Case No. S219052

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY OF MONTEBELLO
Plaintiff and Appellant,

v.

ROSEMARIE VASQUEZ, et al.
Defendants and Respondents,

ARAKELIAN ENTEPRISES,
Intervener.

On Appeal from a Decision of the Court of Appeal
Second Appellate District, Division One, Case No. B245959

Los Angeles County Superior Court Case No. BC488767
The Honorable Rolf Treu

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND PROPOSED AMICUS CURIAE BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES AND LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF NEITHER PARTY

Janis L. Herbstman (SBN 228488)
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941
Telephone: (916) 327-7534
Facsimile: (916) 443-8867
jherbstman@counties.org

Attorney for Amici Curiae California State Association of Counties and League of California Cities

The California State Association of Counties ("CSAC") and the League of California Cities (the "League") seek leave to file the attached amicus brief.

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The League is an association of 473 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

This case presents important issues related to the interpretation of the public prosecutor's exemption under Government Code section 425.16, subdivision (d). Specifically, should the exemption apply generally to prosecutions that protect the public at large, regardless of whether the

actions are brought in the name of the people of the State of California or in the name of a local public entity? The Second District court in the present matter interpreted the exemption narrowly, requiring an action to be brought specifically "in the name of the people of the State of California," but another Second District court adopted a broader interpretation, concluding that the exemption applies generally to public prosecutions aimed at protecting the public at large.

CSAC and the League support a broader interpretation of the exemption. The legislative history indicates that anti-SLAPP protections were enacted to protect against frivolous lawsuits aimed at protected speech and public participation. Public prosecutions are not frivolous lawsuits, but important actions that ensure public protection. By carving out the exemption for public prosecutors, the Legislature recognized that such actions should not be hindered or delayed by anti-SLAPP challenges. A broader interpretation of the exemption is consistent with the purpose of the anti-SLAPP provisions and the need for a carve-out for public prosecutors. Thus, a more narrow interpretation should be rejected.

CSAC and the League have reviewed the briefing of the parties, and do not repeat those arguments here. Rather, the proposed amicus brief offers additional legal arguments on the interpretation of the public prosecutor's exemption under Government Code section 425.16, subdivision (d).

For the foregoing reasons, CSAC and the League respectfully request that this Court accept the accompanying amicus curiae brief.

Dated: Respectfully submitted,

By: _____

JANIS L. HERBSTMAN

Attorney for Amici Curiae

California State Association of Counties
and League of California Cities

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California State Association of Counties
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Sacramento, CA 95814-3941
Telephone: (916) 327-7534
Facsimile: (916) 443-8867
jherbstman@counties.org

Attorney for Amici Curiae California State Association of Counties and League of California Cities

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I. INTRODUCTION

Section 425.16, subdivision (d), of the Code of Civil Procedure provides that the anti-SLAPP statute does not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor. One of the important questions raised by this case is whether this provision should be read broadly to also apply to cases brought by a city directly to recover funds pursuant to Government Code section 1090.

The California State Association of Counties ("CSAC") and the League of California Cities (the "League") believe the answer is yes. The purposes and policy objectives of both Government Code section 1090 and the anti-SLAPP exemption in Code of Civil Procedure section 425.16(d) are served by allowing the exemption to be applied in cases such as this—where a public agency is seeking redress for a breach of the public trust.

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The League is an association of 473 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

CSAC and the League urge the Court in this neutral amicus brief to find that this matter is not one that was intended to be addressed under California's anti-SLAPP statute, but rather it falls within the exception specifically intended for public prosecutors.[1]

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[1] The amicus brief filed by CalAware urges this Court to revisit *Vargas v. City of Salinas* (2009) 46 Cal.4th 1. As CSAC and the League make clear in this brief, however, that issue need not be reached in this case. Given that this case falls within the public prosecutor exemption to the anti-SLAPP statute, it does not necessarily implicate this Court's holdings in *Vargas*. This Court should avoid the constitutional issues raised in *Vargas*, since the present case can be decided on more narrow grounds. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 984, citing *Berglund v. Arthroscopic & Laser Surgery Center of San Diego, L.P.* (2008) 44 Cal.4th 528, 538; *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 846–847.)

