S219052

IN THE

Supreme Court

OF THE STATE OF CALIFORNIA

CITY OF MONTEBELLO,
Plaintiff and Respondent,

vs.

ROSEMARIE VASQUEZ, et al.,
Defendants and Appellants,

ARAKELIAN ENTERPRISES INC.,
Intervener.

REPLY BRIEF ON THE MERITS

AFTER A DECISION BY THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION ONE
[2d Civil No. B245959]

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Defendants and Appellants, Rosemarie Vasquez, Robert Urteaga, Kathy Salazar and Richard Torres ("Appellants") hereby submit their Reply Brief on the Merits.

INTRODUCTION

The City's presentation of the facts consists largely of unsubstantiated allegations lifted from the unverified complaint on file in this action. In fact, the City concedes that its version of the facts are nothing more than allegations by prefacing its recitation of the facts on page four of the *Answering Brief On The Merits* ("*Answering Brief*") with the disclaimer "The City alleges that:." Appellants have provided this Court with a summary of the facts that includes proper citations to the record in their *Opening Brief On The Merits* ("*Opening Brief*") and ask that the City's allegations which are mischaracterized as facts be disregarded.

LEGAL DISCUSSION

A. THERE ARE NO EXEMPTIONS, STATUTORY OR OTHERWISE, WHICH BAR APPELLANTS FROM BRINGING AN ANTI-SLAPP MOTION IN THIS CASE.

The City presents two arguments in the attempt to deny Appellants the right to bring an anti-SLAPP motion. First, the City argues that the public enforcement exemption found in Cal. Code of Civ. Proc., section

425.16, subd. (d), bars Appellants' anti-SLAPP motion. Next, the City argues that because the Complaint in this action alleges a violation of Government Code section 1090, the Appellants thereby forfeit any right to bring an anti-SLAPP motion. Both arguments are unavailing.

1. The Public Enforcement Exemption Does Not Apply.

By statute there are three situations in which the anti-SLAPP statute is unavailable for defendants: (1) section 425.16, subd. (d), which exempts public enforcement actions; (2) section 425.17, subd. (b), which exempts actions brought "solely in the public interest"; and (3) section 425.17, subd. (c), which exempts causes of action that involve certain forms of commercial speech. The City asserts only the public enforcement exemption to this case as an applicable exemption and makes no argument that the two exemptions found in section 425.17 apply in this case so those exemptions will not be addressed.

Both the trial court and the Court of Appeal rejected the City's attempt to squeeze into the public enforcement exception, and with good reason. As the party benefitting from it, the City has the burden of proof to demonstrate the applicability of an exemption. *Simpson Strong-Tie Company, Inc. v. Gore* (2010) 49 Cal. 4th 12, 25. The City has failed to meet its burden of proof on this issue.

The public enforcement exception is found at Code of Civil Proc. section 425.16, subd. (d) and provides:

> (d) This section shall 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.

Notwithstanding the fact that (1) this is not an enforcement action, (2) is not brought in the name of the people of the State of California, and (3) is not brought by the City Attorney in Montebello, the City nevertheless argues it should fall within this exemption citing *City of Long Beach v. California Citizens for Neighborhood Empowerment* (2003) 111 Cal. App. 4th 302 ("*City of Long Beach*"). In *City of Long Beach* the City Attorney brought an *enforcement action* against a political fundraising group and its treasurer, seeking civil penalties and injunctive relief alleging that the fundraising group accepted contributions for independent expenditures in support of a mayoral candidate in excess of the limits set forth in the Long Beach Municipal Code, and failed to timely report independent expenditures in violation of the Long Beach Municipal Code. The enforcement action also sought injunctive relief.

