**FOR PUBLICATION**

# UNITED STATES COURT OF APPEALS
# FOR THE NINTH CIRCUIT

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| THANH VO, an individual,<br>*Plaintiff-Appellant*,<br><br>v.<br><br>JOHN PAUL CHOI, an individual,<br>*Defendant-Appellee.* | No. 20-55737<br><br>D.C. No.<br>8:19-cv-02177-<br>JLS-DFM<br><br>OPINION |

Appeal from the United States District Court
for the Central District of California
Josephine L. Staton, District Judge, Presiding

Submitted June 10, 2022[*]
Pasadena, California

Filed September 21, 2022

Before: Milan D. Smith, Jr., Bridget S. Bade, and Lawrence VanDyke, Circuit Judges.

Opinion by Judge VanDyke;
Partial Concurrence and Partial Dissent by Judge Bade

[*] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

## SUMMARY[**]

### Supplemental Jurisdiction

The panel affirmed the district court's order declining to exercise supplemental jurisdiction over Thanh Vo's California Unruh Civil Rights Act claim against John Choi.

After the district court entered default against Choi on Vo's claims under the Americans with Disabilities Act and the Unruh Act, it ordered Vo to show cause why it should not decline to exercise supplemental jurisdiction over the Unruh Act claim. After considering Vo's response, the district court elected to decline supplemental jurisdiction under 28 U.S.C. § 1367(c)(4). The district court determined that there were exceptional circumstances and compelling reasons justifying this exercise of its discretion.

The panel held that under *Arroyo v. Rosas*, 19 F.4th 1202 (9th Cir. 2021), in order to decline to exercise supplemental jurisdiction in a joint ADA and Unruh Act suit, the district court must properly articulate why the circumstances of the case are exceptional. In addition, the balance of the *Gibbs* values must provide compelling reasons for declining jurisdiction in such circumstances. These values are judicial economy, convenience, fairness to litigants, and comity.

The panel held that the district court did not abuse its discretion. First, there were exceptional circumstances regarding comity and fairness in allowing Vo to evade California's heightened procedural requirements for Unruh

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Act claims by bringing her claims in federal court. Second, unlike in *Arroyo*, the district court declined supplemental jurisdiction well before it ruled on the merits of the ADA claim, meaning that the *Gibbs* values could be effectuated. The panel held that the district court did not abuse its discretion in determining that there were compelling reasons to decline jurisdiction over the Unruh Act claim. The panel rejected Vo's argument that the district court's order was not sufficiently case-specific.

Concurring in part and dissenting in part, Judge Bade agreed with the majority that the district court did not abuse its discretion in determining that exceptional circumstances under § 1367(c)(4) were presented by the distinctive configuration of California-law rules that would be rendered ineffectual if the district court were to exercise supplemental jurisdiction. Judge Bade also agreed that the district court's use of a "boilerplate order" was insufficiently case-specific as to *per se* constitute an abuse of discretion or an error. Judge Bade disagreed, however, with the majority's conclusion that the district court provided compelling reasons that warranted declining to exercise supplemental jurisdiction based on Vo's alleged evasion of California laws restricting construction-related accessibility claims and imposing heightened pleading requirements on high-frequency litigants, when these reasons were not factually supported in the record and were clearly erroneous.

## COUNSEL

Pamela Tsao, Ascension Law Group PC, Tustin, California, for Plaintiff-Appellant.

No appearance by Defendant-Appellee.

## OPINION

VANDYKE, Circuit Judge:

Plaintiff Thanh Vo appeals the district court's order declining to exercise supplemental jurisdiction over her California Unruh Civil Rights Act claim against Defendant John Choi. Because the district court's order was within its discretion and aligns with our circuit's precedent, we affirm.

### I.

Vo is a paraplegic who requires the use of a wheelchair for mobility and travels using a van specialized for wheelchair accessibility. In October 2019, Vo visited a shopping plaza owned by Choi in Garden Grove, California. There, Vo alleges she faced numerous barriers to access in violation of the Americans with Disabilities Act (ADA). The primary issue was unaccommodating parking, including a lack of van-accessible parking spaces and impermissibly steep slopes in the available parking spaces.

Vo brought suit against Choi in federal district court, alleging violations under both the ADA and the related Unruh Act. The district court clerk entered default against Choi after he failed to defend or respond to Vo's complaint, and Vo then filed a motion for default judgment on both claims.

The day after Vo moved for default judgment, the district court ordered Vo to "show cause why the Court should not decline to exercise supplemental jurisdiction over Plaintiff's Unruh Act claim." The court's order noted the heightened procedural requirements that the California legislature enacted for litigants bringing Unruh Act claims in California state court as a potential reason not to exercise jurisdiction. Vo responded by arguing that she was not subject to the heightened procedural requirements, and alternatively that her complaint met all the heightened requirements. Vo also argued there was no "compelling reason" as required by statute for the district court to decline supplemental jurisdiction. *See* 28 U.S.C. § 1367(c)(4).