II. ARGUMENT

A. A Broad Reading of the Public Enforcement Exception is Consistent with the Legislature's Intent.

Actions "brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor" are specifically exempted from anti-SLAPP provisions (Code Civ. Proc., § 425.16, subd. (d).) The Second District Court of Appeal has split in deciding whether this exception applies to civil actions brought by state and local agencies to enforce laws aimed at consumer and/or public protection. Division Seven of the Second District concluded that the exception applies to such cases. (*City of Long Beach v. California Citizens for Neighborhood Empowerment* (2003) 111 Cal.App.4th 302, 308-309.)

In *City of Long Beach*, the court rejected a narrow interpretation of the exemption after analyzing the anti-SLAPP statute's legislative history. That court held that the exemption applies "to any civil enforcement action initiated by a city attorney, county counsel, district attorney or attorney general to enforce laws intended to protect the public." (*City of Long Beach, supra*, 111 Cal.App.4th at p. 307.) The court considered the following in determining the intent of the Legislature in passing anti-SLAPP legislation:

> In its comments on the proposed legislation, the Assembly Subcommittee on the Administration of Justice stated that

> "SLAPP suits are not filed with the intent to obtain a final judgment on the merits, but, rather, to force defendants to incur defense costs and, consequently, remove their opposition to a controversial development project, for example. The purpose of SLAPP suits is to intimidate and silence the opponents of SLAPP suit plaintiffs." (Assem. Subcom. on the Admin. of J., Rep. on Sen. Bill No. 1264 (1991–1992 Reg. Sess.), as amended Mar. 26, 1992, p. 4.)

(*Id.* at p. 308)

Citing *People v. Health Laboratories of North America, Inc*. (2001) 87 Cal.App.4th 442, the court noted that, in contrast, "a public prosecutor's enforcement action is not motivated by a retaliatory attempt to gain a personal advantage over a defendant who has challenged his or her economic ambition." (*City of Long Beach, supra*, 111 Cal.App.4th at p. 308.) Rather, a "prosecutor's motive derives from the constitutional mandate to assure that the laws of the state are uniformly enforced and to prosecute any violation of these laws, so that order is preserved and the public interest protected." (*Ibid*.)

In *Health Laboratories*, the First District reviewed the legislative history for the anti-SLAPP statute to determine whether the prosecutor's exemption was constitutional. The court concluded that "[n]othing in the legislative history of Code of Civil Procedure section 425.16 implies that the problem the Legislature sought to rectify thereby was created by prosecutors bringing meritless enforcement actions." (*Health Laboratories, supra*, 87 Cal.App.4th at p. 450.) Further, the court examined the source of

the exemption and found that it was added in response to the Attorney General's concern that the anti-SLAPP provisions might hinder enforcement actions by state and local agencies. (*Id*. at pp. 446-447.) The court in *City of Long Beach* relied on the court's analysis in *Health Laboratories* in concluding that "it is reasonable to infer that the measure was designed to address the Attorney General's concern, which extended to all civil actions brought by state and local agencies to enforce laws aimed at consumer and/or public protection." (*City of Long Beach, supra*, 111 Cal.App.4th at p. 308.)

But in the present case, Division One of the Second District disagreed and adopted a narrow interpretation of the exemption. Citing a Fourth District opinion, *City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, the court held:

> In *City of Colton v. Singletary*…the court found the language of section 425.16, subdivision (d) to clearly and unambiguously apply only to an action "brought in the name of the people of the State of California." (206 Cal.App.4th at p. 775.) We agree with City of Colton that the plain language of section 425.16, subdivision (d) limits the public enforcement exemption to actions brought in the name of the People of the State of California, not to all civil actions brought by state and local agencies to enforce laws aimed at public protection. (Citation omitted.)

