

IN THE SUPREME COURT OF CALIFORNIA

LOS ANGELES POLICE PROTECTIVE LEAGUE,

Plaintiff and Respondent,

v.

CITY OF LOS ANGELES AND CHARLES BECK,

Defendants and Petitioners.

On Review from the Court of Appeal
for the Second Appellate District, Division Seven,
Case No. B306321

After an Appeal from the Superior Court of California,
County of Los Angeles, Case No. BC676283

**APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES TO FILE
AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONERS CITY OF
LOS ANGELES AND CHARLES BECK; AMICUS CURIAE BRIEF**

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

There are no entities or persons that must be listed in this certificate under California Rules of Court, rule 8.208.

DATED: March 3, 2023

HANSON BRIDGETT LLP

By: s/ David C. Casarrubias

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APPLICATION TO FILE AMICUS CURIAE BRIEF

Pursuant to rule 8.520(f) of the California Rules of Court, the League of California Cities (“Cal Cities”) respectfully requests permission to file an amicus curiae brief in support of Petitioners the City of Los Angeles and Charles Beck. This application is timely made within 30 days after the filing date of the Petitioners’ reply brief on the merits.

No party or counsel for a party in this proceeding authored the proposed amicus brief in any part, and no such party or counsel, nor any other person or entity other than the amicus curiae, made any monetary contribution intended to fund the proposed brief’s preparation or submission. (See Cal. Rules of Court, rule 8.520(f)(4).)

IDENTITY OF AMICUS CURIAE AND STATEMENT OF INTEREST

Cal Cities is an association of 478 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. It is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance.

Cal Cities, along with its Legal Advocacy Committee, has determined that the present case, and more specifically the third issue the Court certified for review, raises important issues that affect its members and all municipalities in California.

Specifically, as framed by the Court, Cal Cities is interested in this issue: “Is it error to compel the City to comply with a statute that has been ruled unconstitutional by the United States Court of Appeals for the Ninth Circuit?”

As explained in Cal Cities’ proposed brief, the answer is “yes.” If municipalities, like the City of Los Angeles here, are compelled by California courts to comply with statutes that have been ruled unconstitutional by the Ninth Circuit, they will be faced with mutually irreconcilable obligations and an impossible choice: obey the state court injunction and enforce an unconstitutional law thereby opening themselves up to suit and liability in federal court, or defy the injunction and face the consequences of contempt. That cannot be the correct result.

Cal Cities’ attorneys have examined the parties’ petition and merits briefs and are familiar with the issues and the scope of the presentations. Cal Cities respectfully submits that its brief will help illuminate the policy implications of compelling cities to comply with statutes that have been ruled unconstitutional by the Ninth Circuit, giving greater attention to these concerns than the parties have been able to do within the confines of their briefs, which necessarily address a wider range of issues.

Therefore, Cal Cities respectfully requests leave to file its Amicus Curiae brief combined with this application.

DATED: March 3, 2023

HANSON BRIDGETT LLP

By: s/ David C. Casarrubias

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BRIEF OF AMICUS CURIAE
LEAGUE OF CALIFORNIA CITIES

INTRODUCTION

As Petitioners have argued, it must be error for a California trial court to compel the City of Los Angeles to comply with a statute that has been ruled unconstitutional by the Ninth Circuit. Upholding a contrary rule—as does the Court of Appeal’s decision below—will leave Cal Cities’ members in a practical quandary where they must either disobey a state court injunction or enforce a statute that California’s governing federal Circuit Court has held is unconstitutional and cannot be enforced. Cities are left stuck between the proverbial rock and hard place, and only this Court can knock them loose. It should do so by reversing the Court of Appeal and holding that where there is a conflict of interpretation of federal law between this Court and the Ninth Circuit, California’s lower courts should follow the Ninth Circuit’s latter decision.

FACTUAL AND PROCEDURAL BACKGROUND

Cal Cities adopts the Factual and Procedural Background set forth in Petitioners’ Opening Brief on the Merits. (OB 13-20.)

