IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

The People of the State of California, *ex rel.* Rob Bonta, Attorney General of the State of California, et al., Petitioners/Appellants, v. **City of Huntington Beach**, et al., Respondents.	Court of Appeal No. **G065589** *Super. Ct. No. 30-2024-01393606*

Appeal from Judgment of the Orange County Superior Court,
Hon. Nico Dourbetas, Judge of the Superior Court

BRIEF OF AMICI CURIAE JAMES V. LACY, UNITED STATES JUSTICE FOUNDATION, AND CALIFORNIA PUBLIC POLICY FOUNDATION IN SUPPORT OF RESPONDENTS

LAW OFFICE OF CHAD MORGAN, APC
Chad D. Morgan (SBN 291282)
1950 W. Corporate Way #12279
Anaheim, CA 92801
Tel: (951) 667-1927
chad@chadmorgan.com

Attorney for Amici Curiae, James V. Lacy, United States Justice Foundation, and California Public Policy Foundation

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BRIEF OF AMICI CURIAE

There can be no avoiding the fact that the issue in this case is one that is highly charged politically where the political alliances of those advocating for one position or the other are reasonably predictable. To this end, conventional wisdom suggests that those perceived as liberal probably oppose Huntington Beach's voter identification measure while those perceived as conservative probably support it. Politics aside, the question is whether Huntington Beach's voter identification measure is a lawful exercise of the city's exclusive right to govern the conduct of its municipal elections free from the state's intrusion.

These amici were the plaintiffs in a similarly charged case where the political alliances of those advocating for one side or the other were similarly predicable. In that case, *Lacy v. City and County of San Francisco* (2023) 94 Cal.App.5th 238, these amici challenged a provision of San Francisco's charter that allows noncitizens to vote in that city's school board elections. The *Lacy* parties' positions are the inverse of those here, but that litigation's procedural history is essentially the same.

To this end, *Lacy* was pursued by conservative-leaning plaintiffs who challenged a government action reasonably perceived as liberal. And, similar to the instant case, the *Lacy* trial court granted judgment in the plaintiffs' favor to invalidate city's voter-approved charter provision. (94 Cal.App.5th at p. 244.) The reasons why *Lacy* reversed that judgment and affirmed San Francisco's right to extend the voting

privilege to noncitizens are the same reasons why this Court should reverse the judgment below.

Looking back to the broader political implications, this interplay between *Lacy* and the instant case sets up a scenario where one side cannot have it all: If California liberals want San Francisco to have the right to extend the voting privilege to noncitizens, then they must also concede that Huntington Beach conservatives have the right to require that voters prove their identity when voting in the city's municipal elections.

ARGUMENT

The issue in this case is the interplay between section 705 of the Huntington Beach City Charter, which provides that "[t]he City may verify the eligibility of Electors by voter identification" (see AA000164), and section 10005 of the Elections Code, which prohibits charter cities from requiring voters to present voter identification. There is an obvious conflict between the Huntington Beach charter provision and section 10005. However, when applied to the Huntington Beach charter, section 10005 of the Elections Code violates article XI of the California Constitution. The judgment below should be affirmed.

I. STATE LIMITS ON A CHARTER CITY'S RIGHT TO GOVERN ITS ELECTIONS ARE UNCONSTITUTIONAL.

A charter city's independent authority to govern its own affairs, its "home rule" power, is set forth in article XI, section 5 of the California Constitution. (*California Fed. Savings & Loan Assn. v. City*

of Los Angeles (1991) 54 Cal.3d 1, 12 (*CalFed*).) In *CalFed*, the Supreme Court described article XI, section 5(a) as "a recognition of the affirmative constitutional grant to charter cities of 'all powers appropriate for a municipality to possess' and of the important corollary that 'so far as "municipal affairs" are concerned,' charter cities are 'supreme and beyond the reach of legislative enactment.'" (*Ibid*. quoting *Ex parte Bruan* (1903) 141 Cal. 204, 207 [cleaned up].)

That grant of power under article XI, section 5(a) is a broad grant of authority over all "municipal affairs." (See *Johnson v. Bradley* (1992) 4 Cal.4th 389, 398.) Article XI, section 5(b) is more specific and expressly states four categories of charter city powers. (*Ibid*.)

In *CalFed*, the Supreme Court established a four-factor framework to evaluate when state law might reign supreme over a charter city's local authority. The *CalFed* framework considers (1) whether the activity is a "municipal affair," (2) that conflicts with state law (3) on a matter of "statewide concern"; if so, it (4) evaluates whether the state law is reasonably related to resolution of the concern and narrowly tailored to avoid unnecessary interference in local governance. (*State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 556 (*Vista*), citing *CalFed* at pp. 16-24.)