The trial court granted the anti-SLAPP motion brought by the defendants, but the Court of Appeal reversed. In reversing the trial court, the Court of Appeal looked beyond the usual and ordinary meaning of the words in the statute to ascertain legislative intent, including statements by

Governor Pete Wilson; the beliefs of the bill's author Senator William Lockyer; and comments by the Assembly Subcommittee on the Administration of Justice. *Id.* at p. 308. Ultimately, the Court of Appeal held that the complaint filed by the City of Long Beach fell within the public enforcement exemption in section 425.16(d) even though the case was not brought in the name of the people of the state of California, and reversed the trial court noting that if the defendant citizen group's arguments were followed, then "any political subcommittee could avoid having to comply with local election laws." *Id.* at p. 309.

However, subsequent to the *City of Long Beach* decision, this Court issued the decision in *Jarrow Forumulas, Inc. v. La Marche* (2003) 31 Cal. 4th 728 ("*Jarrow*"), where the Court stated:

> As we previously have observed, "[n]othing in the statute itself categorically excludes any particular type of action from its operation." (*Navellier, supra,* 29 Cal.4th at p. 92, 124 Cal.Rptr.2d 530, 52 P.3d 703.) . . . The Legislature clearly knows how to create an exemption from the anti-SLAPP statute when it wishes to do so.
>
> *Id.* at p. 735.

Three years later in *City of Los Angeles v. Animal Defense League* (2006) 135 Cal. App. 4th 606, the City of Los Angeles sought protective orders under Code of Civil Procedure Section 527.8(a) on behalf of some of its employees to shield them from workplace violence. The Court of Appeal acknowledged that previously in *City of Long Beach* it had

extended the plain language of the statute, but emphasized that "any further erosion of the specific requirements of that provision is unwarranted in light of this Court's decision in *Jarrow v. La Marche* (2003) 31 Cal. 4th 728, 735 . . . that the plain language of section 425.16 is to be respected and that exceptions to the statute's broad reach must not be lightly implied . . ." *Id.* at p. 620. The Court of Appeal further stated:

> Although section 425.16, subdivision (d), thus applies somewhat more broadly than the literal language of the provision may suggest, only actions brought by a governmental agency to enforce laws aimed generally at public protection qualify for this exemption to anti-SLAPP scrutiny.
>
> (*Id.* at p. 618).

The foray into legislative history made by the Court of Appeal in *City of Long Beach* was again rejected in 2012 in *City of Colton v. Singletary* (2012) 206 Cal. App. 4th 751 ("*City of Colton*") where the Court of Appeal stated:

> We do not find *Long Beach* to be persuasive authority. The well-settled rule of statutory construction is that "'we look first to the words of the statute, giving the language its usual ordinary meaning. If there is no ambiguity in the language [then] we presume the Legislature meant what it said, and the plain meaning of the statute governs." [Citation]" [Citation]" *Long Beach, supra,* 111 Cal. App. 4th at p. 305). The language of section 425.16 is clear and unambiguous: the subdivision applies only to lawsuits "brought in the name of the people of the state of California." Accordingly, we disagree with the *Long Beach* opinion's reasoning because it goes beyond the plain language of the statute, despite the clarity of the statute's wording.

Id. at p. 777.

The *City of Colton* decision also rejected the "absurd result" exception cited in the *City of Long Beach* opinion which suggested that "any political committee could avoid having to comply with local election laws." The Court of Appeal in *City of Colton* noted because the violation of a city ordinance is a misdemeanor it may be prosecuted by city authorities *in the name of the people of the State of California,* citing Gov. Code Section 36900. *Ibid.*

