2d District No. B330202
L.A.S.C Case No. 22SMCV00736

IN THE COURT OF APPEAL, STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 4

CHARLES COHEN AND KATYNA COHEN,
Petitioners,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent.

THOMAS SCHWARTZ AND LISA SCHWARTZ,
Real Parties in Interest.

On Appeal from Los Angeles Superior Court
Hon. Lisa Sepe-Wiesenfeld, Judge Presiding
Department N - (310) 255-1856

Amicus Brief by the City of Los Angeles and the League of California of Cities

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INTRODUCTION

Pursuant to the Court's December 22, 2023, letter requesting amicus briefing, the City of Los Angeles and the League of California Cities (hereafter jointly "the City") submit this joint brief addressing the following important issues:

1. Does Government Code section 36900, subdivision (a) confer upon private citizens the right to enforce municipal ordinances by filing suit against alleged violators?
2. Should the Court decline to revisit *Riley v. Hilton Hotels Corp*. (2002) 100 Cal.App.4th 599 on this issue due to the doctrine of *stare decisis*?

In short: No and No.

In this case, Plaintiffs and Real Parties in Interest Thomas and Lisa Schwartz (the "Schwartzes") seek to privately enforce Los Angeles Municipal Code ("LAMC") sections 12.22.C.20 and 62.169 regarding the removal and height of vegetation on the property of Defendants and Petitioners Charles and Katyna Cohen (the "Cohens"). Neither section authorizes private enforcement. (See Petn. Ex. 3 at pp.55-59.) The Schwartzes erroneously cite Government Code section 36900(a) (hereafter, "Section 36900(a)") to support their direct enforcement.

Section 36900(a) confirms the means for *cities* to enforce their ordinances. In a city's discretion, violations can be

prosecuted as criminal misdemeanors or infractions or "redressed by civil action." Section 36900(a) does not refer to private parties, private actions, or any private civil standing for the private enforcement of all city ordinances throughout California. The City urges the Court to promptly resolve this issue on a plain reading of Section 36900(a).

The contrary assertion in *Riley v. Hilton Hotels Corp.* (2002) 100 Cal.App.4th 599, is simply wrong. This is not surprising, because *Riley* lacks legal authority, legislative history, or logical argument. Rather, *Riley* relies solely on the words "or redressed by civil action," taken out of context from the statute. *Riley* asserted that these words necessarily authorized an unlimited number of private actions to directly enforce each of the thousands of city ordinances in California, all in a manner beyond that city's control. This assertion disregarded basic rules of statutory interpretation and the clear language of the statute. It would lead to absurd results if the case were widely followed.

Even if Section 36900(a) were somehow ambiguous, the larger context of the statutory scheme confirms that it is limited to the operation and scope of city government and not the creation of private enforcement actions. The legislative history repeatedly confirms that the Legislature did not intend to make any substantive changes when enacting Section 36900, and there is no suggestion of any private enforcement for city ordinances.

In any case, Section 36900(a) is a general law that does not apply to charter cities. As a charter city under the California Constitution, the City of Los Angeles has complete control over the scope and enforcement of its own ordinances and is not subject to general state laws. The City of Los Angeles has explicitly provided for the private enforcement of many ordinances, but the subject ordinances are not among them. The fact that this issue was not previously raised by the parties is irrelevant, as the individual arguments and interests of two private parties cannot infringe on the authority of a charter city.

The policy of *stare decisis* should not impede the correct result. First, *Riley*'s decision is contrary to the language of Section 36900(a). Second, *Riley*, like its progeny, asserted its holding without analysis or discussion. Third, *Riley* ignores established law limiting the implicit creation of a private right to enforce public laws. Fourth, the impact of disregarding *Riley* is limited, because there has been no widespread reliance on that holding. Fifth, the correct application of Section 36900(a) does not prevent cities from authorizing private enforcement, or remove ordinances from private litigation, but only confirms the limitations of Section 36900(a). Sixth, the application of Section 36900(a) to a charter city has not been previously litigated.

For all of these reasons, this Court should reverse the order below, instead sustaining the demurrer to the Second and Third

Causes of Action on the grounds that Section 36900(a) does not support private enforcement.

LEGAL DISCUSSION

I. Government Code Section 36900(a) Does Not Create a Private Right of Action to Enforce City Ordinances.

A. Section 36900(a) is not ambiguous and makes no reference to private legal actions.

Section 36900(a) states:

> Violation of a city ordinance is a misdemeanor unless by ordinance it is made an infraction. The violation of a city ordinance may be prosecuted by city authorities in the name of the people of the State of California, or redressed by civil action. (Gov. Code, § 36900, subd. (a).)

