

NO. 19-56410

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**YELLOWSTONE WOMEN'S FIRST STEP HOUSE, Inc.; SOBER
LIVING NETWORK, INC.; and CALIFORNIA WOMEN'S RECOVERY,
INC.,**

Plaintiffs-Appellants

v.

CITY OF COSTA MESA,

Defendant-Appellee

Appeal from the United States District Court for the
Central District of California
Hon. James V. Selna, District Judge
Case No. 8:14-cv-0182

**PROPOSED BRIEF OF *AMICI CURIAE* LEAGUE OF CALIFORNIA CITIES
AND CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF
APPELLEE CITY OF COSTA MESA**

L. Rachel Lerman
BARNES & THORNBURG LLP
2029 Century Park E., Suite 300
Los Angeles, California 90067
TELEPHONE: (310) 284-3871
FACSIMILE: (310) 284-3894

*Attorneys for Amici League of California Cities and California State
Association of Counties*

Table of Contents

	Page
INTEREST OF AMICUS	1
LEGAL DISCUSSION	4
I. CITIES AND COUNTIES LIKE THE CITY OF COSTA MESA EXERCISE THEIR POLICE POWERS TO BALANCE COMPETING INTERESTS AND PROTECT ALL OF THEIR RESIDENTS.....	4
A. Cities and counties have longstanding authority to enact zoning and other land use regulations to protect the public health, safety, and welfare.	4
B. Federal law does not categorically preclude cities and counties from applying zoning and other land use regulations to sober living homes.	6
II. SOBER LIVING HOMES AND STATE-LICENSED ALCOHOL OR DRUG ABUSE RECOVERY TREATMENT FACILITIES PRESENT CHALLENGES FOR CALIFORNIA CITIES AS WELL AS FOR THE INDIVIDUALS THEY ARE INTENDED TO SERVE.....	10
A. California hosts a large and growing number of group homes for recovering addicts and alcoholics.....	10
B. Cities and counties need to regulate sober living homes to preserve the residential character of neighborhoods and to protect sober living home residents.....	13
III. THE CITY’S ORDINANCE CAREFULLY BALANCES THE INTERESTS OF RECOVERING ADDICTS IN NEED OF SAFE HOMES WITH THE INTERESTS OF THEIR NEIGHBORS AND THE WELL-BEING OF THE CITY.....	18

CONCLUSION	20
------------------	----

TABLE OF AUTHORITIES

	Page(s)
 Cases	
<i>Berman v. Parker</i> , 348 U.S. 26 (1954).....	5, 12
<i>Birkenfeld v. City of Berkeley</i> , 17 Cal. 3d 129 (1976)	6
<i>DeVita v. Cty. of Napa</i> , 9 Cal. 4th 763 (1995).....	6
<i>Dodd v. Hood River Cty.</i> , 136 F.3d 1219 (9th Cir. 1998).....	8
<i>Hoehne v. Cty. of San Benito</i> , 870 F.2d 529 (9th Cir. 1989).....	8
<i>Pac. Shores Properties, LLC v. City of Newport Beach</i> , 730 F.3d 1142 (9th Cir. 2013).....	7, 10
<i>Raskiewicz v. Town of New Bos.</i> , 754 F.2d 38 (1st Cir.1985)	8
<i>Tex. Dept. of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.</i> , 576 U.S. 519 (2015).....	7
<i>Vill. of Belle Terre v. Boraas</i> , 416 U.S. 1 (1974).....	5, 12
<i>Vill. of Euclid v. Ambler Realty Co.</i> , 272 U.S. 365 (1926).....	4, 5
<i>Young v. American Mini Theatres, Inc.</i> , 427 U.S. 50 (1976).....	4
 Constitution and Statutes	
29 U.S.C. § 701 et seq.	7
42 U.S.C. § 1983 et seq.....	7
42 U.S.C. § 3601 et seq.....	7
42 U.S.C. § 12101 et seq.....	7
Cal. Const. art. XI, § 7.....	5
Cal. Gov. Code § 11135.....	7
Cal. Gov. Code § 12900.....	7

Cal. Gov. Code § 65008.....	7
Cal. Health & Safety Code § 11834.23(b)	12
Cal. Health & Safety Code § 11834.23(e)	12

