No. 24-652

IN THE

Supreme Court of the United States

DAVID CASSIRER, *et al.*,

Petitioners,

v.

THYSSEN-BORNEMISZA COLLECTION FOUNDATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Respondent Thyssen-Bornemisza Collection Foundation ("TBC" or "Respondent") was the defendant and appellee below. TBC is an agency or instrumentality of the Kingdom of Spain, a foreign sovereign. It is a not-for-profit entity established for educational and cultural purposes; it is a separate legal entity, created under the laws of the Kingdom of Spain. TBC has no parent corporation and no publicly held corporation owns 10% or more of its stock.

Petitioners David Cassirer, the Estate of Ava Cassirer, and the United Jewish Federation of San Diego County ("Petitioners") were plaintiffs and appellants below. The United Jewish Federation of San Diego County has no parent corporation and no publicly held corporation owns 10% or more of its stock.

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INTRODUCTION

This Court should deny Petitioners' request to grant, vacate, and remand. The requested GVR would have this case remanded so that California's new choice-of-law rule could be used to undo a unanimous decision from the Ninth Circuit. The new rule is discriminatory, unconstitutional on its face, subject to federal preemption, and does not justify issuance of a GVR. Issuance of the requested GVR would not be "just under the circumstances" and the statutory basis for this extraordinary order is lacking. Furthermore, Petitioners can pursue the same relief through California's new statute itself, which allows Petitioners to refile their lawsuit against Respondent Thyssen-Bornemisza Collection Foundation ("Respondent" or "TBC"). Petitioners can also pursue this same relief through the Rule 60 Motion to Vacate the Judgment that they filed in the district court on January 28, 2025.

This Court should also deny Petitioners' alternative request to review the merits of the Ninth Circuit's unanimous decision. There is no basis, or need, to review the Ninth Circuit's straightforward application of California's long-standing "governmental interest" choice-of-law rule. The Ninth Circuit's decision did not violate the Supremacy Clause or any other federal law, nor did it conflict with the decision from another Circuit Court. In a factual, detailed, and thorough decision, the Ninth Circuit correctly applied the rule, as did the district court below. Given the opportunity below, the California Supreme Court declined to answer the Ninth Circuit's certified question about whether California's rule test required application of Spain's laws or California's laws. This Court should do the same and deny the petition.

This case has already been to a full and fair merits trial with this Court's prior review. As noted at prior oral argument, it is time for this case to come to an end. In the alternative to denying the petition for writ of certiorari, and because the new California choice-of-law rule cannot withstand constitutional scrutiny, on its face as applied to Respondent, this Court should summarily affirm the lower court's opinion with a clear statement that this case and this dispute has come to an end and should not otherwise be revived by California's passing of a facially discriminatory, federally preempted, and unconstitutional choice-of-law rule.

STATEMENT OF THE CASE

1. On June 4, 2015, the district court held that the federal choice-of-law rule *and* California's governmental interest choice-of-law rule both required application of Spanish substantive law to this case. *Cassirer v. Thyssen-Bornemisza Collection Found.*, 153 F. Supp. 3d 1148 (C.D. Cal. 2015). On July 10, 2017, the Ninth Circuit affirmed that Spanish substantive law should apply, but used the federal choice-of-law rule only, and not the forum's rule. *Cassirer v. Thyssen-Bornemisza Collection Found.*, 862 F.3d 951 (9th Cir. 2017)

After the parties had a trial on the merits under Spanish law and judgment was entered for TBC, which the Ninth Circuit unanimously affirmed, Petitioners asked this Court to remand the case and require the Ninth Circuit to instead use California's governmental interest choice-of-law test. Without comment about which jurisdiction's substantive law should be found to apply, this Court held that California's choice-of-law rule must be

used. *Cassirer v. Thyssen-Bornemisza Collection Found.*, 596 U.S. 107, 117 (2022) ("*Cassirer V*"). On remand, using California's rule, the Ninth Circuit again found that Spanish law applied, unanimously affirming the district court's 2015 analysis that Spain had the greater interest.

2. Thereafter, the California legislature drafted a new choice-of-law rule, specifically targeting this case, and Holocaust-era property claims, with the stated goal of making "it crystal clear that California law must triumph over foreign law, that California stands with Holocaust survivors[.]"*Bill Analysis*, prepared for the Assembly Committee on Judiciary, April 27, 2024 ("*Bill Analysis*"), at 3.[1] The new statute dispenses with any need to conduct a choice-of-law test, or to consider the interests of the other jurisdiction; it simply forces application of California substantive law:

> Notwithstanding any other law or prior judicial decision, in any action brought by a California resident, or by an heir, trustee, assignee, or representative of the estate of a California resident, involving claims relating to title, ownership, or recovery of personal property as described in paragraph (2) or (3), or in the (HEAR) (Pub. L. No. 114-308), including claims for money damages, California substantive law shall apply.

Code Civ. P. 338(c)(6).

The new statute also created a new cause of action and allows filing of a **new** lawsuit for recovery of the same property if a prior action was dismissed:

---

1. Available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240AB2867

> … by a court based on any of the defenses listed in subdivision (f) [including acquisitive prescription, adverse possession, and laches], or based on any procedural basis such as standing, personal jurisdiction, or subject matter jurisdiction [as long as the new action is] commenced within two years of the effective date of this section or the entry of a final judgment and the termination of all appeals, including any petition for a writ of certiorari, whichever is later.

Code Civ. P. §338.2(g). The reference to "any petition for a writ of certiorari" further confirms that this law was specifically meant for this case and designed to discriminate against Spain, because there is no other claimant to which this provision could apply. The same is true for the reference to "acquisitive prescription," which is a key Spanish legal term. *Cassirer v. Thyssen-Bornemisza Collection Found.*, 89 F.4th 1226, 1233 (9th Cir. 2024) ("district court ruled that TBC was the rightful owner of the Painting, pursuant to Spain's law of acquisitive prescription[.])"

