No. _____

In The Supreme Court of the United States

FRANCISCO NEGRETE, WILLIAM BERGER, BRANDON HRAIZ, CRAIG TANAKA AND JOSEF PHILLIPS,

Petitioners,

v.

CITY OF OAKLAND AND THE POLICE COMMISSION OF THE CITY OF OAKLAND,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Pursuant to this Court's decisions in *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308, 314 (2005) and *Gunn v. Minton*, 568 U.S. 251, 258 (2013), do the federal courts have subject matter jurisdiction over a state law claim that "inevitably" requires the resolution of a direct conflict between state law and a federal consent decree?

2. Where a local government is mandated by state law to comply with the terms of its charter, as amended by the voters pursuant to their state constitutional right to order their municipal affairs, is compliance excused by conflicting terms of a settlement agreement between the local government and a private litigant, where that settlement agreement is entered as a federal district court order?

3. Are the terms of a local government charter, endowed by the state constitution as having "the force and effect of [state] legislative enactments," superseded by a settlement agreement between the local government and a private litigant, where that settlement agreement is entered as a federal district court order, and there has been no adjudication of the private litigants' claims?

4. May a federal court suspend operation of a local government charter, in furtherance of implementing a settlement agreement between the local government entity and private litigants, where there has been no adjudication of the private litigants' claims?

PARTIES TO THE PROCEEDING

Petitioners Francisco Negrete, William Berger, Brandon Hraiz, Craig Tanaka and Josef Phillips – peace officers employed by the City of Oakland – were the petitioners in the district court proceedings and appellants in the court of appeals proceedings. Respondents City of Oakland and the Police Commission of the City of Oakland were respondents in the district court proceedings and appellees in the court of appeals proceedings.

RELATED CASES

- *Negrete, et al. v. City of Oakland, et al.*, Alameda County Superior Court Case No. RG19030784. Removed to the U.S. District Court, Northern District of California, on September 18, 2019.
- *Negrete, et al. v. City of Oakland, et al.*, No. 19-cv-05742, U.S. District Court, Northern District of California. Judgment entered June 12, 2020.
- *Negrete, et al. v. City of Oakland, et al.*, No. 20-16244, U.S. Court of Appeals for the Ninth Circuit. Judgment entered August 19, 2022.
- *Negrete, et al. v. City of Oakland, et al.*, No. 20-16244, U.S. Court of Appeals for the Ninth Circuit. Judgment entered September 27, 2022.
- *Negrete, et al. v. City of Oakland*, Alameda County Superior Court Case No. RG21099122, April 13, 2022.

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PETITION FOR A WRIT OF CERTIORARI

Francisco Negrete, William Berger, Brandon Hraiz, Craig Tanaka and Josef Phillips ("Petitioners" or "Officers") petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The Ninth Circuit's opinion is reported at *Negrete, et al. v. City of Oakland, et al.*, 46 F.4th 811 (9th Cir. 2022) and reproduced at App. 1-24. The Ninth Circuit's denial of petitioners' motion for rehearing *en banc* is reproduced at App. 73. The District Court's Order on Cross-Motions for Judgment on the Pleadings is reproduced at App. 25-47.

JURISDICTION

The Ninth Circuit entered judgment on August 19, 2022. App. 1. The Ninth Circuit denied a timely petition for rehearing *en banc* on September 27, 2022. App. 73. Accordingly, this Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves interpretation and application of the federal court's subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

INTRODUCTION AND STATEMENT OF THE CASE

The underlying substantive issue presented in this case impacts every local government entity in the United States governed by charter: whether a local government's state-law mandated compliance with its charter is excused by conflicting terms of a settlement agreement between the local government entity and a private litigant, when that agreement is entered as a district court-ordered "consent decree."

The Ninth Circuit panel majority vacated the District Court's judgment for lack of subject matter jurisdiction, thereby refusing to resolve the important underlying substantive legal issues, with instruction to remand the case to *state court* to determine the legal authority of existing federal district court orders imposing obligations on a local government entity in direct conflict with well-established state law. In so doing, the Ninth Circuit failed to articulate the limits on the federal judiciary's reach into municipal matters reserved to state and local governments in the absence of an adjudicated violation of federal law.