Section 36900(a)'s passive-voice grammar, and the second clause's lack of its own subject, requires careful consideration of the statutory language. However, the only actors it authorizes to enforce ordinances are "city authorities." No other person or entity is even suggested. Its purpose is to describe the means by which "city authorities" may enforce a "violation of a city ordinance." Thus, the plain reading of Section 36900(a) authorizes "city authorities" to respond to a "violation of a city

ordinance," with the prosecution of "a misdemeanor" or "an infraction" or "by civil action," depending on the terms and nature of the ordinance and city's chosen remedy. There is no other reasonable interpretation of this statutory language.

"The rules of statutory construction apply equally to the construction of ordinances." (*Russ Bldg. Partnership v. City & Cnty. of San Francisco* (1988) 44 Cal.3d 839, 847, n.8.) The "fundamental task is to determine the Legislature's intent so as to effectuate the law's purpose." (*Segal v. ASICS Am. Corp.* (2022) 12 Cal.5th 651, 662, cleaned up.) Primarily, the court examines "the statutory language, giving it a plain and commonsense meaning, [not] in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment." (*Ibid.*) The court is "not to insert what has been omitted, or to omit what has been inserted…" (*Seaboard Acceptance Corp. v. Shay* (1931) 214 Cal. 361, 366.) The interpretation of a statute presents a question of law. (*People v. Jimenez* (2020) 9 Cal.5th 53, 61.) These principles of interpretation confirm that the plain language of Section 36900(a) addresses the means by which city authorities may enforce ordinances. It would be improper to rewrite Section 36900(a) to insert the creation of private causes of action.

Outside Section 36900(a), the common law already allows private parties to use ordinances as benchmarks for negligence, nuisance, and other standards of care. (E.g., *Finnegan v. Royal Realty* Co. (1950) 35 Cal.2d 409, 416 ["The standard of conduct of a reasonable man may be established by… ordinance"].) Similarly, an ordinance can support the "unlawful" prong of an unfair competition claim. (E.g., *Hewlett v. Squaw Valley Ski Corp*. (1997) 54 Cal.App.4th 499, 531-532; Bus. & Prof. Code § 17200.) Additionally, many ordinances (not those at issue here) authorize private enforcement. (See *post* at p. 33.)

B. The asserted statutory interpretation in *Riley v. Hilton Hotels Corp*. is baseless.

The bald assertion in *Riley v. Hilton Hotels Corp*. (2002) 100 Cal.App.4th 599, 607, that Section 36900(a) authorizes the private enforcement of all city ordinances in California is simply wrong. *Riley* offered no discussion or law to justify this sweeping assertion, no legislative history, no legal authorities, not even a logical argument. *Riley* merely held, without justification or explanation, that the words "redressed by civil action," taken in isolation, necessarily meant that the Legislature intended to establish the private enforcement of all city ordinances in California. *Riley* went farther, also asserting a city could not stop private enforcement of its ordinances, because *Riley*'s reading of Section 36900(a) necessarily trumped any city ordinance. (*Id*. at

p. 607.) *Riley*'s entire discussion of this issue, including the statutory citations, is limited to 148 words. (See, *ibid*.) This is particularly shocking given the breadth of *Riley*'s holding, purporting to create a private enforcement cause of action for every city ordinance in California.[1]

Only one published case explicitly follows *Riley* on this point, but it offers even less support for this assertion than *Riley*. (E.g., *Huntingdon Life Scis., Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1264 [cites *Riley* without comment – total discussion: 37 words].)[2] No case has justified taking the words "redressed by civil action" out of context or explained why those words compel the creation of broad private enforcement of all city ordinances.

Riley's baseless assertion only makes sense if tied to an unjustified assumption that reference to "civil action" necessarily indicated private enforcement. However, local public entities regularly choose to enforce ordinances through civil actions.[3]

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[1] The impact might be even broader, as a similar statute exists regarding county ordinances. (See Gov. Code § 25132, subd.(a).)
[2] Another published case, *Plotkin v. Sajahtera, Inc.* (2003) 106 Cal.App.4th 953, allowed private enforcement without comment, but disagreed with *Riley* on the retroactive application of an ordinance amendment.
[3] See e.g., *People v. Pacific Landmark, LLC* (Cal.Super. Oct. 16, 2003) No. BC298138, 2003 WL 25676103 [injunction to stop solicitation and/or commission of prostitution on property]; and

When enforcing an ordinance, "[i]t should be unnecessary to point out the tremendous distinction that exists between acts which are simply illegal and for which therefore a civil liability alone results, and those which are criminal, for which penal as well as civil liability arises." (*Matter of Ellsworth* (1913) 165 Cal. 677, 681 [reversing a criminal charge, finding that the applicable ordinance only made his alleged actions illegal, not criminal].)