The City concedes, as it must, that this action is not brought by a city attorney acting as a public prosecutor but rather by a private attorney retained by the City. Nevertheless, the City makes a half-hearted attempt to excuse this non-compliance with the express language in section 425.16, subd. (d), by arguing that outside counsel had to be hired to bring this action because of a purported conflict of interest. This alleged conflict of interest -- which is not mentioned in the Complaint in this action nor supported by a declaration of counsel offering any evidence of this alleged conflict -- is based solely on a declaration from William Molinari, the one-time Mayor of Montebello who unsuccessfully attempted to have Appellants in this case prosecuted by the District Attorney. 3 CT 553-564. Molinari's declaration, which is dated July 18, 2011 -- over a year before this case was ever filed -- was submitted in a different (but related) case and

recites his version of events that took place in the summer of 2008 when the Athens Contract had been approved by the Montebello City Council. The portion of Molinari's declaration which supposedly supports the claimed conflict of interest reads as follows:

> 19. Instead, the City Attorney (whose firm had employed the [sic] Mr.Chiappetta's daughter), the then City Administrator, and then Mayorpro tem Vasquez conspired to usurp the mayoral authority . . . (3CT553)

The most that may be gleaned from this parenthetical comment is that Mr. Chiappetta's daughter was employed at the same law firm as the City Attorney prior to August of 2008, but was no longer employed by the City Attorney's law firm in August of 2008. Neither Mr. Chiappetta nor his employer, Athens Services, is accused of a violation of Gov. Code section 1090 in this action. There is no explanation in the record why the employment of Mr. Chiappetta's daughter at the City Attorney's law firm in 2008 would create a conflict of interest in July of 2012 when the City filed this lawsuit that would require the City to hire separate outside counsel.[1] No declarations are offered from the City Attorney, the attorney of record in this action, or anyone from the City to support this claim of conflict of interest. The City has offered absolutely no evidence to support its claim

[1] No conflict was asserted when the City Attorney represented Montebello in *Torres v. City of Montebello* (CITE) from 2009 to 2011. There, the City Attorney stepped aside after a change in the makeup of the City Council resulted in the City abandoning its defense of the Athens Contract, and instead siding with Athens' competitors who financed the Torres litigation. See *Opening Brief,* p. 10-11).

that a conflict of interest caused it to hire outside counsel to file this case, and even if it had, there is no evidence that counsel is acting in the public prosecutor role of the City Attorney. This case is not a criminal prosecution under Gov. Code section 1097, but is a civil action seeking declaratory relief. 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 state-wide concern because the waste hauling contract concerns only Montebello and its citizens.

The departure from the usual rules of statutory construction that the City advocates is disfavored following this Court's opinion in *Jarrow* as well as the Court of Appeal decisions in *City of Los Angeles* and *City of Colton.* The City's reliance on *City of Long Beach* as authority for applying the public enforcement exemption to this case should be soundly rejected.

2. The City's Attempt To Create A New Exemption Under Section 425.16 For Complaints Alleging a Violation of Government Code Section 1090 Is Contrary To Decisions Of This Court.

Appellants' *Opening Brief* demonstrated that the plain language of section 425.16 affords far broader protection for petitioning activity and free speech than the protections under consideration in *Nevada Com. on Ethics v. Carrigan* (2011) 564 U.S. __, 131 S.Ct. 2343 ("*Carrigan*); and

that applying *Carrigan* to the facts of this case would be contrary to this Court's decisions in *Briggs, Navellier* and *Vargas*.

The broad application of the anti-SLAPP statute mandated by section 425.16, subd. (a) has been repeatedly affirmed by this Court. See, *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal. 4th 1106, 1118 ["The Legislature's stated intent is best served, therefore by a construction of section 425.16 that broadly encompasses participation in official proceedings . . ."]; *Jarrow Formulas Inc. v. La Marche, supra,* 31 Cal. 4th at p. 734 ["And in a trio of opinions issued last year, we held the plain language of the "arising from" prong encompasses any action based on protected speech or petitioning activity as defined in the statute. . . " (citing *Navellier v. Sletten* (2002) 29 Cal. 4th, 82, 89-95; *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal. 4th 53, 58; and *City of Cotati v. Cashman* (2002) 29 Cal. 4th 69,750).]

