No. 25-6173

In the United States Court of Appeals
FOR THE NINTH CIRCUIT

CALIFORNIA POLICY CENTER, INC.,

Plaintiff-Appellant,

v.

LILIA GARCIA-BROWER, *in her official capacity as Labor Commissioner*,

Defendant-Appellee.

On Appeal from the United States District Court
for the Central District of California
No. 8:25-cv-00271-MWC-SK
Honorable Michelle Williams Court

Appellant's Opening Brief

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Corporate Disclosure Statement

Pursuant to Federal Rule of Appellate Procedure 26.1 and Ninth Circuit Rule 26.1-1, Appellant California Policy Center, Inc. states that it has no parent corporations, and no publicly held corporation owns 10% or more of its stock.

Table of Contents

Table of Authorities

Cases

Constitutional Provisions

Statutes

Federal

Introduction

Plaintiff California Policy Center (CPC) brought this First Amendment challenge to the California Worker Freedom from Employer Intimidation Act, Cal. Lab. Code § 1137. The Act unconstitutionally prohibits employers from requiring employee attendance at meetings involving political or religious speech.

But the merits of this case are not yet before this Court. This appeal concerns two procedural rulings. First, the district court dismissed CPC's complaint for lack of standing, erroneously holding that CPC is an exempt "political organization or party"—a term the Act does not define. But the court ignored California statutory definitions of political organization elsewhere and violated settled rules of construction.

Second, after CPC declined to amend the complaint because it could not truthfully do so, the district court dismissed the case for failure to follow a court order—even though it *never ordered* CPC to amend—rather than dismissing under Rule 12(b)(1). Under this Court's precedent, that is an abuse of discretion.

This Court should reverse the district court's Rule 41(b) and Rule 12(b)(1) orders and remand for further proceedings on the merits.

Jurisdictional Statement

This case raises claims under the First and Fourteenth Amendments of the U.S. Constitution and 42 U.S.C. § 1983 seeking declaratory and injunctive relief. The district court had subject-matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3).

On June 24, 2025, the district court entered an order for lack of standing under Fed. R. Civ. P. 12(b)(1), granting leave to amend, but it did not require Plaintiff to amend; instead, it set a deadline for "any amended complaint." When Plaintiff did not file an amended complaint, on July 31, 2025, the district court dismissed the case with prejudice under Fed. R. Civ. P. 41(b) for lack of prosecution and failure to follow the court's order. That order was a final order that disposed of all parties' claims. The next day, Plaintiff filed a motion to reconsider pursuant to Fed. R. Civ. P. 60(b) and on September 9, 2025, the district court denied that motion.

Plaintiff filed its timely notice of appeal on September 29, 2025. *See* Fed. R. App. P. 4(a)(4). This Court has jurisdiction under 28 U.S.C. § 1291.

Statement of Issues Presented for Review

1. The district court dismissed CPC's complaint for lack of standing and granted leave to amend, but it never ordered CPC to amend or warned that failure to amend would trigger dismissal under Rule 41(b). CPC chose to stand on its complaint. Did the district court abuse its discretion by later dismissing the case under Rule 41(b) for failure to follow a court order?

2. CPC's decision not to amend caused Defendant no prejudice, and the district court could have entered final judgment on its standing ruling instead. Public policy favors resolution of First Amendment challenges on the merits. Did the district court abuse its discretion by imposing the harsh sanction of dismissal under Rule 41(b) for lack of prosecution?

3. CPC is a nonpartisan § 501(c)(3) organization legally barred from electioneering and from operating as a "political organization" under federal and California law. The Act exempts "political organization or party" but does not define that term. Did the district court err in holding that CPC is an exempt "political organization" under the Act and therefore lacks standing to challenge it?

Statutory and Regulatory Authorities

The relevant federal and California statutes and rules appear in an Addendum affixed to the end of this brief.

Statement of the Case

A. California restricts employer political and religious speech.

California Senate Bill 399, titled the "California Worker Freedom from Employer Intimidation Act" ("the Act"), was signed into law by the Governor on September 27, 2024, codified as Cal. Lab. Code § 1137, and became effective January 1, 2025. ER-083. The Act prohibits employers from "subject[ing], or threaten[ing] to subject, an employee to discharge, discrimination, retaliation, or any other adverse action" for refusing to attend meetings or receive communications from the employer where the purpose is to "communicate the employer's opinion about religious or political matters." Cal. Lab. Code § 1137(c). The Act defines "political matters" broadly to include speech "relating to elections for political office, political parties, legislation, regulation, and the decision to join or support any political party or political or labor organization." Cal. Lab. Code § 1137(b)(3). The Act defines "religious matters" as "matters relating to religious affiliation and practice and the decision to join or

support any religious organization or association." Cal. Lab. Code § 1137(b)(4).

The Act provides several exceptions. It allows employers to communicate to employees information necessary to perform their job duties. Cal. Lab. Code § 1137(g)(2). The Act also exempts a "political organization or party" from the ban on mandatory meetings or communications about political matters where the purpose is to communicate the employer's political tenets or purposes. Cal. Lab. Code § 1137(h)(2). Religious corporations, entities, associations, educational institutions, or societies are exempt from the Act's ban on communications with respect to speech on religious matters to employees who perform work connected with the activities undertaken by that organization. Cal. Lab. Code § 1137(h)(1).