In *City of Stockton v. Frisbie & Latta* (1928) 93 Cal.App. 277, the city brought a civil action to enforce a zoning ordinance that barred the operation of a funeral home without a permit. The court rejected the argument that a city can only enforce ordinances criminally, holding that a city can "determine for itself the particular mode for enforcing such regulations within its limits" and this included invoking "an appropriate civil remedy to coerce obedience to the mandates of its ordinances…adopted in the exercise of the police power as expressly granted to it by the Constitution."[4] (*Id*. at p. 283.)

People ex rel. City of Los Angeles v. Dino's Victory Roadhouse, Inc. (Cal. Ct. App. Dec. 19, 2008) No. B202083, 2008 WL 5265648, at *1 [injunction to enforce zoning ordinance].

[4] The court referred to Article XII, § 11 of the state constitution, which read: "Any county, city, town or township may make and enforce, within its limits, all such local, police, sanitary and other regulations as are not in conflict with general laws." (See *The Honorable Ronald L. Mac Millen* (1977) 60 Cal. Op. Att'y Gen. 83.) That language now appears in Article 11, § 7.

Indeed, *City of Stockton* observed civil enforcement can be more expeditious and efficient than criminal prosecution. (*Id*. at p. 286.) The California Attorney General relied on these authorities to conclude that an ordinance violation is only a misdemeanor or infraction if the city declares it so, otherwise the "ordinance may be enforced by means of an appropriate civil remedy." (*The Honorable Ronald L. Mac Millen* (1977) 60 Cal. Op. Att'y Gen. 83.) This clearly informs the language in Section 36900(a), and there is no suggestion therein, or in the larger statutory scheme, of any intention to create private causes of action.

The superficial reading by *Riley* disregards the basic tenets of statutory interpretation. "The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context…each sentence must be read not in isolation but in the light of the statutory scheme…" (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) *Riley* improperly inserted private parties into a statute which otherwise makes no mention of them. (See *Seaboard Acceptance Corp.*, *supra*, 214 Cal. at 366 [do not "insert what has been omitted"].) *Riley* made no attempt to justify creating a vast policy of private enforcement and *Riley*'s faulty assumption should be summarily rejected.

C. Even if Section 36900(a) were ambiguous, nothing supports the creation of a global right to private enforcement.

While there is no need to look beyond Section 36900(a), doing so just confirms that the Legislature never intended to create a private right of action to enforce every city ordinance.

a. The legislative history confirms that Section 36900(a) does not create any private enforcement.

Nothing in the legislative history supports the creation of a broad private enforcement policy for city ordinances in California. It is undisputed that the predecessor to Section 36900(a) did not authorize any private enforcement. (See Petn. at p. 10; Prelim. Opp. at p. 24; Supp. Prelim. Opp. at p. 7.) Section 36900 came into existence in 1949 through SB 750, as part of the project to create a modern statutory code system to replace the previous chaotic and disorganized collection of statutes. (See 6-ARJN-1785, 1790, 1793, 1799, 1803, 1808, 1811.)[5] So, the pertinent question is whether that 1949 recodification created a vast new panoply of private enforcement rights.

[5] Schwartezes' Amended Request for Judicial Notice. ("ARJN")

The legislative history repeatedly and expressly confirms that no substantive change was intended though SB 750 or the project to recodify the statutes regarding municipal government. (See 6-ARJN-1814 [Legis. Counsel reporting SB-750 "makes no substantive changes in existing law"]; -1815 [Att. Gen. reported to the Governor re SB-750 that "there are no substantive changes in the law"]; -1817 and 1843 [Cal. Code Commission reporting to the Governor: "No substantive change in the existing law is made in any of these bills."]; and see -1819 [Legislative Memo in the Governor's Office]; and -1823 [Official Summary Digest of Statutes Enacted states that SB 750 "Assembles, codifies and consolidates the law relating to city government without change in legal effect."].) This repeatedly and affirmatively confirms that Section 36900(a) did not create a broad new private enforcement regimen for all city ordinances in California.

The lack of any private right of action is further confirmed by the location of Section 36900(a) in the Government Code. "[W]e consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose." (*Smith v. LoanMe, Inc.* (2021) 11 Cal.5th 183, 190, cleaned up.) Section 36900 appears in Title 4 of the Government Code, titled "Government of Cities", which establishes the structure, powers, duties, and function of

general law cities. Specifically, it appears in Division 3 (Officers), Part 2 (Legislative Body), and Chapter 2 (Ordinances). This statutory scheme establishes the statutory basis for city functions and authority consistent with the terms of Section 36900 as discussed above. (*Ante* at pp. 11-13.) These provisions do not address the creation of private enforcement actions.

b. The Legislature would not have created a broad private right of action sub silentio.

