No. S235735

SUPREME COURT OF CALIFORNIA

RAND RESOURCES, LLC et al.,

Plaintiffs, Appellants, and Respondents,

v.

LEONARD BLOOM, et al.,

Defendants, Respondents and Petitioners.

After a Decision by the Court of Appeal
Second Appellate District, Division One
Case No. B264493

On Appeal from the Los Angeles Superior Court
The Honorable Michael L. Stern
Case No. BC564093

APPLICATION TO FILE AMICI CURIAE BRIEF AND AMICI CURIAE BRIEF OF MEDIA ENTITIES IN SUPPORT OF DEFENDANTS AND RESPONDENTS

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TO THE HONORABLE TANI G. CANTIL-SAKAUYE, CHIEF JUSTICE OF THE STATE OF CALIFORNIA, AND TO THE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Amici Curiae California Newspaper Publishers Association, Californians Aware, The Center for Investigative Reporting, First Amendment Coalition, The Reporters Committee for Freedom of the Press, A&E Television Networks, LLC, BuzzFeed, Inc., Cable News Network, Inc., CBS Corporation, Dow Jones & Company, First Look Media Works, Inc., The Hearst Corporation, NBCUniversal Media, LLC, The New York Times Company, and The Motion Picture Association of America (collectively, "Media Amici") respectfully submit this Amici Curiae Brief in Support of Defendants and Respondents the City of Carson, James Dear, and Leonard Bloom.

For the reasons discussed below, Media Amici urge this Court to reverse the Court of Appeal's impermissibly narrow interpretation of the "public interest" requirement of Subsection (e)(4) of Code of Civil Procedure § 425.16 (the "anti-SLAPP" statute), and the incorrect conclusion it reached as a result – that speech about an individual involved in an effort to bring a major development project to a municipality was outside the scope of the anti-SLAPP statute. Because the Court of Appeal's ruling followed other cases that incorrectly have imposed extra-statutory limitations on the anti-SLAPP statute's public interest requirement, Media

Amici urge this Court to disapprove cases that have failed to apply the public interest standard broadly, and to provide guidance that is consistent with the statute's plain language and well-established constitutional principles.[1]

APPLICATION TO SUBMIT AMICI CURIAE BRIEF

Pursuant to California Rule of Court 8.520(f), Media Amici respectfully request this Court's permission to submit the attached Amici Curiae Brief. Media Amici include news, entertainment, and publishing organizations, who themselves or whose members own and operate newspapers, magazines, Internet platforms, movie production and distribution companies, and television and radio stations in California and throughout the United States. Media Amici also include nonprofit organizations representing journalists, community groups, and ordinary citizens, whose missions focus on promoting free speech rights. A further description of Media Amici is included in the attached Appendix A.

Media Amici submit this brief to address the interpretation and application of the anti-SLAPP statute's public interest requirement. See C.C.P. § 425.16(b)(1) (applying statute to claims arising from conduct in furtherance of speech "in connection with a public issue"); (e)(4) (statute

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[1] Media Amici submit this brief solely to address the interpretation and application of the anti-SLAPP statute's public interest requirement. They do not concede that the City of Carson has a right to file an anti-SLAPP Motion, or take a position on any other issue raised by this appeal.

applies, inter alia, to claims arising from "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"). In this case, the Court of Appeal narrowly construed the "public interest" requirement, using an approach followed by several intermediate appellate courts that imposes extra-statutory restrictions on the definition of "an issue of public interest." Rand Resources, LLC v. City of Carson, 247 Cal. App. 4th 1080, 1091-96 (2016). Media Amici believe that the Amici Brief will be of assistance to this Court in tracing the evolution of the divergent approach followed by the Court of Appeal here, and explaining why that approach is inconsistent with the purpose of the anti-SLAPP statute and prior decisions of this Court. See Amici Brief, Section III.

Additionally, Media Amici propose that this Court adopt a workable standard for determining when the "public interest" requirement is met under the anti-SLAPP statute, based on well-established case law from this Court and the United States Supreme Court that has enunciated guiding principles for evaluating matters of "public interest" and "public concern" in other contexts involving the exercise of free speech. Amici Brief, Section IV.