After considering Vo's response, the court elected to decline supplemental jurisdiction over the Unruh Act claim and dismissed it without prejudice. As required by our caselaw, the court articulated "exceptional circumstances" and "compelling reasons" for declining jurisdiction under § 1367(c)(4). The district court explained that it would not be "fair" to the defendants if plaintiffs could bypass the "limitations California state law has imposed" on Unruh Act claims by simply bringing them in federal court. Moreover, the court noted that allowing federal courts to be an "escape hatch" for plaintiffs seeking to avoid the heightened requirements would be an "affront to the comity between federal and state courts." In light of these considerations, the court determined that there were "'exceptional circumstances' and 'compelling reasons' that justify the Court's discretion to decline to exercise supplemental jurisdiction over Plaintiff's Unruh Act claim under 28 U.S.C. § 1367(c)(4)."

A few weeks after dismissing the Unruh Act claim, the district court returned to Vo's motion for default judgment.

The district court granted Vo's motion as to the ADA claim and denied Vo's motion as to the Unruh Act claim because that claim had already been dismissed. Vo then appealed the district court's order denying supplemental jurisdiction over the Unruh Act claim.

## II.

While Vo's appeal was pending, our court published *Arroyo v. Rosas*, 19 F.4th 1202 (9th Cir. 2021), which clarified the framework for evaluating a district court's decision to not exercise supplemental jurisdiction in a joint ADA and Unruh Act suit. *Arroyo* governs this case, and therefore its holding and reasoning merit more detailed explanation.

Rafael Arroyo, Jr. was a paraplegic who sued the owner of a liquor store in California after experiencing numerous barriers to access. 19 F.4th at 1204. Arroyo brought claims under both the ADA and the Unruh Act. *Id.* The district court granted Arroyo's motion for summary judgment on his ADA claim, which automatically ensured that Arroyo would also succeed on his Unruh Act claim. *Id.*; *see* Cal. Civ. Code § 51(f) ("A violation of the right of any individual under the federal Americans with Disabilities Act . . . shall also constitute a violation of this section."). Nevertheless, the district court declined to exercise supplemental jurisdiction over the Unruh Act claim after granting summary judgment on Arroyo's federal ADA claim because it concluded there were "extraordinary circumstances" and "compelling reasons" to do so, as authorized under § 1367(c)(4). 19 F.4th at 1204–05. The district court explained that retaining jurisdiction would allow the plaintiffs to circumvent California's procedural requirements and would further contribute to the rapid influx of such cases in the federal courts. *Id.* at 1205.

On appeal, we applied the relevant two-step inquiry to determine if the district court abused its discretion in invoking § 1367(c)(4): (1) did the district court properly articulate "why the circumstances of the case are exceptional" under § 1367(c)(4); and (2) "whether the balance of the *Gibbs* values provides compelling reasons for declining jurisdiction in such circumstances." *Id.* at 1210–11 (citation and alteration marks omitted).

We first affirmed that the district court did not abuse its discretion by determining that the circumstances were exceptional. *Id.* at 1211. Indeed, in *Arroyo*, we thought there was "little difficulty" in reaching this conclusion given the legal landscape underlying the case. *Id.* at 1214. California initially opted to expand the available remedies for plaintiffs beyond what the ADA provided. *Id.* at 1206. But in response to these remedies being abused by "a very small number of plaintiffs' attorneys,"[1] the California legislature banned certain pre-litigation demands and imposed heightened pleading requirements. *Id.* (citation omitted). Further refining this statutory equilibrium, the legislature later imposed additional requirements on "high-frequency litigants." *Id.* at 1207 (citation and alteration marks omitted). High-frequency litigants—those who filed "10 or more complaints" within the last twelve months—were now required to plead additional facts (such as why they were near the defendant's business) and pay an additional $1,000 filing fee for each new case brought. *Id.*

[1] The California legislature explained that the threat of heightened remedies under the Unruh Act enabled attorneys "to scare businesses into paying quick settlements that only financially enriched the attorney and claimant and did not promote accessibility either for the claimant or the disability community as a whole." *Arroyo*, 19 F.4th at 1206 (citation and alteration marks omitted).

But we assume, as in *Arroyo*, that these new requirements apply *only* in California state court. As a result, "Unruh Act plaintiffs have 'evaded these limits' by filing in a federal 'forum in which they can claim these state law damages in a manner inconsistent with the state law's requirements.'" *Id.* at 1213 (alteration marks omitted). In determining that this scenario presents extraordinary circumstances, our court borrowed from the *Gibbs* values analysis found in the second part of the two-step inquiry. It noted that "at the very least, that phrase ['exceptional circumstances'] extends to highly unusual situations that threaten to have a substantial adverse impact on the core *Gibbs* values of 'economy, convenience, fairness, and comity.'" *Id.* at 1211 (citation omitted). Accordingly, we determined that "failing to recognize [these circumstances] as exceptional would improperly ignore the very substantial threat to federal-state comity that this overall situation presents." *Id.* at 1213.

Despite agreeing that "exceptional circumstances" were established under § 1367(c)(4), we held in *Arroyo* that the district court abused its discretion at the second step of the applicable test when it determined "there are 'compelling reasons' for declining supplemental jurisdiction in *this* case." *Id.* at 1214. This was because the second part of the inquiry—which utilizes the *Gibbs* values of judicial economy, convenience, fairness to litigants, and comity—"overwhelmingly favored *retaining* jurisdiction over Arroyo's Unruh Act claim" because the district court had already ruled in Arroyo's favor on his ADA claim. *Id.* Because Arroyo automatically won his Unruh Act claim by winning his ADA claim, judicial economy and convenience favored retaining the case. *Id.* at 1214–15. It would therefore "be a sheer waste of time and resources to require

that claim to be refiled in state court" *after* the federal court had already addressed the ADA claim. *Id.* at 1215.

