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Over 70 Current and Former Elected Prosecutors Urge CA's Highest Court to Review Concerning Interpretation of Three Strikes Law That Erodes Prosecutorial Discretion

Elected DAs & AGs nationwide support Los Angeles DA George Gascón's autonomy to implement charging and sentencing policies that voters elected him to carry out

SAN FRANCISCO – Today, a bipartisan group of 73 current and former elected prosecutors and attorneys general from around the country [urged](#) the California Supreme Court to protect the discretion of Los Angeles County District Attorney George Gascón and other elected prosecutors in the state to decide if and when three strikes sentencing enhancements are the best use of limited resources in promoting justice and public safety. The signatories to the *amicus* letter brief – including two former Los Angeles County DAs – advocated for further review of a prior Court of Appeal's ruling requiring that prosecutors charge and prove *all* enhancements under the state's three strikes law. The brief argues that this unprecedented intrusion on constitutionally protected discretion creates a deeply concerning and dangerous starting point that erodes the will of voters who elected DA Gascón based on his commitment to roll back tough-on-crime policies.

The letter brief stems from a lawsuit from the Los Angeles County Association of Deputy District Attorneys (ADDA), which seeks to stop DA Gascón from carrying out policies he campaigned on and enacted upon assumption of office, including ending three strikes sentencing enhancements that have fueled mass incarceration and racial disparities without improving community safety. The signatories argue that the ADDA is seeking to use the courts to unlawfully infringe on decisions uniquely entrusted to the DA and that the problematic lower court decisions “are substituting their own judgment for DA Gascón's, taking an active role in the functioning of his office.” The letter brief urges the Supreme Court to review the case and not allow this “judicial interference” to stand.

“Chief prosecutors are chosen by the voters to reflect the community's vision for public safety, and the people of Los Angeles chose reform when they elected George Gascón to be their district attorney. California's highest court has the ability to reaffirm the settled autonomy and discretion of a duly elected prosecutor, while also addressing the ongoing injustices of our state's three strikes law. As such, this case presents a perfect opportunity to protect the rule of law, preserve prosecutorial independence that is essential to a functioning judicial system, and ensure our courts do not erode the prerogative of elected prosecutors to reject failed practices of the past,” said **Miriam Krinsky**,

Executive Director of [Fair and Just Prosecution](#), co-counsel on the brief and a former federal prosecutor in Los Angeles, as well as the former President of LA City’s Ethics Commission.

The signatories to the letter brief emphasize the unique nature of the Court of Appeal’s ruling: “[W]e could not find another case in California where courts have overridden a prosecutor’s decision *not* to file charges or sentence enhancements and held that the opposite is true—that in every case, prosecutors are *compelled* to file and prove them.” This type of intrusion has “shattered long-standing separation of powers doctrine” and eroded the autonomy of the district attorney.

“The independence of the prosecutor has been well established since our country’s founding, and it is essential for the fair execution of justice that the elected district attorney – not the courts or line prosecutors – has the power to set officewide charging and sentencing policies. Denying a prosecutor their constitutionally protected discretion would be a serious violation of separation of powers and a subversion of the will of the community,” said **former Los Angeles County District Attorney and Los Angeles City Attorney Ira Reiner**, a signatory to the letter brief.

The signatories highlight that the Court of Appeal’s ruling not only undermines prosecutorial discretion but also makes communities less safe by mandating the use of three strikes enhancements, noting that “there is no research that shows sentencing enhancements improve public safety, but there is evidence that excessive sentences increase recidivism and therefore create more victims in the future.” Under DA Gascón’s directives ending the use of three strikes enhancements, people who cause harm are still held accountable without wasting limited resources by adding extra and unnecessary years to sentences.

"For decades, courts have respected prosecutorial discretion when it was used to lock more people up for longer sentences without making us safer. Now, when DA Gascón is seeking to implement data-driven strategies that promote both justice and safety, the court must continue to respect the separation of powers and do the same,” said **Minnesota Attorney General Keith Ellison**, a signatory to the letter brief.

“More and more communities nationwide are coming to realize that the era of mass incarceration has not made us safer, and DA Gascón was put in office based on his commitment to bring fundamental change to the criminal legal system. Preventing him from carrying out that vision – and mandating that he do the opposite – will foster distrust in the legal system and therefore undermine public safety,” said **Michael Romano**, co-counsel on the brief and Director of the Three Strikes and Justice Advocacy Projects at Stanford Law School.

Read the letter brief [here](#); for a 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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