Other Authorities

Matthew M. Gorman et. al, <i>Fair Housing for Sober Living: How the Fair Housing Act Addresses Recovery Homes for Drug and Alcohol Addiction</i> , 42 Urb. Law. 607 (2010)	14
Douglas E. Miller, Note, <i>The Fair Housing Act, Oxford House, and the Limits of Local Control Over the Regulation of Group Homes for Recovering Addicts</i> , 36 Wm. & Mary 1467 (1995).	13
Douglas L. Polcin & Diane Henderson, <i>A Clean and Sober Place to Live: Philosophy, Structure, and Purported Therapeutic Factors in Sober Living Houses</i> , 40 J. Psychoactive Drugs (2008).....	12
Hunter Scharf, <i>A Rising Florida Epidemic: Big Business Controls Florida's Recovery Residence Crisis</i> , 44 Vill. L. Rev. 91 (2019)	11, 15

INTEREST OF *AMICI CURIAE*

Amicus League of California Cities (Cal Cities) is an association of 477 California cities dedicated to protecting and restoring local control over the public health, safety, and welfare of city residents, and to enhancing the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, which is comprised 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 case as having such significance.

Amicus California State Association of Counties (CSAC) is a non-profit corporation consisting of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The ordinance challenged here, Ordinance 14-13, drafted and enacted by the City of Costa Mesa (the City), requires that sober living homes¹ be 650 feet apart from other sober living homes or state-licensed alcohol or drug abuse recovery treatment facilities; that occupants of sober living homes actively participate in recovery programs; that sober living homes prohibit the use of illicit drugs or alcohol; and that they have a policy for the possession, use, and management of prescription medication. It also requires that sober living homes have a good neighbor policy and a visitation policy that precludes visitors under the influence of drugs or alcohol.

All of these requirements were drafted with state and federal legal requirements in mind, based on a staff report that documented the number and clustering of sober living homes and state-licensed alcohol or drug abuse recovery treatment facilities in single-family residential (R1) zones. Ordinance 14-13 recognizes that persons in recovery are considered disabled, and provides a process for reasonable accommodations to address legitimate safety concerns. Moreover,

¹ As used in this brief, “sober living home” means an unlicensed group home for individuals recovering from alcoholism or drug addiction.

Ordinance 14-13 was drafted with the goal of protecting sober living home residents, who are unfortunately often exploited by unscrupulous companies and individuals seeking to profit from their plight.

The day the Ordinance went into effect, Plaintiffs-Appellants Yellowstone Women's Step House (Yellowstone), a state-licensed drug and alcohol recovery facility, California Women's Recovery, an unlicensed sober living home, and Sober Living Network, a membership organization of drug and alcohol recovery facilities and sober living homes, sued the City, arguing that the Ordinance is discriminatory under state and federal law. But a judge and jury rejected their arguments after years of litigation and a 14-day trial, finding no discriminatory intent or practice by the City.

Cal Cities and CSAC (collectively, *Amici Curiae*) urge this Court to uphold the verdict and judgment for the City. If the challenged ordinance—which accords residents of sober living homes the right to reside in R1-zoned neighborhoods, unlike other types of group homes, and seeks to protect these residents from unscrupulous business practices so that they can recover and rejoin society—does not pass muster, it is hard to imagine any local ordinance that would.

LEGAL DISCUSSION

- I. Cities and Counties like the City of Costa Mesa exercise their police powers to balance competing interests and protect all of their residents.**
 - A. Cities and counties have longstanding authority to enact zoning and other land use regulations to protect the public health, safety, and welfare.**

For nearly one hundred years, the U.S. Supreme Court has “broadly sustained the power of local municipalities to use . . . land-use regulation to meet the encroachments of urbanization upon the quality of life of their citizens.” *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 73 (1976) (citing *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 386-387 (1926)). From the start, the U.S. Supreme Court recognized “the very practical consideration underlying the necessity for such power”:

“[W]ith the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities.” *Id.* (quoting *Euclid* at 386-387).

