No. 20-55930

In the

United States Court of Appeals for the Ninth Circuit

R.J. REYNOLDS TOBACCO COMPANY; AMERICAN SNUFF COMPANY; AND SANTA FE NATURAL TOBACCO COMPANY,
Appellants,

v.

COUNTY OF LOS ANGELES; COUNTY OF LOS ANGELES BOARD OF SUPERVISORS; AND HILDA L. SOLIS, MARK RIDLEY-THOMAS, SHEILA KUEHL, JANICE HAHN, AND KATHRYN BARGER, EACH IN HIS OR HER OFFICIAL CAPACITY AS A MEMBER OF THE BOARD OF SUPERVISORS,
Appellees,

On Appeal from the United States District Court
for the Central District of California
No. 2:20-cv-4880 (Hon. Dale S. Fischer)

Petition for Rehearing En Banc

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INTRODUCTION AND RULE 35(b)(1) STATEMENT

This Court should grant rehearing en banc because the panel decision conflicts with decisions of the United States Supreme Court and implicates questions of exceptional importance. Under the federal Tobacco Control Act, states and localities have broad authority to regulate the sale of tobacco products. But one thing they cannot do is completely prohibit their sale because they do not meet the state or locality's preferred "tobacco product standards." Nonetheless, a sharply divided panel of this Court upheld Los Angeles County's ban on the sale of flavored tobacco products. As Judge Nelson explained in dissent, that conclusion defies the statutory text and conflicts with Supreme Court precedent. Indeed, the Supreme Court has "twice reversed" this Court for committing the same error as the panel here: "interpreting an express preemption clause to allow states and municipalities to defeat its entire purpose with a sales ban." Dissent 34 (citing *Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 541 U.S. 246 (2004); *Nat'l Meat Ass'n v. Harris*, 565 U.S. 452 (2012)). Here, the third time is not the charm.

First, Los Angeles's flavor ban falls in the heartland of the TCA's preemption clause. That clause preempts "any" state or local requirements that impose additional or different "tobacco product standards." A flavor ban is a paradigmatic tobacco product standard. Indeed, it is one of the only tobacco product standards that

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