But the City's response to these judicial endorsements of the broad application of the anti-SLAPP statute is simply to note that *Briggs, Navellier* and *Jarrow* did not involve claims of conflict of interest under Gov. Code section 1090, as if this somehow negates the broad application of section 425.16 and thereby renders section 425.16 unavailable to legislators accused of violating Gov. Code section 1090. Section 425.16 provides no exemption for conflict of interest causes of action and this Court has rejected previous attempts to carve out judicial exemptions for

specific causes of action. For example, in *Jarrow,* this Court considered whether malicious prosecution claims should be exempted from the provisions of section 425.16. Plaintiff Jarrow, like the City in this case, argued that applying section 425.16 to malicious prosecution claims would have the effect of denying malicious prosecution victims a remedy. This Court rejected that claim stating:

> In asserting that the anti-SLAPP statute, if applied, would have the effect of barring malicious prosecution claims, Jarrow "fall[s] prey ... to the fallacy that the anti-SLAPP statute allows a defendant to escape the consequences of wrongful conduct...." (*Navellier, supra,* 29 Cal.4th at p. 93, 124 Cal.Rptr.2d 530, 52 P.3d 703.) In fact, "the anti-SLAPP statute neither constitutes—nor enables courts to effect—any kind of 'immunity'.... When a ' "complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited"' [citation], it is not subject to being stricken as a SLAPP." (*Ibid.*)

Id. at p. 738.

The City's *Answering Brief* also makes dire predictions about rampant public corruption if legislators and others public servants are permitted to use section 425.16: "Allowing public officials to use the Anti-SLAPP scheme as a means of avoiding the consequences of self-dealing would in large part render Section 1090 meaningless." *Answering Brief,* p. 41.

But again, similar predictions of gloom and doom if section 425.16 is given broad application have been soundly rejected by this Court because

sufficient statutory protections are in place so that meritorious claims can proceed. This was best illustrated in *Jarrow* where the plaintiff argued that allowing the anti-SLAPP statute to be used in response to a malicious prosecution action would give a green light to parties and counsel to bring meritless actions and would render unscrupulous litigators and attorneys "exempt from any accountability for their acts." *Id.* at p. 745. This Court rejected that argument stating:

> Neither section 425.16 itself nor anything in our anti-SLAPP jurisprudence diminishes the viability of meritorious malicious prosecution claims that may be articulated against such persons. The Legislature ... has provided, and California courts have recognized, substantive and procedural limitations that protect plaintiffs against overbroad application of the anti-SLAPP mechanism." (*Briggs, supra,* 19 Cal.4th at pp. 1122–1123, 81 Cal.Rptr.2d 471, 969 P.2d 564.) "Courts deciding anti-SLAPP motions, for example, are empowered to mitigate their impact by ordering, where appropriate, 'that specified discovery be conducted notwithstanding' the motion's pendency. [Citation.] And if 'the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion.' " (*Equilon, supra,*) 29 Cal.4th at p. 66, 124 Cal.Rptr.2d 507, 52 P.3d 685.) Thus, as we repeatedly have observed, the Legislature's detailed anti-SLAPP scheme "ensur[es] that claims with the requisite minimal merit may proceed." (*Navellier, supra,)* 29 Cal.4th at p. 94, 124 Cal.Rptr.2d 530, 52 P.3d 703.)

Id. at pp. 745-746.

Finally, the *Jarrow* opinion declined to create a categorical exemption from the anti-SLAPP statute for malicious prosecution claims noting that it was up to the Legislature to create exemptions from the

protections provided by section 425.16. *Ibid.* Likewise in this case, there exists no statutory ground or public policy reason to create a new exemption from section 425.16 for claims based on Gov. Code section 1090.