The Act exempts an employer from communicating information required by law to its employees, Cal. Lab. Code § 1137(g)(1), and from "requiring employees to undergo training to comply with the employer's legal obligations," Cal. Lab. Code § 1137(h)(5). The Act allows a "nonprofit, tax-exempt training program requiring a student or instructor to attend classroom instruction, complete fieldwork, or

perform community service hours on political or religious matters as it relates to the mission of the training program or sponsor," Cal. Lab. Code § 1137(h)(4). Likewise, an "educational institution [may] requir[e] a student or instructor to attend lectures on political or religious matters that are part of the regular coursework," Cal. Lab. Code § 1137(h)(3), and an "institution of higher education" may communicate with its employees as part of coursework, symposia, or academic programs, Cal. Lab. Code § 1137(g)(3). The Act also allows a public employer to communicate to its employees "any information related to a policy of the public entity or any law or regulation that the public entity is responsible for administering," Cal. Lab. Code § 1137(g)(4), and to hold "a new employee orientation," Cal. Lab. Code § 1137(h)(6).

The Act provides for enforcement by aggrieved employees, or their exclusive representatives, and by the Labor Commissioner. Cal. Lab. Code § 1137(e), (f). Section 1137(f)(1) of the Act allows "any employee who has suffered a violation" of the Act to bring a "civil action in a court of competent jurisdiction for damages caused by that adverse action, including punitive damages." And "an employee or their exclusive representative may petition the superior court in any county wherein

the violation in question is alleged to have occurred, or wherein the person resides or transacts business, for appropriate temporary or preliminary injunctive relief." Section 1137(f)(2). Even if an aggrieved employee does not bring an action, the Labor Commissioner is empowered to enforce the Act, "including investigating an alleged violation, and ordering appropriate temporary relief to mitigate a violation or maintain the status quo pending the completion of a full investigation or hearing . . . , including issuing a citation against an employer who violates this section and filing a civil action." Cal. Lab. Code § 1137(e). The Act provides that "[i]n addition to any other remedy, an employer who violates this section shall be subject to a civil penalty of five hundred dollars ($500) per employee for each violation." Cal. Lab. Code § 1137(d).

B. The Act harms Plaintiff California Policy Center.

Plaintiff California Policy Center, Inc. (CPC) is a 501(c)(3) nonprofit organization with a mission to secure a more prosperous future for all Californians. ER-081. CPC engages in research and communication related to public policy, primarily focused on the areas of education reform, workplace freedom, government transparency, and

constitutional governance. ER-081. It publishes policy research and trains local elected officials on these topics. ER-086. As a nonprofit organization classified under 26 U.S.C. § 501(c)(3), CPC is categorically forbidden from electioneering and sharply limited from "carrying on propaganda, or otherwise attempting, to influence legislation." 26 U.S.C. § 501(c)(3).

Until the Act went into effect, CPC held mandatory staff meetings every week, except holidays, for all staff, with no exceptions made for job title or position, and it held all-staff retreats, and all staff, regardless of position, were required to attend. ER-086. At the mandatory meetings and mandatory retreats, CPC has discussed, among other things, topics such as government financing at the state and local level, legislation that has been proposed or enacted at the state and local level, activities of labor unions in California to restrict workers' rights, the rights of public-sector workers to opt out of paying union dues, political choices involving infrastructure for water and power, compensation and pensions paid to public employees, legislation relating to free speech, policy failures by California political leadership, and policy solutions that would lead to individual liberty and prosperity

in California. ER-086–87. These meetings often address "political matters" as defined by the Act: "legislation, regulation, and the decision to join or support" a public-sector labor union. Cal. Lab. Code § 1137(b)(3). ER-087.

But for the Act's prohibitions and the risk of enforcement against it, CPC would continue holding mandatory meetings and retreats at which it discusses "political matters" as defined by the Act, including legislation and regulations. The Act chills CPC's political speech by imposing the threat of legal penalties on speech which it has regularly engaged in and intends to continue. ER-087–88.

C. Procedural History

On February 11, 2025, CPC filed its complaint against Defendant, Lilia Garcia-Brower, in her official capacity as Labor Commissioner in the Division of Labor Standards Enforcement of the California Department of Industrial Relations, seeking to enjoin enforcement of the Act. ER-082. CPC filed a motion for preliminary injunction, which was fully briefed, and the district court heard oral argument on April 18, 2025. ER-079. At the hearing, the district court indicated that there may be standing and ripeness issues—although Defendant had not

raised them—and ordered the parties to exchange discovery concerning standing and ripeness and file supplemental briefs. ER-079.

On May 6, 2025, the district court issued an order for CPC to show cause why the case should not be dismissed for lack of prosecution because Defendant had not answered or otherwise pleaded. ER-078. The parties filed a joint stipulation on May 7, 2025, explaining that the parties had agreed to allow Defendant to file a responsive pleading after the Court ruled on CPC's motion for preliminary injunction but forgot to file the stipulation, and requesting that the court grant Defendant an extension to file a responsive pleading 30 days after the court ruled on the motion for preliminary injunction. ER-071–73. The district court denied that request, ER-069–70, and the parties agreed to a briefing schedule for Defendant's motion to dismiss, ER-062–64.

The parties briefed the motion to dismiss, and on June 24, 2025, the district court granted the motion with leave to amend and vacated CPC's motion for preliminary injunction.[1] ER-008–19. The district court held that CPC lacked standing because it is exempt from the Act as a

[1] Defendant moved to dismiss under Rule 12(b)(6), ER-046, but the district court—without noting the mislabeling—applied Rule 12(b)(1), the correct vehicle for challenging Article III standing, ER-012.

"political organization or party"—a term undefined by the Act. ER-09, 014–15. The district court found that the definition of "political" meant "[o]f, relating to, or involving politics; pertaining to the conduct of government," and the term "organization" meant a "group that has formed for a particular purpose." ER-014. Therefore, the district court held that CPC, as a public policy organization, was an exempt "political organization" under the Act. ER-014–15.

