

SUPREME COURT COPY

SUPREME COURT
FILED

Case No. S235735

IN THE
SUPREME COURT
OF THE STATE OF CALIFORNIA

FEB 28 2017

Jorge Navarrete Clerk

Deputy

RAND RESOURCES, LLC, et al.
Plaintiffs, Appellants, and Respondents,

v.

CITY OF CARSON, et al.
Defendants, Respondents, and Petitioners.

**LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA
STATE ASSOCIATION OF COUNTIES' APPLICATION
FOR LEAVE TO FILE *AMICI*
CURIAE BRIEF IN SUPPORT OF CITY OF CARSON;
PROPOSED *AMICI CURIAE* BRIEF**

On Review From the Court of Appeal for the State of California,
Second Appellate District, Division One
Appellate Case No. B264493

After An Appeal From The Superior Court for the State of California
County of Los Angeles, Case No. BC564093
Hon. Michael L. Stern, Judge Presiding

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APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

To The Honorable Presiding Justices:

Pursuant to Rule 8.520, subdivision (f), of the California Rules of Court, the League of California Cities (League) and California State Association of Counties (CSAC) submit this application to file an *Amici Curiae* brief in support of Petitioner and Defendant City of Carson (City or Carson). This application is made within 30 days after the reply brief was filed and is thus timely.

Identity Of *Amici Curiae* And Statement Of Interest:

The League is an association of 475 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, 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.

The California State Association of Counties (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 and CSAC believe that their joint submittal will assist the Court in deciding the issues on review regarding the anti-SLAPP statute, Code of Civil Procedure¹ section 425.16. The League and CSAC represent the hundreds of California cities and counties that frequently engage in speech and conduct protected by the anti-SLAPP statute. As such, the League and CSAC have a strong interest in the issues presented in this case and will provide a unique and important perspective.

Cities and counties often face meritless lawsuits arising from their protected speech and conduct and, typically, these lawsuits are defended with taxpayer dollars. Cities and counties thus have a critical interest in ensuring that a special motion to strike under section 425.16 remains a viable option to dispose of meritless claims at the early pleading stage. If the Court of Appeal's interpretation is adopted, however, section 425.16 would no longer present such an option. That interpretation departs from the well-established rule that section 425.16 must be interpreted broadly. Adoption of the Court of Appeal's interpretation would undermine and frustrate section 425.16's purpose and lead to extended litigation of

¹ Unless otherwise noted, all references are to the California Code of Civil Procedure.

meritless lawsuits against cities and counties at the taxpayer's expense. This would negatively impact cities and counties, their taxpayers, and judicial economy.

Counsel for the League and CSAC have examined the briefs on file in this case and are familiar with the issues involved and do not seek to duplicate that briefing. The League and CSAC confirm that no one and no party other than Proposed *Amici* and their counsel of record made any contribution of any kind to assist in preparation of this brief or made any monetary contribution to fund the preparation of the brief.

Because the League and CSAC have a strong interest in ensuring the viability of special motions to strike under section 425.16 as a means of disposing of meritless litigation, they respectfully request that the Court accept the accompanying *amici curiae* brief for filing in this matter.

Dated: February 23, 2017

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By: _____


Thomas B. Brown

*Amy E. Hoyt

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TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY OF ARGUMENT	1
II. STATUTORY FRAMEWORK	2
III. LEGAL ANALYSIS	3
A. The Court Of Appeal Ignored The Legislature’s Mandate That Section 425.16 Must Be Interpreted Broadly	3
B. The Causes Of Action Arise From A Public Issue And An Issue Of Public Interest	5
1. The Court of Appeal’s narrow characterization of the issue as solely related to the identity of the City’s representative lacks legal foundation	5
2. But even assuming the issue is only the identity of the City’s representative, the representative’s identity is still a public issue and an issue of public interest	6
C. The Causes Of Action Arise Out Of Communications Made In Connection With An Issue Under Consideration By The City And The Court Of Appeal’s Conclusion To The Contrary Impermissibly Adds A Temporal Limit To The Statute Not Found In The Statute’s Express Language	9
V. CONCLUSION	11

