 423 vote failed.[4] (5AA721-722.) In approving that proposed Housing Element, moreover, HCD directed the City to "[i]nitiat[e] a Ballot Measure for a Charter Section 423 Vote by September 2023." (3AA443.) City officials failed to follow that

[4] If the second vote also failed, the Housing Element provided that the City would "seek a legal opinion from the State Attorney General's Office as to how to proceed" (5AA721)—further evidence that the City (and HCD, in approving the Housing Element) did not view the possibility of a "no" vote as an inimical conflict.

schedule, but their failure does not mean that a Section 423 vote is now preempted. If it did, then city officials could deprive citizens of their ability to exercise the franchise by intentionally failing to hold votes until the results of those votes might conflict with state-law deadlines.

If city officials can avoid a vote by manufacturing a time crunch, then they will have little incentive to propose and approve Housing Elements that are consistent with the wishes of the electorate. That is true regardless of whether voters believe that a proposed Housing Element would add too much housing or too little. Either way, on the City's view, nothing would stop officials from adopting a Housing Element that would conflict with voters' preferences, assuming that those officials delay approving the proposal until it is infeasible to hold a vote by the rezoning deadline.

That does not mean, as the City suggested below, that the purpose of Section 423 is to "provide the electorate with 'veto power' over the City's General Plan decisions that provide for state mandated housing." (4AA537.) Rather, Section 423 exists to incorporate the electorate into the decision-making process—and to ensure that the City complies with its state-imposed obligations in a way that reflects voters' preferences—consistent with the Housing Element Law's

application to the entire "local government." (Gov. Code 65583.4(a).) Here, for example, NBSA has no objection to a Housing Element amendment that would comply with the City's RHNA without adding an extra 3,000 units. Indeed, NBSA has proposed an initiative that would do just that. (See NBSA's Req. for J. Notice, Ex. D at 75-83.)

The experience of other cities also shows that voter initiatives serve to improve the Housing Element amendment process, not obstruct it. As noted above, voters in Yorba Linda approved the city's proposed rezoning strategy in November 2024, but they did so only after previously rejecting a different rezoning strategy in November 2022. (NBSA's Req. for J. Notice, Ex. A at 4-7, Ex. C. at 73.) After the first proposal failed to receive approval from a majority of local voters in 2022, Yorba Linda conducted "a robust public outreach effort of seven public workshops" to obtain direction and feedback from the public. (*Id.*, Ex. A at 5.) The city then prepared amendments to its Housing Element and corresponding rezoning strategy to reflect that community input and presented those amended materials to local voters in 2024. (*Id.* at 5-6.) Those efforts were overwhelmingly successful, and the second attempt passed with more than 90% approval. (*Id.*, Ex. C at 73.) That is how the process should work, and it is how the process could

have worked in Newport Beach if city officials had not cut the electorate out by refusing to hold a vote.

3. No Conflict Exists In Any Event Because Voters Could Have Approved The Housing Element Amendment

Finally, even if a failed vote would have caused the City to miss its statutory deadline, the Housing Element Law does not preempt Section 423, because the City would have been in full compliance with Government Code 65583.4(a) if voters had approved the amendment. Where "it is reasonably possible to comply with both the state and local laws," no inimical conflict exists. (*City of Huntington Beach*, *supra*, 44 Cal.App.5th at p. 270 [citation omitted].) And it is certainly "reasonably possible" that the electorate would have approved the amendment if city officials had allowed them to vote. Indeed, the City conceded as much below, explaining that, "if the City had held a Section 423 election in November 2024 and the vote passed, the City could have implemented the Housing Element in the same manner as it has done so here and satisfied the state law deadline." (4AA548.) And as previously discussed, voters in other cities *did* approve similar amendments in November 2024. (See NBSA's Req. for J. Notice, Ex.

C at 70 [election results for City of Cypress Measure S], 73 [election results for City of Yorba Linda Measure JJ].)

While it is true that Newport Beach voters might have rejected the amendment, that is not enough to give rise to preemption. To the contrary, precedent makes clear that courts "should not presume" that voters "will fail to do the legally proper thing." (*DeVita*, *supra*, 9 Cal.4th at pp. 792-793.) In *DeVita*, for example, the Supreme Court upheld a measure requiring local Napa County voters' approval of any changes to the county's land use element based on this reasoning. (*Id.* at pp. 771-772, 792-793.) And multiple other courts have reached similar conclusions. (See *San Mateo Cnty. Coastal Landowners' Ass'n v. County of San Mateo* (1995) 38 Cal.App.4th 523, 544 [voter approval requirement for local land use plan]; *Yost v. Thomas* (1984) 36 Cal.3d 561, 574 [referendum to local land use plan].) Any speculation that voters might have rejected the amendment is insufficient under those authorities to create a conflict with state-imposed deadlines.