ARGUMENT

- I. California’s existing principles of stare decisis create an untenable risk of conflicting legal obligations, as the present case demonstrates.**

California courts are bound by the United States Supreme Court on issues of federal law. (*Chesapeake & O. Ry. Co. v.*

Martin (1931) 283 U.S. 209, 221 [“The determination by this court of (a federal question to be determined by the application of federal law) is binding upon the state courts, and must be followed, any state law, decision, or rule to the contrary notwithstanding.”].) But California courts have so far held that they are not bound by lower federal courts’ interpretation of federal law. (See, e.g., *People v. Bradford* (1997) 15 Cal.4th 1229, 1292; *People v. Bradley* (1969) 1 Cal.3d 80, 86.) California is not alone in this regard; its existing treatment of federal precedent falls within a range of approaches adopted by other courts.

There appear to be four schools of thought on this question: (1) a decision of an inferior federal court should be treated as persuasive, but not binding, authority; (2) a decision of an inferior federal court should be followed, if reasonably possible, to avoid a conflict between state and federal resolutions of the same question; (3) a decision of an inferior federal court binds the state court; and (4) if the decisions of the inferior federal courts are “numerous and consistent,” the state court must follow their dictates.

(*Hall v. Pennsylvania Bd. of Probation and Parole* (Pa. 2004) 578 Pa. 245, 252-253 (*Hall*).)

On the other hand, California trial and appellate courts *must* follow this Court’s precedent in all matters, including its construction of federal law. (*Los Angeles Police Protective League v. City of Los Angeles* (2022) 78 Cal.App.5th 1081, 1099 (*LAPPL*), citing *Winns v. Postmates, Inc.* (2021) 66 Cal.App.5th 803, 811; accord *People v. Perez* (2020) 9 Cal.5th 1, 13.) As the present case illustrates, this principle of stare decisis can lead to unworkable problems, especially when the Ninth Circuit decides a question of

federal law in a manner directly contrary to an earlier construction by this Court. (*LAPPL*, at p. 1099 [acknowledging that the City of Los Angeles was “caught between the Scylla of [Ninth Circuit precedent] and the Charybdis of [this Court’s contrary holding]”).)

Here again, California is not alone in struggling with these problems. “Remarkably, this significant question about the interplay between the state and federal judicial systems lingers unresolved more than two-hundred years after the Constitution’s ratification.” (Frost, *Inferiority Complex: Should State Courts Follow Lower Federal Court Precedent on the Meaning of Federal Law?* (2015) 68 Vand. L.Rev. 53 (hereafter *Inferiority Complex*).) But California’s existing lines of stare decisis—holding that this Court’s decisions are absolutely binding and the Ninth Circuit’s merely persuasive—create unworkable outcomes for California’s lower courts, and are undesirable for litigants across the state who are left faultlessly whipsawed between conflicting obligations. (*Inferiority Complex*, at p. 93 [observing that when two rulings are irreconcilable “the citizen is forced to choose whether to violate either the state court’s or the federal court’s view of federal law and then run the risk of being sanctioned by the court that took the opposing position.”].) This Court can and should adopt a new rule to solve this problem for courts and litigants.

II. This Court should carve out an exception from the general principles of stare decisis that allows California's lower courts to follow Ninth Circuit precedent.

To address the unfair result in this case and the described whipsaw effect for courts and litigants throughout the state, this Court should establish an exception to the existing rules governing California's lower courts' interpretation of federal law. Specifically, California's trial and appellate courts should follow the Ninth Circuit's decisions regarding federal law until and unless this Court grants review and expressly disagrees with the relevant circuit precedent. (Cf. *Hall, supra*, 578 Pa. at pp. 252-253 [discussing the adoption of a similar rule by some states].)

Such an exception would be supported by the Supremacy Clause and principles of comity among sovereigns. And, on balance, the benefits of recognizing a limited exception that only applies to California's lower courts would outweigh the costs to this Court's sovereign jurisdiction over its lower courts on questions of federal law. Accordingly, this Court should make an exception to the general principles of stare decisis and allow California's lower courts to follow Ninth Circuit precedent.

