S285484

IN THE SUPREME COURT OF CALIFORNIA

CHARLES COHEN et al.,
Petitioners,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent.

THOMAS SCHWARTZ, individually and as Trustee etc., et al.,
Real Parties in Interest,

AFTER A DECISION BY THE COURT OF APPEAL, SECOND DISTRICT, DIVISION FOUR • CASE NO. B330202
LOS ANGELES COUNTY SUPERIOR COURT • LISA SEPE-WIESENFELD, JUDGE
CASE NO. 22SMCV00736

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF SUPPORTING NO PARTY; AMICUS CURIAE BRIEF OF CALIFORNIA ACADEMY OF APPELLATE LAWYERS

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APPLICATION FOR LEAVE TO FILE AMICUS BRIEF

Under California Rules of Court, rule 8.520(f), the California Academy of Appellate Lawyers respectfully requests permission to file the attached amicus curiae brief. The Academy's amicus brief is not filed in support of any of the parties. Rather, the Academy's brief proposes that this Court address in its decision an issue the parties have not briefed, but that is an important one this Court has never directly decided and that lower court decisions have resolved inconsistently. Specifically, does a Court of Appeal have the power to "overrule" one of its own prior decisions or is such authority reserved solely to this Court?

The parties have not briefed the issue—most probably because, once this Court granted review, it is no longer relevant to how the case is decided. But that will be true in any case before this Court in which the issue appears. And because no party is likely to ever raise the issue, it will likely evade review, which is another reason why the Court should address it now.

The Academy is a non-profit elective organization of experienced appellate practitioners. Its goals include promoting appellate procedures that ensure proper and effective appellate representation; encouraging the efficient administration of justice on appeal; and supporting improvements in the law affecting appeals. The Academy has participated as amicus curiae in many cases before this Court, including *Family Violence Appellate Project v. Superior Court*, S288176; *Guardianship of Saul H.* (2022) 13 Cal.5th 827; *Jameson v. Desta* (2018) 5 Cal.5th

594; *F.P. v. Monier* (2017) 3 Cal.5th 1099; *Ryan v. Rosenfeld* (2017) 3 Cal.5th 124; *Conservatorship of McQueen* (2014) 59 Cal.4th 602; *Kurwa v. Kislinger* (2013) 57 Cal.4th 1097; *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, and *People v. Pena* (2004) 32 Cal.4th 389.

The Academy respectfully requests permission to file the accompanying brief in support of its goal of furthering the effective administration of appellate justice. No party or attorney for a party participated in drafting this brief or in the Academy's decision to file it. No person or entity, including any party or party's counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

October 1, 2025

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AMICUS CURIAE BRIEF

INTRODUCTION

This amicus brief concerns an issue that the parties have not briefed and that will have no effect on how this Court decides the present case. Nonetheless, the issue is one raised by the Court of Appeal opinion, is of importance to this Court, the superior courts, and the bar, and is likely to continue evading review unless addressed here.

The Court of Appeal panel in this case purported to overrule a case decided more than two decades earlier by a different panel of the same division. California's intermediate appellate courts are in conflict regarding whether they may overrule prior decisions from the same district or division, or whether they may only disagree with such decisions. This Court should address and resolve that conflict in addition to deciding the issue on which review was granted.

Superior courts need to know whether, under *Auto Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450 (*Auto Equity Sales*), they may choose to follow a Court of Appeal opinion that the Court of Appeal has purported to overrule, or whether they are bound by the overruling opinion. Similarly, whether an appellate court can overrule a prior panel's decision affects whether there is a conflict in the case law that this Court should resolve by the grant of review.

We believe the issue should be addressed regardless of how it is resolved. But we also believe the better rule is that only this Court may wield the authority to negate the precedential impact

of a Court of Appeal decision. Under *Auto Equity Sales*, one Court of Appeal panel may *disagree* with another panel's decision. And when there is such a conflict, trial courts may choose which decision to follow until the conflict is resolved by this Court. But there is no precedent from this Court holding that one panel may overrule an earlier decision by another panel, even one from its own district or division. This Court should clarify that the power to disapprove or overrule *any* Court of Appeal decision resides exclusively in the state's highest court.

