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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PROJECT FOR OPEN GOVERNMENT,

Plaintiff-Appellant,

v.

COUNTY OF SAN DIEGO,

Defendant-Appellee.

No. 22-55901

DC No. 3:22-cv-00067-AJB-MDD

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Anthony J. Battaglia, District Judge, Presiding

Submitted December 12, 2023**
Pasadena, California

Before: TASHIMA, GRABER, and CHRISTEN, Circuit Judges.

Plaintiff Project for Open Government filed a complaint in state court against Defendant County of San Diego, seeking declaratory and injunctive relief against a rule adopted by the San Diego County Board of Supervisors, which was

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2)(C).

aimed at curbing disruptive, hostile discourse at Board meetings. The case was removed to federal court. The district court dismissed the complaint without leave to amend under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim as to the federal claim and remanded the remaining state law claim to San Diego County Superior Court.

The complaint's allegations do not establish Article III standing because Plaintiff has not alleged that it "has suffered, or be[en] threatened with, an actual injury traceable to the defendant [that is] likely to be redressed by a favorable judicial decision." *Protectmarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827, 834 (9th Cir. 2014) (second alteration in original) (quoting *Spencer v. Kemna*, 523 U.S. 1, 7 (1998)). Because there was no federal jurisdiction, we conclude that the matter should have been remanded to state court. *Polo v. Innoventions Int'l, LLC*, 833 F.3d 1193, 1194–96 (9th Cir. 2016). Because the district court lacked subject matter jurisdiction, we vacate the district court's 12(b)(6) dismissal and remand with instructions to remand the case to state court.

Plaintiff's motion to strike Defendant's supplemental excerpts of record [Dkt. 29], is denied as moot.

VACATED and REMANDED with directions.