Where a statute is subject to different interpretations, "liberality of construction is justified." (*Byers v. Board of Supervisors* (1968) 262 Cal.App.2d 148, 155.) In construing a statute, it must be considered as a

whole, and words or clauses may be enlarged or restricted to effectuate the intention or to harmonize them with other expressed provisions. (*People v. Pereles* (1932) 125 Cal.App.Supp. 787, 790.) Statutes are to be construed according to the intent of the Legislature. (*Lesem v. Board of Retirement* (1960) 183 Cal.App.2d 289, 298).

The Legislature expressly stated its finding and declarations for the anti-SLAPP statute in Code of Civil Procedure section 425.16, subdivision (a): "[T]here has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances" and "it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process." A broad interpretation of the exemption is consistent with the Legislature's intent. Public prosecutions are not an abuse of the judicial system. Applying anti-SLAPP protections to such actions does not further the statute's purpose and, as the courts in *City of Long Beach* and *Health Laboratories* found after examining the legislative history, it appears to conflict with the purpose of the exemption—to remove prosecutions that protect the public at large from the class of cases that are subject to anti-SLAPP. (*Lesem, supra*,183 Cal.App.2d at p. 298 [Mere literal construction of statute will not prevail over apparent legislative intent].)

B. The Public Prosecution Exemption to the anti-SLAPP Statute is Narrow, Only Extending to Actions Brought by a Public Entity to Protect the Public Interest

The public prosecution exemption is not a blanket exemption for any case involving a governmental entity. Rather, it is narrowly applied to specific types of actions brought by a public agency to enforce public rights and protect the public at large. (*Health Laboratories, supra*, 87 Cal.App.4th at pp. 450-451.)

For example, in *City of Los Angeles v. Animal Defense League* (2006) 135 Cal.App.4th 606, Division Seven of the Second District found that the prosecutor's exemption did not apply to a workplace violence action brought under a labor code provision that is available to public and private employers alike. In that case, the court concluded the city was acting as an employer rather than as a prosecutor protecting the public at large. (*Id*. at p. 619.) In contrast, the allegations in *City of Long Beach, supra,* 111 Cal.App.4th 302, involved local election regulations regarding campaign contributions and the allegations in *Health Laboratories, supra,* 87 Cal.App.4th 442, involved laws prohibiting false advertising and unfair competition, both areas in which the public's interest is at stake.

Applying the exemption in this manner does not interfere with the legitimate use of anti-SLAPP protections. Further, it is consistent with the authority granted to public prosecutors and this Court's view that "it is a bedrock principle that a government attorney prosecuting a public action on

behalf of the government must not be motivated solely by a desire to win a case, but instead owes a duty to the public to ensure that justice will be done." (*County of Santa Clara v. S.C. (Atlantic Richfield Company)* (2010) 50 Cal.4th 35, 57.) It is also consistent with the stated purpose of the anti-SLAPP protections - to protect against frivolous lawsuits aimed at protected speech and public participation – and that purpose is not furthered by hindering public prosecutions that protect the public at large.

In *Bernardo v. Planned Parenthood Federation of America* (2004) 115 Cal.App.4th 322, the Fourth District addressed the distinct role of a public prosecutor versus a concerned private citizen in considering an equal protection challenge brought by a private citizen that was denied the public interest exception under Code of Civil Procedure section 425.17:

> A private plaintiff bringing suit under the [Unfair Competition Law] or [Fair Advertising Law] allegedly on behalf of the public is not similarly situated to a public prosecutor because the private litigant's motive, unlike that of a public prosecutor, does not derive "from the constitutional mandate to assure that the laws of the state are uniformly enforced and to prosecute any violation of these laws, so that order is preserved and the public interest protected" (citation omitted). We conclude that the classification created by section 425.16(d)'s exemption of public prosecutors' enforcement actions from anti-SLAPP motions does not jeopardize the exercise of a fundamental right or categorize litigants on the basis of an inherently suspect characteristic; it is rationally related to the state's legitimate interest in allowing public prosecutors who did not create the SLAPP problem to pursue actions to enforce laws, unencumbered by delay, intimidation, or distraction; and thus it does not violate the equal protection clause of either the United States or California Constitution.

(*Id.* at p. 367.)