LEGAL ARGUMENT

I. Court of Appeal decisions are in conflict regarding a panel's authority to overrule or disapprove a prior decision from the same division or district.

The Court of Appeal's opinion primarily addresses an issue decided over 20 years ago in *Riley v. Hilton Hotels Corp.* (2002) 100 Cal.App.4th 599 (*Riley*)—whether the right to redress a municipal ordinance violation under Government Code section 36900, subdivision (a), is limited to city officials who enacted the ordinance. Both *Riley* and the decision in this case were issued by Division Four of the Second District.

In resolving that issue, the Court of Appeal concluded that *Riley* was wrongly decided, and declined to follow it. But the Court of Appeal panel went beyond mere disagreement with *Riley*. Instead, the panel purported to *overrule* the prior *Riley* decision. (See *Cohen v. Superior Court* (2024) 102 Cal.App.5th 706, 712 (*Cohen*), review granted Sept. 18, 2024, S285484) ["we overrule *Riley* and disavow its recognition of a private right of

action by members of the general public under section 36900, subdivision (a)"]; *id.* at p. 727 ["For these reasons we hold section 36900, subdivision (a) does not authorize a private right of action. To the extent *Riley* held to the contrary, it is overruled."].)[1]

As support for *disagreeing* with one of its own prior decisions, the Court of Appeal relied on prior decisions holding that a decision by one Court of Appeal panel is not binding on another Court of Appeal panel, as there is no horizontal stare decisis among California's intermediate appellate courts. (*Cohen*, *supra*, 102 Cal.App.5th at p. 716, citing *McCallum v. McCallum* (1987) 190 Cal.App.3d 308, 315, fn. 4, and *Sarti v. Salt Creek Ltd.* (2008) 167 Cal.App.4th 1187, 1193 (*Sarti*).) No problem so far.

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[1] In a footnote, the Court of Appeal stated that it was not only overruling *Riley*, but also "disapproving of" decisions from *other courts* that had relied on *Riley*. (*Id.* at p. 727, fn. 11 ["In addition, to the extent they relied on *Riley* to recognize a private right of action under section 36900, subdivision (a), we disapprove of and decline to follow *Amaral v. Cintas Corp. No. 2* [(2008)] 163 Cal.App.4th [1157,] 1181, fn. 10, and *Huntingdon Life Sciences*[,] *Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* [(2005)] 129 Cal.App.4th [1228,] 1263–1264"].) It is unclear whether the Court of Appeal's statement that "we disapprove of and decline to follow" these other decisions meant the court was merely stating its disagreement or actually meant to strip them of future precedential effect. (See Raphael, *Overruled? Court of Appeal panel overrules earlier decision, raising questions about precedent* (Sept. 20, 2024) Daily Journal <https://dailyjournal.com/articles/380998-overruled> [as of Sept. 3, 2025] (*Overruled*) [noting that "*Cohen* may have gone further . . . than overruling a case from its own division," since "disapproval is the term our Supreme Court uses when it abrogates Court of Appeal opinions after resolving a split in the law"].)

