

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FOUR

CALIFORNIA TOW TRUCK
ASSOCIATION,

Plaintiff/Appellant,

CITY AND COUNTY OF SAN
FRANCISCO,

Defendant/Respondent.

Case No. A135960

San Francisco Superior Court

No. CGC-10-501458 AS TO
Court of Appeal First Appellate District

FILED

MAR 20 2013

Diana Herbert, Clerk

by _____ Deputy Clerk

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
and
BRIEF OF AMICUS CURIAE, LEAGUE OF CALIFORNIA CITIES, IN
SUPPORT OF RESPONDENT CITY AND COUNTY OF SAN FRANCISCO

The Honorable Harold Kahn

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Court of Appeal, First Appellate District

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Pursuant to California Rule of Court 8.520(f), proposed *Amicus Curiae* League of California Cities respectfully requests leave to file the attached *Amicus Curiae* Brief in support of the City and County of San Francisco in the case of *California Tow Truck Association v. City and County of San Francisco*, Case No. A135960. This application is timely made within 14 days of the filing of the last party's brief. (Cal. Rules of Ct., rule 8.200(c)(1).) Counsel for *Amicus* is the sole author of the *Amicus Curiae* Brief. No person or entity made a monetary contribution to fund the preparation or submission of this brief.

The League of California Cities (League) is an association of 469 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 Court will consider the scope of local regulatory authority under California Vehicle Code section 21100, subdivision (g). This issue is of vital importance to the League because it directly affects cities' ability to regulate tow companies operating in their jurisdictions in order to ensure the safety of their residents. The League is extremely concerned with preserving the local control of California cities and their ability to regulate tow companies which create a myriad of public safety concerns. The League's brief will make the court aware of the impact of its decision on cities, large and small, throughout the State of California.

For the foregoing reasons, the League respectfully requests leave to file a brief as *Amicus Curiae* in the above-entitled action.

DATED: March 19, 2013

Respectfully submitted,

CARMEN A. TRUTANICH, City Attorney

By 
DEBRA L. GONZALES
Assistant City Attorney

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INTRODUCTION

California Vehicle Code section 21100(g)(1) authorizes cities to regulate “tow truck service or tow truck drivers whose principal place of business or employment is within the jurisdiction of local authority.” Interpreting this language to mean that a tow company’s office and storage yard must be in the city that seeks to regulate the company, as urged by Appellant, would lead to absurd results. This is particularly true given the mobile nature of towing activities. It would allow tow companies that operate and conduct a substantial amount of their business in a city to avoid regulation merely by locating their office and storage yard in a different city. Such a result is contrary to both common sense and reasonable statutory interpretation. The California Legislature enacted section 21100 to protect residents and visitors from the public safety concerns created by predatory towing practices. Narrowly interpreting the language as CTTA proposes would frustrate the statutory purpose of allowing cities to protect against practices that endanger public safety. In sum, limiting local authorities’ ability to regulate towing companies operating in their jurisdictions would create enormous public safety problems.

STATEMENT OF INTEREST

The League of California Cities is an association of 469 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 comprises 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.

ARGUMENT

I. THE LEGISLATIVE INTENT OF VEHICLE CODE SECTION 21100 WAS TO AUTHORIZE LOCAL REGULATION OF TOWING OPERATIONS TO PROMOTE PUBLIC SAFETY

The legislative history of Section 21100, subdivision (g), not only demonstrates a clear intent to allow local regulation of the towing industry, it underscores the critical need for such local regulation.

The 1985 amendment of subdivision (g), which added language expressly permitting local regulation of tow truck drivers, was manifestly intended to strengthen the ability of local authorities to control towing practices in their jurisdictions. The source of the legislation was the City of Los Angeles, which had long required tow truck operators to obtain police permits in order to ensure

proper monitoring and supervision. After an appellate court voided this provision in the city's ordinance as preempted by State law, the Legislature acted to make certain that cities throughout the state could continue to require local regulation and permitting of tow truck drivers to promote public safety.

Los Angeles now reports that drivers in distress are being preyed upon by scam operators posing as tow operators. These persons monitor tow service calls to police and fire departments and arrive on the scene before legitimate operators and authorities. Many persons have been lured into tow scams after believing the tow bandit was a legitimate or police-regulated operator.

This bill would add to the local regulatory authority the ability to control tow car drivers. This would allow Los Angeles and other entities to reinstitute the successful permit and monitoring systems which the court voided.

(Sen. Rules Com., Off. of Sen. Floor Analyses, Sen. Bill 704 (1985-1986 Reg. Sess.) as amended August 26, 1985.) *See Amicus Request for Judicial Notice (RJN)*, p. 2.

The purpose of the 1985 amendment of Section 21100, subdivision (g), couldn't be clearer: to preserve and enhance the authority of local governments to regulate towing operations in their jurisdictions, including by way of permit systems such as those in San Francisco and Los Angeles.