Media Amici are well-positioned to offer this perspective because they have been involved in the crafting and implementation of the anti-SLAPP statute since it was first enacted, and have decades of experience

litigating anti-SLAPP cases at all levels of the court system. See Paterno v. Superior Court, 163 Cal. App. 4th 1342, 1353 (2008) ("[n]ewspapers and publishers, who regularly face libel litigation, were intended to be one of the 'prime beneficiaries' of the anti-SLAPP legislation") (quoting Lafayette Morehouse, Inc. v. Chronicle Publ'g, 37 Cal. App. 4th 855, 863 (1995)).

Media Amici rely on the anti-SLAPP statute to broadly protect their editorial and creative processes. The prospect of defending against even a wholly meritless lawsuit can discourage the publication of news reports and expressive works on matters of public interest. As this Court has recognized, permitting "unnecessarily protracted litigation would have a chilling effect upon the exercise of First Amendment rights." Winter v. DC Comics, 30 Cal. 4th 881, 891 (2003) (quotation omitted). Therefore, "speedy resolution of cases involving free speech is desirable." Id. (emphasis added; quotation omitted). See also Baker v. Herald Exam'r, 42 Cal. 3d 254, 268 (1986) ("[t]he threat of a clearly nonmeritorious defamation action ultimately chills the free exercise of expression").

The anti-SLAPP statute provides a means of "screening out meritless claims that arise from protected activity, before the defendant is required to undergo the expense and intrusion of discovery." Baral v. Schnitt, 1 Cal. 5th 376, 393 (2016). But its protections are illusory if courts follow the approach applied by the Court of Appeal here, which narrowly interprets the public interest requirement in a manner that potentially excludes many

content-based claims from the scope of the anti-SLAPP statute. Amici Brief at Section III. Because Media Amici have a strong interest in ensuring that the anti-SLAPP statute continues to serve its purpose of protecting the free flow of information and creative expression to the public, they respectfully request that this Court grant their Application and consider the attached Amici Brief.[2]

AMICI CURIAE BRIEF

I. SUMMARY OF ARGUMENT

In a series of recent decisions, this Court has reaffirmed that the anti-SLAPP statute must be "construed broadly" to further its goal of encouraging "continued participation in matters of public significance." C.C.P. § 425.16(a)(1).[3] But there remains a critical issue that some intermediate appellate courts have addressed in a manner that threatens the anti-SLAPP statute's central purpose. The Court of Appeal's decision here is emblematic of this divergent line of cases, which have erroneously

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[2] Pursuant to California Rule of Court 8.520(f)(4), Media Amici respectfully advise the Court that no party or counsel for a party in the pending appeal authored the proposed amicus brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity made a monetary contribution intended to fund the preparation or submission of the brief, other than the amici curiae, their members, or their counsel in the pending appeal.

[3] See Barry v. State Bar of California, 2 Cal. 5th 318, 321 (2017); City of Montebello v. Vasquez, 1 Cal. 5th 409, 416 (2016); Baral v. Schnitt, 1 Cal. 5th 376, 392 (2016).

restricted the scope of the anti-SLAPP statute by imposing extra-statutory limitations on the interpretation of what constitutes a matter of "public interest" within the meaning of the statute. This appeal provides an opportunity for this Court to disapprove cases that have impermissibly narrowed the application of the anti-SLAPP statute, and to clarify that the public interest requirement – like other provisions of the statute – must be applied broadly, consistent with the statute's plain language and the Legislature's clear intent.[4]

The Legislature resolved any ambiguity about this question 20 years ago, when it amended the anti-SLAPP statute to expressly ensure that it is broadly construed. See Section II, infra. As this Court recognized, the 1997 amendment rejected a line of cases that had interpreted the law narrowly, as applying only to certain types of political speech. See Briggs v. Eden Council for Hope & Opportunity, 19 Cal. 4th 1106, 1120 (1999). Subsequently, most intermediate appellate courts have recognized that the public interest requirement also must be read expansively, just the same as other provisions of the anti-SLAPP statute. E.g., Nygård, Inc. v. Uusi-

[4] This Amici Brief addresses only the interpretation of the "public interest" clause in Code of Civil Procedure § 425.16(e)(4). Media Amici do not take a position on the other issue presented regarding Subsection (e)(2) of the anti-SLAPP statute, or on any other question raised by this case, including the threshold issue of whether the plaintiff's claims arise from protected conduct, or whether the plaintiff can establish a probability of prevailing on its claims. See Section V, infra; Martinez v. Metabolife Int'l, Inc., 113 Cal. App. 4th 181, 188 (2003).