And while acknowledging the important comity interests implicated, we concluded in *Arroyo* that "the district court waited too late in the litigation to invoke this interest." *Id.* We explained:

> If the district court had declined supplemental jurisdiction over Arroyo's Unruh Act claim at the *outset* of the litigation, it might then still have been possible to further California's interest in cabining Unruh Act damages claims through the imposition of heightened *pleading* requirements and a substantial up-front filing fee. But once the district court granted summary judgment upholding the merits of Arroyo's ADA claim (and, perforce, his Unruh Act claim), it was no longer possible to satisfy the interests underlying California's various devices for pre-screening Unruh Act claims.

*Id.* at 1215–16.

Given how the *Gibbs* values were implicated in this late stage of litigation, we concluded that the district court in *Arroyo* had abused its discretion in not retaining the Unruh claim. *Id.* at 1216–17.

## III.

With the relevant facts and law squarely before us, we turn to Vo's appeal. Vo argues that the district court abused its discretion when it declined to rule on her Unruh Act

claim. Vo's central complaint is that the district court erred in issuing a "boilerplate order" used in other cases with similar issues, and therefore was not sufficiently "case-specific" in its reasoning. For the reasons stated below, we disagree. While the district court's order predates *Arroyo*, the order nonetheless complied with *Arroyo*'s holding and is therefore affirmed.

**A**

A district court's decision to decline supplemental jurisdiction over a state-law claim is reviewed for abuse of discretion. *Bryant v. Adventist Health Sys./W.*, 289 F.3d 1162, 1165 (9th Cir. 2002). "Discretion is abused when the judicial action is arbitrary, fanciful or unreasonable" or where no reasonable person would "take the view adopted by the trial court." *U.S. Cellular Inv. Co. v. GTE Mobilnet, Inc.*, 281 F.3d 929, 934 (9th Cir. 2002) (internal quotation marks and citation omitted).

As explained above, the abuse of discretion inquiry when declining to exercise supplemental jurisdiction for a state-law claim under § 1367(c)(4) is governed by the two-step inquiry applied in *Arroyo*. In this context, a district court must: (1) sufficiently explain "why the circumstances of the case are exceptional" under § 1367(c)(4); and (2) show that "the balance of the *Gibbs* values provides compelling reasons for declining jurisdiction in such circumstances." *Arroyo*, 19 F.4th at 1210–11 (citation and alteration marks omitted). When evaluating the district court's order, we must remember that "'[t]hese two inquiries are 'not particularly burdensome.'" *Id.* at 1211 (citation omitted). We are also guided in our application of the two-step test by considering how *Arroyo* treated each step.

**B.**

There is little doubt that the first prong is satisfied here. The same underlying legal dynamics that constituted "exceptional circumstances" in *Arroyo* are equally present here. The district court here identified similar concerns as the district court in *Arroyo*, including that it would not be "fair" to defendants and "an affront to the comity between federal and state courts" to allow plaintiffs to evade California's procedural requirements by bringing their claims in federal court. Given that the same "unique configuration of laws in this area" present the same concerns about comity and fairness here as they did in *Arroyo*, we cannot stray from *Arroyo*'s conclusion that the first prong of the § 1367(c)(4) inquiry is met. *See id.* at 1212–13.

**C.**

Unlike *Arroyo*, the district court's order in this case also satisfies the second prong of the § 1367(c)(4) inquiry. Again, "in determining whether there are 'compelling reasons for declining jurisdiction' in a given case, the court should consider what 'best serves the principles of economy, convenience, fairness, and comity which underlie the pendent jurisdiction doctrine' articulated in *Gibbs*." *Id.* at 1210 (citation omitted).

The fatal flaw we identified in the *Arroyo* district court's order was that it waited until a "very late stage" of the litigation to decline supplemental jurisdiction. *Id.* at 1214. The district court there did not decline to exercise supplemental jurisdiction over the Unruh Act claim until after it ruled on the ADA claim. *Id.* This meant that—notwithstanding our court's clear acknowledgment that many of the *Gibbs* values *could have* been furthered by refusing supplemental jurisdiction over the Unruh Act claim

in that case, *id.* at 1215–16—doing so at that late point in the litigation would not actually effectuate any of those values. Instead, it would merely create duplicative work for the state court. *Arroyo* summed up the dynamic well: "it is simply too late to undo the now-sunk costs already incurred by litigating this matter to its now-inevitable conclusion." *Id.* at 1216.