The Court should disregard the assertion that the Legislature would create a vast array of private enforcement causes of action, sub silentio. The Schwartzes' primary argument, beyond citing *Riley*, relies on the draftors' deletion of superfluous words when enacting Section 36900 in 1949, as a consolidation of former sections 867 and 769, as follows:

> 36900. ~~Sec. 867. The~~ Violation of ~~any~~ a city ordinance ~~of such city shall be deemed~~ is a misdemeanor~~,~~. Such a violation ~~and~~ may be prosecuted by ~~the~~ city authorities of such city in the name of the people of the State of California~~,~~, or ~~may be~~ redressed by civil action~~, at the option of said authorities~~.
>
> ~~Sec. 769. The violation of any ordinance of such city shall be deemed a misdemeanor, and may be prosecuted by the authorities of such city in the name of the people of the~~

~~state of California, or may be redressed by civil action, at the option of said authorities.~~ (See 6-ARJN-1862 [Note: stricken language was deleted, underlined added].)[6]

The Schwartzes argue that by deleting the words "at the option of said authorities" the Legislature demonstrated the intent to create a broad private right to enforce all city ordinances in California. This is wrong for at least three reasons.

First, this assertion is not supported by either the language that remained in Section 36900 or the language deleted. As discussed above, the remaining language does not refer to private parties or any private right of action. (*Ante* at pp. 11-13.) The deleted language both confirmed that only city authorities could enforce ordinances and stated that they could choose how to enforce them, as a misdemeanor or in a civil action (later the Legislature added infractions as a third option). This deleted language simply repeated the obvious, as the statute authorized each option, leaving city authorities to decide how to proceed. It did not create a private right of action. This is consistent with one recodification goal, modernizing the statutory language by removing verbose and duplicative language. (See 6-ARJN-1841,

[6] In 1974 this text, with the addition of "unless by ordinance it is made an infraction," was placed into subsection (a) when subsection (b) was added. (See Cal. Gov. Code, § 36900 (West) Historical and Statutory Notes 2008 Main Volume.)

at p. 34, part 7 of the text.) Since the deleted language was mere surplusage, its deletion did not change its meaning. All indicia of legislative intent indicates that this amendment served to clean up and codify existing laws, not to create vast new ones.

Second, the Schwartzes' assertions directly contradict the express legislative intent, which repeatedly confirmed that the recodification made no substantive changes. (*Ante* at pp. 17-19.)

Third, the Supreme Court has rejected attempts to create a private enforcement action where none explicitly appears. "The fact that neither the Legislative Analyst nor the Legislative Counsel observed that the new act created a private right of action is a strong indication the Legislature never intended to create such a right of action." (*Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, 300 [finding no private right of action by insureds against their insurers who allegedly commit unfair practices enumerated in Ins. Code, § 790.03, subd. (h) and overruling a prior case which held such a private right of action exists].) "[W]hen neither the language nor the history of a statute indicates an intent to create a new private right to sue, a party contending for judicial recognition of such a right bears a heavy, perhaps insurmountable, burden of persuasion." (*Crusader Ins. Co. v. Scottsdale Ins. Co.* (1997) 54 Cal.App.4th 121, 133; adopted by *Lu v. Hawaiian Gardens Casino, Inc.* (2010) 50 Cal.4th 592, 601, interpreting Lab. Code, § 351.) "[W]hether a

party has a right to sue depends on whether the Legislature has manifested an intent to create such a private cause of action under the statute." (*Lu*, at 596, cleaned up.) The Schwartzes' mistakenly attempt to distinguish these holdings on the grounds that they seek to enforce an ordinance. The issue is whether Section 36900(a) – a state statute – creates a private cause of action, which is the issue addressed by *Moradi-Shalal* and *Lu*.

The Legislature is well-versed in how to create a private right of action by statute and would have done so explicitly if desired. (E.g., Bus. & Prof. Code, § 17204 [claim for unfair competition may be "prosecuted" by "a person who has suffered injury in fact and has lost money or property as a result of the unfair competition."].) In similar fashion, the City has enacted many ordinances that expressly authorize private enforcement. (See *post* at p.33.) Under *Riley*, such language would be meaningless because *Riley* would automatically insert a private right of action in all ordinances, thus undermining the city's control over its own ordinances.

c. The Court should dismiss the Schwartzes' Section 36900(a) policy arguments.

The Schwartzes argue for a legislative policy that would allow the cart blanche private enforcement of city ordinances, largely because they do not approve of the City's allocation of

resources or prosecution priorities to matters it deems more pressing than their neighborhood dispute. However, such policy arguments are properly directed to the relevant legislative body.