3. Because there would be no weighing of the other state's respective interests in the case, this rule would require application of California substantive law to cases having little or no connection to California, including property disputes where the property has never been in California. As explained in the legislative history:

> ***Avoiding the "Choice of Law" problem***. This bill was introduced in response to the Ninth Circuit opinion [in *Cassirer*]. First, this bill attempts to circumvent the "choice of law"

> question by simply asserting that in any case for recovery of fine art or an item of historical, interpretive, scientific, or artistic significance, including those covered by the HEAR Act and brought by a California resident, then California substantive law shall apply. In other words[,] a court, whether federal or state, would not conduct a choice of law analysis and would instead simply apply California substantive law, no matter the claims of the other jurisdiction.

Bill Analysis, *supra*, at 8.

When this case was previously before this Court, the Solicitor General warned about state choice-of-law rules like this:

> And there could be instances in which a State's choice-of-law rules were hostile to or improperly dismissive of a foreign state's interests—especially its interests in regulating certain matters within its own territory—that state law should not control. But those concerns are best addressed by applying limits on the application of state law derived from the Constitution, applicable treaties or statutes, international comity, the Act of State doctrine, or other sources reflecting distinctly federal interests[.][2]

2. Brief for the United States as *Amicus Curiae* at 21 in *Cassirer v. Thyssen-Bornemisza Collection Foundation* (2021) (No. 20-1566). Available at https://www.justice.gov/d9/briefs/2021/11/23/20-1566tsacunitedstates.pdf.

To address these concerns, the Solicitor General advised:

> The federal government's exclusive constitutional authority over foreign affairs limits the application of a State's law to foreign conduct where the state law conflicts with the Nation's foreign policy or interferes in an area of exclusively federal control. See, e.g., *American Ins. Ass'n v. Garamendi*, 539 U.S. 396, 413-427 (2003); *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372-388 (2000); *Zschernig v. Miller*, 389 U.S. 429, 441 (1968). More generally, the Constitution limits a State's ability "to draw into control of its law otherwise foreign controversies, on slight connections, because it is a forum state." *Lauritzen v. Larsen*, 345 U.S. 571, 590–591 (1953). Other constitutional provisions provide additional limits. See *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 304 (1981) (recognizing that the Due Process Clause and the Full Faith and Credit Clause of the Constitution limit a State's ability to select a particular law under its choice-of-law analysis); *Healy v. The Beer Inst.*, 491 U.S. 324, 336 (1989) (recognizing Commerce Clause constraints on a State's ability to regulate activity that occurs outside its borders); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821 (1985) (explaining that the Constitution does not permit a State to "take a transaction with little or no relationship to the forum and apply the law of the forum"). In light of those safeguards, concerns about

> foreign relations in the context of international conflict-of-law problems "limit the scope and reach of state law" in certain instances, but "they ordinarily do not supply a conflicts rule or a uniform rule of substantive law to be followed by state courts or by federal courts sitting in diversity." See Eugene F. Scoles & Peter Hay, Conflict of Laws § 3.56, at 149 (1982).

Brief for the United States as *Amicus Curiae* at 21–23 in *Cassirer v. Thyssen-Bornemisza Collection Foundation* (2021) (No. 20-1566).

Upon questioning from this Court, the Solicitor General repeated those concerns at the hearing:

> JUSTICE BREYER: To go back to the Chief Justice just out of interest, imagine a state, let's say California or make up a state, call it Allachusetts or something, and it has a choice-of-law rule which is "under no circumstances will a court ever give any weight whatsoever to the rule of Myanmar," okay? That's their rule.
>
> And that might interfere with the policy that underlies this, and maybe it would be preempted. I don't know what the ground would be exactly. It's sort of like there was a case, you know, out of Massachusetts. But that could be, I -- I think, the kind of thing that would raise a question.
>
> MS. HANSFORD: Absolutely, Justice Breyer, and that's exactly where we think

> those principles we lay out at pages 21 through 22 of our brief would come in. So how that would be analyzed is, does that law represent Massachusetts creating foreign policy in a way that is preempted either by something specific or some sort of field preemption? And it would be very much the *Garamendi-Zschernig* line of cases, and it would apply the same way to a choice-of-law rule.
>
> Because this is a choice-of-law rule, there's also the additional layer that there would be the due process type of analysis if that choice-of-law rule was used to apply Massachusetts law to something that doesn't have a sufficient connection. So you have that additional check. But just in the same way that you would apply that to a substantive rule down the line in an FSIA case, you would apply it here.

(Transcript of Oral Argument at 25–26, *Cassirer v. Thyssen-Bornemisza Collection Found.*, 596 U.S. 107 (2022) (No. 20-1566) ("Oral Argument Tr.").)

There was general agreement at the January 18, 2022, hearing before this Court that a state could not use a choice-of-law rule that discriminated against a foreign state. In fact, when asked about a potential conflict between FSIA Section 1606 and a hypothetical state choice-of-law rule, even the attorney for Petitioners agreed that a state choice-of-law rule could not discriminate against the foreign state:

> MR. BOIES: That, of course, is not this case, but I think that 1606's language would

> suggest that **the state could not have a rule that discriminated against the foreign state. So I think that to the extent that the state tried to have a rule that would discriminate against the foreign state, the -- 1606 would preclude that**.

(*Id.* at 11 (emphasis added).)

Yet, here we are, and that is exactly what Petitioners now want the courts to apply. The new rule was written specifically to displace Spanish substantive law regardless of her greater interest in this matter — a greater interest that both lower courts have affirmed. As the district court found:

> Most importantly, the Painting has been in the possession of an instrumentality of the Kingdom of Spain in Madrid, Spain since 1992, and that possession in Spain provides the basis for the Foundation's claim of ownership. Spain has a strong interest in regulating conduct that occurs within its borders, and in being able to assure individuals and entities within its borders that, after they have possessed property uninterrupted for more than six years, their title and ownership of that property are certain.
>
> If Spain's interest in the application of its law were subordinated to California's interest, it would rest solely on the fortuitous decision of Lilly's successor-in-interest to move to California long after the Painting was unlawfully taken by the Nazis and the fact

> that he happened to reside there at the time the Foundation took possession of the Painting. Subjecting a defendant within Spain to a different rule of law based on the unpredictable choice of residence of a successor-in-interest would significantly undermine Spain's interest in certainty of title.

Cassirer, 153 F. Supp. 3d at 1158–1159 (citations omitted) (cleaned up).