The district court orders at issue in this case implemented a "consent decree" by way of settlement agreement between two litigants, the City of Oakland ("City") and the plaintiffs of *Delphine Allen, et al. v. City of Oakland, et al.*, U.S.D.C. for the Northern District of California, Case No. 00-04599 ("*Allen*").[1] The *Allen* plaintiffs' allegations were never adjudicated. There are no judicial findings of City liability, and the City – to the present day – denies the *Allen* plaintiffs' allegations of wrongdoing. App. 83 ["Nothing in this agreement . . . shall be construed as an admission of liability or evidence of liability under any federal, state or local law"].

In late 2012, the City and *Allen* plaintiffs settled a motion to place the City's Police Department into federal receivership, by (in part) agreeing to the appointment of a "compliance director" to facilitate the City's compliance with its obligations under the consent decree. That settlement agreement was entered as an order of the District Court on December 12, 2012 ("December 2012 Order"). App. 60-72. In pertinent part, the December 2012 Order empowers the compliance director to direct disciplinary decisions by the Department. App. 67-68.

Four years *after* the District Court's December 2012 Order conferred disciplinary authority on the

[1] Relevant portions of the consent decree – or "Negotiated Settlement Agreement" – are reproduced at App. 75-115. Its general purpose is to facilitate the Police Department's implementation and maintenance of contemporary nationwide police practices. App. 82-85.

compliance director, the City of Oakland's voters overwhelmingly approved Measure LL with 83.19% in favor of the measure.[2] Measure LL amended the City's Charter by setting forth a detailed procedure for the investigation of alleged policy violations and disciplinary decision-making procedures for City police officers.[3] As amended, the Charter expressly limits the authority to make final disciplinary decisions to only the Chief of Police or, in specified circumstances, the City's Police Commission. Thus, the Charter as amended directly conflicts with the compliance director's disciplinary authority as set forth in the consent decree's December 2012 Order; indeed, it supplants that authority.[4]

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[2] https://www.oaklandca.gov/resources/learn-more-about-measure-ll.

[3] Cal. Const. art. XI, § 3(a) ["For its own government, a county or city may adopt a charter by majority vote of its electors voting on the question . . . A charter may be amended, revised, or repealed in the same manner. A charter, amendment, revision, or repeal thereof shall be published in the official state statutes. County charters adopted pursuant to this section shall supersede any existing charter and all laws inconsistent therewith. The provisions of a charter are the law of the State and have the force and effect of legislative enactments"].

[4] For final disciplinary determinations, the City's Charter (as amended) establishes a bifurcated process. If the Police Commission's investigative agency *agrees* with the Chief of Police's investigatory findings and proposed discipline, the process is complete, and the Chief of Police notifies the subject officer(s) of the disposition. But if the investigative agency *disagrees* with the Chief of Police's investigatory findings and/or proposed discipline, the final determination is made by a Discipline Committee comprised of three Police Commission members. In this way, the Charter places a "check" – so to speak – on the Chief of Police's disciplinary

In March of 2018, Petitioners (hereinafter also referred to as "Officers") were involved in an on-duty use of force incident resulting in the death of a suspect. Six separate investigations of the Officers' conduct were commenced, by three separate entities.[5] *All six* unanimously concluded the Officers' force was objectively reasonable and lawful, and otherwise complied with Department policy. Accordingly, under Measure LL's amendments to the Charter, the Chief of Police's determination that no discipline was warranted was final. However, a committee of the City's Police Commission moved to terminate the Officers' employment, with reliance on the compliance director's outlier finding that the Officers used neither reasonable nor lawful force. In direct contravention of the City's Charter, the Commission's committee asserted that the compliance director's determination "stand[s] in the place of" the Chief of Police's.

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decision-making. The Charter provides no role for, nor mentions, the consent decree's compliance director. App. 11-12.

[5] These investigations were conducted by the Department's criminal investigation division, internal affairs division, and "executive force review board," the Department's Chief of Police, the Police Commission's investigative agency (Community Police Review Agency), and the Alameda County District Attorney's Office. Subsequently, in a separate state superior court action, the City was compelled to abide by the determination of an administrative hearing officer to overturn the Officers' terminations and reinstate their employment – the *seventh* independent review to conclude that the Officers' force did not violate Department policy. (*Francisco Negrete, et al. v. City of Oakland*, Alameda County Superior Court Case No. RG21099122, peremptory writ of mandamus dated April 13, 2022.)