It is not the court's role to determine policy or to weigh the pros and cons of a proposed statutory or ordinance scheme. That is a legislative process, not a judicial one. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal.5th 73, 90, n.6 ["policy arguments that the statute should have been written differently are more appropriately addressed to the Legislature."].) It is a legislative function to draft statutes and ordinances, and this includes whether to incorporate a private enforcement mechanism into a particular ordinance, weighing the benefits (e.g., increased resources, motivated plaintiffs) and the burdens (e.g., city's loss of control over ordinance implementation, abuse by private parties). "The judiciary, in reviewing statutes enacted by the Legislature, may not undertake to evaluate the wisdom of the policies embodied in such legislation; absent a constitutional prohibition, the choice among competing policy considerations in enacting laws is a legislative function." (*Marine Forests Soc'y v. California Coastal Com.* (2005) 36 Cal.4th 1, 25.)

For example, the City Council regularly weighs whether to include a private enforcement mechanism in a particular ordinance, and often chooses to do so, but it declined to do so for the ordinances cited by the Schwartzes. (See *post* at p. 33; and

see City Charter § 240, CityRJN at p. 11 [City Council possesses all legislative powers for the City].)

*Rile*y would also lead to the absurd result that cities would lose their ability to monitor and influence courts' interpretation of their ordinances once enacted. Self-interested private parties could seek to enforce ordinances in whatever fashion suited their purposes in that litigation. Outside a city's knowledge or participation, unskilled or underrepresented defendants lacking legislative history or context could default or even lose cases (including facial challenges to ordinances), thus potentially creating legal precedent binding on the city in all cases involving that local law. Courts could rule on arguments about ordinances without input from the city that enacted them. This result would also eliminate prosecutorial discretion, as any private party could choose to proceed with the civil enforcement of any ordinance.

The resulting chaos is exemplified in an unpublished federal opinion, *Cuviello v. Feld Ent., Inc.* (N.D. Cal. Apr. 7, 2014) No. 13-CV-03135-LHK, 2014 WL 1379849. After citing *Riley* and *Huntington Life Sciences* that Section 36900(a) provided a private right of action to enforce ordinances, *Cuviello* noted that neither case, nor their reading of the statutory language, provided any limitation on standing. Thus, based on those holdings, *Cuviello* concluded that there was no standing requirement for the private enforcement of city ordinances. (*Id*. at p. *7.) Under *Riley*, no

principle limits who can enforce any city ordinance (regardless of whether that party personally suffered any harm), and no city has the ability to create such a limit. (See *Riley v. Hilton Hotels Corp.*, *supra*, 100 Cal.App.4th at p. 607.)

D. The Schwartzes' other arguments do not affect the scope of Section 36900(a).

The Schwartzes argue in the alternative that property owners have independent standing to enjoin violations of city ordinances that infringe on their property interest without any reference to Section 36900(a). (See Prelim. Opp. at pp. 7-8 & 12-16.) On its face, this argument is irrelevant to the scope of Section 36900(a). Because this brief is primarily focused on the scope of Section 36900(a), it does not directly address this separate issue.

That said, the City notes that the cases cited by the Schwartzes each required a specific injury to that plaintiff different from the impact on the general public. For example, *Major v. Silna* (2005) 134 Cal.App.4th 1485, states that "citizens of a municipality ordinarily have limited standing to enjoin violations of a municipal ordinance, absent authorization in the ordinance itself…except in a case of nuisance or as otherwise provided by law." (*Id.*, at 1498-99, cleaned up.)

Mendez v. Rancho Valencia Resort Partners, LLC (2016) 3 Cal.App.5th 248, 268, found a consensus of cases holding "that a zoning violation cannot be enjoined by a private individual [unless] the violation also constitutes a private nuisance, has caused the individual special damages of a kind different from the general public, or that the ordinance was enacted to protect the particular welfare of a community of which the private individual is a member." An example of this was discussed in *Pacifica Homeowners' Assn. v. Wesley Palms Ret. Cmty*. (1986) 178 Cal.App.3d 1147, which stated that a property owner could sue under nuisance for the alleged violation of a specific conditional use permit that only benefited the defendant's neighbors. (*Id*., at pp. 1152-53; and see *McIvor v. Mercer-Fraser Co*. (1946) 76 Cal.App.2d 247, 250 [adjacent property owner could sue regarding deep excavation that violated ordinances and created a dangerous condition on plaintiffs' property]; and *Nestle v. City of Santa Monica* (1973) 6 Cal.3d 920, 939-40 [property owner suffering "identifiable harm" from zoning violation could amend complaint to attempt a viable claim].)