A. The Supremacy Clause and principles of comity among sovereigns supports an exception allowing California's lower courts to follow Ninth Circuit precedent on federal law.

The Supremacy Clause supports a rule that where this Court and the Ninth Circuit issue conflicting interpretations of federal law, California's lower courts should follow the latter

decision. The Supremacy Clause states: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; *and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.*” (U.S. Const., art. VI, cl. 2, emphasis added.) The laws of the United States, for purposes of the Supremacy Clause, include federal common law. (See, e.g., *Agua Caliente Band of Cahuilla Indians v. Superior Court* (2006) 40 Cal.4th 239, 250 [opining that in the realm of Indian affairs, the Supremacy Clause “may serve as a basis for preemption of state law where it conflicts with congressional legislation *or federal common law*” (emphasis added)]; accord, OB 51 [citing cases holding that federal law includes authoritative decisions by the federal courts].) Thus, it would be consistent with the Supremacy Clause to create a rule that California’s lower courts should follow the Ninth Circuit, where the Ninth Circuit issues a decision conflicting with a prior state court interpretation of federal law.

Principles of comity among sovereigns also weighs in favor of following the Ninth Circuit’s latter interpretation of federal law. As noted by the United States Supreme Court long ago: “It is true, the sovereignties are distinct, and neither can interfere with the proper jurisdiction of the other . . . hence the State courts have no power to revise the action of the Federal Courts, nor the Federal the State, except where the Federal Constitution or laws are involved.” (*Clafin v. Houseman* (1876) 93 U.S. 130, 137; see

also, *Littlefield v. State, Dept. of Human Services* (Me. 1984) 480 A.2d 731, 737 [“even though only a decision of the Supreme Court of the United States is the supreme law of the land on a federal issue . . . nevertheless, in the interests of existing harmonious federal-state relationships, it is a wise policy that a state court of last resort accept, so far as reasonably possible, a decision of its federal circuit court on such a federal question”].) The Delaware Supreme Court has also recognized that “[i]f . . . significant weight should be accorded the neutral principle that important and novel issues of [state] law are best decided by [state] courts, then it logically follows that our courts must acknowledge that important and novel issues of other sovereigns are best determined by their courts where practicable.” (*Martinez v. E.I. DuPont de Nemours and Co., Inc.* (Del. 2014) 86 A.3d 1102, 1109-1110.) As explained by these courts, comity principles support a rule directing California’s lower courts to follow the Ninth Circuit’s precedent on federal questions, even when that precedent conflicts with an earlier decision by this Court on the same federal question.

Finally, deference to another sovereign goes both ways. The Ninth Circuit regularly certifies questions to this Court on questions of California law (e.g. *Ward v. United Airlines, Inc.* (2020) 9 Cal.5th 732, 742-743), and will reverse its own district courts out of deference to the this Court (see *Ward v. United Airlines, Inc.* (9th Cir. 2021) 986 F.3d 1234, 1245 [reversing district court decision following certification to this Court and remanding with instructions that decision conform to this Court’s

interpretation of state law])). For this additional reason, California's lower courts should follow the Ninth Circuit's decisions on federal law.

B. On balance, the benefits of recognizing a limited exception that only applies to California's lower courts outweighs the costs to this Court's sovereign jurisdiction over its lower courts on questions of federal law.

There are costs and benefits associated with recognizing a rule that makes state courts defer to Ninth Circuit precedent on questions of federal law. (See *Inferiority Complex, supra*, at pp. 91-102.) The primary cost is to this Court's sovereign jurisdiction over its lower courts on questions of federal law. (See *Auto Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450, 455 [explaining California's lower courts' obligations to this Court's decisions under stare decisis].) Under the rule proposed here, those lower courts—instead of deferring to this Court's earlier decisions on federal law—will defer to the Ninth Circuit.

