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76 Current and Former Elected Prosecutors and Attorneys General From Across the U.S. File *Amicus* Brief in Support of Los Angeles DA George Gascón's Prosecutorial Discretion

Criminal justice leaders urge the California Court of Appeal to protect DA's decision to limit use of sentencing enhancements that harm community safety and have a racially disparate impact

LOS ANGELES – Today, a bipartisan group of 76 current and former elected prosecutors and Attorneys General collectively representing nearly 60 million people filed an [amicus brief](#) in the California Court of Appeal in *Nazir v. Los Angeles County Superior Court*, supporting Los Angeles County District Attorney George Gascón's exercise of well-established prosecutorial discretion. Gascón was elected on a promise to end the use of draconian sentences that contributed to mass incarceration; although he put those policies into place once in office, a trial judge foreclosed efforts by Gascón's office to withdraw sentencing enhancements filed his predecessor. Now, the Court of Appeal must decide whether trial courts can prevent elected prosecutors from exercising their constitutionally protected discretion to implement reform.

The *amicus* brief argues that the trial court's decision "would set a dangerous precedent undermining the discretion uniquely vested in our nation's elected prosecutors." *Amici* further emphasize that Gascón's efforts to end the use of sentencing enhancements is predicated on the exact platform that he was elected to carry out, which included his promise to roll back harsh prosecutorial practices that contributed to excessive incarceration rates, particularly for people of color, and that have not been shown to improve public safety.

"The people of Los Angeles County elected George Gascón to move away from dated 'tough on crime' approaches and bring about sensible, data-driven reforms that promote safer and healthier communities," said **Miriam Krinsky, Executive Director of Fair and Just Prosecution** (the organization that organized the brief) and a former federal prosecutor in Los Angeles, as well as the former President of LA's Ethics Commission. "The DA's exercise of prosecutorial discretion is well-established and the efforts by some to override his decisions infringe on the role of elected prosecutors, the sanctity of separation of powers and the will of the voters."

In the brief, *amici* underscore the fundamental obligation of elected prosecutors to carry out their job in ways that take into account the interests of justice and the prudent use of limited resources: "No prosecutor has the ability and resources to prosecute *every* case and *every* violation of the law – nor should they.... [I]t is well-settled that elected prosecutors make decisions about where and how limited resources are best exercised and what cases merit entry into the justice system."

“The voters of Los Angeles put DA Gascón in office because of his commitment to roll back the carceral policies that exploded prison populations without making us any safer. No court should stand in the way of his efforts to implement that vision,” added **District of Columbia Attorney General Karl Racine**, a signatory on the brief.

“Like DA Gascón, I’m an elected prosecutor, and we are accountable to our communities to make decisions that promote public safety and to follow through on the vision for justice we promised,” said **Wyandotte County, Kan. District Attorney Mark Dupree**, another signatory to the brief.

The brief explains that DA Gascón is just one of the many elected prosecutors across the country who is refraining from seeking certain sentences as matters of office policy. While the trial court denied the motion on the grounds that discretion must be based on an individualized assessment, *amici* stress that centralized office policies – especially in a large office where the case outcome should not be based on the fortuity of the individual prosecutor – are critical and fully appropriate: “[A]mici come together in our steadfast belief that elected prosecutors cannot effectively carry out their constitutional responsibilities if they cannot ensure implementation of policies officewide and are, instead, forced to charge offenses and seek penalties that, in the elected prosecutor’s judgment, do not advance public safety or serve the interests of justice.”

“For years, prosecutorial discretion fueled mass incarceration – extending sentences at great cost without improving public safety – and the courts did not interfere with those decisions. Courts should not now be permitted to intrude on settled prosecutorial discretion just because they disagree with the views of the elected district attorney and the people who put him in office,” said **former Los Angeles County District Attorney Gil Garcetti**, a signatory on the brief.

“Sentencing enhancements are part of the failed ‘tough-on-crime’ policies of the past that have inflated our prison populations at great human and financial cost without benefitting public safety,” said **Erwin Chemerinsky, Dean of the University of California at Berkeley School of Law** and one of the counsel who assisted with the brief, alongside Stanford Law Lecturer and Three Strikes Project Director Michael Romano. “Ending the use of these enhancements is clearly within the DA’s purview, and it would be unprecedented and dangerous for the judiciary to violate separation of powers and take this authority away. The Court of Appeal must ensure that we protect and preserve prosecutorial discretion granted to district attorneys by settled case law.”

Read the *amicus* brief [here](#); for a complete list of *amici*, see below.

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Fair and Just Prosecution is a national network of elected prosecutors working towards common-sense, compassionate criminal justice reforms. To learn more about FJP’s work, visit our [website](#) and follow us on [Facebook](#), [Twitter](#), and [LinkedIn](#).

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