There has been some debate about whether the *CalFed* framework is limited to the broad grant of authority under article XI, section 5(a), or whether it also extends to the specific powers set forth in article XI, section 5(b). (Cf. *City of Huntington Beach v. Becerra*

(2020) 44 Cal.App.5th 243, 255-256 (*Becerra*).) But few cases have touched on the issue. *CalFed*, for example, considered the validity of a charter city's business license tax in light of a state statute providing that the state income tax "was in lieu of all other taxes and licenses, including charter city business license taxes." (54 Cal.3d at p. 6.) This exercise of article XI, section 5(a) authority was superseded by state law. (*Id.* at p. 25.)

Vista, supra, an oft-cited case that addressed prevailing wage law, is another example that did not address the issue. (54 Cal.4th at p. 552.) *Johnson, supra*, came close to the question but it applied the *CalFed* framework to uphold a Los Angeles measure that provided for the public financing of political campaigns without reaching the article XI, section 5(b) question. (4 Cal.4th at pp. 403-404.) *Cawdrey v. City of Redondo Beach* (1993) 15 Cal.App.4th 1212, 1228 and *City of Redondo Beach v. Padilla* (2020) 46 Cal.App.5th 902, 911-912 did the same when they considered term limits and the timing of municipal elections, respectively.

A. *Jauregui v. City of Palmdale* was incorrectly reasoned and should not be followed.

Jauregui v. City of Palmdale (2014) 226 Cal.App.4th 781 is an exception to these examples. *Jauregui* considered the balancing act between a charter city's plenary authority and the California Voting Rights Act (CVRA) (*id.* at p. 798), which was enacted to implement constitutional protections (*id.* at p. 793). On this foundation, the crux of Palmdale's argument was that its plenary authority over the manner

in which it elected councilmembers meant that it was not subject to the CVRA and therefore, it had license to violate the constitutional rights of underrepresented members of its community. (*Id*. at pp. 788-789.) Indeed, despite the trial court's conclusion that Palmdale did in fact discriminate, the city did not contest that ruling and instead, doubled down on its contention that it was allowed to discriminate. (*Id*. at p. 792.)

This was the foundation for *Jauregui*'s application of the *CalFed* framework to Palmdale's refusal to comply with the CVRA (226 Cal.App.4th at pp. 795-796) and its eventual conclusion that "[t]he plenary authority identified in article XI, section 5, subdivision (b) can be preempted by a statewide law after engaging in the four-step evaluation process specified by our Supreme Court" (*id*. at pp. 803-804, citing *Vista, supra*, 54 Cal.4th at pp. 556; *CalFed, supra*, 54 Cal.3d at pp. 16-17, 24).

The problem with Palmdale's argument in *Jauregui* was not that a state statute superseded local law (after application of the *CalFed* framework). The problem with Palmdale's argument was that its approach to local elections was unconstitutional and violated the equal protection and voting rights of its residents. (See 226 Cal.App.4th at p. 799.) While a charter city's authority over its local elections is exclusive as compared to the Legislature, it is not exclusive as compared to the Constitution. To this end, *Jauregui* should have invalidated the Palmdale approach because it was unconstitutional,

not because it was superseded by state law. For this reason, *Jauregui* was wrongly reasoned and should not be followed.

Yumor-Kaku v. City of Santa Clara (2020) 59 Cal.App.5th 385, 391-392 was another CVRA case similar to *Jauregui*, where an amicus curiae brief "urge[d] the court to part ways with *Jauregui*" (*id*. at p. 429). *Yumor-Kaku* declined the invitation to depart from *Jauregui* (*id*. at p. 431), but its reasoning does not apply here.

The amicus curiae in *Yumor-Kaku* argued that *Jauregui*'s rejection of the city's plenary authority violated equal protection rights as applied to citizens whose votes were diluted by including noncitizen minorities in the counts that led to the CVRA's dilution analysis. (59 Cal.App.5th at p. 429.) To this end, the amicus argument sought to change *Jauregui*'s outcome. These amici do not go so far. They do not urge the Court to deviate from *Jauregui*'s outcome, just its reasoning, such that Palmdale's voting scheme should have been construed as a constitutional problem rather than a *CalFed* preemption issue.

B. Application of *Becerra* to the instant case is contrary to the Supreme Court's *Johnson* opinion.

Except for *Lacy, infra*, *Becerra* (an opinion from this District 4, Division 3 court) is the only other case on point. Like *Jauregui*, *Becerra* concluded that the *CalFed* framework applies equally to municipal affairs under article XI, section 5(a) and article XI, section 5(b). (44 Cal.App.5th at p. 256.) *Becerra* should not control the outcome of this case because its application to the facts presented here depends on

dicta that is contrary to the Supreme Court's opinion in *Johnson, supra*, 4 Cal.4th 389.