3. The Mere Allegation of Illegal Conduct Does Not Bar an Anti-SLAPP Motion

The *only* judicially recognized exemption to the anti-SLAPP statute is found in *Flatley v. Mauro* (2006) 39 Cal. 4th 299, where this Court affirmed the denial of an anti-SLAPP motion in an action filed by an entertainer against an attorney alleging causes of action based on extortionate demands from the attorney who threatened to go public with a rape allegation unless the plaintiff paid a settlement of $100,000,000. The *Flatley* decision held that "[S]ection 425.16 cannot be invoked by a defendant whose assertedly protected activity is illegal as a matter of law and for that reason, not protected by constitutional guarantees of free speech and petition." *Id.* at p. 317. In holding that the defendant was precluded from using the anti-SLAPP statute to strike plaintiff's complaint, the *Flatley* opinion limited the application of this bar to situations where "[E]ither the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech or petition activity was illegal as a matter of law." *Id.*, at p. 320. The *Flatley* opinion was also careful to note

that this finding of illegality as a matter of law is to be made as part of the first prong of the anti-SLAPP analysis:

> In reaching this conclusion, we emphasize that the question of whether the defendant's underlying conduct wasillegal as a matter of law is preliminary, and unrelated to the second prong question of whether the plaintiff has demonstrated a probability of prevailing, and the showing required to establish conduct illegal as a matter of law—either through defendant's concession or by uncontroverted and conclusive evidence—is not the same showing as the plaintiff's second prong showing of probability of prevailing.

Id.

Later cases also affirm the critical distinction between a plaintiff's bare allegations of criminal acts and uncontroverted evidence of criminal acts. In *Mendoza v. ADP Screening and Selection Services, Inc.* (2010) 182 Cal. App. 4th 1644, the Court of Appeal interpreted the term "illegal" to mean criminal illegality, and not merely the alleged violation of a statute.

> Our reading of *Flatley* leads us to conclude that the Supreme Court's use of the phrase "illegal" was intended to mean criminal, and not merely violative of a statute. First, the court in *Flatley* discussed the attorney's underlying conduct in the context of the Penal Code's criminalization of extortion. Second, a reading of *Flatley* to push any statutory violation outside the reach of the anti-SLAPP statute would greatly weaken the constitutional interests which the statute is designed to protect. As SASS correctly observes, a plaintiff's complaint ***always*** alleges a defendant engaged in illegal conduct in that it violated some common law standard of conduct or statutory prohibition, giving rise to liability, and we decline to give plaintiffs a tool for avoiding the application of the anti-SLAPP statute merely by showing any statutory violation.

See also *Lefebvre v. Lefebrve* (2011) 199 Cal. App.4th 696 where the filing of a false police report -- which uncontroverted evidence showed was in fact a false police report -- did not involve protected activity because it was uncontroverted that the act was illegal.

These cases confirm that the mere allegation of illegal conduct is insufficient to trigger the application of *Flatley* and bar the right of Appellants to bring a motion under section 425.16. Under *Flatley,* the underlying illegal conduct must be either conceded as illegal by the defendants or conclusively established by the evidence, and neither of these events have occurred in this case. The defendants have vigorously denied all of the allegations of a violation of Gov. Code section 1090 in multiple declarations in the record. (Torres Decl. 2CT441; Urteaga Decl. 2CT445; Vasquez Decl. 2CT449; and, Salazar Decl. 2CT453)

B. THE CITY FAILED TO RESPOND TO CASES AND ARGUMENTS MADE BY APPELLANTS.

Appellants demonstrated in their *Opening Brief* that the scope of section 425.16 extends well beyond the scope of *Carrigan* to include acts in furtherance of a person's right of petition or free speech under the California Constitution in connection with a public issue. Rights guaranteed by the California Constitution are not dependent on those granted by the United States Constituion. *Opening Brief,* pp. 24-25. The

City failed to so much as address the application of the California Constitution in its *Answering Brief.*