TABLE OF AUTHORITIES

	Page(s)
State Cases	
<i>Briggs v. Eden Council for Hope and Opportunity</i> (1999) 19 Cal.4th 1106	4
<i>Chaker v. Mateo</i> (2012) 209 Cal.App.4th 1138	7
<i>City of Montebello v. Vasquez</i> (2016) 1 Cal.5th 409	2, 4
<i>Equilon Enterprises v. Consumer Cause, Inc.</i> (2002) 9 Cal.4th 47	4, 8, 10
<i>Ingels v. Westwood One Broadcasting Services Inc.</i> (2005) 129 Cal.App.4th 1050	7
<i>Jarrow Formulas, Inc. v. LaMarche</i> (2003) 31 Cal.4th 78	4
<i>McGarry v. University of San Diego</i> (2007) 154 Cal.App.4th 97	7
<i>Rice v. Downs</i> (2016) 248 Cal.App.4th 175	10, 11
<i>Sipple v. Foundation for National Progress</i> (1999) 71 Cal.App.4th 226	7
<i>Wells Fargo Bank, N.A. v. Superior Court</i> (2008) 159 Cal.App.4th 381	10

State Statutes

Code of Civ. Proc. § 425.16	<i>passim</i>
Code of Civ. Proc. § 425.16(e).....	2, 10
Code of Civ. Proc. § 425.16(e)(2).....	2, 10, 11
Code of Civ. Proc. § 425.16(e)(4).....	2, 5

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The Legislature adopted the anti-SLAPP statute in response to what it called a disturbing increase in the use of litigation to chill protected speech and petitioning activity. It created an anti-SLAPP special motion to strike that could be used to quickly dispose of meritless lawsuits that arise from protected activity and stated emphatically that the anti-SLAPP statute is to be broadly interpreted. The Court of Appeal's decision does grave harm to the Legislature's explicit mandate by concluding, without reasoned analysis, that the identity of the City's representative charged with negotiating a multi-billion dollar NFL stadium deal is not a public issue. To the contrary, the identity of the representative is absolutely a public issue because the negotiator's skill, experience, and contacts are critical in achieving a favorable outcome to the negotiations.

The League and CSAC submit this brief because the Court of Appeal clearly erred in concluding that Rand Resources, LLC and Carson El Camino, LLC's (Rand) causes of action for breach of and interference with an exclusive agency agreement (EAA) to negotiate on the City's behalf for development of an NFL stadium in the City do not arise out of a "public issue or an issue of public interest" or communications made "in connection with an issue under consideration" by the City. The Court of Appeal's conclusion ignores (1) the Legislature's mandate that section

425.16 must be interpreted broadly; (2) the majority of cases that have analyzed the “public issue” and “issue of public interest” language found in section 425.16(e)(4); and (3) the plain language, “in connection with,” found in section 425.16(e)(2).

As the League and CSAC explain below, the identity of the company or person(s) responsible for negotiating a multi-billion dollar deal on the City’s behalf is an issue of public interest because the negotiator’s skills, contacts and experience will directly impact whether a deal is ultimately struck and what the terms of that deal will be. Moreover, the meaning of the phrase “in connection with an issue under consideration or review” clearly encompasses the terms of the EAA. The League and CSAC therefore urge this Court to reject the Court of Appeal’s interpretation and affirm the trial court’s decision.

II. STATUTORY FRAMEWORK

In section 425.16(e), the Legislature described the type of activities it intended the anti-SLAPP statute to protect. *City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 422. Section 425.16(e) identifies four categories of conduct and speech that constitute “acts in furtherance of a person’s right of petition or free speech.” Cal. Code Civ. Proc. §425.16(e).

///

The issues on review correspond to two of those categories, as follows:

- Subdivision (e)(2), which identifies “any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;” and
- Subdivision (e)(4), which includes “any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.”

Rand argues and the Court of Appeal concluded that neither of these subdivisions covers the City’s speech and conduct here. The City has ably demonstrated why that is incorrect and the League and CSAC agree with those arguments. The League and CSAC write separately to further explain why the Court of Appeal’s interpretation of section 425.16 should be rejected.

III. LEGAL ANALYSIS

A. The Court Of Appeal Ignored The Legislature’s Mandate That Section 425.16 Must Be Interpreted Broadly.

The overarching problem with the Court of Appeal’s statutory

interpretation is that it completely ignores the Legislature's explicit mandate that section 425.16 be interpreted broadly.

This Court recently confirmed that mandate in *City of Montebello v. Vasquez, supra*, 1 Cal.5th 409. Noting the Legislature's directive that "the anti-SLAPP statute is to be 'construed broadly' so as to 'encourage continued participation in matters of public significance,'" this Court held that the "statutory protection of acts 'in furtherance' of the constitutional rights incorporated by section 425.16 may extend beyond the contours of the constitutional rights themselves." *City of Montebello v. Vasquez, supra*, at 422, citing Code of Civ. Pro § 425.16(a) and (b)(1).