None of that is true in this case. The district court here declined supplemental jurisdiction over Vo's Unruh Act claim well before it ruled on the merits of the ADA claim. The district court's order therefore completely sidesteps the core concern articulated in *Arroyo*. Moreover, the district court here analyzed Vo's situation under the *Gibbs* values and determined that the values of fairness and comity favored not retaining jurisdiction over the claim. Given these very real concerns, in addition to the deferential standard of review, we see no reason to hold that the district court abused its discretion in determining there were compelling reasons to decline jurisdiction over the Unruh Act claim.[2]

[2] The district court also cited the "tremendous strain on the federal courts" that these claims have brought as another reason not to retain the Unruh Act claim. Vo argues that concerns over docket congestion are not a proper justification for dismissing a claim, and we agree with that argument as a general proposition. *See, e.g.*, *Exec. Software N. Am., Inc. v. U.S. Dist. Ct.*, 24 F.3d 1545, 1561 (9th Cir. 1994), *overruled on other grounds by Cal. Dep't of Water Res. v. Powerex Corp.*, 533 F.3d 1087 (9th Cir. 2008). But as was the case in *Arroyo*, we do not interpret the district court's statement the way that Vo does. Instead:

> [T]he district court rested its decision squarely on the comity-based concerns that California's policy objectives in this area were being wholly thwarted and its courts were being deprived of their crucial role in

Vo attacks the district court's order from a different angle, arguing that the district court erred in issuing a "boilerplate order" that has been issued in other cases that present similar matters instead of undertaking a "case-specific analysis." We disagree. *Arroyo* does indeed expect the district court to engage in some level of case-specific analysis, but that requirement is less demanding than what Vo contends. The district court addressed the specific circumstances underlying Vo's ADA and Unruh Act claims, which is enough to comply with *Arroyo*'s holding.

To understand why the district court's order is sufficiently case-specific, it is important to first note that *Arroyo* required case-specific analysis for *both* prongs of the § 1367(c)(4) framework. For the first prong, "the district court must 'articulate why the circumstances *of the case* are exceptional' within the meaning of § 1367(c)(4)." *Id.* at 1210 (emphasis added) (citation omitted).[3] Yet our court

> carrying out the Legislature's reforms of the Unruh Act. The *mechanism* by which that frustration of California's goals occurred was the wholesale shifting of cases from state to federal court, and the district court therefore can hardly be faulted for noting the federal-court burdens that resulted as a collateral consequence. But that does not vitiate the district court's proper reliance on the exceptional comity-based concerns presented here. Nothing in the district court's order supports the view that the court relied on an impermissible purpose to remand state law claims "solely to ease docket congestion."

*Arroyo*, 19 F.4th at 1213–14 (citation omitted).

[3] *Arroyo* also mentioned that there had previously been "little guidance as to what might constitute the sort of 'exceptional circumstances' that would permit an *exercise of case-specific discretion*

concluded that the district court in *Arroyo* satisfied this requirement by citing to the "distinctive configuration of California-law rules" underlying the situation. *Id.* at 1211. Even though the ADA/Unruh situation obviously applied similarly to other cases beyond Arroyo's, that did not change the undeniable fact that the legal landscape discussed at length in *Arroyo* also applied to that specific case. This demonstrates that, to satisfy the first "case-specific" prong, the district court needs to only identify the exceptional circumstances and confirm that they apply to the *particular case* before it. *See id.* at 1210. The court's analysis was not rendered too general just because those same circumstances also apply to other cases—even many other cases.

We see no reason to demand a different level of "case-specific" analysis at the second step of the § 1367(c)(4) inquiry. *Arroyo* didn't. Just as with the first step, the court in *Arroyo* stated the district court must determine if there are compelling reasons "*in a given case*" to decline jurisdiction under the *Gibbs* values. *Id.* at 1210 (emphasis added). There is no indication that the court in *Arroyo* envisioned or applied a different level of "case-specific" inquiry between the two prongs. As explained, the step-two error identified in *Arroyo* was not that the district court's inquiry was too generalized; it was that the district court "waited too late" to invoke the otherwise valid interests it identified. *Id.* at 1215. Both prongs require similar levels of specificity to satisfy *Arroyo*'s standard.

In Vo's case, the district court explicitly cited the *Gibbs* values when conducting its analysis, satisfying the case-specific requirements of the second prong. The court

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to decline supplemental jurisdiction under § 1367(c)(4)." *Id.* at 1211 (emphasis added).

concluded that, because addressing the Unruh Act claim was (1) not "fair" to the defendants and (2) an "affront to the comity between federal and state courts," the *Gibbs* values favored declining jurisdiction. The district court specifically relied on these factors to justify declining jurisdiction "over *Plaintiff's* Unruh Act claim," (emphasis added). In doing so, it mirrored what the district court in *Arroyo* did with its analysis in the first prong: it identified the important overall legal dynamics and factors around the ADA/Unruh Act and determined that they applied to the case at hand.

This type of analysis was sufficient for our court in *Arroyo*, and it is sufficient here. The justification needed to decline supplemental jurisdiction is "not particularly burdensome," *id.* at 1211 (citation omitted), and we decline to impose any additional requirements.

**D.**

This conclusion is not affected by Vo's other arguments. Vo argues, for example, that she is not a high-frequency litigant and therefore is not subject to some of California's heightened pleading requirements. She also argues that in any event her pleadings exceed the heightened pleading requirements applicable to her under California law.