Kerttula, 159 Cal. App. 4th 1027, 1042 (2008) ("these cases and the legislative history ... suggest that 'an issue of public interest' ... is any issue in which the public is interested"); see also Section II, infra.

The Court of Appeal's decision in this case departs from these principles in two significant ways, which are emblematic of the misguided approach adopted in several published appellate decisions.

First, the Court of Appeal's public interest analysis focused narrowly on the particular statements at issue, rather than focusing on the broad subject of the defendant's speech. See Section III.A, infra. As a consequence, although it acknowledged that there was a strong public interest in information about the City of Carson's negotiations with the NFL to bring a football team and major development project to the city, the appeals court nonetheless concluded that "the identity of the person representing the City in its efforts to lure an NFL team to the City is not a matter of public interest." Rand Resources, LLC v. City of Carson, 247 Cal. App. 4th 1080, 1095 (2016) (emphasis added).

This narrow interpretation of the anti-SLAPP statute squarely conflicts with the weight of authority in this area, which has held that "the proper inquiry is whether the broad topic of defendant's conduct, not the plaintiff, is connected to a public issue or an issue of public interest." Doe v. Gangland Productions, 730 F.3d 946, 956 (9th Cir. 2013) (emphasis added). See also Hunter v. CBS, 221 Cal. App. 4th 1510, 1526-27 (2013);

Tamkin v. CBS, 193 Cal. App. 4th 133, 143-44 (2011); Terry v. Davis Community Church, 131 Cal. App. 4th 1534, 1547-49 (2005).

Media Amici are particularly concerned about this aspect of the Court of Appeal's decision, because the same reasoning could be used in lawsuits targeting news reports or creative works that discuss specific examples of political and social issues in the context of addressing broad topics. See Section III.A. This is not mere speculation: following the Court of Appeal issuing its decision in this case, another intermediate appellate court published an opinion declining to apply the anti-SLAPP statute to a defamation claim arising from a publication about regulatory issues at a rehabilitation center, finding that statements about one particular facility did not involve a matter of public interest. See Dual Diagnosis Treatment Center, Inc. v. Buschel, 6 Cal. App. 5th 1098, 1101 (2016). The narrow standard applied by the Court of Appeal here, and by the court in Dual Diagnosis, ignores the plain language of the anti-SLAPP statute – which protects all speech "in connection with … an issue of public interest" (C.C.P. § 425.16(e)(4)) – and would dramatically limit its protection.

Second, the Court of Appeal relied on a misguided legal standard that restricts the interpretation of speech connected to matters of "public interest" to a few narrow categories of speech. See Section III.B, infra. This divergent approach began with a set of observations by a single court in 2003, and morphed into a multi-part framework that has been applied by

some intermediate appellate courts as a binding public interest test. See Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO, 105 Cal. App. 4th 913, 924 (2003); Weinberg v. Feisel, 110 Cal. App. 4th 1122, 1132-33 (2003); Commonwealth Energy Corp. v. Investor Data Exchange, Inc., 110 Cal. App. 4th 26, 33 (2003); Du Charme v. International Brotherhood of Electrical Workers, Local 45, 110 Cal. App. 4th 107, 119 (2003).

The Rivero-Weinberg-Du Charme framework was derived in large part from inapposite cases dealing with a different legal standard that is purposefully more restrictive than the anti-SLAPP statute's public interest requirement. See Section III.B, infra. When confronted with fact patterns that do not fit the framework – but which clearly belong within the scope of the anti-SLAPP statute – the same courts that issued these opinions have simply disregarded the Rivero-Weinberg-Du Charme standard, which amply demonstrates its shortcomings. Id. Not surprisingly, other intermediate appellate courts have criticized this line of cases, pointing out that they have created extra-statutory limitations that impermissibly narrow the scope of the anti-SLAPP statute, in contravention of the law's plain language and the clearly expressed intention of the Legislature. E.g., Cross v. Cooper, 197 Cal. App. 4th 357, 381 (2011). The disparate interpretation of the statutory language has resulted in inconsistent decisions and confusion that needs resolution by this Court.

