Case No. B282822
IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION FIVE

YOUTH FOR ENVIRONMENTAL JUSTICE;
SOUTH CENTRAL YOUTH LEADERSHIP COALITION;
CENTER FOR BIOLOGICAL DIVERSITY,
Cross-Defendants and Appellants,

CITY OF LOS ANGELES; CITY OF LOS ANGELES DEPT. OF CITY PLANNING; MICHAEL J. LOGRANDE, et al.;
Cross-Defendants and Appellants,

vs.

CALIFORNIA INDEPENDENT PETROLEUM ASSOCIATION;
Cross-Complainant, and Respondent.

Appeal from an Order Denying anti-SLAPP Motion (CCP§425.16)
Superior Court of the State of California, County of Los Angeles
Hon. Terry A. Green, Judge, LASC Case No. BC600373

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF APPELLANTS; PROPOSED BRIEF OF LEAGUE OF CALIFORNIA CITIES & CALIFORNIA STATE ASSOCIATION OF COUNTIES

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APPLICATION TO FILE BRIEF OF AMICI CURIAE

TO THE HONORABLE PRESIDING JUSTICE:

Proposed amici curiae League of California Cities and California State Association of Counties make this application to file the accompanying brief in this case pursuant to California Rules of Court, Rule 8.200, subd. (c).[1]

The League of California Cities 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.

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[1] UCLA School of Law students David Kaye and Sunjana Supekar contributed to the research and drafting of this brief. No party or counsel for any party in the pending appeal authored the proposed amicus brief in whole or in part, and no one other than amici, and their counsel of record, made any monetary contribution intended to fund the preparation or submission of the brief.

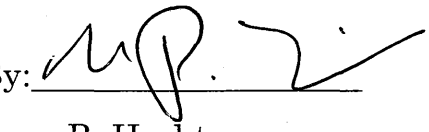
The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation 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 Court's decision in this matter will significantly impact amici's interests, and the interests of cities and counties generally, because the novel legal theories raised by Respondents would wreak havoc on core decision-making functions of local governments by limiting their ability to amend policies and manage litigation risk.

As amici represent hundreds of cities and counties throughout the state, amici are uniquely situated to offer context for the Court and provide insight into the practical ramifications of the trial court's reasoning.

Because amici will be affected by this Court's decision and may assist the Court through their unique perspectives, amici respectfully request the permission of the Honorable Presiding Justice to file this brief.

Dated: September 12, 2018

By: 

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AMICI CURIAE BRIEF

I. Introduction

The issues in this appeal implicate core decision-making powers critical to local governments throughout California. Amici urge this court to reject arguments that would usurp the well-established authority of cities and counties to change their procedures and enter into settlement negotiations without fear of specious litigation threats.

California cities and counties possess broad authority to regulate and govern land use for the general welfare under their police powers. Here, the City of Los Angeles chose to perform a policy-level adjustment to its procedures for processing oil drilling permit approvals. The City also chose to settle a lawsuit filed by Appellants Youth for Environmental Justice, South Central Youth Leadership Coalition, and Center for Biological Diversity (hereinafter, the Nonprofit Groups) concerning these policies, which had been effectively mooted by the City's change in procedure. Such routine decision-making falls squarely within the inherent power of local governments.

Respondent California Independent Petroleum Association (CIPA) alleges that this routine municipal decision-making violates its due process rights. In a written order issued several months after denying the City's and the Nonprofit Groups' anti-SLAPP motions, the Superior Court suggested CIPA may have a

cognizable property interest in the continuation of the previous, uncodified permitting practices. This reasoning, and CIPA's arguments on appeal, represent a significant departure from the traditional understanding of local government authority and would seriously undermine the right that cities and counties have always possessed to employ, and adapt, land use policies and procedures to protect the general welfare of California residents.