Reviewing the district court's choice-of-law analysis *de novo*, the Ninth Circuit found:

> As the California Supreme Court has instructed, our task in applying the comparative impairment analysis "is not to determine whether the [Spanish] rule or the California rule is the better or worthier rule" […] Instead, our task is to decide, "in light of the legal question at issue and the relevant state interests at stake—which jurisdiction should be allocated the predominating lawmaking power under the circumstances of the present case."
>
> Here, as in *McCann*, California's governmental interest rests solely on the fortuity that Claude Cassirer moved to California in 1980, at a time when the Cassirer family believed the Painting had been lost or destroyed. Like *McCann*, none of the relevant conduct involving the Painting occurred in California. […] Claude Cassirer's decision to move to California—a move that was

> unrelated to his claim for the Painting—is "not sufficient to reallocate" lawmaking power from Spain to California.
>
> In contrast, applying California law would significantly impair Spain's interest in applying Article 1955 of the Spanish Civil Code. For one, because the relevant conduct (TBC's purchase of the Painting and its display in the museum) occurred in Spain—or at least not in California—*McCann* teaches that Spain has the "predominant interest" in applying its laws to that conduct. As *McCann* and *Offshore Rental* both make clear, when the relevant conduct occurs within a jurisdiction's borders, that jurisdiction has a strong "interest in establishing a reliable rule of law governing a business's potential liability for conduct undertaken" there.
>
> Applying California law to this case would leave entities in Spain, like TBC, unable to structure and plan their conduct in Spain in reliance on Spain's laws. *McCann* and *Offshore Rental* dictate that such an outcome would significantly impair Spain's governmental interests.
>
> In sum, applying California law to this dispute would significantly impair Spain's interests, whereas applying Spanish law would relatively minimally impair California's interests.

Cassirer, 89 F.4th at 1236–1238, 1242–44 (cleaned up).

The Ninth Circuit's unanimous ruling came after this Court remanded with instructions to apply California's governmental interest test, and after the California Supreme Court declined to answer the Ninth Circuit's certified question of "whether California's choice-of-law test requires application of Spain's laws or California's laws to this dispute[.]" *Cassirer v. Thyssen-Bornemisza Collection Found.*, 89 F.4th at 1230 ("The California Supreme Court declined to answer our certified question.") Spain's interest in this case is superior to California's interest, which arises solely from Claude Cassirer's fortuitous decision to move to California.

3. Petitioners contend that the Ninth Circuit's application of California's choice-of-law test (i) conflicts with decisions of the First and Second Circuit Courts of Appeals, (ii) violates the Supremacy Clause, and (iii) is otherwise preempted by federal law. However, Petitioners' only real dispute is whether the Ninth Circuit's application of California law was correct. Contrary to those contentions, the Ninth Circuit did not violate the Supremacy Clause by correctly applying California's choice-of-law rule as it was instructed to do by this Court, and the cases cited by Petitioners do not support their claim that there is any circuit split regarding the proper application of California's choice-of-law test. Although Petitioners may disagree with the Ninth Circuit's conclusion that Spanish law governs this dispute, this Court does not sit to conduct *de novo* review of state law issues, and Petitioners have otherwise failed to set forth *any* basis for the extraordinary remedy of granting a writ of certiorari.

REASONS FOR DENYING THE PETITION

Petitioners contend that this Court has the authority to issue a GVR order and remand the case back to the Ninth Circuit for application of California's new rule. Respondent does not dispute that this Court has the authority to issue GVR orders, and has, on occasion, issued a GVR order when there was an intervening change in state law. However, those few situations (Petitioners cited four cases) are inapposite and Petitioners fail to demonstrate that a GVR order would be "just under the circumstances" of this case, and likewise fail to meet this Court's traditional requirements for a GVR order. Furthermore, thanks to the statute they helped write, the Petitioners have readily available alternative relief with a two-year window in which they can file a new lawsuit after this petition is denied and the case is finally concluded.

As a fallback, Petitioners ask this Court to find fault in the Ninth Circuit's application of California's governmental interest choice-of-law rule, which this Court previously found to be the correct rule to apply. Despite once advocating for application of this rule, Petitioners now argue it is unconstitutional. Of course, they fail to make that showing, as they likewise fail to identify any defect in the Ninth Circuit's application of the rule. Since this is a California state law issue, there is no circuit split on the application of California's governmental interest choice-of-law rule. The Ninth Circuit, and the district court below, did not apply the governmental interest rule incorrectly—a conclusion supported by the California Supreme Court declining to answer whether its choice-of-law rule would lead to application of Spanish

or California law in this case. Furthermore, the Ninth Circuit's application of California's choice-of-law rule does not raise any important federal issues which could support certiorari.

I. The Circumstances Do Not Warrant Issuance of a GVR Order

The authority for this Court to issue a GVR derives from 28 U.S.C. 2106:

> The Supreme Court … may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

28 U.S.C. § 2106 (emphasis added); *Grzegorczyk v. United States*, 142 S. Ct. 2580, 2581 (2022) ("the authority for this [GVR] practice stems from 28 U.S.C. § 2106") (Sotomayor, J., dissenting); *see also Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 167–68 (1996) ("[w]hether a GVR order is ultimately appropriate depends further on the equities of the case[.]") The circumstances and equities of this case do not warrant issuance of a GVR order and Petitioners' request should be denied for the following reasons.

A. Petitioners' Requested GVR Would Not Be "Just Under the Circumstances"

As required by law and this Court's precedent, a GVR is appropriate only "as may be just under the circumstances." 28 U.S.C. § 2106; *see also Grzegorczyk*, 142 S. Ct. at 2584 (Sotomayor, J., dissenting) ("textual limitation on the Court's authority … requires that a GVR order 'be just under the circumstances.'") This textual limitation factors in the equities of the case (*Lawrence*, 516 U.S. at 167–68), which have variously been described as (i) ensuring the petitioner receives full and fair consideration of her rights (*Stutson v. United States*, 516 U.S. 193, 197 (1996)); (ii) ensuring the petitioner was not deprived of process (*Grzegorczyk*, 142 S. Ct. at 2585 (Sotomayor, J., dissenting); (iii) facilitating the fair and just resolution of individual cases (*Grzegorczyk*, 142 S. Ct. at 2585 (Sotomayor, J., dissenting); (iv) protecting the public legitimacy of, and confidence in, our justice system (*id.*); and, on the flipside, (v) denying GVR when the request appears to arise from gamesmanship or unfair litigation strategy. *Lawrence*, 516 U.S. at 168; *see also Hicks v. United States*, 582 U.S. 924, ––––, 137 S. Ct. 2000, 2001 (2017) (Gorsuch, J., concurring).