On July 15, 2025, the district court entered an order stating "Plaintiff must file *any* amended complaint no later than July 29, 2025. Failure to file an amended complaint by that date will result in dismissal of this action with prejudice." ER-034 (emphasis added). Because no factual scenario exists in which CPC could truthfully amend its complaint, CPC did not file an amended complaint, believing that the district court would dismiss the case for the reasons stated in its order granting the motion to dismiss. However, on July 31, 2025, the district court entered an order stating:

> An Order (Dkt. 41) was issued by the Court on July 15, 2025[,] ordering Plaintiff to file an amended complaint no later than July 29, 2025. As of date, there has been no response filed to the Order (Dkt. 41), and no amended complaint has been filed. Therefore, the Court dismisses the matter for lack of prosecution and failure to follow the Court's Orders.

ER-007.

The next day, August 1, 2025, CPC filed a motion for reconsideration under Fed. R. Civ. P. 60(b) pointing out that the district court had never ordered CPC to amend the complaint and gave no warning that the court would dismiss the case for lack of prosecution for refraining from amending the complaint. ER-026–31. CPC asked the court to vacate its July 31 order and instead enter final judgment based on the June 24, 2025 order granting Defendant's motion to dismiss, so that CPC could appeal. ER-030. Defendant filed a response taking no position on CPC's motion. ER-020–21. On September 9, 2025, the district court denied CPC's motion. ER-003–05.

On September 29, 2025, CPC filed a timely notice of appeal. ER-091–92.

Summary of the Argument

The district court's dismissal under Rule 41(b) for "lack of prosecution and failure to follow the Court's Orders," ER-007, its denial

of CPC's motion to reconsider that dismissal, ER-003, and its Rule 12(b)(1) dismissal for lack of standing, ER-008, should all be reversed.

First, the district court abused its discretion by dismissing CPC's case for "lack of prosecution and failure to follow the Court's Orders." ER-007. CPC was never required to amend its complaint and thus could not have failed to comply with any order to amend. On these facts, this Court has held that dismissal under Rule 41(b), as the district court did here, is an abuse of discretion.

Second, the district court's order dismissing the case for "lack of prosecution" should also be reversed because the five factors for evaluating whether to dismiss under Rule 41(b) weigh heavily in CPC's favor: Defendant will face minimal prejudice if the Rule 41(b) dismissal is overturned, public policy considerations favor resolution of this First Amendment challenge on the merits, and a less drastic alternative is available.

Finally, the district court erred in dismissing CPC's complaint for lack of standing, holding that CPC is exempt from the Act as a "political organization or party"—a term the Act leaves undefined. It found that the definition of "political" meant "[o]f, relating to, or involving politics;

pertaining to the conduct of government," and the term "organization" meant "[a] group that has formed for a particular purpose." ER-014. The district court thus held that CPC, as a public policy organization, was a political organization. ER-014–15.

But the district court ignored California and federal law defining "political organization" as "a party, committee, association, fund, (including the trust of an individual candidate) or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function." Cal. Rev. & Tax. Code § 23701r(e)(1). As a § 501(c)(3) nonprofit organization, CPC is legally forbidden from engaging in electioneering and therefore cannot be a "political organization" as defined in California law. And the district court's analysis in defining "political organization" by defining each word separately is contrary to well-established statutory construction rules. It ignored the context of the phrase "political organization or party." And applying the district court's analysis to defining the term "political party" would make it contrary to the commonly understood meaning of that term, make the words "organization" and "party"

redundant, and make it more difficult to understand which organizations are exempt under that term.

Standard of Review

This Court reviews the district court's dismissal of a complaint pursuant to Rule 41(b) for abuse of discretion. *Applied Underwriters, Inc. v. Lichtenegger*, 913 F.3d 884, 890 (9th Cir. 2019).

This Court reviews de novo a district court's dismissal of a complaint under Rule 12(b)(1) for lack of standing. *Bowen v. Energizer Holdings, Inc.*, 118 F.4th 1134, 1142 (9th Cir. 2024). To establish standing, a plaintiff must show (i) that it suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

Argument

The district court abused its discretion in dismissing this case for lack of prosecution and failure to follow the court's orders, and in denying CPC's motion to reconsider that order. The district court did not provide notice to CPC that it intended to sanction CPC by entering a Rule 41(b) dismissal if it failed to amend its complaint. Further, under

this Court's test for dismissing a case pursuant to Rule 41(b), the district court abused its discretion because there would have been minimal prejudice to Defendant from forgoing Rule 41(b) dismissal, public policy considerations favor resolution of this First Amendment challenge on the merits, and a less drastic alternative was available.

And the district court erred in granting the motion to dismiss for lack of standing by holding that CPC is a political organization exempt from the Act. The court ignored California and federal law's definitions of "political organization" and well-established statutory construction rules.

This Court should reverse the district court's orders, both under Rule 12(b)(1) and Rule 41(b), and remand this case back to the district court.

I. The district court abused its discretion by dismissing this case for lack of prosecution and failure to follow the court's orders.

The district court abused its discretion by dismissing CPC's complaint for lack of prosecution and failure to follow its orders and by denying CPC's motion to reconsider that order. The court never clearly ordered CPC to amend its complaint or warned that choosing to stand on the existing complaint would trigger a Rule 41(b) dismissal. This

Court has held that a district court may not treat a plaintiff's election not to amend, after being granted leave, as a refusal to follow the court's orders.

