

CASE NO. 14-56440

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MICHIKO SHIOTA GINGERY, an individual, KOICHI MERA, an individual,
GAHT-US Corporation, a California non-profit corporation,
Plaintiffs and Appellants,

v.

CITY OF GLENDALE, a municipal corporation, SCOTT OCHOA, in his
capacity
as Glendale City Manager,
Defendants and Appellees.

On Petition for Reconsideration after Appeal from the United States District
Court for the Central District of California,
Case No. 2:14-cv-1291-PA-AJW
District Judge Hon. Percy Anderson

**MOTION OF THE NIPPON TODAY'S RESEARCHERS SOCIETY
(KINGEN) FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT
OF PLAINTIFFS AND APPELLANTS PETITION FOR
RECONSIDERATION *EN BANC***

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

The Interests of KINGEN.....1

The Attached Brief Will Be Helpful to the Court.....2

TABLE OF AUTHORITIES

Cases

Pleasant Grove City v. Summum
555 U.S. 460, 470 (2009)..... 3

Alameda Newspapers, Inc. v. City of Oakland
95 F.3d 1406, 1414 (9th Cir. 1996) 3

MOTION OF [PROPOSED] AMICUS CURIAE THE NIPPON TODAY
RESEARCHER’S SOCIETY (KINGEN) FOR LEAVE TO FILE BRIEF IN
SUPPORT OF PLAINTIFFS AND APPELLANTS PETITION FOR
RECONSIDERATION EN BANC

Pursuant to Rule 29(b) of the Federal Rules of Appellate Procedure, and consistent with Circuit Rule 29-2 of the Ninth Circuit Rules, [Proposed] *Amicus Curiae* The Nippon Today’s Researchers Society (KINGEN) respectfully requests leave to file the concurrently submitted *amicus curiae* brief in support of plaintiff-appellants MICHIKO SHIOTA GINGERY, an individual, KOICHI MERA, an individual, and GAHT-US Corporation, a California non-profit corporation.

The KINGEN offers the Court the perspective of a large, global society of researchers and scholars, who note with dismay the actions of the City of Glendale in accepting as factually true certain allegations against Japan that are disputed by the Government of Japan and many Japanese scholars and researchers. The KINGEN hopes that its (proposed) *amicus* brief will provide the Court with an international perspective on the historical events, disputes, and government-to-government discussions regarding “Comfort Women,” as well as the global response to the demand by the City of Glendale (and/or the Korean interest groups that sponsored the “Comfort Women” monument) that Japan “take historical responsibility” for the “crime” of “enslavement.”

In light of this historical perspective and the undeniably biased and disputed view promoted by Korean interest groups and adopted by Glendale, the panel erred in failing to consider that plaintiffs and appellants can properly state a claim, under the Supremacy Clause, as argued by Plaintiff-Appellants, as well as the Due Process and Privileges and Immunities clauses (as they have argued in California state court).

Finally, the panel misread the First Amendment jurisprudence of government expressive speech in a public forum.

The Interests of KINGEN.

The KINGEN is a private, not-for profit organization founded in Tokyo in 2009. It is made up of 70 members who have serious interest in the recent and contemporary history of Japan. The organization is not related to the Government of Japan, nor is receiving donation or contract from any organization related to any foreign government.

To date, the society of KINGEN have held over 120 lecture meetings on a variety of themes concerning modern historical events in Japan and developments from the 1900s to the present. The society is proud that a large number of its meetings have involved cutting-edge speakers with specialized knowledge and expertise on each meeting's theme. One of the themes on which KINGEN has had great interest is the controversial issue of the "Comfort Women." This issue has for some years been a source of great tension between South Korea, China, and Japan. More recently, the debate has spread to the United States, Australia, Canada, and Europe, including the disputes that have developed as a result of the City of Glendale monument dedicated to the memory of "Comfort Women."

The Attached Brief Will Be Helpful to the Court.

The KINGEN organization has collected a wide range of information and related documents on the subject of "Comfort Women" over the years, and KINGEN has a distinctly different view on the "Comfort Women" as compared to the views expressed in *amicus* briefs submitted to the Ninth Circuit Court of Appeals by the interest groups, Korean American Forum of California ("KAFC") and the Global Alliance for Preserving the History of WWII in Asia ("GAPH").

Because these groups submitted *amicus* briefs to this Court which present their view of the historical record, and because the Ninth Circuit panel accepted those briefs and presumably considered them in rendering its opinion, the KINGEN feel compelled to present our own findings to the Court in support of the plaintiff-appellants' motion for reconsideration *en banc*.

It is an honor for the KINGEN to make available to the Court the results of our past studies on this issue in the hopes of advising the Court on the Japanese perspective and modern understanding of the "Comfort Women."

In the *amicus* brief, KINGEN argues that the Ninth Circuit should grant the petition for reconsideration because the dismissal of Plaintiff's and Appellant's complaint with prejudice is reversible error. Plaintiffs and appellants could assert valid causes of action for violations of the Equal Protection and Due Process Clauses of the U.S. Constitution; and indeed, in the California state court, these plaintiffs have alleged additional violations of the United States Constitution based upon Glendale's treatment of its Japanese citizens as compared to its Korean citizens, which will not be advanced in the United States District Court because their case was dismissed without leave to amend.

In addition, Glendale decided to adopt the monument's language – which was provided and supported by a pro-Korean interest group—while ignoring the objecting views of its Japanese citizens. Glendale's Central Park is a public forum and the City has adopted and set in stone the views of one set of interests while denying the right of others. This is not a valid "time, place and manner" restriction on speech, nor is it "merely expressive speech." but rather an impermissible government subsidy of controversial, highly charged, and internationally relevant speech by adopting the views of a political activist group with anti-Japanese objectives. In so doing, the panel improperly expanded the scope of *Pleasant*

Grove City v. Sumnum, 555 U.S. 460, 470 (2009) – dealing with symbolic speech—and *Alameda Newspapers, Inc. v. City of Oakland*, 95 F.3d 1406, 1414 (9th Cir. 1996)—dealing with a (non-permanent) written resolution or proclamation. This is an entirely new statement of the law: that a city can adopt the foreign policy statement of an interest group, in bronze and stone, in a public park, that a foreign nation should be held accountable for war crimes over the objection of its citizens. The rule announced by the panel would permit cities to engage in all manner of viewpoint discriminatory speech in public fora under the guise of “*merely expressive*” proclamations.

Given California’s troubled history of mistreating Japanese residents, this monument and its one-sided view of history can rightfully be seen as the first step on a slippery slope of government-sponsored anti-Japanese sentiment. If the monument and its incendiary narrative stand, nothing prevents Glendale from adding, as additional “expressive speech,” any manner of divisive or exclusionary rhetoric.

For the reasons stated in this motion, KINGEN respectfully requests that this Court grant its motion to file the accompanying amicus brief in support of the Plaintiffs-Appellants.

DATED: September 26, 20166 Respectfully submitted,

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