Becerra does not apply because the issue in that case was a charter city's regulation of its police force, the first of the four categories set forth in article XI, section 5(b). (44 Cal.App.4th at p. 248.) On this issue, article XI, section 5(b), is read to state: "It shall be competent in all city charters to provide … for (1) the constitution, regulation, and government of the city police force …" Pursuant to *Becerra*, this specific grant of power is merely an example of a "municipal affair", as the term is used in article XI, section 5(a), and was therefore subject to the *CalFed* analysis. (*Becerra* at p. 256.)

But a charter city's authority over local elections is different. On this issue, article XI, section 5(b), is read to state: "It shall be competent in all city charters to provide … for: (1) the … (2) … (3) conduct of city elections **and (4) plenary authority is hereby granted**, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed …" (Emphasis added].) In *Johnson, supra*, 4 Cal.4th at page 398, the Supreme Court construed this final category as "giv[ing] charter cities **exclusive power** to regulate the 'manner' of electing 'municipal officers'." (Emphasis added.)

Under *Johnson*, section 10005 of the Elections Code is unconstitutional as applied to charter cities because the State

Legislature does not have authority to intrude into this exclusive domain of charter cities. To this end, section 705 of the Huntington Beach City Charter must control over any other law, excepting the California or United States Constitutions, irrespective of the *CalFed* framework. On this point, the judgment below should be reversed because the instant case does not present a constitutional problem in the way *Jauregui* did.

This does not run afoul of *Becerra* because *Becerra* did not consider an exercise of a charter city's *plenary authority* to determine the manner in which it elects its officials when it concluded that the *CalFed* framework applies to article XI, section 5(b). Thus, if the general rule under *Becerra* is that the *CalFed* framework applies generally to all home rule questions, then a charter city's plenary authority over "the manner in which, the method by which, the times at which, and the terms for which" it elects its officers is the exception to that general rule.[1]

Johnson also illustrates another flaw in *Jauregui*'s analysis because *Jauregui*, while citing to *Johnson* several times, did not address the conflict between its reasoning and *Johnson*'s assertion that

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[1] Because *Johnson* upheld the Los Angeles measure after applying the *CalFed* framework to article XI, section 5(a) rather than the city's plenary authority under article XI, section 5(b), it could be said that amici's argument depends on *Johnson*'s dicta. Maybe so. But *Becerra*'s application to the instant case also depends on dicta. The *Becerra* dicta might originate from a panel of this Court, but the Supreme Court's dicta in *Johnson* should be deemed more persuasive and should control.

the manner of electing city officials is the exclusive domain of a charter city. Had *Jauregui* done so, it would have seen the irreconcilable conflict between its reasoning and Supreme Court precedent. If *Jauregui* was a trial court, its error might be described as harmless because there was a path by which it could have used sound reasoning to reach the same outcome. But its error was not harmless if its published opinion is used to undermine the rights of charter cities in circumstances where there is no constitutional violation.

II. THE OPINION IN *LACY V. CITY AND COUNTY OF SAN FRANCISCO* COMPELS REVERSAL.

Lacy v. City and County of San Francisco, supra, 94 Cal.App.5th 238 is the most recent case to address this issue. In *Lacy*, these amici challenged a San Francisco's charter provision that extended voting rights to noncitizens. (*Id.* at p. 243.)

Preliminarily, there is some nuance to *Lacy* such that amici's argument in the instant case is not inconsistent with their argument in *Lacy*. The difference is that San Francisco noncitizen voting ordinance applied to *school district* elections rather than municipal elections. (94 Cal.App.5th at p. 238.) As such, the constitutional grant of authority that permitted San Francisco's ordinance was found in article IX, section 16 rather than article XI, section 5. (See *id.* at p. 250.) Assuming in the first instance that San Francisco's ordinance

complied with article II, section 2 (which amici contested),[2] amici's argument in *Lacy* turned on a difference between articles IX and XI such that the ordinance exceeded the San Francisco's authority with respect to school district elections even though it would have been allowed if applied to city elections.

The relevant distinction between article IX, section 16 and article XI, section 5 is that article XI grants "plenary authority" over the manner in which a charter city conducts is municipal elections and article IX merely confers "authority" over the manner in which a charter city conducts its school district elections. (Compare Cal. Const., art. XI, § 5, subd. (b)(4) with *id*. at art. IX, § 16, subd. (a).) In *Lacy*, amici argued that because authority under section IX was not "plenary," it was a lesser grant of authority than that found in article XI. (94 Cal.App.5th at app. 250-251.) The *Lacy* court rejected amici's distinction and construed them as the same. (*Id*. at p. 251.)