Any reliance on *Sapiro v. Frisbie* (1928) 93 Cal.App. 299, to the contrary is misplaced. First, *Sapiro* recognized a private cause of action only when an ordinance was adopted to benefit "a particular class of persons and for their special protection" and not "for the protection of the public at large" and when the

defendants' actions "caused damage to [plaintiffs'] real property" making them "entitled to have redressed by way of compensatory relief the wrong so committed." (*Id.*, at pp. 305-306 & 311.) Any implication that *Sapiro* supports a private enforcement action separate from a valid nuisance action has been rejected. (See *Mendez*, *supra*, 3 Cal.App.5th at pp. 267-68 ["Plaintiffs' reliance on [*Sapiro*] for the proposition that they are entitled to a private cause of action based on a violation of a zoning ordinance…is misplaced."]; and see *Stegner v. Bahr & Ledoyen, Inc.* (1954) 126 Cal.App.2d 220, 232 [rejecting *Sapiro* as authority for a negligence per se action based on a zoning violation]; see also *Das v. Bank of Am., N.A.* (2010) 186 Cal.App.4th 727, 738 ["The doctrine of negligence per se does not provide a private right of action for violation of a statute."], cleaned up.)

In any case, the existence of some other theory in common law does not alter the limited scope of Section 36900(a), which does not authorize actions for private enforcement.

II. Government Code Section 36900 Does Not Apply to a Charter City, such as Los Angeles.

Section 36900(a) does not support the private enforcement of any city ordinances. Section 36900(a) certainly does not apply to undermine the ability of charter cities to control their own ordinances.

A. Under Municipal Home Rule, a Charter City has the power to determine the scope and enforcement of its ordinances.

"Charter cities are specifically authorized by our state Constitution to govern themselves, free of state legislative intrusion, as to those matters deemed municipal affairs." (*State Bldg. & Constr. Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 555.) Article XI, section 5 of the California Constitution is "'an affirmative constitutional grant to charter cities of all powers appropriate for a municipality to possess…and…so far as 'municipal affairs' are concerned, charter cities are "supreme and beyond the reach of legislative enactment." (*State Bldg. & Constr. Trades Council of Cal. v. City of Vista*, *supra*, 54 Cal.4th at p. 556, cleaned up; citing *California Fed. Sav. & Loan Assn. v. City of L.A.* (1991), 54 Cal.3d. 1, 12; quoting *Ex Parte Braun* (1903) 141 Cal. 204, 207.)

"Charter provisions are construed in favor of the exercise of power over municipal affairs and against the existence of any limitation of restriction thereon which is not expressly stated in the charter." (*Domar Electric Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 171 ["the charter represents the supreme law of the City, subject only to the federal and state constitutions and to preemptive state law."]; and see *Johnson v. Bradley* (1992) 4 Cal.4th 389, 395–96 [charter cities can "conduct their own

business and control their own affairs to the fullest possible extent in their own way [and have] the sole right to regulate, control, and govern their internal conduct independent of general laws."]; citing *Fragley v. Phelan* (1899) 126 Cal. 383, 387, 58 P. 923.) The purpose of the charter system is "to enable municipalities to conduct their own business and control their own affairs, to the fullest possible extent, in their own way." (*Butterworth v. Boyd* (1938) 12 Cal.2d 140, 147.)

There is nothing more fundamental to city home rule than the power to pass ordinances and control the manner and scope of their enforcement. This is based on the California Constitution, which states that a chartered city "may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters… and with respect to municipal affairs shall supersede all laws inconsistent therewith." (Cal. Const., art. XI § 5, subd. (a), & § 7; and see *O.T. Johnson Corp. v. City of Los Angeles* (1926) 198 Cal. 308, 325 ["The manner of enacting city ordinances is a municipal affair."].) Thus, the content and enforcement of a city ordinance is at the very heart of municipal governance by a charter city.

If a conflict exists between a charter city ordinance and a state law, the court must determine whether the area addressed is a "municipal affair" – in which case the actions of the charter

city "shall supersede all laws inconsistent therewith." (*State Bldg. & Constr. Trades Council of Cal. v. City of Vista*, *supra*, 54 Cal.4th at p. 555; citing Cal. Const., art. XI § 5, subd. (a).) For example, a charter city controls the bidding process on its public contracts (*R & A Vending Servs., Inc. v. City of Los Angeles* (1985) 172 Cal.App.3d 1188, 1191 [Pub. Contract Code, § 20162 does not control charter cities].) As discussed above, control over the content and enforcement of charter city ordinances is fundamental to municipal rule. Conversely, no statewide interest exists in dictating how each and every city ordinance, regardless of topic or purpose, is enforced, or in undermining a charter city's control over its own ordinances by deputizing the entire population to enforce all ordinances as they see fit.