Guidance can be provided by looking to well-established case law in analogous areas of free speech jurisprudence. In the areas of defamation, privacy, emotional distress, publication of "confidential" information, and public employee speech, courts have been required to identify speech that involves matters of "public concern." See Section IV.A, infra. And as the United States Supreme Court recently explained, this adjudication is possible by applying "guiding principles ... that accord broad protection to speech to ensure that courts themselves do not become inadvertent censors." Snyder v. Phelps, 562 U.S. 443, 452 (2011); see also Section IV.A, infra.

This Court also has enunciated clear standards for determining if speech is of "legitimate public concern," in evaluating privacy claims arising from the exercise of free speech rights. Shulman v. Group W Productions, Inc., 18 Cal. 4th 200, 215 (1998). In doing so, this Court emphasized that any such inquiry must begin with a presumption that most speech about political, social, and cultural issues is a matter of legitimate public concern, and courts must accord substantial deference to editorial judgment. Id. at 224-25. Moreover, consistent with the anti-SLAPP decisions that correctly have focused the public interest inquiry on the "broad topic" of the defendant's speech, this Court held that private facts claims are barred when the particular information disclosed about the

plaintiff has a "logical relationship or nexus" with the wider subject of public concern. Id. at 224.

To ensure that the anti-SLAPP statute encompasses the full range of speech that it is meant to protect, Media Amici urge this Court to disapprove the Rivero-Weinberg-Du Charme line of cases to the extent that they impose extra-statutory limitations on the interpretation of what constitutes a matter of public interest. See Section III.B, infra. In its place, this Court should adopt an approach to defining "public interest" that is consistent with well-established principles of constitutional law, and satisfies the Legislature's directive that the statute be broadly construed. Id. A clear directive from this Court would vindicate the constitutional interests at the heart of the anti-SLAPP statute, and preserve a means for courts to weed out cases involving purely private matters that do not fall within the law's scope. Id.

II. THE SLAPP STATUTE MUST BE BROADLY CONSTRUED TO PROTECT FREE SPEECH.

In 1992, the California Legislature enacted Code of Civil Procedure § 425.16 "to nip SLAPP litigation in the bud[,]" by quickly disposing of claims that target the exercise of free speech rights. See Braun v. Chronicle Publ'g Co., 52 Cal. App. 4th 1036, 1042 (1997). Under the statute,

> [a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall

> be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

C.C.P. § 425.16(b)(1).

In defining what constitutes conduct in furtherance of speech "in connection with a public issue," the statute identifies several categories of protected conduct, including "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." Id. § 425.16(e)(4). The interpretation of the phrases "public issue" and "public interest" were subjects of early disagreement among some appellate courts. A line of cases epitomized by Zhao v. Wong, 48 Cal. App. 4th 1114 (1996), limited anti-SLAPP protections to a "narrowly defined category of litigation," and held that the phrase "public interest" referred only "to speech pertaining to the exercise of democratic self-government." Id. at 1122, 1133. Other contemporary authorities disagreed, noting that "the Legislature intended the statute to have broad application," and that the law encompassed "the broader constitutional right of freedom of speech." Averill v. Superior Court, 42 Cal. App. 4th 1170, 1176 (1996).

The latter group of cases recognized that although the anti-SLAPP statute initially was inspired largely by David and Goliath-type lawsuits aimed at political petitioning activity, the Legislature purposefully had crafted a far more expansive law. As the appeals court explained in Braun,

"[n]othing in any portion of [the statute] ... confines free speech to speech which furthers the exercise of petition rights," and held that "section 425.16 motions can apply to media defendants in libel actions." 52 Cal. App. 4th at 1045-46.