City of Montebello v. Vasquez does not stand alone in recognizing the Legislature's mandate to broadly interpret section 425.16. For example, in *Briggs v. Eden Council for Hope and Opportunity* (1999) 19 Cal.4th 1106, 1117, 1118, this Court explained that the "Legislature's stated intent is best served, therefore, by a construction of section 425.16 that broadly encompasses participation in official proceedings" See also, *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 78, 36-737 (noting that the Legislature intended the statute to "broadly" protect petitioning activity); *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 9 Cal.4th 47, 60 (noting Legislative mandate to broadly interpret the anti-SLAPP statute).

In sum, there is clear direction from both the Legislature and this Court that section 425.16 must be broadly interpreted to effectuate its

purpose of providing a method to promptly dispose of meritless lawsuits that arise from protected speech and conduct. Despite this, the Court of Appeal elected to narrowly construe subdivisions (e)(2) and (e)(4).

B. The Causes Of Action Arise From A Public Issue And An Issue Of Public Interest.

In addition to failing to recognize the mandate to broadly interpret section 425.16, the Court of Appeal also departed from case law interpreting section 425.16(e)(4)'s "public issue" and "issue of public interest" category. Contrary to the Court of Appeal's finding, Rand's causes of action arise from a public issue and an issue of public interest.

1. The Court of Appeal's narrow characterization of the issue as solely related to the identity of the City's representative lacks legal foundation.

As a preliminary matter, the League and CSAC note that the Court of Appeal characterized the issue not as involving the possibility of an NFL stadium in the City, which no one disputes is an issue carrying enormous public interest, but rather as solely involving the identity of the City's representative in those negotiations. The Court of Appeal failed to provide any legal justification for narrowing the issue so myopically.

Given the fact that the anti-SLAPP statute is to be interpreted broadly, and given the lack of principled basis for narrowing the issue to solely the identity of the City's representative, the Court of Appeal's characterization is flawed.

2. But even assuming the issue is only the identity of the City's representative, the representative's identity is still a public issue and an issue of public interest.

But even assuming that the issue is properly narrowed to simply the identity of the City's negotiating representative, the representative's identity is still a public issue and an issue of public interest. The Court of Appeal concluded otherwise, but provided no analysis for why it reached that conclusion.

To the League and CSAC, it seems obvious that the identity of the party representing the City in its negotiations to bring an NFL team and stadium to the City is a matter of the highest possible public interest. Such negotiations are complex and will profoundly affect the City's residents for generations to come. Successful or not, the negotiations will directly impact the City's finances, the local economy, whether hundreds of thousands of workers have jobs, and how the City's physical environment is or is not developed. Accordingly, the parties seem to agree that the terms of the deal itself are plainly in the public interest. Those terms, however, are inextricably linked with the identity of the negotiator.

With so much at stake in negotiating a multi-billion dollar deal to bring an NFL stadium to the City, the identity, expertise, contacts, and experience of the negotiator are every bit as much a part of the public interest as the deal itself. One cannot be separated from the other. This is so because the identity, competence, contacts, and experience of the

company or person(s) the City selects to represent it in such negotiations are outcome determinative of the City's successful resolution of the negotiations. Therefore, because the decision as to the City's representative in negotiations will in many ways determine the City's very future, it is quintessentially in the public interest.

When viewed in the context of other cases in which courts have found issues to be of public interest, it becomes even more obvious that the identity of the City's negotiating representative for its stadium deal is a public issue. The courts have found there to be issues of public interest under much less compelling circumstances. See, e.g. *Chaker v. Mateo* (2012) 209 Cal.App.4th 1138, 1141-42, 1145-47 (derogatory comments made on websites about businessman an issue of public interest); *McGarry v. University of San Diego* (2007) 154 Cal.App.4th 97 (firing of college football coach an issue of public interest); *Ingels v. Westwood One Broadcasting Services Inc.* (2005) 129 Cal.App.4th 1050 (age discrimination lawsuit based on on-air ridicule of plaintiff an issue of public interest); and *Sipple v. Foundation for National Progress* (1999) 71 Cal.App.4th 226, 236-240 (political consultant's alleged domestic violence an issue of public interest).