As support for *overruling* one of its prior decisions, however, the Court of Appeal cited decisions holding that "Courts of Appeal, and divisions thereof, are empowered to reconsider—and in the appropriate case *disapprove of or overrule*—prior decisions of those courts." (*Ibid.*, emphasis added, citing *Estate of Sapp* (2019) 36 Cal.App.5th 86, 109, fn. 9, *Saucedo v. Mercury Sav. & Loan Assn.* (1980) 111 Cal.App.3d 309, 310–311, and *People v. Yeats* (1977) 66 Cal.App.3d 874, 879.) Other intermediate appellate courts have similarly purported to overrule their own prior decisions. (See, e.g., *State Dept. of State Hospitals v. Superior Court* (2022) 84 Cal.App.5th 1069, 1079 [purporting to disapprove and overrule prior decision from same division]; *The Urban Wildlands Group, Inc. v. City of Los Angeles* (2017) 10 Cal.App.5th 993, 1000 ["we disapprove of our prior opinions in *Avila* [*v. Chua* (1997) 57 Cal.App.4th 660] and [*In re Marriage of Hock & Gordon-Hock* (2000) 80 Cal.App.4th 1438]"]; *In re Greenshields* (2014) 227 Cal.App.4th 1284, 1287 ["We disapprove our opinion in *In re Locks* (2000) 79 Cal.App.4th 890"]; *People v. Thompson* (1981) 178 Cal.Rptr. 735 (*Thompson*), hearing granted Jan. 27, 1982 ["we overrule *People v. Barrick* [(1981)] 177 Cal.Rptr. 532 [(*Barrick*), hearing granted Dec. 16, 1981], an opinion by another panel of this court"].)

None of these decisions explain what basis exists for one panel of a Court of Appeal to overrule a decision by a prior panel from the same district or division. (See Shipley, *Horizontal Stare Decisis in the California Courts of Appeal: Law, History, and Reform* (2025) 59 U.S.F. L.Rev. 291, 309 [noting that while "a

handful of cases . . . assume an appellate district can disapprove or overrule (as opposed to simply declining to follow) prior decisions of that particular subunit of the court . . . these fleeting cases do not articulate a meaningful theorized system of horizontal stare decisis"].)

By contrast, other appellate court panels in the same situation have merely stated their *disagreement* with a previous panel's decision, rather than purporting to "overrule" or "disapprove" the earlier decision. (See, e.g., *In re Delila D.* (2023) 93 Cal.App.5th 953, 973 ["we are not persuaded by" a prior decision from the same court], 974 [stating a "reason for declining to follow" the prior decision], 975 [explaining the "several considerations that compel us to depart from" the prior decision], review granted, Sept. 27, 2023, S281447; *Kielar v. Superior Court* (2023) 94 Cal.App.5th 614, 617 [holding that "we join those recent decisions that have disagreed with *Felisilda* [*v. FCA US LLC*]," a prior decision from the same court]; *Eisen v. Tavangarian* (2019) 36 Cal.App.5th 626, 636–637 [holding that "[w]e . . . are free to reconsider one of our prior decisions and conclude it was mistaken," and declining to follow *Zabrucky v. McAdams* (2005) 129 Cal.App.4th 618 without overruling the decision]; *First National Ins. Co. of America* (2010) 184 Cal.App.4th 1454, 1460 ["we conclude our analysis in *Weinberg v. Safeco Ins. Co. of America* [(2004)] 114 Cal.App.4th 1075 . . . was mistaken and will not follow it in the future"].)

II. Why it is important that the Court's opinion in this case resolve whether a Court of Appeal panel may overrule one of its own prior decisions.

The parties have not asked this Court to address the Court of Appeal's assumption of authority to overrule one of its own prior decisions, but there are two important reasons why the Court should resolve the issue.

First, the issue is significant to superior courts and the parties litigating there. It is fundamental that uncontradicted Court of Appeal decisions are binding on trial courts, but when there is an unresolved conflict among Court of Appeal decisions, trial courts "must make a choice between the conflicting decisions." (*Auto Equity Sales*, *supra*, 57 Cal.2d at pp. 455–456.) When, as here, a Court of Appeal attempts to overrule a prior decision, and there are no other on-point decisions, it is unclear whether the latter decision is binding on California's superior courts or whether there is a conflict that allows superior courts to choose between the two decisions.