In any event, *Lacy* decided the issue without considering the *CalFed* factors. Following *Johnson, supra*, 4 Cal.4th at pages 392-393, *Lacy* broadly construed a charter city's authority to provide for the manner of an election as including authority to determine voter qualifications. (*Lacy, supra*, 94 Cal.App.5th at p. 251.) Applied here, a

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[2]In *Lacy*, amici argued that article II, section 2 of the California Constitution required citizenship as a condition to voting meaning that neither the city nor the Legislature could extend voting rights to noncitizens. (*Lacy, supra*, 94 Cal.App.5th at p. 245.) The court rejected this argument. (*Id*. at p. 249.)

demand for voters to identify themselves is similarly the establishment of a voter qualification: Qualified voters are those who identify themselves. Therefore, section 705 of the Huntington Beach City Charter first squarely within *Johnson*'s broad scope of providing for the "manner" of an election, just like San Francisco's extension of voting rights to noncitizens.

CONCLUSION

When considering the political ramifications of these cases, it may be that liberals might support (and conservatives might oppose) enfranchising noncitizens with the right to vote just as it may also be that conservatives might support (and liberals might oppose) efforts to require that voters be required to show identification.[3] But after *Lacy*, the two are inter-connected. The Huntington Beach charter provision allowing the City to require voter identification must stand for the exact same reasons that San Francisco may allow noncitizens to vote in its elections. Under *Lacy*'s interpretation of article IX, section 16, one cannot stand without the other. For these reasons, the judgment below should be reversed.

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[3] That noncitizens might be enfranchised to vote is not mutually exclusive from the possibility that that voters might be required to identify themselves. It stands to reason that every California resident, citizen or otherwise, has access to identification. There may be arguments against this proposition, but those arguments are absurd.

Dated: September 24, 2025

Respectfully submitted,
LAW OFFICE OF CHAD MORGAN, APC

By: /s/
Chad D. Morgan, Esq.
Attorney for Amici Curiae

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204 of the California Rules of Court, counsel hereby certifies that the word count of the Microsoft Office Word 365 word-processing computer program used to prepare this brief (excluding the cover, tables, and this certificate) is 3,512 words.

Dated: September 24, 2025

Respectfully submitted,
LAW OFFICE OF CHAD MORGAN, APC

By: /s/
Chad D. Morgan, Esq.
Attorney for Amici Curiae

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to this action. My business address is 1950 W. Corporate Way #12279, Anaheim, CA 92801. On September 24, 2025, I served:

1. Brief of Amici Curiae James V. Lacy, United States Justice Foundation, and California Public Policy Foundation in Support of Respondents

On the following parties to this action:

Attorney for Petitioners/Appellants
Michael S. Cohen, Deputy Attorney General
1300 I Street, Ste. 125
P.O. Box 944255
Sacramento, CA 95184
Tel: (916) 210-6090 Fax: (916) 324-8835
Michael.cohen@doj.ca.gov

Attorneys for Respondents
Huntington Beach City Attorney's Office
Michael J. Vigliotta, City Attorney mvigliotta.@surfcity-hb.org
Peggy Huang, Senior Deputy City Attorney peggy.huang@surfcity-hb.org

JW Howard Attorneys
John W. Howard johnh@jwhowardattorneys.com
Scott Street sstreet@jwhowardattorneys.com
Michelle Volk michelle@jwhowardattorneys.com
Peter Shelling pshelling@jwhowardattorneys.com
Mitchell Stein mitchell@jwhowardattorneys.com

America First Legal Foundation
James K. Rogers, Esq. james.rogers@aflegal.org
Nicholas Barry, Esq. nicholas.barry@aflegal.org
Ryan Giannetti, Esq. ryan.giannetti@aflegal.org

I served the parties listed above served electronically via True Filing and by sending email to their email addresses listed above from my electronic service address of chad@chadmorgan.com.

Hon. Nico Dourbetas, Trial Court Judge
Orange County Superior Court, Central Justice Center, Dept. C13
700 Civic Center Drive West, Santa Ana, CA 92701

I served the party listed above via email sent from chad@chadmorgan.com to eServiceDCAbriefs@occourts.com in accordance with Local Rule of 510 of the Orange County Superior Court (https://www.occourts.org/system/files/20div5.pdf).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 24, 2025 at Long Beach, California.

CHAD D. MORGAN