These factors all weigh against issuing a GVR order here. After almost twenty (20) years of litigation, including multiple appeals, a merits-based trial,[3] and a prior trip to this Court that resulted in Petitioners' *then-desired*

3. This is not like the circumstances in *Lawrence*, where the lower court judgment arose from the "lower court's summary disposition." *Lawrence*, 516 U.S. at 170.

outcome (ordering the Ninth Circuit to apply California's governmental interest rule), Petitioners cannot claim they have not received full and fair consideration of their rights or that they were deprived of process. By way of comparison, this Court found in *Stutson* that GVR was warranted because:

> (1) the prevailing party below, the Government, has now repudiated the legal position that it advanced below; (2) the only opinion below did not consider the import of a recent Supreme Court precedent that both parties now agree applies; (3) the Court of Appeals summarily affirmed that decision; (4) all six Courts of Appeals that have addressed the applicability of the Supreme Court decision that the District Court did not apply in this case have concluded that it applies to Rule 4 cases; and (5) the petitioner is in jail having, through no fault of his own, had no plenary consideration of his appeal.

Stutson, 516 U.S. at 195.

Those conditions are not present here. No party has repudiated the legal positions they argued below. The courts below, and this Court, have collectively issued numerous opinions on choice-of-law and other issues. The opinion now under question was subject to significant briefing below, including as part of the Ninth Circuit's certification of a question to the California Supreme Court (which the court declined to answer). There are no conflicting circuit court decisions on the application of California's governmental interest choice-of-law rule,

nor can Petitioners claim they have been denied plenary consideration of their numerous appeals. *Cf. Stutson*, 516 U.S. at 194.

Application of California's new rule *after* a trial on the merits was already conducted, and unanimously affirmed, would cause more harm to public confidence in our justice system than a straight denial of certiorari for lack of reversible error and/or an issue worthy of review. *See Grzegorczyk*, 142 S. Ct. at 2581. Not to mention that our allies and other foreign states may well reciprocate if courts of this Nation imposed discriminatory choice-of-law rules like this. As this Court recently found:

> As a Nation, we would be surprised—and might even initiate reciprocal action—if a court in Germany adjudicated claims by Americans that they were entitled to hundreds of millions of dollars because of human rights violations committed by the United States Government years ago. There is no reason to anticipate that Germany's reaction would be any different were American courts to exercise the jurisdiction claimed in this case.

Fed. Republic of Germany v. Philipp, 592 U.S. 169, 185 (2021).

This applies equally to a state changing its choice-of-law rule during a case, and then requiring application of its substantive laws in claims over property with little to no connection to the forum state. This would be especially true if, like here, the rule was changed *after* the party prevailed at a full and fair trial in a foreign court and after

that decision had been unanimously affirmed following multiple appeals.

It would also be unjust to remand this case for consideration under AB 2867 when the courts of this country lack subject matter jurisdiction. As this Court held in *Philipp*, the expropriation exception to FSIA does not apply to a state's taking of property from its own nationals. *Philipp*, 592 U.S. 169; *see also Simon v. Republic of Hungary*, 77 F.4th 1077, 1098–1099 (D.C. Cir. 2023) (extending *Philipp* to a state's takings from *de facto* stateless persons), *cert. granted*, 144 S. Ct. 2680 (2024), and *cert. denied sub nom. Friedman v. Republic of Hungary*, 144 S. Ct. 2686 (2024). Petitioners' predecessor, Lilly Cassirer Neubauer, was a German national until 1941, when Germany rescinded nationality for Jewish nationals living abroad. Germany's taking from Mrs. Neubauer, which occurred in 1939 while she was living in Germany, thus did not violate the international law of expropriation and does not bring this matter within the FSIA's expropriation exception.

Petitioners' request to apply this new rule, after previously arguing to this Court (and below) for application of California's governmental interest rule, comes on the heels of the incredible amount of work by judges and staff at the Ninth Circuit, district court, this Court, and the California Supreme Court, in addition to Respondent's complete participation in these foreign proceedings and the work of its counsel over these past twenty (20) years. Petitioners' request to send this case back again, so that all involved can do even more work, is not justified.

The requested GVR order is not just under the circumstances and should be denied.

B. There Is No Reasonable Probability the Outcome Would be Different if the Case is Remanded for Further Consideration

The requested GVR order should also be denied because there is not a "reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration[.]" *Lawrence*, 516 U.S. at 167–168. This new choice-of-law rule (a) mandates retroactive use of California substantive law in cases involving a foreign sovereign's agency or instrumentality, no matter California's inferior interest in the case; (b) explicitly covers claims for artwork stolen by the Nazi government; and (c) would regulate a property exchange that occurred thirty (30) years ago in a foreign country between foreign entities. As the Solicitor General forewarned, a rule like this is unconstitutional and subject to federal preemption. *See also*, *Garamendi*, 539 U.S. 396 (finding that state law concerning Holocaust-era insurance policies in foreign countries is preempted).

Moreover, this Court has warned that "matters bearing on the nation's foreign relations 'should not be left to divergent and perhaps parochial interpretations.'" *First Nat. City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 622 (1983), *quoting from Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398, 425 (1964) (refusing to apply New York's act of state doctrine in action between U.S. national and an instrumentality of a foreign state). California's new rule is parochial, by design: "California law must triumph over foreign law[.]"*Bill Analysis*, *supra*, at 3. In fact, the risk of preemption was anticipated when the new law was drafted:

> ***Potential federal preemption issue***. Finally, California's first effort to expand the statute of limitation for actions to recover Nazi-looted art created Code Civil Procedure Section 354.3 in 2002. However, as discussed above, in 2009 the Ninth Circuit struck down Section 354.3 on federal preemption grounds, reasoning that by singling out art stolen by a foreign regime, the statute was preempted under the "foreign policy field preemption" doctrine. (Marie von Saher v. Norton Simon Museum (2009) 578 F.3d 1016.) To be sure, this bill does not solely apply to art stolen by the Nazi regime, but rather to any artwork or other property stolen or lost as a result of political persecution. However, the bill also expressly references the HEAR Act and, more significant, includes cases covered by the HEAR Act, which is restricted to art stolen by the Nazis between 1933 and 1945. […]
>
> In addition, while this bill is largely consistent with the HEAR Act, it also goes beyond it [in] important ways. The HEAR Act, for example, did not bar common defenses, nor does it say that when a choice of law question emerges that the court must apply the substantive law of the plaintiff's home state.