Even more surprising was the failure of the City to so much as mention the case of *Vargas v. City of Salinas* (2009) 46 Cal. 1, a decision of this Court that rejected the claim that speech by public officials or employees acting in their official capacity is not protected activity under section 425.16. Ignoring *Vargas,* the City limits its analysis of *Carrigan* to the simple conclusory statement "The rule of *Carrigan* is clear: a legislator's vote is not protected activity." *Answering Brief,* p. 26. But no one disputes what *Carrigan* holds. The dispute is whether the scope of section 425.16 is broader than the narrow holding of *Carrigan.* The express statutory language of section 425.16 and the holdings of *Navellier* and *Vargas* confirm that the scope of section 425.16 is indeed broader than the holding of *Carrigan* and any claim that a cause of action alleging illegal activity should be categorically exempt from the protections of section 425.16 was put to rest in *Flatley* and subsequent decisions following it. *Supra,* pp. 12-15.

1. Political Contributions Do Not Equate To A Conflict of Interest.

The only "evidence" offered by the City in support of the claim of a violation of Gov. Code section 1090 and a resulting "cognizable interest" in the Athens Contract is that the three city council members who are

Appellants received political contributions -- fully reported political contributions -- from Athens. Appellants' *Opening Brief* explained that the mere existence of political campaign contributions does not prove illegality or a violation of Gov. Code section 1090 citing *Buckley v. Valeo* (1976) 424 U.S. 1 and *Woodland Hills Residents Association, Inc. v. City Council* (1980) 26 Cal. 3d 938. Again, the City does not so much as mention these cases in its brief and instead attempts to avoid confronting its lack of evidence with the conclusory statement: "It is not the fact that contributions were made but rather that the contributions in this instance resulted in the former city council members and city administrator having financial interests in securing the AEI contract, something which is prohibited by Section 1090." *Answering Brief*, p. 38.

This statement, which lacks any factual or evidentiary support, is simply stunning in its lack of understanding of the Constitutional protections afforded to political activity and the extensive body of political case law authorizing political fundraising. Appellants have briefed the issue of why political contributions do not equate to a violation of Gov. Code section 1090 at pp. 42-47 of their *Opening Brief* and see no need to repeat those arguments here, particularly when the City has not bothered to address them. But if any one statement in this case illustrates why legislators should be permitted to use section 425.16 to promptly weed out politically motivated nuisance suits, it is the statement by the City that fully

reported political contributions by Athens to three members of the Montebello City Council -- with nothing more -- must equate to an interest in the Athens Contract and thus a violation of Gov. Code section 1090. As this Court noted in *Jarrow,* the public enforcement exemption insures that actions involving violations of statutes (such as Gov. Code section 1090) will be brought by the proper authorities. But as demonstrated above, this action is not brought by a party recognized in the public enforcement exemption and instead in this action the City seeks only to escape repaying Athens the $500,000.00 franchise fee that the City gladly accepted in April 2009 before it changed its position in this litigation in 2011. See *Opening Brief,* pp. 10-11.

2. The Court of Appeal Decision In This Case Is In Conflict With *San Ramon* and *Schwarzburd.*

The City also claims that there is no conflict between the decision in this case and *Schwarzburd et al v. Kensington Police Protection & Community Services District Board* (2014) 225 Cal. App. 4th 1345 ("*Schwarzburd*") stating: "No conflict exists between the First District in *Schwarzburd* and the decision of the Second District in this case as the decisions are easily reconciled." *Answering Brief,* p. 22. The City concedes that both cases involved challenges to how legislators voted but again claims that the mere presence of an alleged violation of Gov. Code section 1090 should magically exempt the City's complaint from the protections

afforded the Appellants by section 425.16. The absence of an alleged section 1090 violation in either *Schwarzburd* (or *San Ramon* for that matter) does not render the holding in that case a nullity. The express holdings of *Schwarzburd,* and a host of other cases (see *infra.*, p. 20) recognize that members of a legislative body or district board have the right to bring an anti-SLAPP motion. Only this case stands alone as not recognizing that right. Reversal of the Court of Appeal decision in this case will confirm uniformity in state law and recognize the right of a legislator to bring an anti-SLAPP motion in response to a meritless case challenging actions taken by a legislator.