Second, the *Auto Equity Sales* conundrum faced in superior court litigation has a ripple effect in this Court. A prime reason for granting review is when "necessary to secure uniformity of decision." (Cal. Rules of Court, rule 8.500(b)(1).) There is "uniformity" if a Court of Appeal may overrule one of its prior opinions and no other opinion has agreed with the prior decision. But a conflict ripe for this Court's resolution remains if superior courts may choose to follow either the "overruling" opinion or the one that has been "overruled."

Somewhat counterintuitively, the courts least affected by whether a Court of Appeal has authority to overrule one of its prior decisions are the Courts of Appeal themselves. Because a Court of Appeal panel is not bound by any other Court of Appeal decision, a panel may find persuasive an "overruled" opinion and disagree with an "overruling" one. (*People v. Lara* (2025) 108 Cal.App.5th 1005, 1024, fn. 8 [" ' "A decision of a court of appeal is not binding in the courts of appeal" ' "].)

In a recent *Daily Journal* column, a Court of Appeal justice noted the inconsistency between the *Cohen* decision and other cases, and concluded, "With our Supreme Court having granted review in *Cohen*, the narrow question about whether it could overrule *Riley*, *Amaral*, and *Huntingdon* no longer matters" to the parties. (*Overruled*, *supra*, <https://dailyjournal.com/articles/380998-overruled>.) Nonetheless, the issue is of importance outside the bounds of the parties' dispute because "a broader question still lurks" about the authority of one Court of Appeal panel to overrule an opinion decided by another panel. (*Ibid.*) Because no party is likely to raise the issue in any case before this Court, the issue is one evading review, which is another reason to address it here.

If this Court does not decide the issue, the Court of Appeal's decision will remain precedential as authority to overrule a prior decision. (See Cal. Rules of Court, rule 8.1115(e)(2) ["After decision on review by the Supreme Court, unless otherwise ordered by the Supreme Court . . . a published opinion of a Court of Appeal in the matter . . . is citable and has

binding or precedential effect, except to the extent it is inconsistent with the decision of the Supreme Court or is disapproved by that court"].)

Thus, unless this Court specifically addresses the Court of Appeal's analysis regarding its authority to disapprove and overrule one of its prior decisions, the Court of Appeal's decision could remain particularly persuasive given the length of the decision's analysis on the issue. Indeed, no prior opinion has analyzed the Court of Appeal's power to disapprove one of its own prior decisions in the same depth. Left unaddressed by this Court, future appellate courts will likely perpetuate the uncertainty.

This Court has recently suggested how the issue should be resolved, but it did so only implicitly. In *People v. Superior Court* (2024) 17 Cal.5th 228, 236, the Court of Appeal stated it was "*disapprov*[*ing*]" (emphasis added) its prior opinion in *People v. Superior Court (Mitchell)* (2023) 94 Cal.App.5th 595, 599. But when this Court related the history of the case, it said that the "Court of Appeal *disagreed* with an earlier opinion by the same district and division." (*People v. Superior Court*, at p. 236, emphasis added.)

Rather than letting this issue continue to fester in the lower appellate courts, the Court should take this opportunity to resolve it. And, as we now explain, it should do so to protect its authority as the only judicial body in California that may remove the precedential effect of a Court of Appeal opinion.

III. This Court should affirm that it alone has the authority to negate a Court of Appeal decision's precedential effect.

Court of Appeal Justice Michael J. Raphael has aptly asked: "Because Court of Appeal precedent is not regional, but rather emanates from a single Court of Appeal, binding trial courts throughout the state, what gives judges that happen to sit in the issuing division the unique authority to overrule a decision from that division? If an old and arguably outdated precedent has existed for decades, binding all trial courts statewide, what gives the justices from the division that happened to issue it—and only those [intermediate appellate court] justices—the authority to overrule it?" (Raphael, *The Puzzle of Precedent in the California Court of Appeal* (2020) 33 Cal. Litig. 11, 14 (*Puzzle*).) There is no such authority. This Court should disapprove the language in the Court of Appeal's decision here and in other decisions where Courts of Appeal have disapproved or overruled their own prior opinions.