Bill Analysis, at 9.

As drafted, and as applied against TBC, the new choice-of-law rule violates the constitutional guardrails the Solicitor General warned this Court about.

- The new rule would mandate the use of California substantive law for Holocaust-era property claims, including those filed under the Holocaust Expropriated Art Recovery Act ("HEAR" Act), Pub. L. 114–308, 130 Stat. 1524, which is an area of exclusive federal control and thus subject to federal preemption. See, e.g., *American Ins. Ass'n v. Garamendi*, 539 U.S. 396, 413-427 (2003); *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372-388 (2000); *Zschernig v. Miller*, 389 U.S. 429, 441 (1968).

- Despite the established factual record detailing Spain's predominant interest in this matter compared to a fortuitous, at best, connection to California, the new rule would mandate the use of California substantive law to determine ownership of property that was exchanged in Spain between a Swiss seller and a Spanish buyer, an unquestionably improper attempt to regulate commerce in foreign jurisdictions. *Healy v. The Beer Inst.*, 491 U.S. 324, 336 (1989).

- The new rule would mandate the use of California law in cases where California has little, if any, connection to the location of the conduct in question. *Lauritzen v. Larsen*, 345 U.S. 571, 590-591 (1953); see also *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 304 (1981); and *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821 (1985).

- The new rule would also deprive TBC of its ownership right, which vested in 1996 in Spain, where the Painting had been since 1992, under Spanish law and long before this case was filed. TBC would be deprived of its vested rights despite having litigated in good faith in the courts of this Country for almost twenty (20) years, subject to Section 1606 and the requirement that TBC be treated like a similarly situated private party, and having successfully confirmed its ownership of the painting. *See, e.g., Cassirer*, 89 F.4th at 1233 ("TBC had fulfilled the requirements of Article 1955 of the Spanish Civil Code and had therefore acquired prescriptive title to the Painting"); *see also Cassirer v. Thyssen-Bornemisza Collection Found.,* 153 F. Supp. 3d 1148, 1168 (C.D. Cal. 2015) ("to the extent that application of amended California Code of Civil Procedure § 338(c) would result in depriving the Foundation of its ownership of the Painting, the statute violates the Foundation's due process rights"), *rev'd and remanded on other grounds*, 862 F.3d 951 (9th Cir. 2017).

Petitioners cite to four cases where an intervening change in state law justified a GVR order. Petition, at 19. Of course, where circumstances justify it, this Court has issued a GVR to account for an intervening change in state law. But that alone does not mean the factual or legal circumstances of *this case* warrant a GVR order, or that such an order would be "just under the circumstances" here. The four cited case did not have the history and circumstances of this case. They did not involve foreign

parties, and questions over which jurisdiction's laws applied, and nearly twenty (20) years of litigation and multiple appeals, including to this Court, and a trial on the merits, and *only then* a new rule (designed for the case at issue) that required application of the forum's substantive laws despite the forum's minimal connection to the case and which would effectively strip a foreign party of its vested property rights. A GVR order under these circumstances would not be just.

Moreover, in many of those cases where this Court has issued a GVR order, the Government (as one of the parties) had requested it.[4] Yet here, the Solicitor General provided warnings against choice-of-law rules (like the one at issue here) that discriminate against foreign jurisdictions and exceed constitutional guardrails.

As this Court stated in *Lawrence*, "our GVR power should be exercised sparingly [and] [r]espect for lower courts, the public interest in finality of judgments, and concern about our own expanding certiorari docket all counsel against undisciplined GVR'ing." *Lawrence*, 516 U.S. at 173. This is not one of the rare cases where the Court's GVR power should be exercised. The circumstances do not warrant the requested relief.

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4. See, e.g., *Grzegorczyk*, 142 S. Ct. 2580 ("the Government now asks this Court to vacate the Seventh Circuit's judgment and to order the Seventh Circuit to reconsider the defendant's § 2255 motion"); *Coonce v. United States*, 142 S. Ct. 25, 26, 211 L. Ed. 2d 267 (2021) (Sotomayor, J., dissenting) ("The Government urges us to [GVR]"); Lawrence, 516 U.S. at 165 (Solicitor General invites Court to GVR); *Stutson v. United States*, 516 U.S. 193, 197, 116 S. Ct. 600, 603, 133 L. Ed. 2d 571 (1996) (noting that a GVR order is satisfactory to the Government); and *Nunez v. United States*, 554 U.S. 911 (2008) (Scalia, J., dissenting) ("Yet the Government urges us to GVR").

C. Petitioners Have Alternate Routes For the Relief They Seek

A GVR order is also unnecessary and unwarranted because Petitioners have alternate paths to the relief being sought. In *Grzegorczyk*, this Court denied the petition and the Government's request to GVR, noting the desired relief could be secured through other means:

> To the extent that the Department of Justice has concluded that this defendant's conviction should be vacated or that his sentence should be reduced, the Attorney General may recommend a pardon or commutation to the President, and the President may pardon the defendant or commute the sentence.

Grzegorczyk, 142 S. Ct. at 2581.

Here, Petitioners have at least two alternative paths for seeking lower court review. First, the California legislation that contained the new choice-of-law rule also contained a provision allowing Petitioners to file a new case against TBC, for recovery of the same painting, as long as the case is filed within two years of this action's final conclusion. Code Civ. P. § 338.2; *see also* App. 82a (A.B. 2867, §3). Second, Petitioners can pursue their relief directly through the Rule 60 Motion they filed on January 28, 2025, in which they asked the district court to "vacate the judgment in favor of TBC that was based on Spanish law, apply California substantive law in accordance with the new [choice-of-law rule], and enter judgment in favor of the Cassirers." Plaintiffs' Notice of Motion and Motion for Relief from Judgment, *Cassirer, et al., v. Thyssen-*

Bornemisza Collection Foundation, Case No. CV 05-3459, at 17 (C.D. Cal. Jan. 28, 2025) (Dkt. 661).

