CALIFORNIA ACADEMY OF APPELLATE LAWYERS

July 29, 2016

VIA FEDEX OVERNIGHT DELIVERY
Chief Justice Tani G. Cantil-Sakauye
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: *People v. Roderick Wright*, No. S235682 (B260216)
Amicus Curiae Letter of California Academy of Appellate Lawyers in Support of Petition for Review

Honorable Justices:

The California Academy of Appellate Lawyers ("the Academy") submits this letter as amicus curiae in support of the petition for review filed by former State Senator Roderick Wright. Specifically, the Academy urges the Court to take this opportunity to reexamine its holding that the doctrine of law of the case binds it to follow earlier Court of Appeal decisions in the same case, even though on "subsequent consideration this court may be clearly of the opinion that the former decision is erroneous ...." (*People v. Stanley* (1995) 10 Cal.4th 764, 786, quoting *People v. Shuey* (1975) 13 Cal. 3d 835, 841, internal quotation marks excluded.)

The members of the Academy are experienced appellate practitioners whose common goals include promoting and encouraging sound appellate procedures designed to ensure proper and effective representation of appellate litigants, efficient administration of justice at the appellate level, and improvements in the law affecting appellate litigation. In the Academy's view it is inconsistent with those goals, and with this Court's proper role as the State's highest court for the Court to hold itself bound by the decisions of intermediate courts.

The Academy takes no position on the merits of the case,[1] but is concerned that this Court will consider itself bound under *Stanley* and *Shuey* to follow the Court of Appeal's ruling, even if it believes the Court of Appeal erred. For the reasons stated below, the Academy urges the Court to adopt the approach taken by the Supreme Court of the United States that, even where it has denied a petition for writ of certiorari following an interlocutory appellate decision, "this court, in now reviewing the final decree by virtue of the writ of certiorari, is called upon to notice and rectify any error that may have occurred in the interlocutory proceedings." (*Hamilton-Brown Shoe Co. v. Wolf Brothers & Co.* (1916) 240 U.S. 251, 258.)

BACKGROUND

In 2009, a grand jury indicted former State Senator Roderick Wright on five counts of fraudulent voting, one count of filing a false declaration of candidacy, and two counts of perjury arising out of a complaint concerning his residency.[2] The trial court granted defendant's pre-trial request to set aside two counts of fraudulent voting that arose while defendant was a member of the California Senate, based on Elections Code section 2026, which provides that the domicile of a member of the Legislature shall be conclusively presumed to be at the residence address on the member's voter registration affidavit.

The prosecution petitioned for an interlocutory writ of mandate and the Court of Appeal reinstated the two counts based on its interpretation of section 2026. (*People v. Wright* ("*Wright I*") 197 Cal.App.4th 511, 516.) This Court denied review.

On remand, the jury convicted defendant on all counts. On appeal, defendant argued that *Wright I* was wrongly decided, but the Court of Appeal held that it was bound to that decision as law of the case. (*Wright II* at *23-25.)

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1 Steven A. Hirsch, one of defendant's counsel, is a member of the Academy. He is not, however, a member of its amicus committee, and played no role in the deliberations of that committee or the drafting of this letter.

2 *People v. Wright* ("*Wright II*") (2016) 2016 Cal.App. Unpub. LEXIS 3901, *16.

Defendant filed a timely petition for review on July 5, 2016, raising the question of whether this Court should continue to hold itself bound by such an interlocutory Court of Appeal decision under *Stanley* and *Shuey*.

ADHERENCE TO A LOWER COURT'S DECISION IS NOT CONSISTENT WITH THIS COURT'S ROLE AS THE STATE'S HIGHEST COURT

While it may have been appropriate for the Court of Appeal to apply law of the case to avoid disturbing its own recent decision, the doctrine ought not to be applied to make the Court of Appeal's decision binding on this Court. To do so would be to give substantive force to this Court's denial of review of an interlocutory writ, inconsistent with well-established precedent to the contrary and the realities of this Court's limited resources and the many claims on its attention. (See, e.g., *Trope v. Katz* (1995) 11 Cal.4th 274, 287 fn. 1.) Thus, for several reasons, the Academy urges the Court to take this opportunity to reexamine the notion that Court of Appeal decisions are binding upon it as law of the case in this context.