Moreover, it has long been recognized that a charter city has the power to impose zoning ordinances to regulate the use of property within its borders, through either criminal or civil remedies as the city chooses. (See *City of Stockton v. Frisbie & Latta*, *supra*, 93 Cal.App. at 280 and 286 [city is not limited to criminal enforcement of ordinances, but is authorized to enforce civil remedies]; and see *Lindell Co. v. Bd. of Permit Appeals of City & Cnty. of San Francisco* (1943) 23 Cal.2d 303, 310 [zoning and land use regulations are "undeniably a 'municipal affair' over which [the charted city] has supreme control."]; *Denham, LLC v. City of Richmond* (2019) 41 Cal.App.5th 340, 353, n.5 ["…zoning

ordinances…for charter cities…are not bound by state zoning law unless their charters or laws so provide."].) Deciding whether and how to enforce city zoning ordinances is therefore an inherent administrative city function.

B. As a charter city, the City of Los Angeles is not subject to Section 36900(a).

As a charter city, Section 36900(a) cannot be applied to undermine the City of Los Angeles's control over its own ordinances. The City of Los Angeles "is a chartered city with maximum allowable control over municipal affairs." (*First Street Plaza Partners v. City of Los Angeles* (1998) 65 Cal.App.4th 650, 661; and see Los Angeles City Charter ("City Charter"), § 101 [the City "shall have all powers possible for a charter City"], at CityRJN at p. 7.) "All legislative power of the City…is vested in the Council and shall be exercised by ordinance…" and the City Council has the power "to pass ordinances upon any subject of municipal concern." (City Charter, § 240, CityRJN at p. 11.) Thus, the City's charter specifies that the City of Los Angeles has the maximum power provided under the California Constitution to a charter city and the power to enact ordinances lies exclusively with the City Council.

The City Charter also assigns the duty to enforce city ordinances. The Mayor is charged with executing and upholding

"all laws and ordinances of the City." (City Charter, § 230, CityRJN at p. 9.) The City Attorney is authorized to enforce city ordinances through either criminal and civil legal proceedings, as appropriate under the circumstances. (See City Charter, §272, subd. (a) ["The City Attorney shall initiate appropriate legal proceedings on behalf of the City."] & § 272 ["The City Attorney may initiate civil litigation on behalf of the City or the People of the State of California..."], CityRJN at p. 13.) The City's municipal code further clarifies the means of enforcement, declaring that any ordinance violation is a public nuisance and authorizing the City Attorney to abate this "as a nuisance by means of a restraining order, injunction or any other order or judgment in law or equity issued by a court of competent jurisdiction."].) (Los Angeles Municipal Code ("LAMC") § 11.00, subd. (l), 1-Exhibits-51.)

The City Charter also establishes other authorities for the enforcement of specific ordinances. For example, the Office of Zoning Administration is a "quasi-judicial agency" with authority to render decisions on zone compliance, requests for variance, conditional use permits, and nuisance abatement. (City Charter §561; LAMC § 13A.1.7, CityRJN at pp. 15 and 20-21.) As with any enforcement agency, the Zoning Administrator can decide which violations to prioritize and which to prosecute. Nothing in

the City Charter suggests any ability of residents to privately enforce city ordinances.

The City Council has exercised its discretion to address private enforcement through individual ordinances. As only a few of many examples in the municipal code:

> (A) any City resident may enforce article 9.5 of Chap. IV, titled "Municipal Ethics and Conflicts of Interest" or Article 9.7, Chapter IV, titled "Campaign Finance" (LAMC §§ 49.5.16.B.1 and 49.7.39.B.1, CityRJN at pp. 25 and 27);
>
> (B) any "aggrieved person may enforce…by means of a civil action" article 2 of Chap. XVIII, titled "Hotel Worker Protection Ordinance" (LAMC § 182.10, CityRJN at p. 30); and
>
> (C) any Owner "may bring an action against a Mortgage Modification Consultant" for violation of article 7.2 of Chap. IV, titled "Mortgage Modification Consultants" (LAMC § 47.108, CityRJN at p. 23).

These are only a sample of dozens of ordinances in which the City Council determined that the City's goals and policies are best served by authorizing designated private persons to enforce a particular ordinance. The frequent existence of such language in several ordinances confirms that the City chose not to authorize

private enforcement of the remaining statutes, including the ones at issue in this lawsuit.

The Schwartzes argue that Section 36900(a) effectively amends City ordinance sections 12.22 and 62.169 to authorize private enforcement over the vegetation on their neighbor's property. However, to overcome the strong presumption of Home Rule autonomy, they would need to show a statewide interest in the height of the Cohen's hedge or in the specific zoning requirements implemented by the City. No such statewide interest exists. This is particularly clear regarding zoning ordinances, because they reflect a decision by a city on how to organize the property within city limits.

