Superior Court of California
County of Los Angeles

CITY OF REDONDO BEACH, *et al.*, Petitioners, vs. ROB BONTA, *et al.*, Respondents.	Case No. 22STCP01143 **RULING ON VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE** Dept. 86 (Hon. Curtis A. Kin)

Petitioners City of Redondo Beach, City of Carson, City of Torrance, City of Whittier, and City of Del Mar seek a writ of mandate invalidating Senate Bill 9 ("SB 9") and directing respondents Rob Bonta, in his official capacity as California Attorney General, and the State of California to cease implementation and enforcement of SB 9. Petitioners contend that SB 9 violates the California Constitution because it is neither reasonably related to its stated concern of ensuring access to affordable housing nor narrowly tailored to avoid interference with local government.

As discussed below, this is not a case about whether our State Legislature may enact legislation to ensure access to affordable housing or whether it may act to address the different concern of a statewide shortage in housing more generally. The courts of our State have held both to be valid statewide concerns for which our Legislature possesses authority to address. However, because the provisions of SB 9 are not reasonably related and sufficiently narrowly tailored to the explicit stated purpose of that legislation—namely, to ensure access to affordable housing—SB 9 cannot stand, and the writ petition must be GRANTED.

I. Factual Background

In 2021, the Legislature adopted SB 9, which added sections 65852.21 and 66411.7 to the Government Code and amended Government Code § 66452.6.[1] (RJN Ex. A at 1.) The adoption of SB 9 "require[s] a proposed housing development

[1] Statutory references are to the Government Code, unless otherwise stated.

containing no more than 2 residential units within a single-family residential zone to be considered ministerially, without discretionary review or hearing, if the proposed housing development meets certain requirements...." (RJN Ex. A at 1: Gov. Code § 65852.21(a).) The adoption of SB 9 also "require[s] a local agency to ministerially approve a parcel map for an urban lot split that meets certain requirements...." (RJN Ex. A at 2; Gov. Code § 66411.7(b)(1).) Put another way, "Senate Bill 9 requires cities and counties to permit ministerially either or both of the following, as long as they meet specified conditions: [¶] A housing development of no more than two units (a duplex). [¶] The subdivision of a parcel into two approximately equal parcels (urban lot split)." (RJN Ex. C at 29.) The author of SB 9, Sen. Toni Atkins, explained the bill's effect: "Senate Bill 9 promotes small-scale neighborhood residential development by streamlining the process for a homeowner to create a duplex or subdivide an existing lot." (RJN Ex. B at 17, Ex. C at 32, Ex. D at 43.)

With regard to the Legislature's purpose in enacting the legislation, section 4 of SB 9 states:

> The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Sections 1 and 2 of this act adding Sections 65852.21 and 66411.7 to the Government Code and Section 3 of this act amending Section 66452.6 of the Government Code apply to all cities, including charter cities.

(RJN Ex. A at 11; *see also* RJN Ex. B at 18 ["California's high—and rising—land costs necessitate dense housing construction for a project to be financially viable and for the housing to ultimately be affordable to lower-income households. Yet, recent trends in California show that new housing has not commensurately increased in density"].)

II. Procedural History

On March 29, 2022, petitioners filed the original verified petition for writ of mandate. On February 7, 2023, petitioners filed the operative verified First Amended Petition ("FAP"). On March 6, 2023, respondents filed an Answer.

On July 12, 2022, at a trial setting conference, the Court (Hon. Mary H. Strobel) set the petition for writ of mandate for hearing on April 27, 2023. The Court stayed the second cause of action for declaratory/injunctive relief pending resolution of the first cause of action for writ of mandamus by the Court.

Pursuant to stipulations, the hearing on the petition for writ of mandate was continued to June 13, 2023, and then to September 5, 2023.

On February 27, 2023, petitioners filed an opening brief. On April 25, 2023, respondents filed an opposition. On June 27, 2023, petitioners filed a reply. On May 5, 2023, City of Cerritos and League of California Cities filed separate amicus curiae briefs. On June 2, 2023, respondents filed a response.

On July 5, 2023, respondents filed an ex parte application to strike the evidence that petitioners submitted in support of the reply and related argument. On July 7, 2023, petitioners filed an opposition to the ex parte application. On July 10, 2023, the Court continued the hearing on the ex parte application to be heard at the same time as the petition for writ of mandate.

On September 5, 2023, the Court heard the writ petition and the ex parte application. The Court took both matters under submission.