An overly technical interpretation of the statute that requires the caption to specifically state "People of the State of California" does little to further the purpose of the anti-SLAPP legislation, but instead provides a delay tactic to hinder the important and legitimate work of public prosecutors protecting the public at large.[2]

As the court in *Health Laboratories, supra*, 87 Cal.App.4th at pp. 450-451, recognized:

> To enable prosecutors to perform their constitutional duties thoroughly and effectively, laws have been enacted to insulate them from actions that would hinder or deter their

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[2] The court in *City of Long Beach, supra,* 111 Cal.App.4th at p. 307 found that "[u]nfortunately, there is no discussion in the legislative history as to why the authors of section 425.16 chose to use the particular language "enforcement actions brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, *acting as a public prosecutor*" in subdivision (d). (Italics added.) However, the identical language was later added to section 998, which covers the withholding or augmenting of costs following rejection or acceptance of an offer to compromise, and the legislative history of that statute sheds light on the origin of the exemption as well as the policy reasons for its inclusion." The court then concluded that "[t]he legislative history of section 998 explains that the provision was originally included in section 425.16 at the request of the Attorney General, not to provide an exemption that otherwise would have been nonexistent, but rather to confirm the existence of the prosecutorial exemption assumed by the drafters. (Sen. Com. on Judiciary, Analysis of California Assem. Bill No. 732 (2001–2002 Res. Sess.), July 3, 2001, p. 5.) Further, it was intended that the 998 exception apply broadly to "civil enforcement actions" seeking injunctions, restitution and civil penalties, but not damages. Thus, in 2001 the Legislature understood the language at issue in this case (albeit in the context of section 998) to encompass the type of lawsuit now before us."

> enforcement actions…. The exclusion of public prosecutors from the anti-SLAPP motion procedure is consistent with the rationale of these immunity statutes. Subjecting them to such a procedure could unduly hinder and undermine their efforts to protect the health and safety of the citizenry at large by delaying an enforcement action. Not only would prosecutors have to respond to the motion at the trial level, they could become ensnared in an appeal, insofar as the grant or denial of a SLAPP motion is immediately appealable. (§ 425.16, subd. (j).)

Further, with a narrow interpretation of the exemption, whether anti-SLAPP provisions apply may turn solely on an administrative decision to bring the case in the name of the city versus in the name of the people of California, a decision that has no bearing on the purpose or substance of the action. For example, in *City of Colton, supra,* 206 Cal.App.4th 751, in rejecting the broader interpretation of the *City of Long Beach* decision, the court argued:

> We disagree that the "absurd results" exception to the plain language rule is applicable in such a scenario, because the "[v]iolation of a city ordinance is a misdemeanor unless by ordinance it is made an infraction[, and the] violation of a city ordinance may be prosecuted by city authorities in the name of the people of the State of California, or redressed by civil action." (Gov. Code, § 36900, subd. (a), italics added.) Since the suit against the political committee could have been brought in the name of the People, we disagree that a political committee could avoid local election laws via the anti-SLAPP provisions.

(*Id.* at p. 777.)

A narrow reading of the statute that fails to have any impact on the substance of a case does nothing to further the purpose behind anti-SLAPP

protections. As the Legislature intended, the exemption is limited. It does not apply to every action brought by a state or local entity, but only to prosecutions for consumer and public protection – prosecutions that should not be hindered or delayed by anti-SLAPP provisions.

C. The Court's Focus on Statewide Versus Local Concerns for Purposes of Applying the Anti-SLAPP Exemption is Misplaced.

In applying the exemption to this case, Division One of the Second District drew a distinction between statewide and local matters:

> This limitation is designed to exempt enforcement actions on issues of statewide concern. Actions solely based on parochial issues are not aimed at protecting the citizenry at large and are thus undeserving of the exemption. Here, the City's lawsuit against appellants was not brought in the name of the People of the State of California, nor is the City suing on an issue of statewide concern. The waste hauling contract concerns only Montebello and its citizens. We therefore conclude the public enforcement exemption does not apply.