The Legislature responded to this split in authority in 1997, by amending the anti-SLAPP statute in a manner that unequivocally embraced the Braun/Averill line of cases and their expansive view of the anti-SLAPP statute's reach. The amendment added the express requirement that the statute "shall be construed broadly." C.C.P. § 425.16(a). As this Court explained, the "Legislature's 1997 amendment of the statute to mandate that it be broadly construed apparently was prompted by judicial decisions" including Zhao that "were mistaken in their narrow view of the relevant legislative intent." Briggs v. Eden Council for Hope & Opportunity, 19 Cal. 4th 1106, 1120 (1999). This Court added that it "agree[d], moreover, with the court in Braun v. Chronicle that 'Zhao is incorrect in its assertion that the only activities qualifying for statutory protection are those which meet the lofty standard of pertaining to the heart of self-government.'" Id. at 1116 (quoting Braun, 52 Cal. App. 4th at 1046-47).

Since the 1997 amendment, this Court consistently has upheld the statute's broad construction. For example, in City of Montebello, this Court explained that 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' supports the view that 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." 1 Cal. 5th at 421. Conversely, this Court has "repeatedly emphasized that the exemptions" to the anti-SLAPP statute "are to be narrowly construed." Id. at 419-20 (quotations omitted). See also Barry, 2 Cal. 5th at 321 ("[t]he statute instructs that its provisions are to be 'construed broadly'"; reading the law expansively to allow for motions to strike on jurisdictional as well as merits grounds, and to allow courts without jurisdiction to award fees to prevailing defendants).[5]

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[5] See also Jarrow Formulas, Inc. v. LaMarche, 31 Cal. 4th 728, 735 (2003) (adhering to the "express statutory command" that the anti-SLAPP statute be "construed broadly"); Navellier v. Sletten, 29 Cal. 4th 82, 91 (2002) (the anti-SLAPP statute does not exclude any particular type of cause of action from its operation, and refusing to adopt plaintiffs' request to exclude contract and fraud causes of action from the anti-SLAPP statute's ambit because it "would contravene the Legislature's express command that section 425.16 'shall be construed broadly'"); Soukop v. Law Offices of Herbert Hafif, 39 Cal. 4th 260, 279 (2006) ("the Legislature has directed that the statute 'be construed broadly.' To this end, when construing the anti-SLAPP statute, '[w]here possible, we follow the Legislature's intent, as exhibited by the plain meaning of the actual words of the law...") (internal citations omitted); Kibler v. Northern Inyo County Local Hospital Dist., 39 Cal. 4th 192, 199 (2006) (following the Legislature's requirement that the courts must "broadly construe" the anti-SLAPP statute, and applying it to hospital peer review proceedings); Club Members For An Honest Election v. Sierra Club, 45 Cal. 4th 309, 318 (2008) (because the anti-SLAPP statute must be construed broadly, exemption for cases brought purely in the public interest are construed narrowly to conform with legislative intent); Vargas v. City of Salinas, 46 Cal. 4th 1, 19 (2009) (noting that after courts narrowly interpreted the anti-SLAPP statute, the Legislature amended that

Many post-amendment decisions of the courts of appeal also recognized that the anti-SLAPP statute's "public interest" standard must be broadly construed in accordance with the Legislature's clear intent. In Nygård, Inc. v. Uusi-Kerttula, 159 Cal. App. 4th 1027 (2008), for example, the Second Appellate District examined the issue at length, observing that "Section 425.16 does not define 'public interest,' but its preamble states that its provisions 'shall be construed broadly' to safeguard 'the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.'" Id. at 1039 (quoting C.C.P. § 425.16(a)).

After examining the text of the anti-SLAPP statute, the 1997 amendment, and many of the earlier cases discussed above, the court concluded:

> Taken together, these cases and the legislative history that discusses them suggest that 'an issue of public interest' within the meaning of section 425.16, subdivision (e)(3) is any issue in which the public is interested. In other words, the issue need not be 'significant' to be protected by the anti-SLAPP statute – it is enough that it is one in which the public takes an interest.

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law to clarify its intent that it be interpreted broadly, and using a broad interpretation to find that the anti-SLAPP statute applied to claims against government officials); Simpson Strong-Tie Co., Inc. v. Gore, 49 Cal. 4th 12, 21-22 (2010) (recognizing that the anti-SLAPP statute must be "construed broadly," and in turn interpreting commercial speech exemption to the anti-SLAPP statute narrowly to conform with legislative intent).