The Officers sued in state superior court, by way of a petition for writ of mandate pursuant to California Code of Civil Procedure section 1085, and declaratory relief pursuant to California Code of Civil Procedure section 1060, seeking to compel the City's compliance with the Charter. The City removed the case to the District Court, 28 U.S.C. section 1441(a), asserting that the Officers' suit "seeks to attack or undermine an order of a federal district court." The District Court thereafter ruled that the case was related to the *Allen* matter.

The parties filed cross-motions for judgment on the pleadings. The Officers' arguments were based on this Court's precedent. This Court has stated that the legal force of a consent decree is founded upon a party's lawful ability to consent to its terms. *Local No. 93, Intern. Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 522-523, 525 (1986). This follows from the principle that consent decrees are construed as contracts under the law of the situs state. *United States v. ITT Continental Baking Co.*, 420 U.S. 223, 237 (1975); *Irving Trust Co. v. Day*, 314 U.S. 556, 561 (1942); *Collins v. Thompson*, 679 F.2d 168, 170 (9th Cir. 1982). And crucially, under California law, the City cannot lawfully consent to terms which require it to act in violation of its Charter. *Harman v. City and County of San Francisco*, 7 Cal.3d 150 (1972); Cal. Civ. Code § 1441.[6] Because the terms of the consent decree

[6] California Civil Code section 1441 ["A condition in a contract, the fulfillment of which is impossible or unlawful, within the meaning of the article on the object of contracts, or which is

purporting to vest disciplinary authority in the compliance director contravene the Charter provision vesting that authority in the Chief of Police, those terms of the consent decree must yield to the controlling Charter provisions.

The City claimed it was bound by the terms of the consent decree (specifically the December 2012 Order) such that it *could not* comply with its Charter, at risk of being in contempt of the District Court's December 12, 2012 Order.

The District Court issued an order on June 12, 2020 ("June 2020 Order"), granting the City's motion and denying the Officers' cross-motion. App. 25-47. The District Court's order acknowledged the consent decree and December 2012 Order derive from contractual agreements between the City and *Allen* plaintiffs, and accepted the Officers' interpretation of the plain language of the City's Charter. App. 26-29, 31-32. However, the District Court found the City properly "delegated" the Chief of Police's Charter-derived duties to the compliance director by way of the December 2012 Order – thereby implicitly suspending operation of the voters' amendments to the City's Charter for the duration of the consent decree. The Officers appealed to the Ninth Circuit.

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repugnant to the nature of the interest created by the contract, is void"].

The Ninth Circuit panel's majority declined to reach the merits of the case[7], leaving the fate of the federal consent decree's terms, including the continuing validity of the District Court's December 2012 Order, to be decided *by a state court* instead of the federal District Court that issued the order. The majority held the court lacked subject matter jurisdiction under both branches of federal question jurisdiction. App. 14-22. First, the majority found it lacked subject matter jurisdiction under the federal cause of action branch because the Officers alleged only state law causes of action. App. 14-17. Second, and most pertinent for this Petition, the majority found there was no substantial federal question giving rise to subject matter jurisdiction, because the Officers' claims do not "necessarily" raise a federal issue. App. 18-22; *Grable & Sons Metal Prods. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 310 (2005) ("*Grable*").

The majority recognized that "the potential" federal issue involving the question of how to resolve the conflict between the consent decree and City's Charter was "inevitable" to resolve the Officers' claims. App. 19. The majority determined that resolving this conflict between the consent decree and state law was not "necessarily raised" because it is not "an essential

[7] Oral argument was held on May 10, 2021. On October 19, 2021, the Ninth Circuit directed the parties to file supplemental briefing "addressing whether the court has subject matter jurisdiction over [the] case." No party up to that point contended federal subject matter jurisdiction was improper. In their supplemental briefing, the parties agreed that the court had subject matter jurisdiction.

element" of the Officers' claims. "At most," the majority stated, the conflict "is a federal issue that may arise as a potential defense" to the City's non-compliance with its Charter. App. 19-20 ["Although this question would inevitably arise in this case and may involve a federal issue, it is not an issue that is necessarily raised within the meaning of *Grable*"].