By viewing this case as merely a disagreement over a local waste hauling contract, the court failed to recognize the important statewide policy concerns at issue. At the heart of this matter is a long-standing state conflict-of-interest prohibition intended to protect the public and guard against those whose actions would diminish the public's trust in our local elected officials. An interpretation of the exemption that attempts to distinguish between matters of statewide concern versus local concern fails to further the purpose of the legislation by not focusing on the substance of the action and whether the prosecution is necessary for protection of the

public at large. In fact, such an interpretation impedes the purpose of the exemption by creating confusion regarding its application.

A local matter by definition addresses local concerns, but that does not preclude it from being a statewide concern as well. Cities and counties are political subdivisions of the State. Cities and counties can bring certain actions in the name of the people, but cities and counties can also bring actions that enforce public rights in their own names. (See, e.g., *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153 [action against unauthorized medical marijuana dispensary]; *City and County of San Francisco v. Ballard* (2006) 136 Cal.App.4th 381 [action for failure to comply with fire prevention statutes]; *City and County of San Francisco v. Flying Dutchman Park Inc.* (2004) 122 Cal.App.4th 74 [action to enforce local parking tax]; *County of San Bernardino v. Walsh* (2007) 158 Cal.App.4th 533 [action to recover damages related to bribery scheme].) Laws pertaining to unlawful business practices, public-nuisance and political and campaign reform, to mention a few, are found in state statutes, but they may be enforced at the local level.[3] As in this case, Government Code section 1090 is a statewide prohibition that impacts state officials and

[3] See, e.g., Bus. & Prof., Code § 17500 et seq. (prohibitions against false advertising); Bus. & Prof., Code § 17000 et seq. (prohibitions on unfair trade practices); Code Civ. Proc., § 731 (public-nuisance law); Gov. Code, § 1090 (prohibition against self-dealing); Gov. Code, § 81000 et seq. (Political Reform Act).

local officials alike. It is a state law because it is a state concern. But, it is also a local concern. Violations of city ordinances are by definition city issues. However, as the Fourth District noted in its decision in *City of Colton,* violations of city ordinances can be prosecuted in the name of the people of California. (*City of Colton, supra*, 206 Cal.4th at p. 777; Gov. Code, § 36900, subd. (a).)

Attempting to draw a line between statewide versus local concerns when applying this exemption will undoubtedly lead to fact-specific inquiries that will delay legitimate prosecutions as confusion and layers of unnecessary complexity are sorted out in the courts. But most importantly, such discussions are irrelevant. Actions enforcing public rights brought by governmental entities are not the types of cases anti-SLAPP protections were targeting. The exemption clearly carved out certain cases and a broad interpretation of the provision does not conflict with the statutory scheme as a whole or with the apparent purpose of this exemption. The interpretation of the *City of Long Beach* court satisfies both the legislative intent behind the anti-SLAPP provision and the purpose of the prosecutor's exemption —i.e., an action brought by a public prosecutor that is aimed at public protection is exempt from anti-SLAPP.

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D. Government Code Section 1090 Protects the Public, and Therefore Actions Intended to Enforce Section 1090 Are Eligible for the Anti-SLAPP Exemption.

Government Code section 1090, subdivision (a), provides the following prohibition:

> Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.

The prohibition against self-dealing by public officials has a longstanding and well-established history in California. (*Oakland v. California Constr. Co*. (1940) 15 Cal.2d 573, 576.) The basis for the prohibition is that a public office is a public trust created in the interest and for the benefit of the people. (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.)

Cases brought under Section 1090 are varied -- from bribery schemes (*County of San Bernardino v. Walsh, supra,* 158 Cal.App.4th 533), to a public official steering business under a government contract to a private company in which he or she holds a financial interest. (*City Council v. McKinley* (1978) 80 Cal.App.3d 204.) The statue is interpreted broadly, even reaching situations that merely give the appearance of impropriety and where the official's financial interest may be indirect, including the contingent possibility of pecuniary benefits. (*People v. Honig* (1996) 48 Cal.App.4th 289, 322-323.) Given the important public policy

issues at stake, conflict-of-interest statutes are strictly enforced. (*Thomson v. Call* (1985) 38 Cal.3d 633, 652.)