Fifty years later, with municipalities facing continuing increases in population and “constantly . . . developing” problems, the Court observed that “zoning has become an accepted necessity in our

increasingly urbanized society, and the types of zoning restrictions have taken on forms far more complex” than were anticipated in 1926. *Id.*

The Court has stressed, among other things, the importance of zoning to protect single-family neighborhoods. Justice Douglas famously emphasized that zoning authority “is not confined to elimination of filth, stench, and unhealthy places.” *Vill. of Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974). “The concept of the public welfare is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary.” *Id.* at 6 (citing *Berman v. Parker*, 348 U.S. 26, 32-33 (1954)). The zoning power must be broad enough “to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.” *Id.* at 9.

The challenges faced by municipalities have only grown in recent decades. Today, cities must work to keep residential neighborhoods safe for all residents, while they seek to accommodate a rising population and a rapidly changing society.

In California, municipal police powers are not only recognized by the courts, they are enshrined in the State Constitution. Cal. Const. art. XI, § 7 (“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.”) And the California Supreme Court has recognized that zoning is an essential aspect of these police powers, serving “to impose reasonable regulations upon private property rights to serve the larger public good.” *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 146 (1976). The City of Costa Mesa, like all cities and counties in California, has broad authority to enact zoning controls to protect the public health, safety and welfare, pursuant to its police power. *See DeVita v. Cty. of Napa*, 9 Cal. 4th 763, 782 (1995) (“The [California] Legislature, in its zoning and planning legislation, has recognized the primacy of local control over land use.”).

B. Federal law does not categorically preclude cities and counties from applying zoning and other land use regulations to sober living homes.

While cities and counties have broad authority to enact zoning and other land use regulations, they must also comply with federal statutes like the Fair Housing Act (FHA) (42 USC § 3601 et seq.) and Americans with Disabilities Act of 1990 (ADA) (§ 12101 et seq.), which prohibit governmental entities from discriminating against disabled

persons through zoning.² *Pacific Shores Properties, LLC v. City of Newport Beach* (9th Cir. 2013) 730 F.3d 1142, 1157. Cities and counties like the City of Costa Mesa understand that preventing discrimination against individuals with disabilities—including those who are recovering from drug or alcohol addiction—is an essential aspect of managing a city and protecting public health and safety. *Pac. Shores Properties, LLC v. City of Newport Beach*, 730 F.3d 1142, 1156 (9th Cir. 2013) (“It is well established that persons recovering from drug and/or alcohol addiction are disabled under the FHA and therefore protected from housing discrimination.”).

But the FHA was never meant to usurp local land use authority wholesale. *Tex. Dept. of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 542 (2015) (“The FHA does not decree a particular vision of urban development[.]”). Local authorities are

² In this case, Appellants alleged violations of violation of the Fair Housing Act (42 U.S.C. § 3601 et seq.), the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), the Rehabilitation Act (29 U.S.C. § 701 et seq.), the Civil Rights Act of 1871 (42 U.S.C. § 1983 et seq.), California’s Fair Employment and Housing Act (Cal. Gov. Code § 12900 et seq.), and Cal. Gov. Code §§ 11135 and 65008. For purposes of this appeal, these state and federal statutes govern the same conduct in essentially the same way. We refer to these laws collectively as fair housing laws.

attuned to and understand their own residents' concerns and are best situated to serve them. Recognizing this, the U.S. Supreme Court has pointed out that disparate impact claims under the FHA should be limited so that governmental entities are not "prevented from achieving legitimate objectives." *Id.* at 544.

By the same token, while federal courts have authority to adjudicate claims that zoning ordinances violate federal law, courts "were not created to be 'the Grand Mufti of local zoning boards'" or to "sit as super zoning boards or zoning boards of appeals." *Dodd v. Hood River Cty.*, 136 F.3d 1219, 1230 (9th Cir. 1998) (cleaned up) quoting *Hoehne v. Cty. of San Benito*, 870 F.2d 529, 532 (9th Cir. 1989), and *Raskiewicz v. Town of New Bos.*, 754 F.2d 38, 44 (1st Cir.1985)).