Rule 41(b) provides that "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it." With a few exceptions not relevant here, "a dismissal under" 41(b) "operates as an adjudication on the merits." Fed. R. Civ. P. 41(b). This Court has held that where a district court only grants leave to amend—without clearly requiring an amended complaint and without warning that failure to amend will lead to a in Rule 41(b) dismissal—it abuses its discretion by later dismissing the complaint for failure to comply with a court order. *Applied Underwriters, Inc.*, 913 F.3d at 892 (reversing Rule 41(b) dismissal where court granted leave to amend but did not order amendment or warn of dismissal); *Hendrix v. City of San Diego*, No. 22-55732, 2024 U.S. App. LEXIS 22414, at *5 (9th Cir. Aug. 13, 2024) (same).

This case presents the same fact pattern as *Applied Underwriters* and *Hendrix*: the court dismissed with leave to amend, CPC elected to

stand on its complaint, and the court then invoked Rule 41(b). For the same reasons those decisions identify, this Court should hold that the district court abused its discretion in dismissing CPC's complaint for failure to prosecute and failure to follow a court order.

In *Applied Underwriters*, the district court dismissed the plaintiff's complaint with leave to amend, and plaintiff chose not to amend and to wait for final judgment. 913 F.3d at 889. The district court then dismissed the complaint under Rule 41(b) for failure to file an amended complaint. *Id.* at 889–90. This Court found that "'[d]ismissal of a case for disobedience of a court order is an exceedingly harsh sanction which should be imposed only in extreme cases, and then only after exploration of lesser sanctions.'" *Id.* at 891 (quoting *Mann v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 488 F.2d 75, 76 (5th Cir. 1973)). And it held that "[f]ailure to amend a complaint after it has been dismissed with leave to amend is not such an extreme case of disobedience, if it is disobedience at all." *Applied Underwriters*, 913 F.3d at 891 (quoting *Mann*, 488 F.2d at 76).

Although this Court's "precedent makes clear that 'when a district court *requires* a plaintiff to file an amended complaint, the court may

dismiss the case under Rule 41(b) if the plaintiff fails to follow the requirement.'" *Applied Underwriters*, 913 F.3d at 891 (quoting *Brown v. Rawson-Neal Psychiatric Hospital*, 840 F.3d 1146, 1150 (9th Cir. 2016) (Graber, J., dissenting) (emphasis in original), the district court may not do so when it "*did not require* Plaintiff to file an amended complaint," but instead "merely granted leave to amend." *Applied Underwriters*, 913 F.3d at 891 (quoting *Brown*, 840 F.3d at 1150 (emphasis in original)).

"By its plain text, a Rule 41(b) dismissal under these circumstances requires 'a court order' with which an offending plaintiff failed to comply." *Applied Underwriters*, 913 F.3d at 891. A "district court's dismissal under Rule 41(b) require[s] noncompliance with a court order. A grant of leave to amend is not an order to amend." *Id.* at 892. Thus, Rule 41(b) does not apply where a district court "did not mandate the filing of an amended complaint" and "did not indicate that failure to do so would result in dismissal of the complaint pursuant to Rule 41(b)." *Id.*

Similarly, in *Hendrix,* the plaintiff's 42 U.S.C. § 1983 suit was dismissed with leave to amend; when plaintiff waited for a final

judgment rather than amending, the district court dismissed under Rule 41(b). 2024 U.S. App. LEXIS 22414, at *5. Relying on *Applied Underwriters*, this Court held that "[a] district court abuses its discretion by dismissing a plaintiff's claims under Rule 41(b) without a prior order requiring amendment." *Id.* And where "the district court neither required amendment nor warned [the plaintiff] that her failure to amend would result in a Rule 41(b) dismissal," but instead merely granted leave to amend, Rule 41(b) does not apply. *Id.*

This case is the same: The district court abused its discretion in dismissing CPC's complaint for failure to prosecute and failure to follow the court's order. It did not clearly require CPC to amend its complaint, nor did it give fair notice that choosing not to amend would result in a Rule 41(b) dismissal. Its order simply set a deadline for CPC to file "*any* amended complaint," ER-034 (emphasis added), which naturally contemplates that CPC may or may not decide to amend.

The district court's reliance on *Haley v. Hasler,* No. CV 08-1424, 2008 U.S. Dist. LEXIS 79902, at *4 (C.D. Cal. June 3, 2008), is misplaced. There, the court justified its 41(b) dismissal of a § 1983 complaint only after it had explicitly "ordered plaintiff to file an amended complaint"

and "admonished that failure to timely file an amended complaint could result in the dismissal of this action due to plaintiff's failure to diligently prosecute." *Id.* Here, by contrast, the court did neither: it did not issue a clear order to amend, and it did not warn that failure to amend would be treated as sanctionable disobedience.

The district court was also mistaken to rely on *Harris v. Mangum* for the proposition that "[w]hen a district court dismisses an action because the plaintiff has not filed an amended complaint after being given leave to do so and has not notified the court of his intention not to file an amended complaint, [courts] may deem the dismissal to be for failure to comply with a court order based on Federal Rule of Civil Procedure 41(b)." 863 F.3d 1133, 1142 (9th Cir. 2017). *Harris* did not address whether a Rule 41(b) sanction was proper in the first instance. It addressed only how to characterize an already-entered dismissal for purposes of the Prison Litigation Reform Act's "strike" provision. *Id.* at 1136–37. In rejecting an argument that Rule 41(b) dismissal could never count as a "strike" for "failure to state a claim," this Court explained that, in that context, such a dismissal could stem from noncompliance with an earlier Rule 12 order. *Id.* at 1142. *Harris* does

not authorize district courts to bypass the clear-order and fair-warning requirements reaffirmed in *Applied Underwriters* and *Hendrix*.

