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More Than 65 Current & Former Elected Prosecutors Call On CA Supreme Court to Protect Prosecutorial Discretion, Public Safety and the Will of Los Angeles Voters

Lower court’s ruling would undermine Los Angeles DA George Gascón’s autonomy to implement charging policies backed by his community

SAN FRANCISCO – Yesterday, 68 current and former elected district attorneys and attorneys general from across the country filed an amicus brief urging the California Supreme Court to affirm the constitutionally protected discretion of Los Angeles County District Attorney George Gascón and other elected prosecutors to decide if and when to pursue sentencing enhancements. The signatories call for a reversal of a Court of Appeals ruling that would require prosecutors to charge and prove all enhancements under the state’s three strikes law – whether or not the interests of justice support those extreme penalties – thereby undermining separation of powers and the ability of elected prosecutors to make decisions about how to allocate their offices’ limited resources. If left as is, the lower court’s ruling would also override the will of voters who elected DA Gascón based on his commitment to shrink the footprint of the criminal legal system.

The case before the court stems from a lawsuit by 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 addressing three strikes sentencing enhancements that have fueled mass incarceration and racial disparities without improving community safety. The signatories to the brief underscore the deeply troubling nature of efforts such as these to “harness the authority of the court system to prevent DA Gascón from making policy decisions with which the deputies do not agree,” and urge the California Supreme Court to reject this attempt to disrupt purely prosecutorial functions.

“The people of Los Angeles chose George Gascón – and kept him in office through two well-funded recall attempts – to implement the evidence-backed reforms that will create lasting safety in their communities. There is no evidence that extreme prison sentences make us safer, yet the lower court’s ruling would override separation of powers and mandate that prosecutors throughout the state commit to this failed tough-on-crime strategy. We are hopeful that California’s highest court will act to safeguard the discretion of elected prosecutors and the will of the people to bring about change in their communities,” 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 brief emphasize the concerning and unprecedented elements of the Court of Appeal’s ruling: “We know of no other precedent or law in the country where prosecutors are forced to file and prove enhancements or special penalty provisions over their expressed objections.” This intrusion would erode the separation of powers that is “essential to a well-functioning, healthy democracy” and hinder the district attorney from effectively carrying out their constitutional duties.

“A foundational tenet of the American criminal legal system is the independence of chief prosecutors, who are democratically elected to represent their community’s vision of safety, equity and fairness. Denying a prosecutor the ability to set officewide charging and sentencing policies would undermine decades of settled prosecutorial autonomy, supplant the will of voters and undermine public trust in the justice system,” said former Los Angeles County District Attorney Ira Reiner, a signatory to the brief.

The signatories stress that the Court of Appeal’s ruling not only infringes on prosecutorial discretion but also threatens public safety by mandating the use of three strikes enhancements in all cases, noting that “there is no research that shows sentencing enhancements or alternate penalty provisions 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 but without wasting limited resources on pursuing lengthy, counterproductive sentences.

“The court must protect prosecutorial discretion as they have through decades of tough-on-crime policies and reject this attempt by unelected line prosecutors to usurp that authority. Like other communities nationwide that are retreating from the failed punitive policies that led to mass incarceration, Los Angeles elected a district attorney who embraces a new approach to justice, and the voters deserve to see that vision carried out,” said Contra Costa County, Calif. District Attorney Diana Becton, a signatory to the brief and former Contra Costa County Superior Court judge.

Read the brief here; see below for a list of amici.

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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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