In light of this case law, there is simply no basis for concluding that the identity of the City's negotiating representative for a multi-million dollar stadium deal is not a public issue or an issue of public interest. To

the contrary, the representative will be directly responsible for decisions and negotiations that will have profound impacts on the City's (indeed the region's) population, environment, economy, and finances for generations. One would be hard-pressed to imagine a decision that would more prominently affect the public interest in a community.

Rand and the Court of Appeal warn that finding that the causes of action at issue here arise from a public issue would render all business disputes subject to anti-SLAPP motions and make all contracts with public agencies unenforceable. These warnings are absurd on their face.

First, the anti-SLAPP statute's second prong—probability of success on the merits—protects against precisely this concern. Even if a cause of action arises from protected activity, if the plaintiff can demonstrate a probability of success on the merits, the special motion to strike will be denied. The second prong thus ensures that only meritless lawsuits that arise from protected conduct are dismissed; those that have a probability of success may proceed.

Second, finding that Rand's causes of action arise from the very public issue of who is negotiating on the City's behalf for an NFL stadium merely effectuates section 425.16's plain language. As this Court explained in *Equilon Enterprises v. Consumer Cause, Inc.*, *supra*, 9 Cal.4th at 66, the judiciary is "well advised not to upset the Legislature's carefully crafted scheme for disposing of SLAPPs quickly and at minimal expense to

taxpayers and litigants.”

In short, the identity of the City’s representative in negotiations to bring a multi-million dollar NFL stadium to the City is patently a public issue. One must ask, if that is not a public issue, what is? If such a cause of action is not subject to a special motion to strike, what cause of action would be?

C. The Causes Of Action Arise Out Of Communications Made In Connection With An Issue Under Consideration By The City And The Court Of Appeal’s Conclusion To The Contrary Impermissibly Adds A Temporal Limit To The Statute Not Found In The Statute’s Express Language.

In addition to its clear error in finding that the causes of action do not arise from a public issue, the Court of Appeal found that the communications were not made “in connection with an issue under consideration or review.”

The Court of Appeal reached this conclusion because the communications—speech that allegedly breached the EAA—occurred more than twelve months before the City Council made its decision not to renew the EAA. Opinion, p. 15. The Court of Appeal concluded that because of this time lag, the protected speech was solely made in connection with the alleged breach of contract and not “in connection with an issue under consideration or review.” Opinion, p. 15. There are at least two significant flaws with this position.

First, section 425.16's plain language does not include any such temporal limitation. Section 425.16, subdivision (e) states that "acts in furtherance of a person's right of petition or free speech" include "any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." Code of Civ. Proc. § 425.16(e)(2). Subdivision (e)(2) does not require that the written or oral statement must be made within a certain number of days, weeks, or months of the official proceeding. It does not include any time constraints whatsoever.

The Court of Appeal's interpretation thus adds a temporal limitation that is not found in the statute's plain language. Neither the parties nor the courts may re-write the statute to add such a requirement. *Equilon Enterprises v. Consumer Cause, Inc.*, *supra*, 9 Cal.4th at 59. In fact, this Court has expressly declined to inject additional requirements into section 425.16. See, *id.* at 57 (rejecting request to read an "intent to chill speech" requirement into section 425.16).

Second, the Court of Appeal's interpretation ignores that the "in connection with" language not only does not suggest a temporal limitation, it requires the opposite: a broad reading. See, e.g., *Rice v. Downs* (2016) 248 Cal.App.4th 175, 186; *Wells Fargo Bank, N.A. v. Superior Court* (2008) 159 Cal.App.4th 381, 389. Under the phrase's ordinary meaning, it

broadly includes anything that relates to or regards any issue under review by the City. Section 425.16(e)(2) must be interpreted according to its plain language. *Id.* at 59. The Court of Appeal’s narrow reading of the phrase is thus contrary to its plain meaning, and to the accepted understanding of the language “in connection with” the Legislature chose.

In short, the Court of Appeal defied the Legislature in two ways. It invented a temporal limitation the Legislature did not impose, and it ignored the broad “in connection with” language the Legislature did use.

V. CONCLUSION

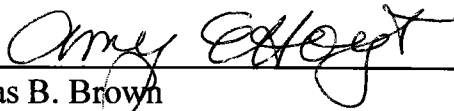
This Court should reject the Court of Appeal’s incorrect interpretation of section 425.16. That interpretation violates the Legislature’s emphatic mandate to broadly interpret the anti-SLAPP statute as follows:

- It illogically concludes, without reasoned analysis, that the decision about who will negotiate a deal that will impact the City, and perhaps the region, for generations is somehow less important than the deal itself, and thus does not affect the public interest; and.
- It impermissibly re-writes section 425.16(e)(2) to invent a temporal requirement that the Legislature chose not to impose and that actually conflicts with the broad “in connection with” language that the Legislature did use.