On December 7, 2023, by way of minute order, the Court granted the ex parte application in part. The Court declined to strike the evidence that petitioners submitted in support of the reply. Instead, the Court allowed respondents to file a sur-reply and responsive evidence to address the new reply evidence. The Court also ordered supplemental briefing from the parties limited to the issues of (1) whether the statement in section 4 of SB 9 that "ensuring access to affordable housing" is the only statewide concern the Court shall consider when evaluating the constitutionality of SB 9 and (2) the extent to which the Court may or should look to other statutory uses of "affordable housing" and similar terms by the Legislature in determining what is meant by section 4's reference to the statewide concern of "affordable housing."

On February 7, 2024, respondents filed their sur-reply and responsive evidence. On February 19, 2024, petitioners filed their responsive sur-reply. On February 29, 2024, the Court conducted the continued hearing on the writ petition and thereafter took the matter under submission.

III. Standard of Review

The instant petition for writ of mandate is brought pursuant to CCP § 1085. Traditional mandamus is used to challenge the constitutionality or validity of legislative matters. (*City of Redondo Beach v. Padilla* (2020) 46 Cal.App.5th 902, 909.)

The petition raises pure questions of law concerning the validity of SB 9. "'On questions of law arising in mandate proceedings, [the court] exercise[s] independent judgment.'.... Interpretation of a statute or regulation is a question of law subject to independent review." (*Christensen v. Lightbourne* (2017) 15 Cal.App.5th 1239, 1251.)

The petitioner bears the burden of proof in a petition for writ of mandate proceeding brought under CCP § 1085. (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1153.) "To support a determination of

facial unconstitutionality, voiding the statute as a whole, petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute .... Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084, emphasis in original, internal quotations omitted.)

IV. Request for Judicial Notice

Petitioners' request to take judicial notice of Exhibits A-E, legislative history materials with respect to SB 9, is GRANTED. (*People ex rel. Foundation for Taxpayer & Consumer Rights v. Duque* (2003) 105 Cal.App.4th 259, 264.) Petitioners' request to take judicial notice of Exhibits F-J, excerpts from petitioners' housing elements, is GRANTED, pursuant to Evidence Code § 452(c) and (h). Petitioners' request to take judicial notice of Exhibits K-Q, sections of the Municipal Code for petitioners, is GRANTED, pursuant to Evidence Code § 452(b).

Amicus curiae City of Cerritos' request to take judicial notice of Exhibits 1-3, documents evidencing regulatory acts of the City of Cerritos and the State of California, is GRANTED, pursuant to Evidence Code § 452(b). City of Cerritos' request to take judicial notice of Exhibit 4, Executive Order N-3-23 from Governor Gavin Newsom, is GRANTED, pursuant to Evidence Code § 452(c).

V. Analysis

The principal question presented in the instant petition is whether SB 9 violates the authority granted to charter cities under the California Constitution to govern and manage "municipal affairs." Municipal affairs "refer to the internal business affairs of a municipality." (*Fragley v. Phelan* (1899) 126 Cal. 383, 387.)

A. Standard to Determine State's Ability to Legislate in Municipal Affairs of Charter Cities

It is undisputed that petitioners are charter cities. (FAP ¶ 1: Opp. at 1:10.) Known as the "home rule" doctrine, article XI, section 5(a) of our Constitution provides that charter cities are authorized to legislate with respect to municipal affairs, stating: "It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws." (Cal. Const., art. XI, § 5; *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 5 [*Cal Fed Savings*].) Thus, with respect to the municipal affairs of charter cities, the Legislature is prohibited from "interfer[ing] in the government and management of the municipality." (*Ex parte Braun* (1903) 141 Cal. 204, 209.)

However, the power of a charter city to govern its municipal affairs must give way when the state enacts a statute that is "reasonably tailored to the resolution of a subject of statewide concern." (*Cal Fed Savings,* 54 Cal.3d at 7 ["In the event of a true conflict between a state statute reasonably tailored to the resolution of a subject of statewide concern and a charter city [ ] measure, the latter ceases to be a 'municipal affair' to the extent of the conflict and must yield"].) In deciding whether the state can enact a law with respect to a municipal affair, our Supreme Court articulated a four-step inquiry in *Cal Fed Savings*:

> First, a court must determine whether the city ordinance at issue regulates an activity that can be characterized as a "municipal affair." Second, the court "must satisfy itself that the case presents an actual conflict between [local and state law]." Third, the court must decide whether the state law addresses a matter of "statewide concern." Finally, the court must determine whether the law is "reasonably related to ... resolution" of that concern and "narrowly tailored" to avoid unnecessary interference in local governance. "If ... the court is persuaded that the subject of the state statute is one of statewide concern and that the statute is reasonably related to its resolution [and not unduly broad in its sweep], then the conflicting charter city measure ceases to be a 'municipal affair' pro tanto and the Legislature is not prohibited by article XI, section 5(a), from addressing the statewide dimension by its own tailored enactments."