As Justice Raphael notes, although the Courts of Appeal are organized into regional districts (and, sometimes, divisions) their decisions are treated as issuing from a single Court of Appeal, and have statewide effect. (*Puzzle*, *supra*, at p. 10.) But at the same time, there is no horizontal stare decisis within the Courts of Appeal: an opinion of one panel does not bind any other panel. (*Sarti*, *supra*, 167 Cal.App.4th at p. 1193.) Thus, one Court of Appeal panel may disagree with a prior panel's decision because it is poorly reasoned, is in conflict with public policy or

revisions to the governing statute, or for any number of other reasons. (*Puzzle*, at p. 12.)

But unlike in the intermediate federal appellate courts, a Court of Appeal "has no 'en banc' procedure through which a larger (and formally more powerful) panel—either from a division, or from the entire Court of Appeal—can reconsider an opinion and supersede it." (*Puzzle*, *supra*, at p. 14; see *Horizontal Stare Decisis*, *supra*, 59 U.S.F. L.Rev at p. 325 [recognizing that en banc review "would likely be constitutionally impermissible at the level of the courts of appeal" because the "provision of the state constitution that authorizes the courts of appeal requires a court of appeal to 'conduct itself as a 3-judge court' "].) Under the California Constitution, the power to resolve such conflicts is reserved exclusively to this Court. (See *Cole v. Rush* (1955) 45 Cal.2d 345, 351 [a Court of Appeal opinion "stands . . . as a decision of a court of last resort in this state, until and unless disapproved by this [Supreme C]ourt or until change of the law by legislative action"], overruled on another ground by *Vesely v. Sager* (1971) 5 Cal.3d 153, 157; *Horizontal Stare Decisis*, at p. 315 ["Under the current no horizontal stare decisis rule, the most a court of appeal can do is add to the persuasive weight of its interpretation of the law until the supreme court weighs in"].)

There are many reasons, including the following, why one panel of the Court of Appeal should not be able to overrule even one of its own prior decisions.

First, as noted, every Court of Appeal panel has authority equal to any other. If a panel disagrees with another panel's

decision, it may diverge from that decision. But as Justice Raphael observes, "no theory has been articulated as to the source of one Court of Appeal panel's authority to overrule another." (*Puzzle*, *supra*, at p. 14.) When a panel splits from another decision, this Court can grant review—whether sooner or later—"to secure uniformity of decision." (Cal. Rules of Court, rule 8.500(b)(1).) This Court has never *expressly* held that the Court of Appeal may not disapprove a prior decision from the same division or district, but "disapproval is the term our Supreme Court uses when it abrogates Court of Appeal opinions after resolving a split in the law." (*Overruled*, *supra*, <https://dailyjournal.com/articles/380998-overruled>.) This Court should not allow the intermediate appellate courts to infringe its exclusive authority to "secure uniformity of decision" by disapproving decisions.

***Second*,** allowing a panel to overrule a prior decision is problematic in districts not divided into separate divisions and in divisions with more than three justices. In those districts and divisions, the rationale that the panel is merely overruling one of its own decisions is questionable because other justices in that district or division may *agree* with the earlier decision. As Justice Raphael has noted, if "three justices in the Sacramento division [*sic*] overrule an opinion, seven off-panel justices might disagree with that ruling." (*Overruled*, *supra*, <https://dailyjournal.com/articles/380998-overruled>.) In the absence of any en banc procedure within individual districts and divisions to reach a consensus on whether a prior decision should

be overruled, allowing a single panel of three justices to exercise that authority is fraught with risks to collegiality, and may not express the majority view of the district or division.

Consider the following actual past situation. A Court of Appeal division ruled on an evidentiary issue one way, with Justices A and B in the majority, and Justice C dissenting. (*Barrick*, *supra*, 177 Cal.Rptr. 532.) Just six weeks later, in an opinion by Justice C with Justices D and E concurring, that division decided the same issue differently and purported to overrule the earlier decision. (*Thompson*, *supra*, 178 Cal.Rptr. 735 ["we overrule *People v. Barrick* . . . an opinion by another panel of this court which held to the contrary"].)