Even accepting Vo's characterization, both of her arguments—that the district court should not have declined to exercise supplemental jurisdiction because she is not a high-frequency litigant and she has satisfied the heightened pleading requirements in any event—fail for the same reason. Forcing the district court to determine if these two assertions are in fact true would itself run afoul of the *Gibbs* values—especially comity. As *Gibbs* explains, "[n]eedless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by

procuring for them a surer-footed reading of applicable law" by the state courts. *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966). If the federal district court is required to adjudicate these threshold matters, it will "deprive the state courts of their critical role in effectuating the policies underlying those reforms." *Arroyo*, 19 F.4th at 1213. For these reasons, we find no error in the district court's decision to decline supplemental jurisdiction without first addressing these preliminary matters.[4]

## IV.

The district court's order declining supplemental jurisdiction was issued weeks before it ruled on the ADA claim, the court explained why the concerns surrounding ADA/Unruh claims applied to the case before it, and the court explicitly considered the relevant factors when it invoked § 1367(c)(4). That is all that our caselaw requires. The district court's order is **AFFIRMED**.

[4] The dissent acknowledges that the district court "nowhere made a factual finding" about these preliminary Unruh Act matters, but elsewhere seems to conclude that the district court did *implicitly* address them, and did so erroneously. And later the dissent alternatively argues that even if the district court didn't address those issues, it was an abuse of discretion for it not to do so. Rather than speculate about what the district court might have *implicitly* concluded about threshold Unruh Act issues, we agree with the dissent's starting point: "the district court nowhere made a factual finding" about those threshold issues. And contrary to the dissent's criticism of the district court, as already discussed above we conclude that the court did not err in refusing to decide those issues. If, as the dissent seems to argue, to properly address the "compelling reasons" prong a federal district court was required to decide threshold Unruh Act issues—such as whether a particular plaintiff is a high-frequency plaintiff and whether heightened pleading requirements apply and have been met—that would undermine the very federal-state comity concerns emphasized in *Arroyo*. 19 F.4th at 1213.

BADE, Circuit Judge, concurring in part and dissenting in part:

I agree with the majority that, under our precedent, the district court did not abuse its discretion in determining that "exceptional circumstances" under 28 U.S.C. § 1367(c)(4) were presented by the "distinctive configuration of California-law rules" that "would be rendered ineffectual if the district court were to exercise supplemental jurisdiction." *Arroyo v. Rosas*, 19 F.4th 1202, 1211 (9th Cir. 2021); *see* Maj. Op. at 11. I also agree that the district court's use of a "boilerplate order" was not insufficiently "case-specific" as to *per se* constitute an abuse of discretion or an error. *See* Maj. Op. at 13–15. I disagree, however, with the majority's conclusion that the district court provided "compelling reasons" that warranted declining to exercise supplemental jurisdiction in this particular case. Maj. Op. at 11–12, 15–16. Because I would hold that the district court abused its discretion in declining to exercise supplemental jurisdiction, I respectfully dissent.

I.

As an initial matter, I write separately to note two points. First, I do not read the majority opinion as stating that the same reasons and factors supporting a finding of "exceptional circumstances" would *necessarily* support a finding of "compelling reasons." Indeed, such a conclusion would be at odds with our precedent. We have recognized that, "when the balance of the *Gibbs* values indicates that there are 'compelling reasons' to decline jurisdiction, the underlying circumstances that inform this calculus usually will demonstrate how the circumstances confronted are 'exceptional.'" *Exec. Software N. Am., Inc. v. U.S. District Court*, 24 F.3d 1545, 1558 (9th Cir. 1994), *overruled on other grounds by Cal. Dep't of Water Res. v. Powerex Corp.*,

533 F.3d 1087, 1094–96 (9th Cir. 2008). Nevertheless, we stated that this would not "always . . . be the case." *Id.* Even if a court's evaluation of the *Gibbs* factors provides "'compelling reasons' for declining jurisdiction, *it might still be the case* that the differences between the case it is confronting and the case in which supplemental jurisdiction is appropriate are not sufficient to justify the conclusion that the court would, in fact, be applying subsection (c)(4) properly." *Id.* (emphasis added). The same is true for the reverse: although a case may present "exceptional circumstances," the balance of the *Gibbs* factors may still weigh against declining supplemental jurisdiction, as in *Arroyo*. 19 F.4th at 1214.

Second, although the majority concludes that the district court's order was sufficiently case-specific to comply with our precedent, I do not read this portion of the majority opinion as endorsing a district court's abdication of its responsibility to "take seriously" its decision "whether to decline, or to retain, supplemental jurisdiction over state law claims when any factor in [§ 1367(c)] is implicated." *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997) (en banc). As we have stated, this decision is "far better served by a deliberative decision than by default." *Id.*

Thus, to the extent the majority opinion could be construed to suggest otherwise in regard to these issues, it would be in conflict with our precedent.

II.

Although I agree with the majority that the district court did not abuse its discretion in determining that "exceptional circumstances" were present, I must dissent in part because I cannot conclude that the district court properly exercised its discretion in declining supplemental jurisdiction in this

case. Even if the factors the district court cited were sufficient to constitute "exceptional circumstances," a proper evaluation of the *Gibbs* factors demonstrates that there were no "compelling reasons" for declining to exercise supplemental jurisdiction, and the district court abused its discretion in holding otherwise.