In the case, Appellants brought a variety of challenges under the fair housing laws: they alleged the Ordinance was facially discriminatory, that the City intended to discriminate against recovering addicts and alcoholics when it passed the Ordinance, that the Ordinance had a disparate impact on such persons, and that the City failed to reasonably accommodate them. All of these challenges failed. The court dismissed the facial challenge, observing that the

Ordinance provides opportunities to recovering addicts and alcoholics that it does not provide to other living in group homes. *See Community House, Inc. v. City of Boise*, 468 F.3d 1118, 1125 (9th Cir. 2006) (explaining that facially discriminatory zoning does not violate the FHA if it benefits the protected class).³

The jury heard evidence concerning the City's intent, the impact of the Ordinance, and the City's reasonable accommodation procedures, and decided that the evidence weighed in favor of the City. Accordingly, it returned a verdict finding that Appellants had failed to show by a preponderance of the evidence that the City had any discriminatory animus toward recovering addicts and alcoholics, that the Ordinance was meant to discriminate against this class of persons, or that the Ordinance did in fact discriminate against them. It also found that Appellants failed to demonstrate that the City failed to reasonably accommodate residents of sober living homes when asked to do so. After considering Appellants' request for equitable relief and reviewing their

³ Appellants later took this challenge off the table, so they cannot appeal the court's decision in any event.

motions for JNOV, the court entered judgment against the City on all of Appellants' claims.

In sum, the jury and the court concluded that the City had properly exercised its police power to promote the public welfare without discriminating against recovering addicts and alcoholics. The fair housing statutes prevent cities and counties from discriminating against protected individuals, but they do not prevent cities and counties from achieving legitimate nondiscriminatory objectives through the enactment of zoning ordinances, as the City did here.. *See Gamble v. City of Escondido*, 104 F.3d 300, 306 (9th Cir. 1997) (“[C]oncern for the character of the neighborhood is legitimate nondiscriminatory goal.”).

II. Sober living homes and state-licensed alcohol or drug abuse recovery treatment facilities present challenges for California cities as well as for the individuals they are intended to serve.

A. California hosts a large and growing number of group homes for recovering addicts and alcoholics.

California is among the states seeing a marked increase in the number of group homes housing recovering addicts and alcoholics. In fact, “Southern California beachside cities between Malibu and San

Clemente have earned the moniker ‘The Rehab Riviera’ due to the proliferation of drug and alcohol addiction treatment centers and sober living houses concentrated in these communities.” Rick McNeil et al., *Rumble in the Riviera*, Orange County Law., 58 APR Orange County Law 36 (April 2016), available at http://trendmag2.trendoffset.com/publication/?i=295397&article_id=2438382&view=articleBrowser&ver=html5; *see also* Hunter Scharf, *A Rising Florida Epidemic: Big Business Controls Florida’s Recovery Residence Crisis*, 44 Vill. L. Rev. 91 (2019) (discussing similar situation in Florida).

California law allows licensed treatment and recovery facilities, such as appellant Yellowstone, to be sited in residential zones so long as they offer services such as detoxification, counseling, recovery planning,

and individual and group therapy for individuals recovering from drug or alcohol addiction, and serve no more than six residents.⁴

By contrast, sober living homes are unlicensed and do not provide treatment services. They are group homes “in which recovering alcoholics and drug users live communally and mutually support each other's recovery.” *Pacific Shores Properties, LLC*, 730 F.3d at 1147; see also Douglas L. Polcin & Diane Henderson, *A Clean and Sober Place to Live: Philosophy, Structure, and Purported Therapeutic Factors in Sober Living Houses*, 40 J. Psychoactive Drugs (2008), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2556949/>.

⁴ See Cal. Health & Safety Code § 11834.23(b) (“For the purpose of all local ordinances, an alcoholism or drug abuse recovery or treatment facility that serves six or fewer persons shall not be included in the definition of a boarding house [or] rooming house . . . or similar term that implies that the alcoholism or drug abuse recovery home is a business run for profit or differs in any other way from a single-family residence”); see also Cal. Health & Safety Code § 11834.23(e) (“No conditional use permit, zoning variance, or other zoning clearance shall be required of any alcoholism or drug abuse recovery or treatment facility that serves six or fewer persons that is not required of a single-family residence in the same zone.”).

B. Cities and counties need to regulate sober living homes to preserve the residential character of neighborhoods and to protect sober living home residents themselves.

It is widely recognized that sober living homes pose health and safety challenges to both residents and their neighbors. *See, e.g.,* Douglas E. Miller, Note, *The Fair Housing Act, Oxford House, and the Limits of Local Control Over the Regulation of Group Homes for Recovering Addicts*, 36 Wm. & Mary 1467, 1475 (1995).