This Court has repeatedly held that opting not to amend a complaint and waiting for final judgment is not a failure to follow a district court's orders unless the district court requires an amended complaint. Here, the district court's order stated that "Plaintiff must file *any* amended complaint no later than July 29, 2025." ER-034 (emphasis added). CPC reasonably understood that language to mean: if CPC chose to amend, the amendment must be filed by that date. The order does not direct CPC to amend; it simply regulates the timing of "any amended complaint" that might be filed. Nor did the court clearly notify CPC that standing on the complaint would be treated as disobedience warranting the "exceedingly harsh" sanction of Rule 41(b) dismissal. *Applied Underwriters*, 913 F.3d at 891. Under this Court's precedent, the absence of a clear order to amend and fair warning makes Rule 41(b) dismissal an abuse of discretion.

II. The five factors of this Court's test for dismissing a case pursuant to Rule 41(b) weigh against dismissing CPC's complaint.

Even apart from the lack of a prior order, the dismissal was an abuse of discretion because the five factors this Court applies in evaluating whether to dismiss pursuant to Rule 41(b) overwhelmingly favor CPC. There would have been no meaningful prejudice to Defendant from forgoing 41(b) dismissal, public-policy considerations strongly favor resolution of this First Amendment challenge on the merits, and a straightforward, less drastic alternative was available.

"[T]he five factors that must be considered before dismissing a case pursuant to Rule 41(b)" are "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives." *Applied Underwriters*, 913 F.3d at 890 (quoting *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)). This Court "may affirm a dismissal where at least four factors support dismissal or where at least three factors 'strongly' support dismissal." *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998) (internal citations

omitted). The first and second factors—the public's interest in expeditious resolution of litigation and the court's need to manage its docket—often tilt toward dismissal in the abstract. *See Engineer.AI Corp. v. Appy Pie LLC*, No. 24-109, 2024 U.S. App. LEXIS 26246, at *3 (9th Cir. Oct. 10, 2024). But here, even assuming those factors favor dismissal (which CPC does not concede[2]), the remaining three factors strongly favor CPC, and they are the ones that do the real work in this case.

A. Defendant would have suffered no prejudice from dismissal under Rule 12(b)(1) rather than Rule 41(b).

The district court's dismissal under Rule 41(b) abused its discretion because Defendant would have suffered minimal—if any—prejudice if the case were dismissed for the reasons stated in the district court's order granting her motion to dismiss rather than under Rule 41(b).

"A defendant suffers prejudice if the plaintiff's actions impair the defendant's ability to go to trial or threaten to interfere with the rightful decision of the case." *Allen v. Bayer Corp. (In re:*

[2] CPC's good-faith decision not to amend the complaint did not obstruct the expeditious resolution of this case and the district court could have just as easily managed its docket by dismissing the case for lack of standing, rather than under Rule 41(b).

Phenylpropanolamine (PPA) Prods. Liab. Litig.), 460 F.3d 1217, 1227 (9th Cir. 2006) (quoting *Adriana Int'l Corp. v. Thoeren*, 913 F.2d 1406, 1412 (9th Cir. 1990)). "'The law presumes injury from unreasonable delay,' though that presumption can be rebutted 'where a plaintiff has come forth with an excuse for his delay that is anything but frivolous.'" *Finicum v. Oregon*, No. 22-35064, 2022 U.S. App. LEXIS 31045, at *4 (9th Cir. Nov. 7, 2022) (quoting *Moneymaker v. CoBen (In re Eisen)*, 31 F.3d 1447, 1452–53 (9th Cir. 1994)). "[I]f there is a showing that no actual prejudice occurred, that fact should be considered when determining whether the district court exercised sound discretion." *Allen*, 460 F.3d at 1228. If the plaintiff "proffer[s] an excuse for delay that, if 'anything but frivolous,' [will shift] the burden of production to the defendant to show at least some actual prejudice; if it does, the plaintiff must persuade the court that the claims of prejudice are illusory or relatively insignificant in light of his excuse." *Id.* Here, there was no lengthy or unexplained delay. If any delay existed at all, it was brief, occurred at a discrete point in the case, and stemmed from CPC's reasonable reading of the court's order and its decision to stand on the existing complaint.

"[T]he costs of moving to dismiss" and "litigating" a Rule 41(b) "appeal" are "not . . . the type of prejudice that [courts] consider under the third factor." *Hernandez*, 138 F.3d at 399. Rather, "[t]o show prejudice, the defendants must show that the plaintiff's actions interfered with their ability to proceed to trial or interfered with the rightful decision of the case." *Martin v. Swinson*, No. 94-15218, 1994 U.S. App. LEXIS 23531, at *3 (9th Cir. Aug. 23, 1994). "[O]nly unreasonable delay will support a dismissal for lack of prosecution and unreasonableness is not inherent in every lapse of time." *Luna Distrib. LLC v. Stoli Grp. USA LLC*, 835 F. App'x. 224, 226 (9th Cir. 2020) (quoting *Nealey v. Transportacion Maritima Mexicana*, 662 F.2d 1275, 1280 (9th Cir. 1980)).

Courts "weigh" the "respondent's lack of objection" when assessing whether any asserted prejudice can justify "the drastic sanction of dismissal." *Pena v. Sherman*, 743 F. App'x. 882, 882 (2018). Here, Defendant did not oppose CPC's motion for reconsideration; she filed a response brief taking no position on CPC's motion. The underlying constitutional issues in this case are likely to be litigated in this case or future cases. Indeed, a similar case has been filed in the Eastern

District of California bringing a similar challenge. *See Cal. Chamber of Commerce v. Bonta*, No. 2:24-cv-03798, 2025 U.S. Dist. LEXIS 193529 (E.D. Cal. Sep. 30, 2025). Dismissing this case under Rule 41(b) simply delays the resolution of its underlying issues.

There is no prejudice to Defendant; this factor weighs heavily in favor of reversing the district court's Rule 41(b) dismissal.