The district court determined that "California's enactment of laws restricting construction-related accessibility claims, combined with the burden the ever-increasing number of such cases poses to the federal courts, present[ed] 'exceptional circumstances' and 'compelling reasons' that justif[ied] [its] discretion to decline to exercise supplemental jurisdiction over [Vo's] Unruh Act claim under 28 U.S.C. § 1367(c)(4)." The district court reasoned in part that it was "not, under the *Gibbs* factors, 'fair' to defendants that plaintiffs may pursue construction-related accessibility claims in [federal court] while evading the limitations California state law has imposed on such claims." Permitting "federal courts to become an escape hatch allowing plaintiffs to pursue such claims" was also, in the district court's view, "an affront to the comity between federal and state courts" and resulted in "tremendous strain on the federal courts."

In other words, the district court's cited explanation for finding "exceptional circumstances" and "compelling reasons" (*i.e.*, for finding that the *Gibbs* factors weighed in favor of declining to exercise supplemental jurisdiction) was Vo's alleged "evasion" of California "laws restricting construction-related accessibility claims." Because these reasons are not factually supported in the record and are clearly erroneous, the district court abused its discretion by relying on them. *See United States v. Hinkson*, 585 F.3d 1247, 1263 (9th Cir. 2009) (en banc) (providing that a

district court abuses its discretion if the district court's factual findings are "illogical, implausible, or without support in inferences that may be drawn from the facts in the record").

A.

First, the district court nowhere made a factual finding that Vo or her counsel *were* high-frequency litigants subject to the additional heightened pleading requirements under California Civil Procedure Code § 425.50(a)(4), (b)(2). In its order to show cause, the district court ordered Vo to "provide declarations from [herself] and [her] counsel, signed under penalty of perjury, providing all facts necessary for the Court to determine if each is a 'high-frequency litigant.'" Vo did so: she provided the definition of a high-frequency litigant under California law, an analysis in which she argued that she did not qualify as a high-frequency litigant, declarations stating under penalty of perjury that neither she nor her attorney was a high-frequency litigant, and printouts from PACER listing all of her and her counsel's qualifying cases in federal court over the twelve months preceding her complaint.[1] But the district court did not address the declarations and the other information that Vo submitted, and instead referred in general terms to the California "restrictions," "limitations," and "enactment of laws" in its order declining supplemental jurisdiction, without mentioning the restrictions applied to high-frequency litigants in connection with Vo specifically. Thus, it appears that the district court in fact concluded that Vo and her counsel were *not* high-frequency litigants.

[1] The declarations provided that the only "construction-related accessibility claims" were filed in federal court.

Therefore, the majority's suggestion that the district court did not decide whether Vo and her counsel fall under the definition of high-frequency litigants is inaccurate. *See* Maj. Op. at 15. To the extent the majority relies on the district court's supposed decision not to address whether Vo and her counsel were high-frequency litigants, it affirms grounds that the district court did not invoke. *See Arroyo*, 19 F.4th at 1210 n.4 ("[W]e cannot uphold the district court's decision based on discretionary grounds it did not invoke.").

Second, to the extent that it is unclear whether the district court made this factual finding or relied on such a finding in rendering its decision, the majority errs by deciding what the district court implicitly found and thereby substituting its own reasoning for that of the district court. *See Liti v. Comm'r*, 289 F.3d 1103, 1105 (9th Cir. 2002) ("Although we could review the record and speculate on which reasons the court below found persuasive, doing so would merely substitute our reasons for those of the [court]. Our duty is to review the reasonableness of the [court's] reasoning, not try to divine its nature or substance."); *see also Blue Cross & Blue Shield of Ala. v. Unity Outpatient Surgery Ctr., Inc.*, 490 F.3d 718, 724 (9th Cir. 2007) ("We cannot review the district court's exercise of discretion . . . unless we know that it has done so and why it reached its result.").

Third, even if the district court did decline to address whether Vo and her counsel were high-frequency litigants under California law, it strains credulity to conclude, as the majority does, that forcing the district court to decide this issue would be inappropriate. Maj. Op. at 15–16. The district court invited Vo to provide information for it to decide this very issue under threat of "dismissal of the entire action without prejudice." If the district court then declined to address the issue that *it identified* as a factor in its

discretionary decision whether to exercise supplemental jurisdiction, that would be an abuse of discretion. *Cf. United States v. $11,500.00 in U.S. Currency*, 710 F.3d 1006, 1011 (9th Cir. 2013) ("A district court abuses its discretion if it . . . fails to consider the factors relevant to the exercise of its discretion."); *United States v. Schlette*, 842 F.2d 1574, 1577 (9th Cir. 1988) (providing that "abuse of discretion means [a] court failed to consider [a] significant factor" (citing *United States v. Kramer*, 827 F.2d 1174, 1179 (8th Cir. 1987))).

Finally, if the district court made a factual finding that Vo was a high-frequency litigant, it did not make this finding on the record such that we could exercise our responsibility to review the district court's findings for clear error. *Hinkson*, 585 F.3d at 1263 (our abuse of discretion review includes a review of the district court's underlying factual findings for clear error); *Blue Cross & Blue Shield of Ala.*, 490 F.3d at 724 ("[M]eaningful appellate review for abuse of discretion is foreclosed when the district court fails to articulate its reasoning." (alteration in original) (citation and internal quotation marks omitted)).