If the Court of Appeal's interpretation is adopted, it is fair to say that the special anti-SLAPP motion to strike will no longer be a viable option for responding to many lawsuits arising from protected speech and conduct. Given that the purpose of section 425.16 is to allow these motions to avoid unnecessary expense to taxpayers, the League and CSAC urge this Court to reject the Court of Appeal's interpretation and affirm the trial court's decision.

Dated: February 23, 2017

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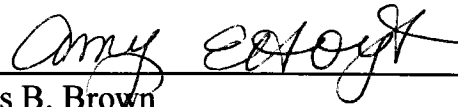
**CERTIFICATION OF COMPLIANCE WITH
CALIFORNIA RULES OF COURT, RULE 8.204(c)(1)**

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 3,114 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: February 23, 2017

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*Amy E. Hoyt

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ASSOCIATION OF COUNTIES

PROOF OF SERVICE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 1600 Iowa Avenue, Suite 250, Riverside, California 92507.

On **February 23, 2017**, I served the following document(s): **LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES' APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF CITY OF CARSON; PROPOSED *AMICI CURIAE* BRIEF** on the interested parties in this action by placing a true and correct copy of such document, enclosed in a sealed envelope, addressed as follows:

SERVICE LIST

(Update: 01-26-17)

Rand Resources, LLC, et al. v. City of Carson, et al.

Supreme Court Case No.: S-235735

[2nd Appellate Case No. B264493

LASC Case No. BC564093]

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<u>U.S. MAIL</u> Hon. Michael L. Stern LOS ANGELES SUPERIOR COURT 111 N. Hill Street, Department 62 Los Angeles, California 90012	LASC Judge LASC Case No. BC564093 (1 Copy)
<u>VIA OVERNIGHT COURIER AND ELECTRONICALLY</u> Clerk of the Court SUPREME COURT OF CALIFORNIA 350 McAllister Street, Room 1295 San Francisco, California 94102-4797	Supreme Court (Original plus 8 copies and 1 copy electronically submitted) Tel: 415-865-7000

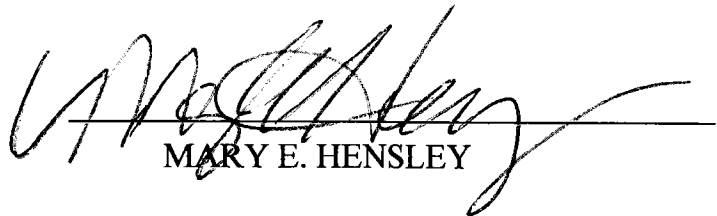
- (X) **BY U.S. MAIL as noted.** I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at Riverside, California. [CCP § 1012; 1013; 1013a]
- (X) **BY OVERNIGHT COURIER, as noted.** I caused the above-referenced document(s) to be deposited in a box or other facility regularly maintained by the overnight courier, or I delivered the above-referenced document(s) to an overnight courier service, for delivery to the above addressee(s). [CCP §1013]
- () **BY FACSIMILE.** The facsimile transmission of the foregoing document was reported as complete and without error. A copy of

the transmission report as issued by the transmission facsimile machine is attached pursuant to California Rules of Court, Rule 2.306(h)(4). [CRC 2.306(a)(b)(d)(f)(g)(h)]. **[Pursuant to Agreement between counsel – fax service pursuant to Rule 2.251(b)(1)(A), CRC].**

- () **BY EMAIL.** I caused the document (without enclosures) described above, to be sent via email in PDF format to the above-referenced person(s) at the email addresses listed. **[Pursuant to Agreement between counsel – electronic service pursuant to Rule 2.251(b)(1)(A), CRC].**
- () **BY PERSONAL SERVICE.** I caused such envelope to be delivered by hand to the above-referenced person(s) at the above address(s). [CCP § 1011]
- (X) **BY E-FILING AND/OR E-SUBMISSION,** I caused the document described above, to be sent via E-Filing and/or E-Submission in PDF format to the above-referenced person(s) via the Supreme Court's E-Filing and/or E-Submission Portals.

Executed **February 23, 2017** Riverside, California.

- (X) (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


MARY E. HENSLEY