(*State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 556, citing *Cal Fed Savings,* 54 Cal.3d at 16-17, 24, internal citations omitted.)

Doubts as to whether a concern is "statewide" or a "strictly municipal affair" must be resolved in favor of the authority of the state. (*Baggett v. Gates* (1982) 32 Cal.3d 128, 140.)

B. First and Second Steps of Inquiry

With respect to the determination of whether SB 9 supersedes charter cities' authority over land use and zoning, the parties agree with respect to the first and second steps of the four-step inquiry. First, municipal land use and zoning regulations are municipal affairs. (*Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 511.) Second, SB 9 conflicts with local authority to regulate land use and zoning. SB 9 enacted state statutes requiring cities to approve duplexes and urban lot splits "ministerially without discretionary review" and overriding any local designation of single-family residential zones or local statutes regulating lot sizes. (*Compare* Gov. Code § 65852.21(a) *with* RJN Ex. K at 83 [Redondo Beach], Ex. L at 86 [Carson], Ex. M at 92 [Del Mar], Ex. N at 93 [Torrance], Ex. O at 94

[Whittier]; *compare* Gov. Code § 66411.7(b)(1) *with* RJN Ex. P at 95 [Redondo Beach] and Ex. Q at 97 [Carson].)

C. Third Step of Inquiry—Applicable Statewide Concern

With respect to the third step, the parties differ with respect to how to define the statewide concern at issue. Petitioners define the applicable statewide concern as ensuring affordable housing. Respondents contend that the statewide concern which SB 9 addresses is the shortage of housing as a whole in California.

The Legislature and courts have deemed both lack of affordable housing and shortage of housing in general to be matters of statewide concern. (*AIDS Healthcare Foundation v. Bonta,* No. B321875, 2024 WL 1336414 at *4 (Mar. 28, 2024) [shortage of housing at all income levels]; *Ruegg & Ellsworth v. City of Berkeley* (2021) 63 Cal.App.5th 277, 312 [lack of affordable housing]; *California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 848-49 (*Cal Renters*) [shortfall in housing].) Nevertheless, defining the particular statewide concern addressed by SB 9 is critical to determine whether SB 9 is reasonably related to the resolution of *that* concern and narrowly tailored to avoid unnecessary interference in local governance, as required by the fourth step of the *Cal Fed Savings* inquiry.

Thus, a critical question presented in the instant writ petition is whether the explicitly stated intent found in the text of SB 9 (*i.e.*, providing affordable housing) should be deemed the relevant statewide concern or whether the Court may look elsewhere to identify a different statewide concern (*i.e.*, increasing housing supply) purportedly meant to be addressed by SB 9, notwithstanding what the Legislature said. Put another way, can the statewide concern unambiguously expressed in section 4 of SB 9 be reformulated when that concern fails the fourth step of the *Cal Fed Savings* inquiry, as discussed *infra*? While this Court and others recognize the importance of increasing this State's housing supply as a whole (*see AIDS Healthcare Foundation*, 2024 WL 1336414 at *4; *Cal Renters*, 68 Cal.App.5th at 848-49),[2] the Court finds that the answer is no.

[2] The Court recognizes the provisions of SB 9 might support a finding that SB 9 addresses the shortfall in housing generally. SB 9 increases approval of the development of duplexes and the subdivision of lots within single-family residential zones. Rather than requiring a hearing for a proposed duplex development or urban lot split, where local agencies may exercise discretion to deny the duplex or lot split, SB 9 requires ministerial approval, without discretionary review or a hearing. (§§ 65852.21(a), 66411.7(b)(1).) Further, committee reports indicate the Legislature was aware that local governments' response to community opposition to new housing and local zoning laws limiting development on larger lots to single-family homes was contributing to a lack of housing in California. (RJN Ex. C at 28-29, Ex. D at 44.). SB 9 takes away the ability of local governments to impede the state's goal of increasing

In so concluding, the Court cannot ignore the declaration of intent in section 4 of SB 9. Sections 65852.21, 66411.7, and 66452.6, which are the code sections SB 9 either added or amended, contain no finding of statewide concern. Though uncodified, section 4 of SB 9 is the only statement of the Legislature's intent in enacting the legislation. "An uncodified section is part of the statutory law." (*Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 925, citing *Los Angeles County v. Payne* (1937) 8 Cal.2d 563, 574 ["'The codes of this state ... have no higher standing or sanctity than any other statute regularly passed by the [L]egislature']") Accordingly, the Court applies the rules of statutory construction.