Judge Rakoff[8] dissented, finding the Officers' claims "plainly" present a federal issue that is "essential" and "necessarily raised," noting that "[i]n order to prevail on their claims, the [O]fficers must establish that the federal consent decree did not obligate the City to adopt the procedure it did." App. 23. Thus, "[d]etermining the scope and meaning of the federal consent decree is [ ] necessary to decide this case." App. 24. The Officers' petition for rehearing *en banc* was rejected. App. 73.

The dissent got it right. The federal courts have subject matter jurisdiction over the Officers' claims, and the significant legal issues presented should be resolved in a federal court. Remanding the case to state court to determine the continuing validity of the consent decree and related orders in light of this Court's precedent is not appropriate. It is a matter uniquely appropriate for resolution in the federal courts.

Moreover, the District Court's assertion of federal judicial interference in this case over the will of the City's electorate is unprecedented and must be

[8] The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.

definitively rejected by this Court. The District Court's judgment represents a de facto suspension of the City's Charter – a local constitution having the force and effect of a state legislative enactment – *without* an adjudicated finding of a violation of federal law. Not only does this represent judicial overreach, it usurps the State's residents' state constitutional right to order their municipal affairs of a core local-government function without unjustified intrusion by the federal government. Doing so with no legal justification, or even an acknowledgment that such intrusion has occurred, erodes the public's trust in the federal judiciary's capacity to fairly and effectively resolve legal disputes.[9]

[9] "[S]ocial practices like judging either flourish or decay from within. When judges treasure the craft of legal reasoning and celebrate those who do it excellently, the practice of judging is strengthened, and other forms of ordering, based on partisanship or favoritism, are displaced. When the craft of good legal reasoning is diminished, cynicism grows, morale suffers, and other forms of ordering gain sway. These effects diffuse from the judges to the lawyers who follow their cues, and from the lawyers to members of the public who consult them." *Reason in Law*, Lief H. Carter & Thomas F. Burke, Ninth Ed., The University of Chicago Press, 2016, p. 214.

REASONS FOR GRANTING THE PETITION

I. Determining the Continuing Validity of a Federal Consent Decree and Related Orders is a Matter Squarely Within the Purview of the Federal Courts.

"[F]ederal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Gunn v. Minton*, 568 U.S. 251, 258 (2013). "Where all four of these requirements are met . . . jurisdiction is proper because there is a 'serious federal interest in claiming the advantages thought to be inherent in a federal forum,' which can be vindicated without disrupting Congress's intended division of labor between state and federal courts." *Id.*

Although the federal consent decree sits squarely in the middle of Petitioners' claims and the City's defense, a majority of the Ninth Circuit panel determined the Officers' action "does not necessarily raise a federal issue in the way" required by *Grable*, *supra*, because it exclusively asserts state law claims, and the federal issues presented are not "essential elements" of those claims. This misconstrues both the nature of the Officers' claims, and this Court's precedent subsequent to *Grable*.

A. The Federal Issues Presented Constitute Essential Elements of the Officers' Claims.

Demonstrating that the City's compliance with the Charter is mandated – in contravention of the December 2012 Order – is an "essential element" of the Officers' traditional mandamus claim.

To prevail on their mandamus claim, the Officers must prove the City has a clear, present and ministerial duty to act in a particular manner under the Charter. *See*, Cal. Code Civ. Proc. § 1085; *MacLeod v. Long*, 110 Cal.App. 334, 339 (1930) (issuance of mandamus "predicated upon the existence of a duty on the part of defendants to perform an act *concerning which they have no right to refuse* . . . The burden is, therefore, upon the plaintiff to prove the existence of such right rather than upon the defendants to disprove the same") (emphasis added). "The showing required to be entitled to mandate is that the public agency has a clear, present, and ministerial duty to afford the relief sought, and that the petitioner has a clear, present, and beneficial right to performance of that duty. [citations omitted]" *Hudson v. County of Los Angeles*, 232 Cal.App.4th 392, 408 (2014). An act is ministerial when a public officer is required to perform it in a prescribed manner when a given state of facts exists. *Kavanaugh v. West Sonoma County Union High School*, 29 Cal.4th 911, 916 (2003).