In addition, this reasoning is incorrect as a matter of law. The existence of an uncodified administrative permit application-processing practice does not create a due process right in the use of that practice in future permit proceedings where there is no legal entitlement to the substantive benefit of obtaining a permit. ZA Memo No. 133 allows for a hearing if changes or modifications to a permit will be made. Otherwise, existing permits are not implicated at all. And CIPA's members do not have a due process right to any aspect of future discretionary permitting procedures. In determining the likelihood of success on the merits of CIPA's due process claim, the trial court suggested that possible financial costs and delays on future applications for discretionary approvals could constitute cognizable property interests. The trial court's written statement of decision also suggests there is a protected property interest in certain administrative procedures, even where those procedures are, and always have been, developed pursuant to the government's discretionary decision-

making authority. These conclusions are contrary to well-settled law.

CIPA's due process theory would be devastating to the interests of cities and counties across the state for two primary reasons. First, broadening the category of cognizable property interests giving rise to due process causes of action would improperly limit local governments' ability to create and amend their policies. Such a broad view of property interests could severely constrain government agencies from managing their own discretionary approval processes and policies. Second, it would have a chilling effect on local governments' ability to resolve litigation challenging government policies and practices. The court's decision essentially holds that a government's conduct to resolve a lawsuit is not protected activity for purposes of the SLAPP statute when a third party disagrees with the policy or practice. This determination thus exposes parties as targets for retaliatory lawsuits based on their settlement activities and strips them of anti-SLAPP protections.

Amici represent cities and counties in California whose decision-making authority will be jeopardized if the Court of Appeal adopts CIPA's arguments. Because the reasoning expressed in the trial court's written order not only ignores the broad authority of cities and counties to govern land use, but also ignores the chilling implications for their ability to make

decisions in the future, amici urge the Court of Appeal to reverse the trial court's decision and to provide guidance for the lower courts on these important issues.

II. Discussion

A. California Cities and Counties Possess Broad Authority to Regulate and Govern Land Use for the General Welfare Under the State Police Power.

The City's authority to regulate activities affecting land use, including oil drilling, stems from the California Constitution. Pursuant to Article XI, section 7 of the California Constitution, cities and counties derive their broad authority to govern from the state police power, the inherent authority reserved by the states "to protect the order, safety, health, morals, and general welfare of society." (*In re Rameriz* (1924) 193 Cal. 633, 649-50; see also Cal. Const., art. XI, § 7.) The police power of a county or city within its territorial jurisdiction is "as broad as the police power exercisable by the Legislature itself." (*Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885; see also *Miller v. Board of Public Works of City of Los Angeles* (1925) 195 Cal. 477, 484 [describing municipal police power as an "indispensable prerogative of sovereignty and one that is not to be lightly limited"].) The police power is "elastic" and "capable of expansion to meet existing conditions of modern life," rather than a "circumscribed prerogative." (*Miller*, 195 Cal.

at p. 484-5.) And the "general power of governing" reserved in the police power is broad, allowing states and local governments to "perform many of the vital functions of modern government." (See *National Federation of Independent Business v. Sebelius* (2012) 567 U.S. 519, 535-36.) This is particularly true in the land use context, where cities and counties have authority to regulate extensively for the public welfare. (*Cal. Building Industry Ass'n v. City of San Jose* (2015) 61 Cal.4th 435, 455.)

B. The Lower Court's Reasoning Would Drastically Limit City and County Police Powers in Direct Contravention of Well-Established Law.

In its written order explaining its denial of the City's and Nonprofit Groups' anti-SLAPP motions, the trial court ignored the City's broad police powers and instead suggested that CIPA had a "protected property interest" in the City's future discretionary decision-making procedures. (Order at p. 8.) The reasoning contained in the trial court's order inappropriately expands the category of property rights that give rise to a due process claim and ignores well-settled law.

A fundamental application of the police power is the authority of states and localities to implement zoning and other land use controls. (See, e.g., *Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1181; see also *Berman v. Parker* (1954) 348 U.S. 26, 32-33.) The exercise of police power in the land use context is owed substantial deference and is presumed

constitutional, "with every intendment in their favor." (*Cal. Building Ass'n*, 61 Cal.4th at 455 [quoting *Associated Home Builders etc., Inc., v. City of Livermore* (1976) 18 Cal.3d 582, 604-5].) To allege a substantive due process violation in the land use context requires "some form of outrageous or egregious conduct constituting a 'true abuse of power.'" (*Las Lomas Land Company, LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 855-6.) Procedural due process challenges are available only when a claimant has been deprived of a "statutorily conferred benefit or interest." (*Ryan v. California Interscholastic Federation* (2001) 94 Cal.App.4th 1048, 1071; see also *Las Lomas*, 177 Cal.App.4th at p. 852-3 ["Not every denial of a fair hearing for which a remedy may be available under state law implicates constitutional due process."].)