To further the purposes of the section, government officials are required to comply with Government Code section 1095, requiring that "[o]fficers charged with the disbursement of public moneys shall not pay any warrant or other evidence of indebtedness against the State, county, or city when it has been purchased, sold, received, or transferred contrary to any of the provisions of this article."

Thus, a public agency faced with allegations of a Section 1090 violation is required to protect the public's interest and prevent further commitment of public funds to an illegal contract. Further, Government Code section 1092 provides that "[e]very contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein." By prosecuting the violators and establishing that a violation has occurred, the contract is declared void and the governmental entity protects its citizens from further misdeeds by the government official, who would then be barred from holding public office under Government Code section 1097. Public funds would also not be used to fund the illegal contract and the public would benefit from the remedies available in the wake of successful prosecution of the violators. Such benefits include recovery by the governmental entity of any compensation it paid under a tainted contract without restoring any of the

benefits it received. (*Carson Redevelopment Agency v. Padilla* (2006) 140 Cal.App.4th 1323, 1336.) Disgorgement is "consistent with the policy of strict enforcement of conflict-of-interest statutes, [and] it provides a strong disincentive for those officers who might be tempted to take personal advantage of their public offices … ." (*Thomson, supra*, 38 Cal.3d at p. 652.)

Section 1090 does not address mere contractual relationships between two parties, but rather it targets contracts that involve a governmental entity or public officials. Thus, prosecutions under Section 1090 are unique to government and its role as the protector of the public trust and fisc, and not merely a civil action commonly litigated among members of the public.

This Court has distinguished civil prosecutions from other civil actions. In a civil prosecution, the government is acting as a representative of the public and not as counsel for the government as an ordinary party in a civil controversy. (*Atlantic Richfield, supra*, 50 Cal.4th at p. 55.) Local government enforcement of prohibitions against self-dealing protects the public and limited public resources from unscrupulous public actors that use their official positions to advance their own interests. Seeking redress for wrongs committed under Section 1090 is an action prosecuted by, in this case, the city not as a plaintiff in an ordinary civil case with the interests of an ordinary party, but as a governmental entity fulfilling its duty

to act on behalf of the people to redress an alleged wrong by individuals that allegedly breached the public's trust.

In the present case, the Second District trivialized the alleged 1090 violation by viewing it parochially as merely a local waste hauling contract. In doing so, the court failed to recognize that Section 1090 involves broad statewide concerns and it is broadly relevant to protecting the public at large.

E. An Action to Enforce Public Rights is Properly Within the anti-SLAPP Exception Even if the City Uses Outside Counsel to Prosecute the Action.

That a public agency might decide, either by choice or necessity, to prosecute its Section 1090 action through outside counsel does not change the analysis set forth above. An agency may decide, based on any number of factors, that outside counsel best meets its needs. For example, the public agency's own attorney may have a conflict of interest that precludes the office from handling the matter, necessitating use of outside counsel.[4] Or perhaps, as in the present case, the city substituted outside counsel to represent the city. Either way, it is the nature of the action to enforce a public right that exempts it from the anti-SLAPP statute under Code of

[4] Where the head of a public agency is disqualified due to a conflict, the entire office is vicariously disqualified. (*City and County of San Francisco v. Cobra Solutions* (2006) 38 Cal.4th 839.)

Civil Procedure section 425.16(d), and not whether the attorney handling the matter is a public agency employee.

This Court has endorsed the use of outside counsel for prosecuting cases in the public's interest even on a contingency basis with appropriate controls in place. (*Atlantic Richfield, supra*, 50 Cal.4th at p. 59.)[5] Further, Anti-SLAPP protections were enacted to curb frivolous lawsuits aimed at protected speech and public participation. Its provisions were never intended to interfere with a public prosecutor's duty to enforce laws for public protection.