However, that cost can be offset by limiting the exception only to California's lower courts, and exempting this Court from having to defer to the Ninth Circuit. Doing so allows this Court to retain its role in the development of federal law. (*Inferiority Complex, supra*, at p. 100 [explaining that input from state courts can be particularly valuable in the development of federal law].) It also protects this Court's power to grant review and reverse lower court decisions following latter Ninth Circuit precedent in the event that this Court still disagrees with the Ninth Circuit.

In those circumstances—where the Ninth Circuit rules on a question of federal law, and this Court *subsequently* considers and rejects the Ninth Circuit’s analysis—California’s lower courts would be bound by this Court’s decision.

Notwithstanding, the benefits of creating a rule that makes state courts defer to Ninth Circuit precedent on questions of federal law, in the circumstances described above, are substantial.

First, having lower courts defer to the Ninth Circuit ensures uniformity in the application of federal law. (*Inferiority Complex, supra*, at pp. 92-94.) Uniformity avoids the serious problem of parties in a single state being subject to conflicting legal standards. That is precisely the problem Petitioners face in this case. (OB 51.) As Petitioners noted in their opening brief, forcing a city to obey an injunction enforcing an unconstitutional law will necessarily force the city to violate federal law, and thereby violate the constitutional rights of its citizens. (*Ibid.*) Alternatively, if cities refuse to follow the state court injunction, they face the possibility of being held in contempt. (*Ibid.*) Neither option is tenable. If the lower courts had followed the Ninth Circuit’s decision, this problem could have been avoided.

Second, creating a rule that makes the lower courts defer to Ninth Circuit precedent on questions of federal law also has the benefit of preventing forum shopping. (*Inferiority Complex, supra*, at pp. 94-95.) Ordinarily, “California courts do not throw their doors wide open to forum shopping.” (*Appalachian Ins. Company v. Superior Court* (1984) 162 Cal.App.3d 427, 438.) However, if

the state's lower courts are permitted—or even required—to ignore Ninth Circuit precedent on questions of federal law, savvy litigants will take advantage of the interjurisdictional split and forum shop their way to a desired result. (See *Red Maple Properties v. Zoning Commission of the Town of Brookfield* (Conn. 1992) 222 Conn. 730, 739, fn. 7 [“It would be a bizarre result if this court (adopted one analysis) when in another courthouse, a few blocks away, the federal court, being bound by the Second Circuit rule, required (a different result)”].) This problem is avoidable if California's lower courts follow Ninth Circuit precedent on federal law.

Third, requiring the state's lower courts to follow Ninth Circuit precedent on federal law avoids offending the rule of law. (*Inferiority Complex, supra*, at pp. 95-96.) “Differing interpretations of the same statute or constitutional provision undermine the equality principle of treating like cases alike and weaken the integrity of the law itself by suggesting its meaning is not immutable.” (*Id.* at p. 95.) This problem is exacerbated when different interpretations of the same law are allowed to exist within a single state. (*Id.* at p. 96.) The public is left in the balance, forced to figure out what law they plan to follow, and public confidence in the rule of law diminishes. (*Ibid.*) This problem is also avoidable if the state's lower courts follow Ninth Circuit precedent on federal law.

Fourth, allowing the state's lower courts to follow Ninth Circuit precedent avoids having state judges—who do not have life tenure and are subject to electoral challenges—decide

difficult questions of federal law. (*Inferiority Complex, supra*, at pp. 96-98.) Because Article III judges are protected from the whims of public opinion, they are better suited to decided controversial constitutional questions in the first instance. The rule proposed here thus appropriately aligns decision making.

Fifth, having the states' lower courts follow Ninth Circuit precedent will conserve both state and federal judicial resources. (*Inferiority Complex, supra*, at p. 99.)

Under the current system, litigants cannot be sure how a state court will rule on a question of federal law even after that question has been definitively resolved by the federal court of appeals for the region. This uncertainty may inspire litigation by those seeking to take advantage of the potential divergence between state and federal courts on the meaning of the federal law—litigation that *would not* be brought were state courts bound to follow federal precedent.