The trial court's reasoning would jeopardize the ability of cities and counties to make their own permitting decisions, a core local government power, because of a putative—and specious—property interest. First, there is no property interest in a future discretionary permitting decision. Here, CIPA alleges a property interest not even in the *outcome* of a future permitting decision, but in the *procedures* by which such a decision might be made. Second, the U.S. Supreme Court decided long ago that procedural due process is not required for agency actions that do not adjudicate facts. Here, the Zoning Administrator's memo simply

modifies an uncodified practice without changing the legal terms on which permits are considered. There is no due process right to the continuation of an uncodified procedure generally applicable to future permitting decisions.

1. CIPA does not have a protected property interest in the outcome of future discretionary decisions, nor does it have a protected property interest in the procedures used to reach those decisions.

California courts recognize procedural due process rights in certain decisions made by local governments, but they have never recognized a due process right to the procedures by which such decisions are made. CIPA seeks to freeze the City's processes under a procedural due process theory that would completely upend the way local governments make decisions.

"A person seeking a benefit provided by the government has a property interest in the benefit for purposes of procedural due process only if the person has 'a legitimate claim of entitlement to it.'" (*Las Lomas*, 177 Cal.App.4th at p. 853 [quoting *Board of Regents v. Roth* (1972) 408 U.S. 564, 577].) An ownership interest in the property that is subject to a local government's discretionary approval is not sufficient to demonstrate such a claim; rather, procedural due process concerns arise only if there is a "legitimate claim of entitlement *to the approval*" of a land use application. (*Ibid.* [emphasis added].) In *Las Lomas*, a developer claimed deprivation of property

without procedural due process when the City of Los Angeles halted preparation of an EIR and declined to approve the developer's proposed project. (*Id.* at p. 844-5.) The Court of Appeal held that a developer could not claim a protected property interest in the outcome of discretionary land use decisions by a city, and thus the decision not to proceed with the project could not be a deprivation of property for the purpose of procedural due process. (*Id.* at p. 854.)

Here, CIPA claims a protected property interest not just in the outcome of future discretionary land use decisions, but in the procedures used to reach those decisions. (See Respondent's Brief at p. 40.) CIPA argues its members are entitled to "continued oil production subject to the existing environmental review procedures" based on the City's "long-standing historical practice" to "conduct abbreviated review of requested modifications to existing drilling permits." (*Id.* at p. 40-41.) But as *Las Lomas* establishes, CIPA does not have a legitimate claim of entitlement to the approval of any application that the City has always had the discretion to deny. And if CIPA does not have a due process right in a speculative approval, CIPA certainly does not have a due process right in a specific administratively-determined procedure when seeking a speculative approval.

Procedural due process provides an opportunity to be heard prior to a decision if that decision implicates a protected property

interest. But procedural due process has never required the decision-making body to utilize a given set of procedures when exercising its discretion to make that decision. Inherent in the City's discretion to approve or deny oil drilling permit applications is the discretion to decide *how* to exercise that power, including creating (and modifying) procedures to evaluate such applications. Recognizing a protected property interest in the City's procedures would allow CIPA to freeze the City's policies in direct contravention of the City's broad discretion to exercise its police powers to protect the public welfare. This would effectively prevent local governments from modifying their procedures, significantly impeding the ability of cities and counties throughout the state to exercise both the substantive and procedural discretion that is a hallmark of local governments' authority over land use and other areas falling under the traditional police powers.

2. Even if there were a protected property interest at issue, the issuance of ZA Memo No. 133 was not an adjudicative decision implicating procedural due process.