It would be an absurd result, and one not contemplated by the Legislature, for a public agency to lose the anti-SLAPP public enforcement exception merely because its in-house agency counsel has a disqualifying conflict of interest or has otherwise been substituted by outside counsel. Thus, whether the litigation is brought by a government attorney or an attorney retained by a governmental entity, the prosecutor's exemption

[5] *Atlantic Richfield* addressed the use of private counsel on a contingent basis for a public nuisance action. For a contingent fee relationship, this court required agreements to provide (at a minimum): (1) that the public-entity attorneys will retain complete control over the course and conduct of the case; (2) that government attorneys retain a veto power over any decisions made by outside counsel; and (3) that a government attorney with supervisory authority must be personally involved in overseeing the litigation. (*Atlantic Richfield, supra,* 50 Cal.4th at p. 64.) That case did not address required supervision over outside counsel when the government attorneys have a disqualifying conflict of interest in the matter.

should be unaffected and the government agency retains its exemption status.

III. CONCLUSION

For all the foregoing reasons, CSAC and the League respectfully submit this brief to urge the Court to adopt the commonsense interpretation of the anti-SLAPP statute to carve out of its special procedures all actions that state and local agencies bring on behalf of the public to enforce public rights, including the law against self-dealing at issue in this case, regardless of the name of the plaintiff on the pleading. The narrow interpretation endorsed by the court below does not further the purpose of anti-SLAPP protections, but may actually interfere with efficient and timely enforcement of laws that protect the public at large.

Dated: _____ By: _____

JANIS L. HERBSTMAN

Attorney for Amicus Curiae
California State Association of Counties
and League of California Cities

CERTIFICATION OF COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 8.204(c)(1)

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the word count feature in my Microsoft Word software, this brief contains 4,143 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this ___ day of February, 2015 in Sacramento, California.

Respectfully submitted,

By: _____
JANIS L. HERBSTMAN
Attorney for Amicus Curiae

Proof of Service by Mail

City of Montebello v. Vasquez
Case No. S219052

I, Mary Penney, declare:

That I am, and was at the time of the service of the papers herein referred to, over the age of eighteen years, and not a party to the within action; and I am employed in the County of Sacramento, California, within which county the subject mailing occurred. My business address is 1100 K Street, Suite 101, Sacramento, California, 95814. I served the within **APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF AND APPELLANT CITY OF MONTEBELLO; PROPOSED AMICUS CURIAE BRIEF BY THE CALIFORNIA STATE ASSOCIATION OF COUNTIES AND LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF NEITHER PARTY** by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Proof of Service List

Party	Attorney
City of Montebello: Plaintiff and Respondent	John Gregory McClendon Leibold McClendon & Mann, PC 23422 Mill Creek Dr #105 Laguna Hills, CA 92653 Raul Salinas AlvaradoSmith 633 West Fifth Street, Suite 1100 Los Angeles, CA 90071
Rosemarie Vasquez: Defendant and Appellant	Frank Revere Revere & Wallace 355 South Grand Ave. Suite 2450 Los Angeles, CA 90071-1560
Robert Urteaga: Defendant and Appellant	Frank Revere Revere & Wallace 1150 South Olive Suite 2000 Los Angeles, CA 90015-2211

Kathy Salazar: Defendant and Appellant	Frank Revere Revere & Wallace 1150 South Olive Suite 2000 Los Angeles, CA 90015-2211
Richard Torres: Defendant and Appellant	Frank Revere Revere & Wallace 1150 South Olive Suite 2000 Los Angeles, CA 90015-2211 Frank Revere Revere & Wallace 355 South Grand Ave. Suite 2450 Los Angeles, CA 90071-1560
Arakelian Enterprises: Intervener	Lauren D. Friedman Courtney R. Dreibelbis Gibson Dunn & Crutcher, LLP 3161 Michelson Drive Irvine, CA 92612 Paul T. Gough Bell McAndrews & Hiltachk, LLP 13406 Valleyheart Drive North Sherman Oaks, CA 91423
Court of Appeal	Clerk of the Court Second Appellate District – Division One Ronald Reagan State Building 300 S. Spring Street, 2nd Floor, No. Tower Los Angeles, CA 90013
Trial Court	Honorable Rolf Treu Los Angeles County Superior Court 111 North Hill Street, Room 105E Los Angeles, CA 90012

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on _____, at Sacramento, California.

_____

MARY PENNEY