B. Public policy considerations favor resolution of this case on its merits.

The district court also abused its discretion because public policy considerations favor resolution of this First Amendment case on its merits.

The public policy "factor inherently counsels *against* dismissal because 'public policy favors disposition of cases on the merits.'" *Smith v. Salmonsen*, No. 21-35942, 2023 U.S. App. LEXIS 3471, at *5 (9th Cir. Feb. 14, 2023) (quoting *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002) (emphasis added)). "This policy favoring resolution on the merits 'is particularly important in civil rights cases.'" *Hernandez*, 138 F.3d at 399 (quoting *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987)).

This is a civil rights case involving a § 1983 challenge to a statewide statute that regulates core political speech. The district court found it lacked Article III jurisdiction and then dismissed under Rule 41(b) instead of entering final judgment on that ruling. The issues presented will almost certainly recur. Resolving whether the Act applies to CPC and similar groups—and, if necessary, the merits of its First Amendment claim—now will save time and resources for future litigants, for Defendant, and for the courts. That is precisely the kind of case in which the public-policy factor weighs especially strongly against a punitive procedural dismissal.

The public policy factor weighs heavily in favor of reversing the district court's Rule 41(b) dismissal.

C. A less drastic alternative to dismissal was available to the district court.

The district court also abused its discretion by overlooking an obvious, less drastic alternative to Rule 41(b) dismissal: it could simply have entered final judgment based on its Rule 12(b)(1) ruling.

"[T]he 'harsh remedy' of dismissal require[s] the district court to reasonably explore 'meaningful alternatives[,] bearing in mind the drastic foreclosure of rights that dismissal effects.'" *Luna Distrib.*, 835

F. App'x. at 227 (quoting *Nevijel v. N. Coast Life Ins. Co.*, 651 F.2d 671, 674 (9th Cir. 1981)); *Gibbs v. Hedgpeth*, 389 F. App'x. 671, 673 (9th Cir. 2010) ("The district court also failed to consider, as it must, less drastic alternatives to dismissal."). "Although the explicit discussion of alternatives to dismissal is not necessary for dismissal to be upheld, [the] 'failure to warn the plaintiff has frequently been a contributing factor in [this Court's] decisions to reverse orders of dismissal.'" *Vernon v. Sullivan*, No. 90-16246, 1991 U.S. App. LEXIS 30286, at *5 (9th Cir. Dec. 11, 1991) (quoting *Malone v. United States Postal Serv.*, 833 F.2d 128, 133 (9th Cir. 1987) (cleaned up)).

In determining whether the district court considered less drastic alternatives to dismissal, this Court considers the following factors: (1) Did the court explicitly discuss the feasibility of less drastic sanctions and explain why alternative sanctions would be inadequate?; (2) Did the court implement alternative methods of sanctioning or curing the malfeasance before ordering dismissal?; and (3) Did the court warn the plaintiff of the possibility of dismissal before ordering dismissal? *Vernon*, 1991 U.S. App. LEXIS 30286, at *5 (quoting *Malone*, 833 F.2d at 132). This Court may also consider whether the plaintiff declined to

explain its actions after a Rule 41(b) dismissal and whether it objected to the Rule 41(b) dismissal, such as by filing a motion to reconsider. *Engineer.AI*, 2024 U.S. App. LEXIS 26246, at *4.

Here, the district court did not, explicitly or implicitly, "discuss the feasibility of less drastic sanctions and explain why alternative sanctions would be inadequate." *Vernon*, 1991 U.S. App. LEXIS 30286, at *5 (quoting *Malone*, 833 F.2d at 132). It did not do a factor-by-factor analysis of its dismissal at all, either in its initial three-sentence order or its opinion on CPC's unopposed motion for reconsideration. *See* ER-003–07. The district court gave no indication it saw malfeasance prior to issuing its order. Thus, the district court's actions are not "alternative methods of sanctioning or curing . . . malfeasance." *Vernon*, 1991 U.S. App. LEXIS 30286, at *5 (quoting *Malone*, 833 F.2d at 132). The district court never warned CPC of the possibility of 41(b) dismissal and CPC—in its motion for reconsideration filed one day after the Rule 41(b) dismissal order—was extensive in its efforts to explain its conduct, assert its zealousness in prosecution, and articulate how it had no desire to ignore a judicial order. ER-023–33.

A simple alternative existed for the district court: It could have made its 12(b)(1) judgment final—either once CPC elected not to file an amended complaint or, at the latest, after CPC moved to reconsider the Rule 41(b) order and expressly requested entry of final judgment under 12(b)(1). That course would have fully vindicated the court's view of standing without imposing the "exceedingly harsh" sanction of a Rule 41(b) dismissal. *Applied Underwriters*, 913 F.3d at 891. By failing even to consider that obvious alternative, the district court abused its discretion.

III. CPC has standing because it is not a "political organization" exempt from the Act.

The district court erred in granting Defendant's motion to dismiss for lack of standing on the ground that CPC is exempt from the Act as a "political organization." CPC is not a political organization under California or federal law, and the district court's contrary conclusion rests on a misapplication of basic statutory construction rules.

The Act exempts "[a] political organization or party requiring its employees to attend an employer-sponsored meeting or to participate in any communications with the employer or its agents or representatives, the purpose of which is to communicate the employer's political tenets

or purposes." Cal. Lab. Code § 1137(h)(2). The Act does not define the term "political organization or party."