There is no need for this Court to issue a GVR order where Petitioners have alternative pathways to the relief they seek.

II. This Case Does Not Present Any "Compelling Reason" Justifying the Extraordinary Remedy Of The Grant Of A Writ Of Certiorari

The remainder of Petitioners' arguments amount to nothing more than their disagreement with the Ninth Circuit's application of California's well-established choice-of-law rule. Contrary to Petitioners' arguments, the Ninth Circuit correctly applied California's choice-of-law rule, and, regardless, Petitioners have not set forth *any* basis for the extraordinary remedy of granting a writ of certiorari.

Rule 10 of the Rules of the Supreme Court of the United States provides that a "petition for a writ of certiorari will be granted only for compelling reasons." In contrast, "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." *Id.* Petitioners contend that the Ninth Circuit's application of California's choice-of-law test (i) conflicts with decisions of the First and Second Circuit Courts of Appeals; (ii) violates the Supremacy Clause; and (iii) is otherwise preempted by federal law. Petitioners endeavor to convince this Court that this is a case worthy of certiorari, yet Petitioners' only real dispute is whether the Ninth Circuit's application of California law is correct.

After the Supreme Court of California declined the Ninth Circuit's invitation to answer the question of whether Spanish or California law governed this dispute, the Ninth Circuit conducted its own *de novo* review of this state law issue and agreed with the district court's interpretation of California law. Petitioners now invite this Court to conduct its own *de novo* analysis of California's choice-of-law rule.

A. The Ninth Circuit's application of California's choice-of-law test did not violate the Supremacy Clause

Petitioners first contend that the Ninth Circuit's application of California's choice-of-law test violated the Supremacy Clause by failing to consider relevant federal law and policy in its analysis; Petitioners further contend that California's choice-of-law rule itself violates the Supremacy Clause by failing to specifically incorporate federal interests.

Contrary to Petitioners' contentions, the Ninth Circuit did not violate the Supremacy Clause by applying California's choice-of-law rule as it was instructed to do by this Court. *See Cassirer V,* 596 U.S. at, 114–17 (2002). "Simply put, it does not violate the Supremacy Clause for a federal court sitting in diversity to apply state substantive law. *See Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938)." *Nat'l Jewish Democratic Council v. Adelson*, 417 F. Supp. 3d 416, 422 (S.D.N.Y. 2019). As this Court previously recognized, "[n]o one would think federal law displaces the substantive rule of decision in [FSIA] suits; and we see no greater warrant for federal law to supplant the otherwise applicable choice-of-law rule." *Cassirer V,* 596 U.S. at 114–17 (2022).

There is nothing in the extensive body of case law about California's choice-of-law rule that would require the Ninth Circuit, in its choice-of-law analysis under California law, to factor in the federal interests Petitioners allude to in their myriad arguments; in fact, as detailed below, such national or international policy is irrelevant to California's choice-of-law rule. Even if Petitioners were correct in claiming the Ninth Circuit failed to consider certain "federal interests" in its most recent decision, however, Petitioners cannot demonstrate that the Ninth Circuit committed anything but "harmless error." (*See* Oral Argument Tr. at 59 ("JUSTICE SOTOMAYOR: Now I understood from the briefing by everyone that, in most circumstances, federal and state choice-of-law provisions would come out the same way"). Ironically, Petitioners argued against application of the federal choice-of-law rule when the Ninth Circuit—applying the Second Restatement test—had factored in the federal interests Petitioners now urge the Court to consider and nonetheless concluded that Spanish law governs this dispute.

To take Petitioners argument to its logical conclusion, Petitioners argue that *any* state choice-of-law test that fails to incorporate and account for federal policy in its analysis runs afoul of the Supremacy Clause. The Court should decline Petitioners' invitation to reconsider the constitutionality of virtually every state's choice-of-law test. *Maryland v. Louisiana*, 451 U.S. 725, 728, 101 S. Ct. 2114, 2129, 68 L. Ed. 2d 576 (1981) ("Consideration under the Supremacy Clause starts with the basic assumption that Congress did not intend to displace state law").

B. There is no Circuit Split

Petitioners next contend that the Ninth Circuit's choice-of-law analysis creates a split between the Ninth Circuit, and the First and Second Circuits. This is not true. The cases Petitioners cite do not support their claim that there is any circuit split regarding the proper application of California's choice-of-law rule. *See Vineberg v. Bissonnette*, 529 F.Supp.2d 300, 307–08 (D.R.I. 2007), *aff'd*, 548 F.3d 50 (1st Cir. 2008) (finding that because "Defendant [did] not address [plaintiff's] choice of law argument . . . this Court need not engage in an extensive choice of law analysis and will apply Rhode Island law where appropriate"); *and Kunstsammlungen Zu Weimar v. Elicofon*, 536 F.Supp. 829 , 846-847 (E.D.N.Y. 1981), *aff'd* 678 F.2d 1150 (2d Cir. 1982) ("New York's choice of law dictates that questions relating to the validity of a transfer of personal property are governed by the law of the state where the property is located at the time of the alleged transfer"). There is no "conflict" between the decision of the Ninth Circuit and the decisions of the First Circuit in *Vineberg* or the Second Circuit in *Kunstsammlungen;* neither of those cases held that federal laws and policies cited by Petitioners must be considered when conducting a state's choice-of-law analysis.

The fact that foreign states may be subject to different choice-of-law rules in FSIA cases in different fora does not create a circuit split, but best effectuates Congress's overall intent by ensuring "the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances." *See Barkanic*, 923 F.2d at 959 (citing 28 U.S.C. § 1606); *see also Cassirer V*, 596 U.S. at 114 (same).