In some circumstances, sober living homes detract from the peaceful, quiet nature of residential zones. Neighbors report “overcrowding, excessive and late-night noise, vulgar language, excessive cigarette smoking, invasion of privacy and lewd conduct, increased litter, increased vandalism, and problematic traffic and parking issues.” McNeil et al., *supra*, 58 APR Orange County Law at 38, available at http://trendmag2.trendoffset.com/publication/?i=295397&article_id=2438382&view=articleBrowser&ver=html5; *see also* <https://www.latimes.com/socal/daily-pilot/news/story/2019-09-17/huntington-beach-to-create-laws-regulating-sober-living-homes-in-neighborhoods> (Huntington Beach officials are looking for ways to

regulate sober living homes in response to residents' complaints that sober-living homes "ruin their quality of life, citing debris, noise and congested parking.") Such problems are typical of those addressed through zoning ordinances. *See Village of Belle Terre*, 416 U.S. at 9; *Berman*, 348 U.S. at 33.

Neighbors' concerns are not the only challenge, however. It is also widely recognized that sober living homes "can be easily abused by landlords seeking to maximize rents." Matthew M. Gorman et. al., *Fair Housing for Sober Living: How the Fair Housing Act Addresses Recovery Homes for Drug and Alcohol Addiction*, 42 Urb. Law. 607, 608 (2010); *see also* David Gorn, Doing the 'sober-living dance' on the Orange County coast, Cal Matters (April 24, 2018), <https://calmatters.org/health/2018/04/doing-the-sober-living-dance-on-californias-rehab-riviera/> (observing that some sober living homes provide no oversight or rehabilitation of their tenants while providing their owners with substantial income, as much as \$10,000 a month).

Without supervision, recovering addicts may find themselves surrounded by the drug and alcohol use the home is meant to prevent. *Id.* (according to one resident, who was recently arraigned on felony

drug charges, “there’s no sober in sober-living. They’re more like party houses, rife with the drug and alcohol use they’re supposed to prevent”); *see also* Scharf, *supra*, 44 Vill. L. Rev. at 115 (studies show that unethical practices in sober living homes have created a direct pipeline to relapse and drug overdose deaths) (citation omitted); <https://www.danapointtimes.com/getting-clean-city-pursues-legal-methods-clean-house-comes-sober-living/> (reporting that the City of Santa Ana has discovered sober living homes operating in conjunction with a commercial facility, acting as the licensed center, transporting patients from unlicensed and uncertified homes throughout Dana Point; “home inspections revealed that the operators appeared to have jammed as many beds into the single family residential home as possible. Some homes had as many as 13 beds,” confirming city staff’s belief that the operator ignored licensing requirements to avoid being limited to six or fewer residents).

And some sober living homes push recovering addicts out of the home without notice when their insurance benefits run out. *See, e.g.,* Teri Sforza, *County Supervisors Tighten Rules on Sober Living Homes, Addiction Treatment Facilities*, The Orange County Register (Jan. 28,

2020, 4:07 p.m.) <https://www.ocregister.com/2020/01/28/county-supervisors-tighten-rules-on-sober-living-homes-addiction-treatment-facilities/>. This renders the recovering individual suddenly homeless, without notice to emergency services that might provide assistance. As a result, Costa Mesa and other California cities and counties have seen a sharp uptick in homeless populations, stretching city and county resources thin. *See Gorn, supra*.

While a residential setting is meant to produce an environment conducive to recovery, cities and counties need to regulate sober living homes to protect their residents and the residential character of neighborhoods, the destruction of which harms recovering individuals in recovery as well as the families living alongside them.⁵

The evidence in this case reflects the serious problems cities and counties have encountered with sober living homes and licensed

⁵ There is evidence that insurance companies are also being exploited. In Santa Ana, for example, investigation by the California Department of Insurance and the Orange County District Attorney's Office "has led to charges against five defendants in connection with a fraud ring allegedly designed to traffic vulnerable substance abuse patients from outside California into treatment facilities in Orange and Riverside counties and to bilk insurance companies out of millions of dollars." *See* <http://www.insurance.ca.gov/0400-news/0100-press-releases/2020/release055-2020.cfm>.