(*Ibid.*, emphasis added.) That is precisely what happened to Petitioners, here. They were hauled into state court to account for a state statute that was deemed unconstitutional in federal court nearly two decades ago—invoking three levels of state court review along the way.

Which leads to the *final* point weighing in favor of a rule that makes state courts defer to Ninth Circuit precedent on questions of federal law—conserving party resources. This problem is particularly acute when the defendant is a municipality. A primary purpose of all California towns and cities is to avoid costly litigation. (See *Eaton v. Ventura Port Dist.* (1975) 45 Cal.App.3d 862, 867 [holding that a primary responsibility of all government entities is “guarding the public

treasury” by avoiding litigation where possible].) But if cities are forced either to disobey a state court injunction, or enforce a statute that the Ninth Circuit has held is unconstitutional and cannot be enforced, they face subjecting themselves to costly litigation in two different forums, state and federal. That result cuts directly against Cal Cities’ members’ policy objective of guarding the public treasury by avoiding litigation where possible. It is also a result that can be avoided by this Court recognizing the predicament that state courts face when the Ninth Circuit issues a decision interpreting federal law that conflicts with this Court’s prior ruling.

CONCLUSION

Cal Cities agrees with Petitioners that it is error to compel the City of Los Angeles to comply with a statute that has been ruled unconstitutional by the Ninth Circuit. The better rule is for California lower courts to follow the Ninth Circuit's interpretation of federal law until and unless this Court grants review and expressly considers and disagrees with the Ninth Circuit. Accordingly, Cal Cities urges this Court to reverse the portion of the Court of Appeal's decision upholding the trial court's injunction.

DATED: March 3, 2023

HANSON BRIDGETT LLP

By: s/ David C. Casarrubias

ADAM W. HOFMANN
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WORD CERTIFICATION

I, David C. Casarrubias, counsel for amicus curiae, hereby certify, in reliance on a word count by Microsoft Word, the program used to prepare the foregoing “Application of the League of California Cities to File Amicus Curiae Brief in Support of Petitioners City of Los Angeles and Charles Beck; Amicus Curiae Brief,” that it contains 3,214 words, including footnotes (and excluding caption, certificate of interested entities or persons, tables, signature block, and this certification).

DATED: March 3, 2023

HANSON BRIDGETT LLP

By: s/ David C. Casarrubias

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PROOF OF SERVICE

LOS ANGELES POLICE PROTECTIVE LEAGUE v. CITY OF LOS ANGELES AND CHARLES BECK

**California Supreme Court Case No.: S275272
County of Los Angeles, Case No. BC676283**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Contra Costa, State of California. My business address is 1676 N. California Blvd., Suite 620, Walnut Creek, CA 94596.

On March 3, 2023, I served true copies of the following document(s) described as:

**APPLICATION OF THE LEAGUE OF CALIFORNIA
CITIES TO FILE AMICUS CURIAE BRIEF IN SUPPORT
OF PETITIONERS CITY OF LOS ANGELES AND
CHARLES BECK; AMICUS CURIAE BRIEF**

on the interested parties in this action as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 3, 2023, at San Bruno, California.

/s/ Debbie Estebanez
Debbie Estebanez

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PROOF OF SERVICE

LOS ANGELES POLICE PROTECTIVE LEAGUE v. CITY OF LOS ANGELES AND CHARLES BECK

California Supreme Court Case No.: S275272

County of Los Angeles, Case No. BC676283

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 425 Market Street, 26th Floor, San Francisco, CA 94105.

On March 3, 2023, I served true copies of the following document(s) described as:

**APPLICATION OF THE LEAGUE OF CALIFORNIA
CITIES TO FILE AMICUS CURIAE BRIEF IN SUPPORT
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CHARLES BECK; AMICUS CURIAE BRIEF**

on the interested parties in this action as follows:

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BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Hanson Bridgett LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 3, 2023, at San Francisco, California.

/s/ Sharrol Singh
Sharrol Singh

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**California Supreme Court Case No.: S275272
County of Los Angeles, Case No. BC676283**

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