C. The Ninth Circuit's Decision Correctly Applied California's Choice-of-Law Test

The Ninth Circuit's conclusion that Spanish law applies was correct and compelled by the facts of this case. The soundness of the Ninth Circuit's conclusion (which unanimously affirmed the 2015 district court conclusion) is evidenced by the fact that the California Supreme Court took the rare step of declining to answer the Ninth Circuit's question, as discussed above.[5]

In dissenting from the Ninth Circuit's request to the California Supreme Court, one justice noted, "Spain is the only interested jurisdiction" under California's choice-of-law rule and "[t]his is a simple, straightforward analysis that requires no certification to the California Supreme Court." *Cassirer v. Thyssen-Bornemisza Collection Found.*, 69 F.4th 554, 575 (9th Cir. 2023) ("*Cassirer VI*") (Bea, J., dissenting); *see also id.* at 586 ("Each and every relevant factor favors Spanish law. The majority has not identified a single factor that goes the other way").

D. The HEAR Act and Other "Federal Interests" Cited by Petitioners Do Not Preempt Application of Spanish Law

Petitioners' argument that the Ninth Circuit failed to properly consider certain federal interests is both

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5. *See* https://www.atthelectern.com/supreme-court-turns-down-the-ninth-circuit-in-nazi-painting-case/ ("Before today, the Supreme Court had granted 20 of the last 21 Ninth Circuit requests for help with California law issues, dating back to July 2018".)

incorrect and a misstatement of California's choice-of-law rule. The Ninth Circuit previously considered and rejected Petitioners' arguments that the HEAR Act demonstrated a federal interest that should outweigh application of Spanish law, because, as the Ninth Circuit found:

> HEAR does not specify which state's rules of decision should govern the merits of claims involving art expropriated during the Holocaust. HEAR simply supplies a statute of limitations during which such claims are timely. Thus, HEAR does not alter the choice of law analysis this Court uses to decide which State's law will govern TBC's claim of title to the Painting based on acquisitive prescription.

Cassirer v. Thyssen-Bornemisza Collection Found., 862 F.3d 951, 964 (9th Cir. 2017) ("*Cassirer III*").

Nor does the HEAR Act preempt or otherwise bar the Foundation from acquiring the Painting through acquisitive prescription, as the Ninth Circuit previously found. *Id.* at 965. In fact, the Ninth Circuit also already addressed and rejected Petitioners' arguments in support of their petition for a writ of certiorari that the HEAR Act preempts Spain's acquisitive prescription law in a prior (2017) decision:

> Because of the time periods mentioned in Article 1955, TBC's defense based on Article 1955 could be at first glance considered "a defense at law relating to the passage of time." However, TBC's Article 1955 defense is a defense on the merits: that TBC has *acquired*

> *title to the Painting based on Spain's property laws*. *See* Article 1955 ("Ownership of personal property prescribes by . . . ") (emphasis added), Ministerio de Justicia, *Spain Civil Code* 220 (2009) (English translation). Read in context, HEAR's § 5(a) language that the six-year statute of limitations applies "notwithstanding any defense at law relating to the passage of time" is meant to prevent courts from applying defenses that would have the effect of shortening the six-year period in which a suit may be commenced. HEAR does not bar claims based on the substantive law that vests title in a possessor[;] that is, the substantive law of prescription of title. Therefore, HEAR does not foreclose the possibility that TBC is entitled to summary judgment because TBC has acquired title to the Painting via Article 1955.

Id. at 965.

E. Petitioners' Arguments that the Ninth Circuit Failed to Appropriately Consider Certain "Federal Interests" Are Without Merit

First, to the extent the Ninth Circuit failed to consider certain "federal policy" in its choice-of-law analysis under California law, such considerations would have only bolstered its conclusion that Spanish law applied to this dispute. When the Ninth Circuit and district court previously applied the federal choice-of-law test, which takes these federal interests into account, both courts concluded that Spanish law applies. *See Cassirer*, 153 F. Supp. 3d at 1154; *Cassirer III*, 862 F.3d at 961–64; *see*

also Pokorny v. Quixtar, Inc., 601 F.3d 987, 994 (9th Cir. 2010) (applying California's government interest analysis choice-of-law test); *Rustico v. Intuitive Surgical, Inc.*, 993 F.3d 1085, 1091 (9th Cir. 2021) (same). With or without consideration of these federal interests, Spanish law would still be found to apply (*see, e.g.*, Oral Argument Tr. at 59).

To the extent the HEAR Act—or any of the other source of federal policy cited by Petitioners—evidences a *national* or *international* policy, such interest is plainly irrelevant to California's choice-of-law rule. California's choice-of-law rule does not allow, much less direct, a court to consider national laws or policies. California's rule focuses on the governmental interests of the states whose laws may be implicated. The Ninth Circuit previously rejected Plaintiffs' assertions that such national and international laws or policies play a meaningful role or overcome the fact that Spain has the "most significant relationship to the thing and the parties[.]" *Cassirer III*, 862 F.3d at 964 (citation omitted). The Ninth Circuit further rejected Petitioners' assertions that application of Spanish law would (1) violate international law, or (2) be "truly obnoxious" to federal policy. *Id.* at 980–81, 964. In addition, as one justice noted in dissenting from the Ninth Circuit's decision to certify the choice-of-law question to California's Supreme Court:

> Even if we previously concluded, applying Federal choice of law considerations, that the Second Restatement test required such a "taken as a whole" approach in *Cassirer III*, California's test expressly says otherwise. Again, California choice of law principles require us to examine "the *relevant law* of each

> of the potentially affected jurisdictions with regard to the *particular issue* in question," and to "examine[ ] each jurisdiction's interest in the application of its own law *under the circumstances of the particular case* to determine whether a true conflict exists."

Cassirer VI, 69 F.4th at 581, n.12 (Bea, J., dissenting) (emphasis in original) (quoting *Kearney v. Salomon Smith Barney, Inc.*, 137 P.3d 914, 922 (Cal. 2006)).

Further, on March 5, 2024, the United States once again confirmed its commitment to the Terezin Guidelines and Washington Principles by endorsing the Best Practices for the Washington Conference Principles on Nazi-Confiscated Art (the "Best Practices"), which "were drafted with the awareness that there are differing legal systems and that states act within the context of their own laws. Countries will apply the best practices that follow in accordance with national laws."[6] While Petitioners cite these Best Practices in support of their petition, it is clear the United States did not seek to impose its property laws or the property laws of its own states on other foreign sovereigns, but rather to reiterate that Holocaust-era claims remain within foreign affairs.