III. This Policy of *Stare Decisis* Should Not Deter this Court from the Correct Result.

This Court should not let the policy of *stare decisis* bar the correct result. While the policy of *stare decisis* seeks to promote "certainty, predictability and stability in the law…" it is also "a flexible [policy] which permits [the] court to reconsider, and ultimately to depart from, [its] own prior precedent in an appropriate case." (*Moradi-Shalal v. Fireman's Fund Ins. Companies*, *supra*, 46 Cal.3d 287, 296.) The policy of *stare decisis* "is sufficiently flexible to permit this court to reconsider, and ultimately to depart from, its own prior precedent in an

appropriate case [and] should not shield court-created error from correction." (*Freeman & Mills, Inc. v. Belcher Oil Co*. (1995) 11 Cal.4th 85, 93; citing *Monell v. New York City Dept. of Social Services* (1978) 436 U.S. 658, 695 [stare decisis should not be mechanically applied to prohibit overruling prior decisions interpreting statutes].) Moreover, a court of appeal is not bound by its own previous opinions. (See *People v. Yeats* (1977) 66 Cal.App.3d 874, 879 ["we admit our error and disapprove it"].)

Stare decisis should not stop the Court from rejecting *Riley* for at least six reasons. First, as discussed above, *Riley*'s conclusion is contrary to the statutory language and legislative intent. (*Ante* at pp. 11-13 & 17-19.) Second, on a related note, *Riley*, and its sparse progeny, were poorly decided and provided no basis for their conclusion but for the mere assertion of it without meaningful discussion. (See *Samara v. Matar* (2018) 5 Cal.5th 322, 337 [reversal of prior decision supported by "our concern that no satisfactory rationalization has been advanced for the decision at issue"]; and see *ante* at pp. 13-16.)

Third, *Riley* disregards the established legal test for determining whether the Legislature created a private right to enforce. (See *Lu v. Hawaiian Gardens Casino*, *supra*, 50 Cal.4th at 597; and *ante*, at pp.21-22.)

Fourth, no evidence suggests any widespread reliance on *Riley*. The City found only four cases (two published, two unpublished) that follow *Riley* on this point – in over twenty years – and each of them does so in passing without substantive discussion or support. (See *ante* at pp. 13-16.) Consistent with this limited impact, the City found no evidence that any city has ever litigated the application of Section 36900(a) to create broad private authority to enforce all city ordinances. Such a holding flies under the radar of the cities whose authority is being undermined by a wholesale license for private enforcement. The issue would only ever arise between two private parties and the cities would not have notice or even be aware of the litigation. Indeed, amici were completely unaware of the case at bench until this Court requested amicus briefing.

Fifth, properly interpreting Section 36900(a) does not remove city ordinances from an appropriate role in private civil actions. For example, if a plaintiff can otherwise satisfy the requirements for a common law claim – such as negligence or nuisance – an ordinance could be used to set a standard of care. (*Finnegan*, *supra*, 35 Cal.2d at p. 416.) In addition, many ordinances expressly authorize private enforcement. (See *ante* at p. 33.)

Sixth, the City can find no evidence that any court has considered whether Section 36900(a) supports private

enforcement of ordinances passed and controlled by a charter city. Thus, there is no potential *stare decisis* as to that issue.

CONCLUSION

On its face, Government Code section 36900, subdivision (a) defines the scope and use of city authority. Nothing in its text or legislative history supports the creation of a broad policy of private enforcement for each of the thousands of city ordinances in California. This Court should reject the superficial assertion in *Riley v. Hilton Hotels Corp.* and its progeny to the contrary because the language of the statute and the legislative history does not support this holding. In any case, Section 36900(a) does not apply to charter cities, such as the City of Los Angeles, who have plenary control over their own ordinances.

Dated: March 20, 2024

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CERTIFICATE OF WORD COMPLIANCE

Counsel of Record hereby certifies, pursuant to California Rules of Court 8.486(a)(6) and 8.204(c), that the enclosed petition and memorandum is produced using 13-point or larger type and that it contains 6,541 words and within 30 pages. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: March 20, 2024

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PROOF OF SERVICE

(By TrueFiling and U.S. Mail)

I, the undersigned, declare that I am over the age of 18 years and not a party to the within action or proceeding. My business address is 200 No. Spring Street, 14th Floor, Los Angeles, California 90012.

I am familiar with the business practice at the Office of the City attorney for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the City Attorney is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On March 20, 2024, I electronically served the attached:

Amicus Brief by the City of Los Angeles and the League of California of Cities

by transmitting a true copy via this Court's True Filing system.

On March 20, 2024, I served participants in this case who have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, a true copy thereof enclosed in a sealed envelope in the internal mail collection service at the Office of the City Attorney, addressed as follows:

Hon. Lisa K Sepe Wiesenfeld
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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 this 20th day of March, 2024, at Los Angeles, California.

Brenda Perez