The Court begins with the language of SB 9 to ascertain the legislative intent and purpose of the legislation. (*Yes in My Back Yard v. City of Culver City* (2023) 96 Cal.App.5th 1103, 1113.) Section 4 states:

> The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Sections 1 and 2 of this act adding Sections 65852.21 and 66411.7 to the Government Code and Section 3 of this act amending Section 66452.6 of the Government Code apply to all cities, including charter cities.

(RJN Ex. A at 11.) "The statutory language itself is the most reliable indicator, so we start with the statute's words, assigning them their usual and ordinary meanings, and construing them in context. If the words themselves are not ambiguous, we presume the Legislature meant what it said, and the statute's plain meaning governs. On the other hand, if the language allows more than one reasonable construction, we may look to such aids as the legislative history of the measure and maxims of statutory construction. In cases of uncertain meaning, we may also consider the consequences of a particular interpretation, including its impact on public policy." (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1190.)

Here, the Legislature's intent in section 4 is unambiguous. The Legislature plainly declared that the statewide concern addressed by SB 9 is "ensuring access to affordable housing." The Court presumes that the Legislature meant to address affordable housing because that is what the Legislature said, not some other statewide concern.

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housing production to address the shortage in housing. But, the Court declines to decide whether SB 9's provisions permissibly address some other concern (housing supply) not identified by the Legislature in enacting SB 9.

In their supplemental brief, respondents cite *Anderson v. City of San Jose* (2019) 42 Cal.App.5th 683 for the assertion that the Court is not limited to the statewide concerns identified in a law when determining whether the four-step inquiry is satisfied. In other words, while the Legislature declared in SB 9 that "affordable housing" is a matter of statewide concern, respondents contend that the identification of affordable housing in section 4 of SB 9 does not preclude a shortfall in housing from also being a statewide concern for purposes of SB 9.

Courts exercise independent judgment in interpreting the state statute, determining the subject matter of the statute, identifying whether the statute addresses a matter of statewide concern, and whether the statute can be constitutionally applied to charter cities. (*Anderson v. City of San Jose* (2019) 42 Cal.App.5th 683, 704.) Phrased another way, "the Legislature's declared intent to preempt all local law is important but not determinative, i.e., courts may sometimes conclude that a matter is a municipal concern despite a legislative declaration preempting home rule." (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 783.)

These principles, however, do not permit the Court to ignore the plain and unambiguous language of SB 9 here. While it is true that the courts may conclude that the Legislature cannot legislate a matter of municipal concern simply by declaring such matter instead to be a statewide concern, it does not necessarily follow that this Court can reformulate the Legislature's explicit declaration of statewide concern in contravention of its plain language in section 4 of SB 9.

The Court thus finds that, for purposes of determining whether SB 9 runs afoul of the "home rule" doctrine, this Court must determine whether the provisions of SB 9 permissibly address the statewide concern of ensuring access to affordable housing.

D. Fourth Step of Inquiry—Whether SB 9 is Reasonably Related to Ensuring Access to Affordable Housing and Narrowly Tailored to Avoid Unnecessary Interference in Local Governance

Petitioners contend that SB 9 is neither reasonably related to ensuring access to affordable housing nor narrowly tailored to avoid unnecessary interference in local governance.

Before resolving the question concerning the breadth of SB 9, the Court examines the meaning of the word "affordable" in section 4. According to petitioners, "affordable" refers to below market-rate housing. According to respondents, "affordable" can refer to the promotion of housing affordability at all income levels in the short term and subsequent promotion of affordability at lower income levels by increasing overall housing availability. (*See AIDS Healthcare Foundation*, 2024 WL 1336414 at *5 [recognizing the "direct link between the affordability of housing and the supply of housing"].)