C. THE CITY'S INTERPRETATION OF THE BURDEN OF PROOF REQUIRED WOULD RENDER SECTION 425.16 A NULLITY IN CASES ALLEGING A CONFLICT OF INTEREST.

Under the interpretation of *Lexin v. Superior Court* (2010) 47 Cal. 4th 1050 ("*Lexin*") urged by the City, the mere *allegation* of receipt of political contributions is sufficient to meet the burden of proof under the second prong of section 425.16, and establish a "cognizable interest" in the Athens Contract for the three former city council members. Such an overbroad interpretation of the term "cognizable interest" would effectively deny legislators the right to file a motion under section 425.16 anytime a conflict of interest is simply alleged to exist in a matter before a legislative

body involving a past or future contributor. This attempt to create a backdoor exemption under section 425.16 for claims alleging a violation of Gov. Code section 1090 should likewise be rejected by this Court. Under *Jarrow, supra,* 31 Cal. 4th at 741 the City "must demonstrate that the Complaint is both legally sufficient and supported by a *prima facie* showing of facts to sustain a favorable judgment," something the City's unsupported allegations and character assassination have failed to do in this case. Simply stated, campaign contributions are not the functional equivalent of bribes as the City wrongfully asserts, and these bare allegations are insufficient to meet the burden of proof imposed on the City in the second prong of section 425.16.

D. THE ARGUMENT OF *AMICI* HAS BEEN REJECTED BY THIS COURT IN *VARGAS.*

The brief of *Amicus Curiae* urges this Court to find that absolutely no governmental activity qualifies for protection under section 425.16. In order to accomplish this result, the Court would have to overrule a substantial body of case law starting with *Vargas* and including a host of other cases including *Schwarzburd.* If this argument sounds vaguely familiar it is because *Amici* are represented by the same attorney who represented Mr. Vargas in this Court in *Vargas v. City of Salinas* (2009) where the same arguments were rejected by this Court:

Although plaintiffs acknowledge that a long and uniform line of California Court of Appeal decisions explicitly holds that governmental entities are entitled to invoke the protections of section 425.16 when such entities are sued on the basis of statements or activities engaged in by the public entity or its public officials in their official capacity (see, e.g., *Bradbury v. Superior Court* (1996) 49 Cal. App. 4th 1108, 1113-1116, 57 Cal. Rptr. 2d 207; *Schroder v. Irvine City Council* (2002) 97 Cal. App. 4th 174, 183-814, 118 Cal. Rptr. 2d 330; *San Ramon Valley Fire Protection Dist. v. Contra Costa County Employees' Retirement Assn.* (2004) 125 Cal. App. 4th 343, 353, 22 Cal. Rptr. 3d 724; *Tutor-Saliba Corp. v. Herrera* (2006) 136 Cal. App. 4th 604, 609, 39 Cal. Rptr. 3d 21; *Santa Barbara County Coalition Against Automobile Subsidies v. Santa Barbara County Assn. of Governments* (2008) 167 Cal. App. 4th 1229, 1237-1238, 84 Cal. Rptr. 3d 714; *Schaffer v. City and County of San Franciso* (2008) 168 Cal. App. 4th 992, 1001-1004, 85 Cal. Rptr. 3d 880 (*Schaffer*), plaintiffs essentially contend that all of these decisions were wrongly decided and should be disapproved.

We reject plaintiffs' contention. Whether or not the First Amendment of the federal Constitution or article I, section 2 of the California Constitution *directly* protects government speech in general or the types of communications of a municipality that are challenged here—significant constitutional questions that we need not and do not decide—we believe it is clear, in light of both the language and purpose of California's anti-SLAPP statute, that the statutory remedy afforded by section 425.16 extends to statements and writings of governmental entities and public officials on matters of public interest and concern that would fall within the scope of the statute if such statements were made by a private individual or entity.