The 2006 amendment of subdivision (g) expressly added legislative findings and declarations in support of local regulatory control and was part of a bill sponsored by the City of Los Angeles that emphasized the public safety threat posed by renegade tow truck companies and operators. The author cited numerous public safety concerns in support of the bill, including the "unscrupulous practice" of illegally towing cars and leaving motorists stranded "at all hours, many of

whom are elderly, infirm, or with infants and small children,” and the “hostile and violent behavior” exhibited by “bandit” tow truck operators. (CTTA’s Motion to Augment the Record at 21-22; AB 2210: Vehicle Towing Regulations, Statement of Bill Author, Assemblymember Jackie Goldberg, April 11, 2006.)

The ability to combat these and other abuses through local regulations would be severely undermined if CTTA’s interpretation of Section 21100 were to prevail. If, by simply locating its office and storage yard in a different city, a tow company could ignore permit requirements and other regulations in the city or cities where it routinely conducts business, the purpose of the legislation would be thoroughly defeated.

The League of California Cities expressed its support of Assembly Bill 2210 when it was introduced because it “affirms the authority that local policy leaders have regarding the licensing and regulation of tow truck companies.” (League of California Cities, Memorandum to Members of the California State Senate Re: Assem. Bill No. 2210 (as amended June 29, 2006), August 4, 2006.) *See Amicus* RJN, p. 3. The League continues to firmly believe that a “safe and speedy towing and vehicle recovery process that is regulated at the local level can reduce the wasteful use of local law enforcement’s limited resources while ensuring the safety of citizens.” *Id.*

Local regulatory authority over tow companies and drivers must, logically, include authority to require them to obtain a permit as a condition of doing business within city limits. As discussed below, other California cities, besides

San Francisco, require companies and drivers that operate in their jurisdictions to obtain a permit as a means of ensuring that they meet basic standards designed to promote the safety of their citizens. Background checks, for instance, are a standard component of such permit systems. Issuance of permits also enables cities to monitor tow companies that operate in their jurisdictions and, if necessary, suspend or revoke the permits of those that violate the permit conditions. The obvious regulatory purposes served by a permit system are no less compelling with respect to tow companies that happen to have their office and storage yard elsewhere. The potential danger posed to a city's residents by a predatory tow company does not depend on the location of its office and storage yard. This fact is implicitly recognized in the regulations of several California cities noted below which, like San Francisco, make no regulatory distinction based on where the tow company's office and storage yard is located.

II. LOCAL REGULATORY CONTROL IS NECESSARY TO PROTECT PUBLIC SAFETY

The abundant documented evidence of serious misbehavior by tow car companies underscores the importance of local regulations such as in San Francisco. Without the ability to perform criminal history background checks, inspect storage facility premises, and enforce other safety-related permit conditions relative to all tow companies that routinely do business in their jurisdictions, cities would be deprived of an essential regulatory tool. A few examples of towing "horror stories" illustrate that local regulatory control should

not be curtailed based on where companies that operate within a city's jurisdiction happen to have their offices and storage yards.

On February 10, 2005, Griselda Rojas double-parked her car with her emergency lights on while she unloaded it at an apartment building in Garden Grove. When she returned to her car less than two minutes later, it had been towed with her sleeping four-year-old strapped in his car seat.¹ Protecting the safety of children is clearly an important public safety issue that municipalities must be able to address.

In Santa Ana, tow truck driver Paul Sassenberger, an employee of Pepe's Towing, ran over and killed Leoncio Flores when he protested the tow by grabbing the truck's steering wheel and lost his grip. Sassenberger pleaded guilty not only to felony vehicular manslaughter, but also to use of methamphetamine, seven counts of illegally taking a vehicle, two counts of extortion and one count of attempted extortion.²

A driver for 5A Roadside Assistance, a Van Nuys company, towed a pregnant woman's car while she was seated behind the wheel. After the incident,

¹ Mai Tran, "Bill to Protect Motorists From Predatory Towing Clears House," Los Angeles Times (March 10, 2005), available online at articles.latimes.com/2005/mar/10/local/me-predatory10.

² Andrew Good, "Driver gets six years for tow-truck death," The Orange County Register
Andrew Good, "Driver gets six years for tow-truck death," The Orange County Register (Nov. 4, 2006), available at <http://www.ocregister.com/news/tow-45653-sassenberger-truck.html>

she went to a hospital emergency room where she was treated for early contractions brought on by the stressful incident.³

Orange County District Attorney Tony Rackauckas once estimated that “about 100 cars a week in Orange County are hauled away by predatory towers, mostly in Anaheim, Santa Ana and beach communities such as Newport Beach.”⁴ In Los Angeles, thousands of cars each year have been illegally seized from private parking lots.⁵ However, determining a precise number of predatory tows is very difficult to determine because some car owners do not report the towing of their cars.⁶ The sheer volume of predatory tows demonstrates how necessary local regulation is to protect against the perils of unscrupulous towing practices.

III. OTHER CALIFORNIA CITIES REQUIRE ALL TOW COMPANIES THAT CONDUCT BUSINESS IN THEIR JURISDICTIONS TO OBTAIN A PERMIT

Unregulated towing operators can threaten public safety by leaving people stranded, preying on unsuspecting traffic accident victims and endangering other drivers. These concerns are legitimate and plentiful not only in San Francisco, but

³ Ralph Vartabedian, “Predator on the street: the tow truck,” Los Angeles Times, Aug. 10, 2005; Beth Barrett, “Renegade tow trucks,” LA Daily News, June 26, 2005.