To interpret "affordable," the Court examines the use of "affordable" in the context of SB 9. (*Yu v. Superior Court* (2020) 56 Cal.App.5th 636, 644 [words of statute given ordinary and usual meaning and viewed in statutory context].) When the Legislature included the word "affordable" in SB 9, it was in the context of below market-rate housing. In the four times "affordable" is used in SB 9, it is to prohibit proposed housing developments or urban lot splits from requiring the demolition or alteration of housing where any recorded covenant, ordinance, or law "restricts rents to levels affordable to persons and families of moderate, low, or very low income." (RJN Ex. A at 1-3, 6; §§ 65852.21(a)(3)(A), 66411.7(a)(3)(D)(i).) The use of "affordable" in SB 9 alone is sufficient to establish that "affordable" refers to below market-rate housing.

The legislative history of SB 9 also supports the interpretation of "affordable" to mean below market-rate housing. (RJN Ex. A at 18 ["California's high — and rising — land costs necessitate dense housing construction for a project to be financially viable and for the housing to ultimately be affordable to lower-income households."], 44 ["A major cause of our housing crisis is the mismatch between the supply and demand for housing. According to the Roadmap Home 2030 (Housing CA and California Housing Partnership Corporation, 2021), to address this mismatch, California needs approximately 2.6 million units of housing, including 1.2 million units affordable to lower income households."], 55 ["The families who own these properties [e.g., [Accessory Dwelling Units] could provide affordable rental opportunities for other working families who may be struggling to find a rental home in their price range, or who may be looking for their own path to home ownership"].)

Other housing statutes also refer to affordable housing in terms of income levels. (§§ 65580 [declaration from Legislature that "[t]he provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government."]; 65589.5(o)(2)(D)(i) [defining "affordable housing project" as housing development where all the units within development are dedicated to lower income households, as defined by Health and Safety Code § 50079.5]; 65913.4 [requiring housing developer seeking to use ministerial process in applying for approval of development to record covenant ensuring "affordable housing costs or rent to persons and families of lower or moderate income" for specified periods of time].)

Case law has also distinguished between affordable housing and housing in general. (*Ruegg & Ellsworth,* 63 Cal.App.5th at 312 ["[T]the Legislature has repeatedly emphasized in express findings and declarations that the lack of affordable housing in the state is a crisis and that legislation including section 65913.4 and the HAA [Housing Accountability Act, Government Code § 65589.5] is intended to address that crisis by encouraging and facilitating the construction of housing in general and affordable housing in particular"].)

For the foregoing reasons, the Court finds that "affordable housing" in SB 9 refers to below market-rate housing and not simply housing as a whole that may be made more affordable for all. The Court next turns to whether SB 9 is reasonably related to ensuring access to below market-rate housing and narrowly tailored to avoid unnecessary interference in local governance.

Respondents present no evidence to support the assertion that the upzoning permitted by SB 9 would result in any increase in the supply of below market-rate housing. The declaration of Melinda Coy, submitted by respondents, provides support for the assertion that there is a shortfall in housing, including the extent and reasons for the shortfall. (Coy Decl. ¶¶ 8, 10, 26-44.) However, Coy says nothing about how SB 9 would effectuate a reduction in housing prices, let alone ensuring increases in available below market-rate housing. Coy avers that, according to the Legislative Analyst's Office, 190,000 to 230,000 net new units housing per year are needed to keep housing prices from escalating. (Coy Decl. ¶ 8.) Coy's declaration supports a finding that, at best, an increase in housing development may slow or stop the rise in housing prices. But Coy never states that the removal of barriers to housing development through enactment of SB 9 would lead to housing that is below market rate and affordable. Indeed, petitioners present an article indicating that relaxing single-family zoning—the result of SB 9—may lead to gentrification and the development of housing for high-income households, thereby resulting in little improvement to access for lower- and moderate-income households.[3] (Storper Decl. ¶ 6 & Ex. A at 17-20 ["There is also virtually no evidence that substantially lower costs trickle down to the lower two-thirds of households"].)

With respect to the declared statewide concern of ensuring access to affordable housing, the broad requirement of ministerial approval of duplexes and urban lot splits does not contain any connection to affordable housing. Under SB 9, charter cities would be required to approve additional housing development in single-family-zoned land, but any additional housing resulting therefrom would not necessarily be below market rate or accessible to people with lower financial means, especially in economically prosperous cities.

The lack of connection to affordable housing is evident when comparing SB 9 to Senate Bill No. 35 ("SB 35"), enacted during the 2017-18 legislative session, and Senate Bill No. 423 ("SB 423"), enacted in 2023.