In this case, the Officers must demonstrate that the City has "no right to refuse" to comply with its

Charter. *MacLeod, supra*. As correctly noted by Judge Rakoff's dissent, resolution of this issue is necessarily raised by the Officers' claims:

> In order to prevail on their claims, the [O]fficers must establish that the federal consent decree did not obligate the City to adopt the procedure it did. (citation omitted) Without doing so, the officers are not entitled to relief directing the City to comply with a given procedure under state law.
>
> Determining the scope and meaning of the federal consent decree is thus necessary to decide this case. App. 23-24.

This issue "is the central point of dispute" in the case. *Gunn*, *supra*, 568 U.S. at 259. Both the panel majority and dissent acknowledge the issue is "inevitable." If the issue is "inevitable," it cannot "at most" constitute a "*potential* defense."

B. The Ninth Circuit Panel Overstates the Limits of *Grable*.

The Panel majority dismisses the Fifth Circuit's decision in *Baccus v. Parrish*, 45 F.3d 958 (5th Cir. 1995) because it is not binding in this circuit and was decided prior to *Grable*. The Panel majority also inferred that it conflicts with this Court's decision in *Syngenta Crop. Prot., Inc. v. Henson*, 537 U.S. 28 (2002) ("*Syngenta*"). App. 16.

However, whether the bare holding of *Baccus* itself "is still good law" (*Energy Mgmt. Servs., LLC v. City*

of Alexandria, 739 F.3d 255, 261 (5th Cir. 2014)) is irrelevant. No case has held that under circumstances meeting *Grable's* test, as clarified in *Gunn* (545 U.S. at 258), the import of a federal consent decree on a plaintiff's state law claims may never suffice for subject matter jurisdiction under the substantial federal question branch.

Nor has *Syngenta* closed the door on such a scenario. In *Syngenta* this Court addressed whether the All Writs Act, 28 U.S.C. section 1651(a), itself vests federal courts with authority to exercise removal jurisdiction where a party sought to prevent a state court litigant from bringing an action the removal party claimed was required to be dismissed pursuant to a settlement agreement reached in a federal action. *Syngenta*, 537 U.S. at 31-33. Relevant here, this Court held only that the All Writs Act was not sufficient, *on its own*, for removal – it held the courts must have original jurisdiction over an action for removal and that the All Writs Act "is not a substitute for that requirement." *Id.* 537 U.S. at 34.

Pre-dating *Grable* and its progeny, *Syngenta* did not require this Court to address, nor does it appear that this Court considered, whether the court otherwise would have had jurisdiction under the "substantial federal question" branch.

C. The Federal Issues Presented Are "Substantial" and Should Be Resolved in a Federal Court.

Perhaps most importantly, the federal issues presented by this case meet the requirements that they be "substantial" and "capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Grable*, *supra*, 545 U.S. at 313-314. The "substantiality inquiry under *Grable*" is not limited to the significance of the federal issue to the particular parties. Rather it "looks instead to the importance of the issue to the federal system as a whole." *Gunn*, *supra*, 568 U.S. at 260.

In *Grable*, this Court focused on the broad significance of property seizure notices issued by the Internal Revenue Service, emphasizing the government's "'strong interest'" in being able to recover delinquent taxes through seizure and sale of property; it was the government's "direct interest in the availability of a federal forum to vindicate its own administrative action" that made the federal question in that case one that "'sensibly belong[ed] in federal court.'" *Gunn*, *supra*, 568 at 260-261, quoting *Grable*, 545 U.S. at 315. In *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180 (2021), this Court found that the plaintiff's state claim that a bank could not purchase certain federal bonds arose under federal law because the decision turned upon whether the government "securities were issued under an unconstitutional law, and hence of no validity." *Smith*, 255 U.S. at 201.

Similarly here, the federal issue is significant to the government's interest because it implicates the continuing validity of a federal consent decree existing in direct conflict with express provisions of a city charter duly constituted under state law. *See*, *e.g.*, *Taylor v. Crane*, 24 Cal.3d 442, 450 (1979). Surely the government interest in the effect and administration of a federal consent decree of a District Court makes the federal question on which this litigation turns "an important issue of federal law that sensibly belong[s] in a federal court." *Grable*, 545 U.S. at 315. This would appear essential to the "development of a uniform body of" law addressing the interplay of state and federal law at issue here. *Bonito Boats, Inc. v. Thunder Craft Boats, Inc*., 489 U.S. 141, 162 (1989).