Giving the second opinion binding effect and negating the precedential effect of the first would depend on the happenstance of two factors, neither of which should be determinative. The order in which the two opinions were filed was critical if one panel could overrule a different panel. Had the filing times been reversed, the law for the state's superior courts would have been quite different. Also decisive was which justices were randomly assigned to decide the two cases. There would have been no overruling at all if the panel for the second case had been, say, Justices A, B, and D. California common law should not depend on such winds of chance.

Third, the "overruling" of a prior Court of Appeal decision by a later panel of the same district or division overlooks that "panels in *other* divisions may have agreed with an existing precedent but found no need to publish (and so make

precedential) a repetitive decision." (*Overruled*, *supra*, https://dailyjournal.com/articles/380998-overruled, emphasis added.) Justices in other divisions or districts should be able to count on the persistence of an existing precedent unless *this Court* disapproves or depublishes it. If instead justices must be concerned that an appellate panel might "overrule" its own division or district precedent, then panels in *other* divisions or districts will be encouraged to publish "we agree" opinions that would not otherwise meet the rule 8.1105(c) publication standards.

Finally, the fiction that a panel is merely reconsidering its own prior reasoning cannot justify the arrogation of what should be this Court's exclusive power to negate a Court of Appeal decision's precedential effect. Many years may separate the first decision and the decision purporting to overrule it. In the intervening time, the composition of the district or division may have changed entirely, eliminating any nexus between the authorship of the two decisions. And, unlike with a single Supreme Court, the district or division—both before and after the change—will be composed of justices who could have just as easily been appointed to a different district or division. In practical effect, such "disapproval" is therefore no different than attempting to overrule a prior decision from another one of the Court of Appeal's geographic divisions. No panel of the Court of Appeal has previously suggested it possesses authority to overrule an opinion from a different division, regardless how outdated or wrong. (See, e.g., *Garza v. Asbestos Corp., Ltd.*

(2008) 161 Cal.App.4th 651, 659, fn. 5 ["As a court of equal dignity, we are certainly free to disagree with our colleagues in Division One, and may even decline to follow them. However, principles of stare decisis do not permit us to 'overrule' their decision . . . ."].)

CONCLUSION

For the foregoing reasons, in deciding this matter on the merits the Court should address whether the Court of Appeal had authority to overrule one of its prior decisions, and should hold that a panel of the Court of Appeal has no such authority.

October 1, 2025

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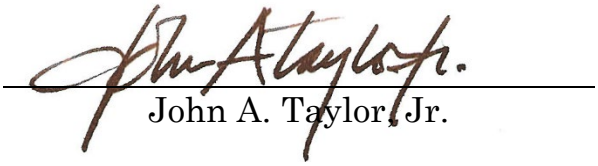
By: 
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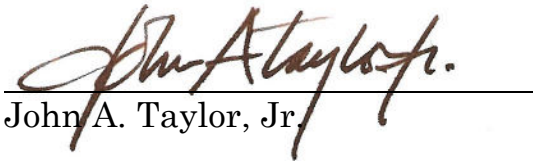
The text of this brief consists of 3,537 words as counted by the program used to generate the brief.

Dated: October 1, 2025



John A. Taylor, Jr.

PROOF OF SERVICE

Cohen et al. v. Superior Court Los Angeles County et al. (Schwartz)
Case No. S285484

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On October 1, 2025, I served true copies of the following document(s) described as **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF SUPPORTING NO PARTY; AMICUS CURIAE BRIEF OF CALIFORNIA ACADEMY OF APPELLATE LAWYERS** on the interested parties in this action as follows:

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BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 1, 2025, at Burbank, California.

Millie Cowley

Millie Cowley

SERVICE LIST
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