SB 35 codified section 65913.4, which "requires a 'ministerial approval process' for certain affordable housing projects when a locality has failed to provide its share

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[3] In response, respondents counter with an article critiquing petitioners' article. (Manville Decl. ¶ 4 & Ex. A.) The Court need not resolve the competing views in these articles. Even assuming SB 9 increases housing supply generally, to be constitutionally permissible, SB 9 must be reasonably related to ensuring access to below market-rate housing. As discussed above, it is not.

of 'regional housing needs, by income category.'" (*Ruegg & Ellsworth,* 63 Cal.App.5th at 291, citing § 65913.4(a)(4)(A).) The Legislature declared in SB 35 that "ensuring access to affordable housing is a matter of statewide concern, and not a municipal affair," just as it did in section 4 of SB 9. (*Compare* SB 35, § 4 *with* RJN Ex. A at 11.) The Court of Appeal upheld SB 35, finding that there was a "direct, substantial connection" between section 65913.4 and "the Legislature's purpose of expediting and increasing approvals of affordable housing developments" and that the scope of section 65913.4 is narrowed by the statute's many requirements, including the inclusion of specified percentages of below market-rate housing that is affordable to households with incomes as defined in the statute. (*Ruegg,* 63 Cal.App.5th at 314, fn. 23.)

In SB 423, the Legislature declared that "it has provided reforms and incentives to facilitate and expedite the construction of affordable housing." (SB 423, § 1(t).) The Legislature also declared that "ensuring access to affordable housing is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution," just as it did in section 4 of SB 9. (*Compare* SB 423, § 3 *with* RJN Ex. A at 11.) Through the enactment of SB 423, however, the Legislature requires developers who seek to avail themselves of a streamlined, ministerial approval process for their development to record a covenant requiring any lower or moderate-income housing units to remain available at affordable prices for specified periods of time. (SB 423, § 2, citing Gov. Code § 65913.4(a)(3)(A).) By contrast, SB 9 contains no similar provision to require, promote, or incentivize dwelling units within single-family residential zones or on subdivided urban lots to be affordable or designated as affordable. SB 423 also amended SB 9 to allow four units to be built on single-family parcels in California (SB 423, § 1(t)), but it did not otherwise require any development resulting from ministerial approval of a subdivision to be available at below market-rate levels.

Compared to SB 35 and SB 423, SB 9 has, at best, an attenuated connection to affordable housing. In order to justify SB 9's interference with the municipal concerns of land use and zoning regulations, the Legislature cannot rely on a potential, eventual decrease in prices resulting from increased housing supply to demonstrate that SB 9 would increase the supply of affordable (*i.e.*, below market-rate) housing.

Accordingly, the Court finds that SB 9 is neither reasonably related to ensuring access to affordable housing nor narrowly tailored to avoid unnecessary interference in local governance. SB 9 is therefore unconstitutional as violative of the "home rule" doctrine.

E. Declaratory Relief

In their second cause of action, petitioners request a declaration that "SB 9 is unconstitutional, and that Respondent be enjoined from implementing or enforcing SB 9." (Prayer for Relief ¶ 2.) On July 12, 2022, the Court stayed the second cause of action for declaratory/injunctive relief. It appears that the ruling on the first cause of action for writ of mandate resolves the second cause of action.

If, however, petitioners believe their request for declaratory/injunctive relief is a stand-alone cause action they are entitled to and wish to pursue, then the Court's stay as to that cause of action will be lifted and the matter assigned will be assigned to an unlimited jurisdiction independent calendar court. Pursuant to the local rules, which designate that Department 82 is a specialized Writs and Receivers department and not a general civil department, only a cause of action for writ of mandate is properly assigned to this department. (LASC Local Rules 2.8(d) and 2.9.) Local Rules 2.8(d) and 2.9 do not include a claim for declaratory relief as a special proceeding assigned to the writs departments.

Within ten (10) days hereof, petitioner shall either (1) submit a request for dismissal of their second cause of action and proposed judgment in accordance herewith or (2) file a notice of their intent to pursue their second cause of action so as to inform this department that it should refer the instant matter to Department 1 for reassignment to an unlimited jurisdiction independent calendar court.

VI. Conclusion

For the foregoing reasons, the petition for a writ of mandate is GRANTED.

Date: April 22, 2024

HON. CURTIS A. KIN

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