

2d District No. B330202
LASC Case No. 22SMCV00736

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

CHARLES COHEN, KATYNA COHEN
Petitioners,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent,

THOMAS SCHWARTZ, LISA SCHWARTZ,
Real Parties in Interest.

Los Angeles Superior Court.
Honorable Lisa Sepe-Wiesenfeld, Judge Presiding

**MOTION FOR LEAVE TO FILE OPPOSITION TO THE
MOTION TO DISMISS**

HYDEE FELDSTEIN SOTO, City Attorney (SBN 106866)
DENISE C. MILLS, Chief Deputy City Attorney (SBN 191992)
SCOTT MARCUS, Chief Assistant City Attorney (SBN 184980)
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City of Los Angeles and the League of California of Cities

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Amici the City of Los Angeles and the League of California Cities (hereafter jointly "the City") hereby move for leave to file opposition to the motion to dismiss filed by Plaintiffs and Real-Parties-in-Interest, Thomas Schwartz and Lisa Schwartz.

Points and Authorities

When it invited the City to file an amicus brief in this matter, the Court recognized both the significance of the issues raised in the subject Petition and the inherent interest the City has in those issues. The Petition addresses a core issue of municipal governance – do cities have the ability to control the scope of their own ordinances and how and when those ordinances are enforced? While the answer should be an unqualified yes, *Riley v. Hilton Hotels Corp.* (2002) 100 Cal.App.4th 599, reached the wrong conclusion by neglecting any legal analysis or discussion before asserting its conclusion that Government Code section 36900, subdivision (a), provided a blank check to the private enforcement of all city ordinances. (See, City's Amicus Brief.) Because of the importance of having an opportunity to address this issue – *Riley* is only raised between private parties – the City accepted the court's invitation and filed a substantive amicus brief urging the court to reverse *Riley*.

Plaintiffs apparently want to preserve *Riley* for as long as possible by avoiding a ruling on the merits here, so they belatedly

moved to dismiss the Petition. The City requests permission to file an opposition to the motion to dismiss. The court should grant this motion for at least three reasons.

- **First**, the City has a unique interest in addressing the legal error imposed by *Riley*. While the parties have a specific grievance between them regarding the condition of their properties, *Riley*'s holding is much broader than that and threatens to undermine a core aspect of municipal governance – a city's control over its own ordinances. Thus, the issues at stake go far beyond the specifics of the dispute between these parties and are particularly important to the City.
- **Second**, it appears that the Court's invitation to file an amicus brief, and City's acceptance, are what prompted the motion to dismiss. (See Motion at pp. 5-6.) As a result, the City is already part of the discussion on whether the Court should grant the motion. Thus, it is only reasonable that the Court permit the City to oppose the motion.
- **Third**, the City has a unique interest in having this matter decided on the merits. *Riley* is only raised in claims between private parties, when one party is trying to enforce an ordinance against the other. As a result, the City, or any other local government, has few opportunities to address how local ordinances should be interpreted or

enforced in litigation between private parties with no incentive to argue for an interpretation or enforcement in the manner in which the municipality intended.

Nevertheless, the municipalities are the parties that are, and will be, primarily impacted by *Riley* and its usurpation of municipal sovereignty. As such, the City has a unique interest in ensuring that the merits of the Petition are addressed.

For all of the reasons discussed in the City's amicus brief and its proposed opposition to the Motion to Dismiss, the City has a unique and urgent need to correct the body of law and to have this matter heard on the merits. As a result, the Court should grant this motion.

Dated: April 10, 2024

HYDEE FELDSTEIN SOTO, City Attorney
DENISE C. MILLS, Chief Deputy City Attorney
SCOTT MARCUS, Chief Assistant City Attorney
SHAUN DABBY JACOBS, Sup. Asst. City Attorney
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By: /s/ Michael M. Walsh
MICHAEL M. WALSH
Deputy City Attorney

Attorneys for Amicus City of Los Angeles, and the League
of California Cities

Declaration of Michael M. Walsh

I, Michael M. Walsh, do hereby declare as follows:

1. I am an attorney at law duly licensed to practice before all courts in the State of California, and am counsel for Amicus City of Los Angeles. I am also authorized to file papers in this matter on behalf of, and with the approval of, Amicus the League of California Cities.
2. The City was unaware of this lawsuit until it received the Court's invitation to file an amicus brief. This is typical in cases involving *Riley*, because that holding is only raised in claims between private parties.
3. The City considers the holding in *Riley* to be both incorrect and also a fundamental attack on municipal sovereignty that must be reversed.
4. The City is unaware of any other opportunities for it to address the legal error perpetuated by *Riley* or even when such an opportunity might arise in the future.
5. No party will be prejudiced if the Court grants the motion and considers the City's opposition.

I declare under penalty of perjury that the foregoing is true and correct and that if called as a witness I could and would competently testify thereto.

Executed this 10th day of April, 2024 at Los Angeles,
California.

/s Michael M. Walsh

Attorney for Amicus,
City of Los Angeles and the
League of California Cities

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PROPOSED ORDER

The court grants amici the City of Los Angeles and the League of California Cities leave to file a joint opposition to the pending motion to dismiss filed by Plaintiffs and Real-Parties-in-Interest.

Dated: _____

Presiding Judge