And for the same reasons this case meets *Grable's* fourth requirement, concerned with the appropriate "balance of federal and state judicial responsibilities." *Grable, supra*, 545 U.S. at 314. At bottom, this case does not concern so much whether the City is complying with the terms of its Charter – it is not – but whether the "federal consent decree did [or did not] obligate the City to adopt the procedure" to which the Officers object. App. 23.

II. The Ninth Circuit's Erroneous Refusal to Assert Jurisdiction Sanctioned the District Court's Unprecedented Assertion of Federal Power Over Local Municipal Affairs – Without an Adjudicated Finding of a Violation of Federal Law.

The City's residents have a state constitutional right to self-governance of their municipal affairs by enacting, and amending from time to time, the City's Charter. Cal. Const., art. XI, § 3(a). They exercised this constitutional right by adopting Measure LL and amending the City's Charter.

The Charter is the City's local constitution, its provisions comprising the "supreme organic law" of the City. *Creighton v. City of Santa Monica*, 160 Cal.App.3d 1011, 1017 (1984). The Charter's provisions also constitute state law, and may only be superseded by conflicting provisions of the federal and state Constitutions and preemptive state law. Cal. Const., art. XI, § 3(a) ["The provisions of a charter are the law of the State and have the force and effect of legislative enactments"]; *Domar Electric, Inc. v. City of Los Angeles*, 9 Cal.4th 161, 170 (1994).

Measure LL's amendment to the City's Charter establishes public oversight of the Police Department, and specifically oversight of the Chief of Police's disciplinary determinations. One of the amendment's central public oversight mechanisms is the explicit identification of the Chief of Police as the disciplinary decision-maker. The Chief of Police's disciplinary

determinations, in turn, are subject to review by a separate and independent investigatory agency overseen by a citizen body, the City's Police Commission. If the Chief of Police's disciplinary determinations are confirmed – for lack of a better term – by that separate and independent investigative inquiry, the public is provided assurance that the Chief of Police made the right decision, thereby encouraging the public's confidence in the decisions of its Police Department's most visible public official.

In rejecting the Officers' claims, the District Court did not identify conflicting provisions of the federal or state Constitutions or preemptive state law. *Domar Electric, Inc., supra*. In fact, it did not even attempt to do so. Instead, the District Court found that the City properly "delegated" the Chief of Police's Charter-derived duties to the compliance director by way of the December 2012 Order.[10] The District Court's order is problematic for three reasons relevant to this Petition.

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[10] "The City reasonably understood that its agreed-to delegation of the Chief of Police's final decision-making authority in this instance, to the Compliance Director acting in the shoes of the Chief was not in conflict with [the Charter] during the duration of this court's supervision of OPD pursuant to the [consent decree] and subsequent Orders." App. 45.

A. The District Court's Finding That the Consent Decree and Associated Orders Supersede the City's Charter Conflicts with Clearly Established California Supreme Court Precedent.

The District Court was bound to follow the decisions of the state's highest court when construing the legal authority of the Charter's provisions. *Poulos v. New Hampshire*, 345 U.S. 395, 402 (1993); *Paulson v. City of San Diego*, 294 F.3d 1124, 1128 (9th Cir. 2002). Its failure to identify conflicting provisions of the federal or state Constitutions or preemptive state law violates the California Supreme Court's clearly established precedent on this issue. *Domar Electric, Inc., supra*.

Similarly, and in light of the supremacy of Charter provisions established by state law, the District Court's finding that the City properly "delegated" the Chief of Police's Charter-derived authorities also violates clearly established state law. *Scott v. Common Council*, 44 Cal.App.4th 684, 695 (1996) ("[T]he city council cannot relieve a charter officer of the city from the duties devolving upon him by the charter . . . ")

As such, the District Court's finding that the consent decree and its associated orders supersede the City's Charter – by "delegation" or otherwise – decided an important federal question in a way that conflicts with a state court of last resort and relevant decisions of this Court. Sup. Ct. R. 10(a), (c).

B. The District Court's Finding That the Consent Decree and Associated Orders Supersede the City's Charter Decided an Important Federal Question in a Way That Conflicts with This Court's Precedent.