A. CPC is not a "political organization" under that term's established meaning in California and federal law.

But political organization is elsewhere defined in California law as well as federal law. *See Wendz v. State Dep't of Educ.*, 93 Cal. App. 5th 607, 633 (2023) ("To understand the intended meaning of a statutory phrase, we may consider use of the same or similar language in other statutes, because similar words or phrases in statutes *in pari materia* ordinarily will be given the same interpretation." (quoting *In re Bittaker*, 55 Cal. App. 4th 1004, 1009 (1997))). Indeed, like the term political party, the term political organization is a well-established term of art with a specific meaning that is different from the combination of the definitions of the individual words that make it up.

The California Revenue and Taxation Code defines "political organization" as "a party, committee, association, fund, (including the trust of an individual candidate) or other organization (whether or not incorporated) organized and operated primarily *for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function*." Cal. Rev. & Tax. Code § 23701r(e)(1)

(emphasis added). An "exempt function" is for the "function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office . . . ." Cal. Rev. & Tax. Code § 23701r(e)(2).

Similarly, the California Code of Judicial Ethics defines "political organization" as "a political party, political action committee, or other group, the principal purpose of which is to further the election or appointment of candidates to nonjudicial office." And the California Education Code states that a "student political organization" may hold meetings on a community college campus so long as it is "affiliated with the official youth division of any political party that is on the ballot of the State of California." Cal. Educ. Code § 76067.

Federal law similarly defines "political organization" as "a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for [a tax-]exempt function." 26 U.S.C. § 527(e)(1). And other states define political organization in a similar way. *See, e.g.*, C.R.S. § 1-45-103 (Colo.) (same); 230 ILCS 5/6(c) (Ill.) (similar); R.I. Gen. Laws

§ 17-1-2(9) (similar); Fla. Stat. § 501.702(20) (similar). The ordinary meaning of the term "political organization" is the one given in the Internal Revenue Code and in the California Revenue and Taxation Code, as well as the statutes of other states.

Similarly, the term "political party" has a specific meaning under California and federal law. California law defines "party" as "a political party or organization that has qualified for participation in any primary or presidential general election." Cal. Elec. Code § 338. And California law has specific procedures for a group to qualify as a political party that makes clear that a political party is more than just a group of people with similar political beliefs. *See* Cal. Elec. Code § 5100. Federal law defines the term "political party" as "an association, committee, or organization that nominates a candidate for election to any Federal or State elected office whose name appears on the election ballot as the candidate of such association, committee, or organization." 18 U.S.C. § 207(j)(7)(C)(vi); 52 U.S.C. § 30101(16) (same). The context of the term "political organization or party" matters and is evidence of its intended meaning in the Act. A political party is a type of political organization, and both are set apart from other organizations by the fact that they

have a purpose of accepting contributions or making expenditures to attempt to influence a candidate's selection, nomination, election, or appointment to public office.

As a § 501(c)(3) not-for-profit organization, CPC does not accept or make expenditures for the purpose of supporting or opposing candidates or campaigns because it is prohibited by federal law from doing so. The Internal Revenue Code prohibits such organizations from "participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office," and sharply limits them from "carrying on propaganda, or otherwise attempting, to influence legislation." 26 U.S.C. § 501(c)(3). Thus, CPC is not and cannot be a political organization as defined by federal and California law.

B. The district court erred by disregarding settled rules of statutory construction.

The Supreme Court has held that "it is a 'cardinal rule of statutory construction' that, when Congress employs a term of art, 'it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken.'" *FAA v. Cooper*, 566 U.S. 284, 292 (2012) (quoting *Molzof v. United States*, 502

U.S. 301, 307 (1992)). "[A]s Justice Frankfurter colorfully put it, 'if a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it.'" *Sekhar v. United States*, 570 U.S. 729, 733 (2013) (quoting Frankfurter, J., Some Reflections on the Reading of Statutes, 47 Colum. L. Rev. 527, 537 (1947)). Thus, courts should follow "the rule of construction that Congress intends the same language in similar statutes to have the same meaning." *Cooper*, 566 U.S. at 301. The same principle applies here. When the Legislature used the established term "political organization," it incorporated the settled tax and election-law meaning of that term, not the sum of dictionary entries for "political" and "organization."

In *Cooper*, the Court rejected Cooper's attempt to rely on the ordinary meaning of the word "actual" in determining the meaning of the term "actual damages" left undefined by the statute. *Id.* at 292. Instead, it held that "actual damages" is a legal term of art that cannot be understood by the sum of the definitions of the words "actual" and "damages." *Id.* In *United States v. Schena*, this Court, in determining the meaning of the word "induce," rejected the meaning of that word

"[i]n ordinary parlance"—defining it as "[t]o lead on; to influence; to prevail on; to move by persuasion or influence"—because it has a specialized meaning in the criminal law context that "incorporates common-law liability for solicitation and facilitation." 142 F.4th 1217, 1224 (9th Cir. 2025) (cleaned up) (quoting *United States v. Hansen*, 599 U.S. 762, 778 (2023). The district court failed to follow this rule of construction by disregarding the specific meaning given to the term "political organization" elsewhere in California and federal law by claiming those provisions were "areas of California law [which] do not relate to the Act." ER-016. Nor did the district court provide any definition of the term "political organization" elsewhere in California law that *is* related to the Act. *See* ER-016–19.

The district court also ignored the canon of *noscitur a sociis*—a word is known by the company it keeps. That canon of construction, the Supreme Court has held, "counsels that a word is given more precise content by the neighboring words with which it is associated," *United States v. Williams*, 553 U.S. 285, 294 (2008), and serves the important purpose of "avoid[ing] ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended

breadth to the Acts of Congress," *Yates v. United States*, 574 U.S. 528, 543 (2015) (quoting *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995). The Act exempts a "religious corporation[s], entit[ies], association[s], educational institution[s], or societ[ies]," Cal. Lab. Code § 1137(h)(1), and "educational institution[s]," Cal. Lab. Code § 1137(h)(3), alongside "political organization or part[ies]," Cal. Lab. Code § 1137(h)(2), which each have distinct, legally recognized meanings. That context further confirms that the Legislature meant "political organization" in its established, technical sense, not as any group with some interest in politics.