facilities. As the City discusses in its Appellee's Brief, appellant Yellowstone's homes have been cited for failing to have smoke detectors, failing to provide three nutritious meals a day to its residents, and for keeping a dirty kitchen.⁶ (Appellee's Br. at 21, *Yellowstone Women's First Step House, Inc. et al. v. City of Costa Mesa*, No. 19-56410 (9th Cir. Jan. 29, 2021).) Boston House, a home owned by Yellowstone, was also the subject of numerous complaints regarding excessive noise, large gatherings, and residents teasing/taunting a dog, causing it to bark incessantly. (*Id.*)

If not for the City's efforts, these problems would undoubtedly persist. At least some owners would continue to exploit recovering addicts by putting them in overcrowded and unsafe conditions, creating problems for both residents and their neighbors.

⁶ Because Yellowstone is a *licensed* facility, its homes would not be affected by the ordinance but for the fact that Yellowstone wishes to pack as many as 15 people into its homes instead of six.

III. The City's ordinance carefully balances the interests of recovering addicts in need of safe homes with the interests of their neighbors and the well-being of the City.

As set forth at length in the City's Appellee's Brief, Ordinance 14-13 provides that sober living homes may locate in an R1 zone with a special use permit, unlike other group homes, such as boarding houses. (Appellee's Br. at 16.)

The Ordinance provides that sober living homes are subject to a 650-foot spacing requirement from other sober living homes or state-licensed alcohol or drug abuse recovery treatment facilities; that occupants of sober living homes must actively participate in recovery programs; that homes must prohibit the use of illicit drugs or alcohol, and have a policy for the possession, use, and management of prescription medication. (*Id.*) It also requires that sober living homes have a good neighbor policy, and a visitation policy that precludes visitors under the influence of drugs or alcohol. (*Id.*)

All of these requirements were drafted with state and federal legal requirements in mind, based on a staff report that documented the number and clustering of sober living homes and state-licensed alcohol or drug abuse recovery treatment facilities in R1 zones. Ordinance 14-

13 recognizes that persons in recovery are considered disabled, and provides reasonable accommodations to address legitimate safety concerns.

Appellants nevertheless sued the City, arguing that the ordinance is discriminatory under state and federal law. But a judge and jury rejected their arguments after years of litigation and a 14-day trial, finding no discriminatory intent or practice.

Because the challenged ordinance accords residents of sober living homes the right to reside in R1-zoned neighborhoods, unlike other types of group homes, is designed to protect these vulnerable residents from unscrupulous business practices so that they can recover and rejoin society, and ensures that residential neighborhoods retain their character, the verdict and judgment for the City should be upheld. A contrary ruling could have the effect of usurping local land use regulation of sober living homes entirely, an effect not contemplated by the drafters of the FHA and similar statutes.

CONCLUSION

For these reasons and the reasons stated in the City's Appellee's Brief, this Court should affirm the district court's ruling upholding the jury's verdict in favor of the City.

DATED: February 4, 2021

Respectfully submitted,

BARNES & THORNBURG, LLP

/s/ L. Rachel Lerman

L. Rachel Lerman

Counsel for *Amici Curiae*

League of California Cities and
California State Association of
Counties

CERTIFICATE OF COMPLIANCE

[F.R.A.P. 32(a)(7)(C) and Circuit Rule 32.1

I certify that, pursuant to Fed. R. App. P. 32 (a)(7)(C) and Ninth Circuit Rule 32.1, the attached brief is proportionately spaced, has a typeface of 14 points or more and contains 3527 words.

Dated:

BARNES & THORNBURG LLP

BY /s/ L. Rachel Lerman

L. Rachel Lerman

BARNES & THORNBURG LLP

2029 Century Park E., Suite 300

Los Angeles, California 90067

TELEPHONE: (310) 284-3871

FACSIMILE: (310) 284-3894

*ATTORNEYS FOR AMICI LEAGUE OF
CALIFORNIA CITIES AND CALIFORNIA
STATE ASSOCIATION OF COUNTIES*

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2021, I electronically filed the foregoing **PROPOSED BRIEF of *AMICI CURIAE*** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Monica Martinez