C. The Trial Court's Contrary Reasoning Was Incorrect

In denying NBSA's motion for judgment, the trial court made several fundamental errors. As noted above, the court improperly viewed Section 423 as an external obstacle to Newport Beach's

legislative process, rather than as a part of that process. And the court adopted the extreme position—which the City, but not HCD, has taken in this litigation—that state law preempts Section 423 even if municipal officials hold a multi-step vote like the one that the Housing Element originally envisioned. NBSA had argued that if "the City acted more promptly, it could have held a vote on the . . . amendments and met the February 12, 2025 deadline," but the trial court disagreed, concluding that "[t]he point is not the date by which the City was required to comply," but rather that "section 423 provided the electorate discretion to decide whether the City would comply with a mandatory state law." (9AA1441-1442.) Under that reasoning, municipalities can *never* incorporate voters into the Housing Element amendment process, even if they do so far in advance of the deadline. Success stories like Yorba Linda's will become forbidden practices. That cannot be right.

The trial court also appeared to assume that, once a Housing Element is adopted, jurisdictions have no discretion in terms of how to implement the Housing Element. (*Ibid.*) That assumption is incorrect. Housing Elements are not set in stone but are instead living documents that both guide and adapt to the housing strategy undertaken by a jurisdiction over multiple years. Indeed, it is not uncommon for

jurisdictions to amend their Housing Elements during the implementation process to address unforeseen constraints or community feedback, including, for example, strong community opposition to dense housing at certain locations. (See Gov. Code § 65583; NBSA's Req. for J. Notice, Ex. A at 4-7.) Jurisdictions can also elect to change course in the middle of a planning period to reflect intervening events. (Gov. Code § 65585.) For example, if a large residential project is built that was not accounted for at the time a jurisdiction pursued its initial, more expansive rezoning strategy, the jurisdiction can later pursue a narrower rezoning strategy that accounts for the housing provided by the unforeseen project. (Gov. Code §§ 65583.1, subd. (d), 65583.2, subd. (c)(2).) And while it is true that jurisdictions must obtain HCD sign-off on Housing Element amendments to avoid penalties and other consequences under state law (Gov. Code § 65585, subds. (b)-(i)), it is incorrect to conclude that a jurisdiction's discretion over its long-term housing strategy ends once a Housing Element is adopted.

The trial court also erred in rejecting NBSA's argument that "section 423 did not conflict with the Housing Element Law because the voters might approve the amendments." (9AA1441.) According to

the trial court, it was "not 'reasonably possible' for the City 'to comply with both the state and local laws,' because the state law forbids (discretion to comply) what the local ordinance permitted (discretion to comply)." (9AA1442 [quoting *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729, 743].) Section 423 did not give voters discretion to comply with state law, though, any more than do municipal laws establishing other voting bodies like city councils and boards of supervisors. Rather, Section 423 provides the *means* for the City to comply with state law requirements. As the trial court itself observed, the relevant state-law requirement was for "the City to complete any required rezonings by the specified deadline." (9AA1441.) And the City would have complied with that requirement, while also complying with Section 423, if city officials had held a vote, and if voters had approved the amendments.

Finally, the trial court misapplied the standard for assessing whether the Legislature intended to preempt local initiatives. The trial court correctly recognized that "'a state statute preempts local laws adopted through initiative only if there is a "clear showing" or "definitive indication" of legislative intent to do so.'" (9AA1444 [quoting *AIDS Healthcare Foundation*, *supra*, 101 Cal.App.5th at

p. 89].) The court then concluded, though, that "the Legislature clearly showed and definitively indicated its intent to displace a local law adopted by initiative" (*ibid.*), based on legislative statements that made no mention of the initiative power at all (contra *AIDS Healthcare Foundation*, *supra*, 101 Cal.App.5th at p. 90). The statements on which the court relied described the need for local governments generally to contribute to the statewide goal of increasing housing. (See 9AA1444-1445 [quoting Gov. Code §§ 65580, subd. (d), 65581, 65589.5, subds. (a)(2)(K), (L)].) But nothing in those statements reflects any intention with respect to voter approval processes, let alone an intention that is "clear" or "definitive." And as above, if generic concerns about local contributions to statewide problems are sufficient to show an intent to preempt local initiatives, then they also are sufficient to show an intent to preempt other steps in local legislative processes, including city council votes, that might frustrate statewide goals.