Id. at p. 17.[2]

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[2] In the later attorneys' fee litigation captioned *Vargas v. City of Salinas* (2011) 200 Cal. App. 4th 1331 this argument was also rejected by the Third District Court of Appeal.

The *Vargas* opinion went on to note that subsequent amendments of section 425.16 by the Legislature after the many reported decisions recognizing the ability of public entities to bring a motion under section 425.16 laid that question to rest. *Id.* at p.19. See also *Estate of McDill* (1975) 14 Cal. 3d 831, 837-838 : "The failure of the Legislature to change the law in a particular respect when the subject is generally before it and changes in other respects are made is indicative of an intent to leave the law as it stands in the aspects not amended."

There is no dispute that the *Vargas* opinion soundly rejected the very arguments again put forth by *Amici*:

> In view of this legislative purpose and history, as well as the language of section 425.16, subdivision (e) and section 425.18, subdivision (i), discussed above, we conclude that section 425.16 may not be interpreted to exclude governmental entities and public officials from its potential protection. Accordingly, we agree with the numerous Court of Appeal decisions cited above (*ante,* 92 Cal.Rptr.3d at pp. 296–297, 205 P.3d at p. 216) that have reached this same conclusion.

Id. at p. 19.

In view of this clear rejection by this Court in 2009 of the arguments put forth by *Amici*, Appellants see no need to address these matters any further.

CONCLUSION

For the foregoing reasons, Defendants and Appellants, Rosemarie Vasquez, Robert Urteaga, Kathy Salazar and Richard Torres, respectfully request rulings from this Honorable Court determining that (1) individual members of a legislative body are entitled to rely on the anti-SLAPP statute in response to actions challenging their votes or statements made in connection with an issue under consideration and review in an official proceeding authorized by law despite the holding in *Nevada Commission on Ethics v. Carrigan*; (2) individual members of a legislative body may bring an anti-SLAPP motion in response to an action challenging votes or statements made by those individuals in connection with an issue under consideration or review in an official proceeding authorized by law; and (3) parties challenging decisions made by individual members of a public entity after discussion and vote at a public meeting are required to make a prima facie showing of the merits of their claim in the face of an anti-SLAPP motion.

DATED: January 22, 2015.

Respectfully submitted:

REVERE & WALLACE

BY: FRANK REVERE

Attorneys for Defendants and Appellants

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) and 8.360(b)(1) of the California Rules of the Court, the enclosed Reply Brief on the Merits of Defendants and Appellants, ROSEMARIE VASQUEZ, ROBERT URTEAGA, KATHY SALAZAR and RICHARD TORRES is produced using 13-point Times New Roman type including footnotes and contain approximately 5,408, which is less than the total words permitted by the rules of the court. Counsel relies on the word count feature of the computer program, Microsoft Word 2010, used to prepare this brief.

DATED: January 20, 2015

REVERE & WALLACE

By: Frank Revere
Frank Revere
Attorney for Defendants
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PROOF OF SERVICE BY MAIL

In Re: REPLY BRIEF ON THE MERITS; No. S219052
Caption: CITY OF MONTEBELLO v. ROSEMARIE VASQUEZ, et al.
Filed: IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
(Constructively filed on this date pursuant to CRC R. 8.25(b)(3)(B).)

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I am a citizen of the United States and a resident of or employed in the County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 200 East Del Mar Blvd., Suite 216, Pasadena, CA 91105. On this date, I served the persons interested in said action by placing one copy of the above-entitled document in sealed envelopes with first-class postage fully prepaid in the United States post office mailbox at Pasadena, California, addressed as follows:

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I certify (or declare) under penalty of perjury that the foregoing is true and correct. Executed on January 23, 2015, at Pasadena, California.

E. Gonzales