The district court violated this canon by ignoring the specific context of the phrase "political organization or party"—which are entities whose purpose is to attempt to influence the outcome of an election. Instead of looking to how the term "political organization" is defined elsewhere in California law, the district court took the sum of the definition of the word "political" and the definition of the word "organization" to find the meaning of the term. It found that the definition of "political" meant "[o]f, relating to, or involving politics; pertaining to the conduct of government," and the term "organization" meant "[a] group that has

formed for a particular purpose." ER-014. According to the district court, a political organization is a group where one of its tenets or purposes includes matters related to politics. ER-014–15. Thus, the district court held that CPC, as a public policy organization, was a political organization. ER-014–15.

C. The district court's interpretation is unworkable: it creates uncertainty, significantly broadens the exemption, and undermines the Act's purpose.

The district court's interpretation leaves "political organization" "so broad that it is inconsistent with its accompanying words"—specifically "political party"—and thus gives the Act "unintended breadth." *Yates*, 574 U.S. at 543 (quoting *Gustafson*, 513 U.S. at 575). That breadth flows from the court's definition of "political" as "encompass[ing] all matters related to politics," ER-014, a formulation that has no meaningful limit. Many organizations in modern life engage with public policy in some way; under the district court's test, that ordinary engagement is enough to make them "political organizations."

If CPC is a political organization because it comments on public policy, the same logic sweeps in private, for-profit corporations that lobby regulators, submit comments on proposed rules, or advocate for

particular legislation. It turns every publication that advocates specific public policy views—from National Review to Mother Jones—into a "political organization." Corporations in heavily regulated industries such as telecommunications, energy, or healthcare routinely press government agencies on how regulations should be written, applied, and interpreted. Defense contractors that depend on government procurement, law firms that regularly sue government officials for their allegedly illegal or unconstitutional conduct, and public-sector unions—whose activities are "inherently political," *Janus v. AFSCME, Council 31*, 585 U.S. 878, 881 (2018)—all become "political organizations" under the district court's reasoning.

Virtually all businesses have a stake in political outcomes: tax rates, environmental and labor regulations, and trade policies can determine whether a business survives. Broad federal tariffs, for example, may directly threaten the viability of import-dependent businesses. *See, e.g.*, *V.O.S. Selections, Inc. v. Trump*, 772 F. Supp. 3d 1350, 1368 (Ct. Int'l Trade 2025). Yet the district court's definition grants "political organization" status to any business whose survival depends on political decisions, such as an import-dependent company challenging a tariff.

Under the district court's definition, a private corporation could convert itself into an exempt "political organization" merely by devoting more of its time, money, and staff to lobbying or criticizing the government.

Applying this expansive definition to the Act's exemption creates serious uncertainty about which employers are covered and which are not. By contrast, using the established definitions of "political organization" and "political party" in California and federal law, as CPC urges, yields a clear and administrable line. Even Defendant, who shares the district court's expansive view, acknowledges this uncertainty in its motion to dismiss by refusing to state unequivocally that CPC is a political organization and instead asserting only that CPC "may constitute a 'political organization,'" and "may fall within the political-organization exemption," while admitting that it was "premature to determine whether the exemption applies to any mandatory meetings plaintiff may hold." ER-049. The district court's reading not only muddies who is exempt, but it also undermines the Act's stated purpose—to "promote[] workers' rights, especially those of marginalized communities, by protecting their right to advocate for themselves and opt out of conversations about politics or religion that

have nothing to do with their ability to properly execute their job duties," ER-017—by vastly expanding the universe of employers who can compel such conversations.

The flaw of the district court's method of interpreting "political organization" becomes clearer when that same method is applied to "political party." As noted above, California and federal law define "political party" as an organization that fields candidates and participates in elections. That is also the ordinary understanding: a political party coordinates candidates to compete in elections and to govern. But if, as the district court did, one simply combines dictionary definitions—"political" meaning "encompass[ing] all matters related to politics," ER-014 (citing Black's Law Dictionary (12th ed. 2024)), and "party" meaning, among other things, "a person or group taking one side of a question, dispute, or contest," or "a person or group participating in an action or affair," *Party*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/party (last visited Dec. 22, 2025)—then a "political party" becomes any person or group that takes a side on a political question. Defining "political party" that way is obviously absurd and contrary to the statute's context and

common usage. The district court's definition of "political organization" is no less extreme.

CPC is not a "political organization" subject to the exemption of Cal. Lab. Code § 1137(h)(2) under the term's established meaning in California and federal law—or under any plausible ordinary meaning. CPC has standing. The district court's holding otherwise is erroneous and should be reversed.

Conclusion

The district court abused its discretion in dismissing this case under Rule 41(b) and erred in dismissing for lack of standing under Rule 12(b)(1). CPC respectfully requests that this Court reverse the district court's Rule 12(b)(1) and Rule 41(b) orders and remand for further proceedings on the merits.

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Respectfully submitted,

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Certificate of Compliance

I am the attorney for Appellant.

This brief contains 8,386 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief complies with the word limit of Cir. R. 32-1.

/s/ Jeffrey M. Schwab Dated: December 22, 2025

Attorney for Plaintiff-Appellant

Certificate of Service

I certify that on December 22, 2025, I electronically filed the foregoing Appellant's Opening Brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF System. I certify that all participants in this case are registered CM/ECF users and will be served by the CM/ECF system.

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