D. The Trial Court's Decision Threatens To Disenfranchise California Voters On The Issue Of Housing Development

If this Court affirms the trial court's decision, then California voters will lose one of the most effective avenues they have to express their preferences. Section 423 "give[s] citizens a voice on questions of

public policy." (*James v. Valtierra* (1971) 402 U.S. 137, 141.) And it "reclaim[s] the legislative power from the influence of . . . 'special interests.'" (*DeVita*, *supra*, 9 Cal.4th at 795 [citation omitted].)

Local initiatives, moreover, are not a one-way ratchet. Although NBSA opposes a Housing Element that seeks to add thousands more units than are required by Newport Beach's RHNA, it has proposed and actively supports an initiative that would satisfy that RHNA. (See NBSA's Req. for J. Notice, Ex. D at 81-83.) And in other jurisdictions, local citizens have regularly voted against proposals that would *restrict* development.[5] The purpose of an initiative like Section 423 is not to achieve a particular substantive end, but to enable local voters to play a direct role in shaping their communities.

The trial court's decision threatens to empower local legislators at the expense of their constituents, and to reward them for engaging in gamesmanship. Here, city officials indicated all along that they would put the proposed Housing Element amendment to a vote (see, e.g., 4AA566), and HCD approved the proposed amendment based on that understanding (3AA443). The proposed Housing Element also

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[5] See, e.g., Leah Rothstein, *Lessons from a Successful Fight for Affordable Housing in the Heart of Silicon Valley*, Econ. Pol'y Inst. (May 10, 2023), https://tinyurl.com/y7v7tfvs.

contemplated a two-step vote that would allow for an iterative process between the City and Newport Beach voters—a process that other cities like Yorba Linda have followed. (5AA721-722; NBSA's Req. for J. Notice, Ex. A at 5-6.) At the eleventh hour, however, city officials changed course and decided that they would remove voters from the process, based on timing concerns that were the product of those officials' own delay. (See pp. 44-48, *supra*.)

If the trial court is correct, then Newport Beach voters never had a right to participate in the amendment process in the first place. And cities like Yorba Linda and Cypress will be required to cut their constituents out going forward, despite having successfully incorporated them to date. Nothing in the Housing Element Law requires that outcome, and this Court should not endorse it.

E. This Court Should Reverse With Instructions To Issue A Writ Of Mandate

For all of the foregoing reasons, this Court should reverse the decision below and remand with instructions to issue a writ of mandate. A local government's "failure to follow its own procedures provides the basis for the issuance of a traditional writ of mandate." (*CV Amalgamated LLC v. City of Chula Vista* (2022) 82 Cal.App.5th 265, 283.) Here, city officials purported to adopt the amended Housing

Element without first obtaining voter approval, as Section 423 required. This Court should instruct the trial court to issue a peremptory writ directing the City to submit the proposed amendments to a Section 423 vote, and it should also instruct the trial court to retain jurisdiction and order a return on the writ to ensure city officials' compliance within a reasonable period. (*City of Carmel-By-The-Sea v. Bd. of Supervisors* (1982) 137 Cal.App.3d 964, 971 ["[T]he court which issues a writ of mandate retains continuing jurisdiction to make any order necessary to its enforcement."].)

In the proceedings below, NBSA also asked for a declaration that the City will remain in substantial compliance with state housing laws while it prepares for a Section 423 vote. (See 1AA24-25.) The trial court did not address that request because of its erroneous conclusion that Section 423 was preempted by state law. This Court should direct the trial court to consider NBSA's request for declaratory relief in the first instance on remand.

CONCLUSION

This Court should reverse the decision below and remand with instructions to issue a writ of mandate.

Dated: January 7, 2026

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

This brief contains 9,973 words according to the word-count feature of the computer program used to prepare this brief.

Dated: January 7, 2026

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PROOF OF SERVICE

I am employed in the City and County of San Francisco, California. My business address is 101 California Street, 48th Floor, San Francisco, CA 94111. I am over the age of 18, and I am not a party to this action.

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

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