⁴ Ralph Vartabedian, “Predator on the street: the tow truck,” Los Angeles Times, Aug. 10, 2005.

⁵ Richard Winton, “Bandit Tow-Truck Drivers to Face Jail,” Los Angeles Times, (June 23, 2004) (“We’re talking thousands of vehicles annually,” quoting Los Angeles police Capt. Bradley R. Merritt).

⁶ *Id.* (As supported by Newport Beach Police Sgt. Steve Shulman.)

also in Los Angeles and other California cities.⁷ To minimize these dangers, such cities also regulate towing companies that operate and conduct business in their jurisdictions, regardless of where the companies have their offices and storage yards.

Los Angeles regulates all tow companies and drivers, requiring that they obtain a permit and meet specified requirements to help ensure public safety. Thus, its regulatory scheme captures companies that may have their offices and storage yards outside of the city, provided they engage in “the activity of towing vehicles for compensation within the City of Los Angeles.”⁸ (Los Angeles Mun. Code §103.204) *See Amicus* RJN, p. 4. Los Angeles has long recognized the need for stringent regulation of the tow companies and their drivers, given its experiences with unscrupulous operators. As noted above, the city requested the legislation which led to the amendments of Vehicle Code section 21100.

Given the serious public safety concerns associated with certain segments of the towing industry, other cities have recognized the need for regulating towing companies that operate in their jurisdictions. For example, the City of San Jose requires a permit to be obtained by any company engaged in “the business of towing motor vehicles in the city, whether or not the towing extends beyond the city.” (San Jose Mun. Code § 6.66.010.) *See Amicus* RJN, p. 9. Similar to Los

⁷ “Tow Truck Treachery,” ABC News, Nov. 28, 2005. (“‘It’s a public safety issue,’ said Lt. Andre Dawson. ‘We have truck operators that are taking vehicles and leaving people stranded.’”)

⁸ The ordinance contains four narrow exceptions not relevant here.

Angeles, “[i]t is unlawful for any person to conduct any towing operation in the [city of Lancaster] without first obtaining a license authorizing such operation.” (Lancaster Mun. Code § 5.32.030.) *See Amicus RJN*, p. 11. The code defines a towing operation as “the activity of towing vehicles for compensation within the city of Lancaster.” (Lancaster Mun. § 5.32.010.) *See Amicus RJN*, p.10. Additionally, the City of Richmond requires that “[e]ach private tow service operator who does business within the City of Richmond shall . . . obtain a . . . permit.” (Richmond Mun. Code § 7.72.080.) *See Amicus RJN*, p. 18.

The need to regulate tow companies that engage in towing activity in the jurisdiction is especially important to smaller cities. Such cities may not have any companies with offices and storage yards in their jurisdiction but may have many different companies that tow the vehicles of their residents and visitors. Without the ability to regulate such tow companies that operate within their jurisdictions, these cities will have no way to protect their communities from the dangers described above.

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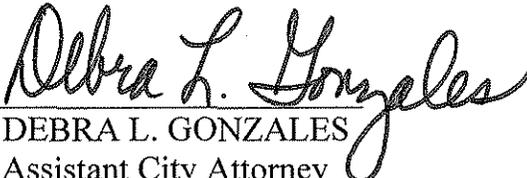
CONCLUSION

California Vehicle Code section 21100(g) expresses clear legislative intent to allow local regulatory control of tow truck services and drivers. Allowing tow companies to avoid regulation by simply locating their offices and storage yards outside of a jurisdiction where they routinely operate and do business would frustrate that intent and endanger public safety. Cities must be allowed to protect their citizens from the dangers created and predatory practices of unscrupulous towing companies.

DATED: March 19, 2013

Respectfully submitted,

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By 
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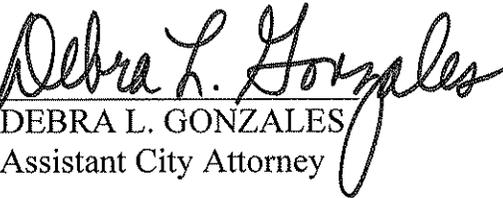
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CERTIFICATE OF COMPLIANCE

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 for Windows Software, this brief contains 2,467 words up to and including the signature lines that follow the brief’s conclusion.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on March 19, 2013.

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By 
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PROOF OF SERVICE

(Page 1 of 2)

I, Patricia Guerra, declare as follows:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 200 N. Main Street, City Hall East Room 800, Los Angeles, CA 90012.

On March 19, 2013, I served the document(s) described as:

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

and

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- [X] **BY UNITED STATES MAIL** – I caused each envelope with postage fully prepaid, to be placed in the United States Mail at Los Angeles, California. I thereafter caused such envelope to be deposited in the mail at Los Angeles, California, with first class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business.
- [X] **VIA ELECTRONIC MAIL** – As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed March 19, 2013 at Los Angeles, California.



Patricia Guerra