B.

The majority also erred by concluding that the district court was not required to address the "threshold matter[]" of whether Vo's complaint satisfied California's heightened pleading requirements for all "construction-related accessibility claim[s]," regardless of whether the plaintiff is a high-frequency litigant. Maj. Op. at 15–16; Cal. Civ. Proc. Code § 425.50(a)(1)–(3). In her response to the district court's order to show cause, Vo argued—and provided the district court with citations to relevant portions of her complaint—that her complaint satisfied these heightened pleading requirements. In its order declining supplemental

jurisdiction, however, the district court cited Vo's alleged evasion of these heightened pleading requirements without making any factual finding that she *had in fact evaded them*. According to Vo, and as she argued to the district court in response to its order to show cause, she had not evaded anything because her complaint satisfied the heightened pleading requirements applicable to construction-related accessibility claims.

The majority concludes that the district court was entitled to avoid this unnecessary threshold issue of state law, Maj. Op. at 15–16, while failing to recognize that the district court did not "avoid" this issue at all. It is this *exact determination*—that Vo had used the federal court as an "escape hatch" to avoid the requirements that she otherwise would have had to meet in state court—that the district court used to exercise its discretion to decline supplemental jurisdiction under § 1367(c)(4). Thus, the district court's entire reasoning for declining supplemental jurisdiction was based on its finding that Vo had evaded California's heightened pleading requirements.

Therefore, no matter how we construe the district court's order, the majority errs by concluding that the district court was within its discretion not to address—and did not need to address—the issue of whether Vo satisfied California's heightened pleading requirements. First, if the district court indeed made an implicit factual finding that Vo's complaint did not meet the pleading requirements for construction-related accessibility claims under California law, then it did not properly make this finding on the record. *Hinkson*, 585 F.3d at 1263; *Blue Cross & Blue Shield of Ala.*, 490 F.3d at 724–25.

Second, if the district court did not make such a factual finding, then it abused its discretion in basing its reasoning

for declining supplemental jurisdiction on the illogical and unfounded assumption that Vo had evaded anything by filing her complaint in federal court. *Hinkson*, 585 F.3d at 1263. And, again, to the extent it is unclear exactly what the district court found in making its discretionary decision, the majority errs by affirming the district court on grounds it did not invoke and by substituting the majority's reasoning for that offered by the district court. *Arroyo*, 19 F.4th at 1210 n.4; *Liti*, 289 F.3d at 1105.

Third, if the district court had found that Vo's complaint satisfied the heightened pleading requirements, it abused its discretion by declining to exercise supplemental jurisdiction based on the unfounded conclusion that Vo was using federal court as an "escape hatch" to evade California's pleading requirements. *Cf. Arroyo*, 19 F.4th at 1216 (comity grounds are insufficient to warrant exercise of discretion under § 1367(c)(4) when "it was no longer possible to satisfy the interests underlying California's various devices for pre-screening Unruh Act claims"); *Hinkson*, 585 F.3d at 1263 (a district court abuses its discretion when it makes an "illogical" factual finding). As in *Arroyo*, if Vo's complaint satisfied California's heightened pleading requirements, the "burden from *this* particular litigation ha[d] already been borne" by Vo.[2] 19 F.4th at 1216.

[2] The majority asserts that "[f]orcing" the district court to determine whether Vo was a high-frequency litigant or otherwise satisfied the applicable pleading requirements "would undermine the very federal-state comity concerns emphasized in *Arroyo*." Maj. Op. 15–16, 16 n.4. The concern in *Arroyo*, however, was that district courts could facilitate "a wholesale evasion" of "California's carefully crafted reforms"—but, again, Vo says *she did not evade anything*. 19 F.4th at 1213. That comity concern simply is not present here.

In sum, no matter how the district court's order is interpreted, the district court abused its discretion in declining to exercise supplemental jurisdiction, and the majority errs by finding otherwise.

C.

Finally, in determining that a district court may not be "force[d]" to decide whether Vo was a high-frequency litigant or satisfied the heightened pleading requirements under state law, the majority invokes *Gibbs*, reasoning that deciding these threshold issues of state law would "run afoul of the *Gibbs* values." Maj. Op. at 15–16. Although the majority quotes *Gibbs* for the assertion that "[n]eedless decisions of state law should be avoided," Maj. Op. at 15–16 (quoting *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966)), this principle was ultimately codified in § 1367(c). *See City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 172–73 (1997) (stating that § 1367 "codifies [the] principles" in *Gibbs*). The majority thus ignores that, "to the extent that *Gibbs* . . . [was] interpreted as permitting courts to extend the [supplemental jurisdiction] doctrine's underlying values beyond previously recognized applications *whenever* doing so was consistent with those values, . . . section 1367(c)(4) more carefully channels courts' discretion." *Exec. Software*, 24 F.3d at 1559.

The majority fails to explain how this principle of avoiding state-law issues alone provides valid "other compelling reasons" sufficient to expand the reach of § 1367(c)(4). *See id.* at 1560. The majority does not conclude that determining whether Vo was a high-frequency litigant or satisfied heightened pleading requirements involves unsettled or complex issues of state law, *see*

28 U.S.C. § 1367(c)(2),[3] and even if it did, that would not be enough to save the district court's exercise of discretion under § 1367(c)(4). *See Arroyo*, 19 F.4th at 1210 n.4. Nor does the majority explain how federal courts deciding these issues would deprive the state *courts* of their role, as the standard for who meets the definition of a high-frequency litigant is determined by *statute*.[4] *See* Cal. Civ. Proc. Code § 425.55(b).