Moreover, as the United States contemplated previously in its *amicus* brief to the Supreme Court in this action, "there could be instances in which a State's choice-of-law rules were hostile to or improperly

6. *See*, https://www.state.gov/office-of-the-special-envoy-for-holocaust-issues/best-practices-for-the-washington-conference-principles-on-nazi-confiscated-art.

dismissive of a foreign state's interests-especially its interests in regulating certain matters within its own territory-that state law should not control." *See* Brief for the United States as *Amicus Curiae* at 21 in *Cassirer v. Thyssen-Bornemisza Collection Foundation* (2021) (No. 20-1566). Were the Ninth Circuit to apply the choice-of-law rule proposed by Petitioners that would displace Spain's overwhelming interest in having its law applied, such impermissible overreach by a state would be "best addressed by applying limits on the application of state law derived from the Constitution, applicable treaties or statutes, international comity, the Act of State doctrine, or other sources reflecting distinctly federal interests." *Id.*

Contrary to Petitioners' arguments today, federal policy only bolsters the Ninth Circuit's conclusion that Spanish law applies. Recall, Petitioners had previously argued against the choice-of-law rule that expressly factored in these federal interests. Either way, the result would not change, which led Justice Sotomayor to wonder what Respondent was afraid of if the Ninth Circuit was ordered to apply California's governmental interest rule. (Oral Argument Tr., at 59 ("JUSTICE SOTOMAYOR: [. . .] If California law and federal law, you say, both correctly point to the application of Spanish law, what are you afraid of? […] Now I understood from the briefing by everyone that, in most circumstances, federal and state choice-of-law provisions would come out the same way. Am I correct on that assumption?").)

Petitioners disagree with the Ninth Circuit's conclusion. They do not argue the Ninth Circuit's decision is contrary to precedent or statute. Nor do they contend the Ninth Circuit disregarded the mandate of *Klaxon* or

failed to use the proper analytical approach for choice-of-law issues under California law. Petitioners' contention that the district court and Ninth Circuit gave inadequate attention to certain federal interests ignores the focus of California's rule and the history of this case, where such interests were considered and found to be insufficient to outweigh Spain's greater interest in the case.

Contrary to Petitioners' arguments, the parties extensively and repeatedly briefed the choice-of-law issues. Both the district court and the Ninth Circuit were well-equipped to apply California's long-established choice-of-law rule to the facts. *Cassirer VI*, 69 F.4th at 582, n.14 (Bea, J., dissenting) (noting "this situation is far from unique and has repeatedly been addressed in California Supreme Court cases") (citing *Kearney*, 137 P.3d at 917; *McCann v. Foster Wheeler LLC*, 48 Cal. 4th 68 (2010)). And both courts below—including a unanimous Ninth Circuit panel—concluded that Spanish law applied. Petitioners' complaint is nothing more than frustration with the Ninth Circuit's unanimous conclusion. There is no basis for certiorari; the "compelling reasons" called for by the Rules of this Court are not present.

III. The Views of the Solicitor General

The Solicitor General filed an *amicus* brief when this matter was previously before this Court. The Solicitor General also participated at the hearing. As discussed above, the Solicitor General warned about state choice-of-law rules that violate constitutional constraints or affect areas of exclusive federal control and preemption. The Solicitor General has also advised this Court of its "substantial interest" in cases against foreign sovereigns.

See, *e.g.*, Brief for the United States as *Amicus Curiae* at *1 in *Republic of Hungary, et al. v. Simon, et al.* (2024) (No. 23-867) (2024 WL 4138393) ("This case concerns the substantive and procedural standards for establishing subject-matter jurisdiction in a civil action against a foreign state under the expropriation exception to sovereign immunity in the [FSIA]. Civil litigation against foreign sovereigns in U.S. courts can have significant foreign-relations implications for the United States and can affect the reciprocal treatment of the United States in the courts of other nations. The United States thus has a substantial interest in this case.")

If Court has any doubt that denial of the petition is the correct outcome, the Court should call for the views of the Solicitor General because this case runs afoul of the very same constitutional guardrails previously warned of, and directly implicates foreign policy, foreign relations, and Holocaust-era property claims, which is an area of exclusive federal control.

IV. TBC is Immune from Suit Under the FSIA, as Confirmed by *Philipp*

Finally, as confirmed by this Court's recent precedent in *Fed. Republic of Germany v. Philipp*, 592 U.S. 169 (2021), TBC is immune from suit under the FSIA. Petitioners relied exclusively on the expropriation exception to the FSIA for subject matter jurisdiction in this case. However, this Court confirmed in *Philipp* that the expropriation exception does not apply to a state's taking of property from its own nationals, as occurred here.

Petitioners have previously argued their predecessor lost her German citizenship as a result of laws passed in

1935. However, German law is clear that she remained a German national until 1941, at least, when Germany rescinded nationality for any Jewish German person living abroad. Furthermore, a state's taking from its own national, even if rendered *de facto* stateless through discriminatory measures and treatment, does not violate the international law of expropriation and, therefore, does not satisfy the expropriation exception. *Simon v. Republic of Hungary*, 77 F.4th 1077, 1098-1099 (D.C. Cir. 2023), *cert. granted*, 144 S. Ct. 2680 (2024), and *cert. denied sub nom. Friedman v. Republic of Hungary*, 144 S. Ct. 2686 (2024). Because TBC is immune from suit under the FSIA, this Court should reject Petitioners' request to now set aside—and reverse—the merits-based judgment favoring TBC.

CONCLUSION

The decision of the Ninth Circuit was correct in all respects, and, because California's new choice-of-law rule is discriminatory, preempted and facially unconstitutional as applied to TBC, this Court should summarily affirm the lower court's opinion with a clear statement that this case and this dispute has come to an end and should not be revived after twenty (20) years by California's new rule. *See*, *e.g.*, *Garamendi*, 539 U.S. 396 (finding that state law concerning Holocaust-era insurance policies in foreign countries is preempted); *Japan Line, Ltd. v. Los Angeles Cnty.*, 441 U.S. 434, 454 (1979) (holding that tax as applied to foreign entity was unconstitutional under the Commerce Clause); *and Jackson v. Ogilvie*, 403 U.S. 925 (1971) (issuing summary affirmance).

Otherwise, and for the reasons discussed above, the petition for writ of certiorari should be denied.

Respectfully submitted,

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