The District Court's order refused to acknowledge, let alone apply, this Court's precedent concerning the construction of federal consent decrees. This Court has stated that the legal force of a consent decree is founded upon a party's lawful ability to consent to its terms. *Local No. 93, Intern. Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 522-523, 525 (1986) [For a consent decree, "it is the parties' agreement that serves as the source of the court's authority to enter any judgment at all"]. This follows from the principle that consent decrees are construed as contracts under the law of the situs state. *United States v. ITT Continental Baking Co.*, 420 U.S. 223, 237 (1975) ("a consent decree or order is to be construed for enforcement purposes basically as a contract").

As applied to the Officers' claims, this means that the consent decree and its associated orders – including the December 2012 Order – *cannot* supersede the City's Charter, because the City does not have the lawful authority to agree to terms which require it to act in violation of its Charter. Cal. Civ. Code § 1441 ("A condition in a contract, the fulfillment of which is impossible or unlawful [] or which is repugnant to the nature of the interest created by the contract, is void"); *Tiedje v. Aluminum Taper Mill. Co.*, 46 Cal.2d 450,

453-454 (1956) (contractual agreements made "against the express mandate of a statute may not serve as the foundation of any action, either in law or equity").

Stated another way, the City cannot agree to violate its "local constitution." *Creighton, supra*, 160 Cal.App.3d 1011, 1017 [a charter is "the equivalent of a local constitution"]. And, any act taken by the City in violation of its Charter is void. *Domar Electric, supra*, 9 Cal.4th at 171 ("[a]ny act that is violative of or not in compliance with the charter is void").

The District Court's ruling, in effect, elevates the consent decree above conflicting terms of the City's Charter. The District Court arrived at this conclusion by failing to adhere to this Court's precedent that consent decrees must be construed as contracts.

Accordingly, the District Court decided an important question of federal law – the continuing validity of the consent decree's terms subsequent to the City's voters' amendment of their Charter – in a manner that conflicts with this Court's decisions in *Local No. 93, supra*, and *ITT Continental Baking Co., supra*. Sup. Ct. R. 10(c).

C. The District Court's Ruling Represents an Unprecedented Intrusion Into Local Government.

In finding that the consent decree supersedes the City's Charter "during the duration of" the District Court's "supervision of [the Department] pursuant to

the [consent decree] and subsequent [o]rders," the District Court implicitly suspended operation of the voters' amendments to their Charter to a date to be determined by the District Court itself. This represents an unprecedented and unwarranted federal judicial intrusion into local government affairs, thereby denying the City's residents their state constitutional right to order their municipal affairs, with no lawful justification to do so.

The consent decree is founded upon the City's agreement to settle the *Allen* plaintiffs' allegations. Those allegations were never adjudicated, and the City maintains its denial that any violation of federal law occurred. App. 83. As such, in enforcing the parties' settlement agreement the District Court is *not* exercising its inherent remedial powers. *Milliken v. Bradley*, 418 U.S. 717, 738 (1974) (remedial power "may be exercised 'only on the basis of a constitutional violation' "). Rather, the District Court is merely administering a settlement agreement between two parties. In this context, suspending the City's Charter impermissibly intrudes into local governance, thereby frustrating the delicate balance between federal courts and state governance. *Rizzo v. Goode*, 423 U.S. 362, 379-380 (1976).

Suspending the City's Charter in this manner also completely discards the City's voters' chosen method of law enforcement oversight. Measure LL identified the Chief of Police as the public official accountable to the public for the operation of the Department. The consent decree's compliance director is not accountable to

the City's residents, because the compliance director is not the public official tasked by the Charter with providing leadership to the Department, or instilling confidence in the public.

In fact, allowing the compliance director's findings in this case to displace the Chief of Police's findings, contrary to the Charter's oversight process, has the exact opposite of Measure LL's intended effect by discouraging confidence in the Chief of Police's decision-making. Casting aside the unanimous determinations of the Chief of Police, Community Police Review Agency, District Attorney's Office, and the Department's Executive Force Review Board, Internal Affairs Division, and Criminal Investigation Division serves only to undermine the public's confidence – and not merely in the Chief of Police, but every other of the five separate investigative entities which unanimously determined that the Chief of Police was right to find that the Officers in this case used reasonable and lawful force.

Put simply, the Charter's procedure worked as designed, and the City has no lawful ability to disturb that process with reliance on an agreement it reached with private plaintiffs in an unrelated case. Neither does the District Court. *Rizzo, supra*.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court grant the petition for a writ of certiorari.

Respectfully submitted,

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