More importantly, endorsing the routine avoidance of issues of state law is fundamentally incompatible with how the Supreme Court has interpreted the supplemental jurisdiction doctrine and *Gibbs*. For example, the Court has stated that "it is evident from *Gibbs* that pendent state law claims are not always, or even almost always, to be dismissed and not adjudicated" because, "given advantages of economy and convenience and no unfairness to litigants, *Gibbs* contemplates adjudication of these claims." *Hagans v. Lavine*, 415 U.S. 528, 545–46 (1974).[5] Under the

[3] Indeed, in *Arroyo*, we had no trouble deciding such a state-law issue *on appeal* that the district court did not address—whether the plaintiff had "shown that he 'intended to use [the store] on a *particular* occasion' and 'was deterred from accessing' it 'on [that] *particular* occasion.'" 19 F.4th at 1215 (alterations in original) (quoting Cal. Civ. Code § 55.56(d)(1)). We concluded that "this sole remaining issue present[ed] little difficulty" after reviewing the plaintiff's declaration in support of his summary judgment motion. *Id.*

[4] And, at least as to the determination of whether an attorney is a high-frequency litigant, pursuant to state law this determination is to be "made solely on the basis of the verified complaint and any other publicly available documents." Cal. Civ. Proc. Code § 425.50(f).

[5] The Court even cited instances in which it had, for example, "characteristically dealt *first* with possibly dispositive state law claims pendent to federal constitutional claims." *Hagans*, 415 U.S. at 546

majority's view, any time a district court decides that it would prefer not to pass on *any* issue of state law, no matter the novelty or complexity, it could exercise its discretion under § 1367(c)(4)—and potentially the other § 1367(c) subsections as well—to decline supplemental jurisdiction as a matter of comity.[6] This is inconsistent with our exhortation that "declining jurisdiction outside of subsection (c)(1)–(3) should be the exception, rather than the rule." *Exec. Software*, 24 F.3d at 1558.

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(emphasis added); *see also Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 117 (1984) ("Th[is] Court also has held that a federal court may resolve a case solely on the basis of a pendent state-law claim and that in fact the court usually should do so in order to avoid federal constitutional questions." (citation omitted)). Although those are not the circumstances here, the Supreme Court's preference for sometimes disposing of state-law issues first is instructive.

[6] As the majority opinion recognizes, a consideration of the *Gibbs* factors underlies both prongs of the two-part inquiry under § 1367(c)(4), so the majority's reasoning would not be limited to cases in which "exceptional circumstances" had already been found. Maj. Op. at 8; *Arroyo*, 19 F.4th at 1211 ("[W]e think that, at the very least, [the] phrase ['exceptional circumstances'] extends to highly unusual situations that threaten to have a substantial adverse impact on the core *Gibbs* values of economy, convenience, fairness, and *comity*." (emphasis added) (quoting *Int'l Coll. of Surgeons*, 522 U.S. at 172–73)); *id.* at 1213 (finding exceptional circumstances given the "very substantial threat to federal-state *comity*" (emphasis added)). Even more concerning, because a district court's decision under any of the § 1367(c) provisions must be "informed by whether [declining jurisdiction] comports with the underlying objective[s] of . . . economy, convenience, fairness, and comity," *O'Connor v. Nevada*, 27 F.3d 357, 363 (9th Cir. 1994) (first alteration in original) (quoting *Exec. Software*, 24 F.3d at 1557), the majority's reasoning would easily extend to the other § 1367(c) subsections as well, permitting a district court to decline supplemental jurisdiction whenever it confronts a threshold issue of state law that it would prefer not to be "forced" to decide. Maj. Op. at 15–16.

In addition, such a practice disposes of the district court's "obligation and . . . duty to decide cases properly before [it], absent a *firm basis* for declining to do so." *Tillman v. Tillman*, 825 F.3d 1069, 1075 (9th Cir. 2016) (emphasis added) (citation and internal quotation marks omitted); *see also City of Tucson v. U.S. W. Commc'ns, Inc.*, 284 F.3d 1128, 1132 (9th Cir. 2002) (same). Indeed, we recently reaffirmed this principle, stating that a federal court generally "has a responsibility to decide cases properly before it, *even those it would gladly avoid*." *Mecinas v. Hobbs*, 30 F.4th 890, 901 (9th Cir. 2022) (emphasis added) (quoting *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 194 (2012)).

The majority undermines the responsibility of the federal courts to decide cases within their jurisdiction by giving a district court carte blanche to avoid any issue of state law that it would prefer not to address under the guise of making a "rare" exercise of discretion to decline supplemental jurisdiction under § 1367(c)(4).

III.

The majority errs in affirming the district court's decision to decline supplemental jurisdiction over Vo's Unruh Act claim and by endorsing a district court's unrestrained abdication of its duty to decide cases before it as a valid "other compelling reason" for declining jurisdiction under § 1367(c)(4). I respectfully dissent.