First, and most importantly, is the anomaly of the State's highest court considering itself bound by a lower court's decision even where it "may be clearly of the opinion that the former decision is erroneous ...." (*People v. Stanley*, *supra*, 10 Cal.4th at 786.) This is particularly true where the lower court published its decision, thus making law *beyond* the case. Whether or not this Court chooses to overturn the lower court's decision, it should not be prevented from doing so — or compelled to affirm it by mere denial of review — by a self-imposed rule like law of the case. Such a situation is directly at odds with the mandate of article VI, section 12 (b) of the California Constitution that "[t]he Supreme Court may review the decision of a court of appeal in any cause." As this Court said long ago, "[W]hen a certain jurisdiction has been conferred on this or any court, it is the duty of the court to exercise it ...." (*People v. Jordan* (1884) 65 Cal. 644, 646.)

Second, the doctrine interferes with this Court's ability to settle important questions of law. (Cal. Rules of Court, Rule 8.500(b)(1).) Where (as here), the Court denies review of an interlocutory ruling by a court of appeal – or where review is never sought – application of law of the case forecloses later review of that ruling under preferred

circumstances: with the benefit of a full record subsequently developed in the trial court. A full record may well reveal unforeseen consequences of the appellate court's ruling when applied to the facts before the trial court. For example, in *Christianson v. Colt Indus. Operating Corp.* (1988) 486 U.S. 800, Justice Stevens' concurrence describes how even an issue involving a court of appeals' jurisdiction might change between the pleading stage and completion of trial. (*Id.* at 820-824.)

Finally, the doctrine fails to fulfill its stated purpose of encouraging judicial economy.[3] Rather, it freights this Court's denial of review with substance granted in no other setting and compels a losing party in the court of appeal to seek review in this Court before the Court has the benefit of the kind of full record discussed above. The Court will continue to face the unwelcome choice of granting review of a lower court's decision on an undeveloped record or allowing the lower court's decision to stand.

The Supreme Court of the United States long ago rejected application of the law of the case to its own decision-making. In *Panama Railroad Company v. Napier Shipping Company* (1897) 166 U.S. 280, 284, the Court explained its reasoning as follows:

> If, under such circumstances, this court were powerless to examine the whole case upon certiorari, we should then be compelled to issue it before final decree, whereas ... it is and generally should be issued only after a final decree.... But while the Court of Appeals may have been limited on the second appeal to questions arising upon the amount of damages, no such limitation applies to this court, when, in the exercise of its supervisory jurisdiction, it issues a writ of certiorari to bring up the whole record. Upon such writ the entire case is before us for examination.

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[3] See *People v. Stanley*, *supra*, 10 Cal.4th at 786 (principal reason for law of the case doctrine is judicial economy).

The Academy respectfully suggests that the same rule should apply in this Court. While the two courts are different, each is a court of last resort with more claims on its attention than resources with which to respond. Each can take only a few of the cases offered it and cannot afford to be bound by its many, necessarily summary decisions to deny review.

For the reasons stated above and in the petition for review, the Court should grant review to reconsider and discontinue the application of the doctrine of law of the case in this Court.

Respectfully submitted,

CALIFORNIA ACADEMY OF
APPELLATE LAWYERS
AMICUS CURIAE COMMITTEE

By: Margaret M. Grignon

Margaret M. Grignon, Chair (No. 76621)
Robin Meadow (No. 51126)
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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years and not a party to the within action. My business address is GRIGNON LAW FIRM LLP, 5150 East Pacific Coast Highway, Suite 200, Long Beach, CA 90804. On July 29, 2016, I served the following document(s) by the method indicated below:

LETTER IN SUPPORT OF PETITION FOR REVIEW (S235682)

☐	by transmitting via facsimile on this date from fax number _____ the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 PM and was reported complete and without error. The transmission report, which is attached to this proof of service, was properly issued by the transmitting fax machine. Service by fax was made by agreement of the parties, confirmed in writing. The transmitting fax machine complies with Cal.R.Ct 2003(3).
☒	by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Long Beach, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 29, 2016, at Long Beach, California.

Melissa Ackerman

SERVICE LIST

People v. Roderick Wright
Supreme Court Case No. S235682
(Court of Appeal Case No. B260216)
(Los Angeles Superior Court Case No. BA361187)

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