Procedural due process is required only for formal government actions that are adjudicative in nature: those actions that affect individual rights and are "determined by facts peculiar to the individual case." (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612-13.) Here, conversely, there is no cognizable

argument that the City's issuance of ZA Memo No. 133 was "determined by facts peculiar to the individual case." The memo merely articulates guidelines for the Zoning Administrator to apply in processing discretionary applications for oil drilling in the city. It does not adjudicate facts for any particular land use application. Rather, it sets forth generally applicable procedures guiding how the City's Zoning Administrator evaluates discretionary applications for oil drilling. It does not change any property rights, but instead merely modifies the City's procedures to ensure compliance with CEQA. ZA Memo No. 133 is best characterized as a simple administrative policy change, updating, through informal administrative guidance, procedures the City will use in exercising its discretionary authority. It is not an adjudicative act under any theory.

Furthermore, even when governments take universally applicable actions through formal actions, these actions are quasi-legislative in nature and do not implicate procedural due process requirements. In the landmark U.S. Supreme Court *Bi-Metallic* decision, the Colorado state tax agency increased the valuation of all taxable property in Denver by 40 percent. (*Bi-Metallic Inv. Co v. State Bd. of Equalization* (1915) 239 U.S. 441, 443.) A property owner sued, alleging property deprivation without due process pursuant to the 14th Amendment to the U.S. Constitution. (*Id.* at p. 444.) Upholding the assessment as a

generally applicable legislative action not requiring procedural due process, Justice Holmes stated:

> Where a rule of conduct applies to more than a few people, it is impracticable that everyone should have a direct voice in its adoption. The Constitution does not require all public acts to be done in town meeting or an assembly of the whole. General statutes within the state power are passed that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule. (*Id.* at p. 445.)

By increasing the valuation of all taxable property, rather than the valuation of just a few property owners, the tax assessor's decision affected a wide number of property owners in Denver. The court reasoned that it would be impractical for each affected property owner to have a "direct voice" in the municipal decision-making process. The state tax assessor's decision to increase valuation was legislative in nature, because it affected all owners of taxable property, and not just a few owners. Thus, the court concluded that the power to increase valuation without due process was squarely within the authority of the state.

This principle was reaffirmed by the California Supreme Court in *San Diego Building Contractors Association v. City Council* (1974) 13 Cal.3d 205, 210-14 ["California courts have

uniformly adhered to the constitutional teaching of the *Bi-Metallic* decision, repeatedly reaffirming that '[t]here is no constitutional requirement for any hearing in a quasi-legislative proceeding.'"].) In that case, voters in San Diego enacted a zoning ordinance through voter initiative. (*Id.* at p. 207.) Plaintiffs challenged the ordinance on procedural due process grounds, pointing to the lack of notice and comment. (*Ibid.*) The court ruled that the ordinance was a legislative act, and therefore not subject to procedural due process requirements. (*Id.* at p. 211 ["From the inception of this nation's legal system, statutes of general application have regularly been enacted without affording each potentially affected individual notice and hearing."].)

ZA Memo No. 133 is a far easier case than those because of the lack of formal action by the City's legislative bodies. CIPA appears to argue, and the trial court suggested, that the issuance of ZA Memo No. 133 was transformed into an adjudicative act requiring procedural due process because alleged increased costs for future permit modifications affected property rights of existing permit holders. (See, e.g., Respondent's Brief at p. 43-45, Order at p. 8-9.) But this is flatly contrary to *Bi-Metallic* and *San Diego*, both of which specifically considered—and rejected—similar arguments that generally applicable legislative acts—and, *a fortiori*, generally applicable informal administrative

guidance—should require procedural due process for alleged impacts to real property value. (*San Diego*, 13 Cal.2d at p. 213-4 ["[A]lthough zoning measures frequently do significantly affect real property values, this attribute does not distinguish such measures from a host of other legislative enactments which may have an equally important impact on those values. . . . Indeed, the authoritative decisions of the United States Supreme Court [including *Bi-Metallic*] clearly demonstrate that the constitutional principle permitting the enactment of legislation without notice and hearing is as applicable to legislation affecting the value of real property as to any other legislation."].)

CIPA's citation to *Horn v. County of Ventura* for the contrary position is inapposite. (See, e.g., Respondent's Brief at p. 45.) *Horn* concerned subdivision approvals, which the California Supreme Court noted involve "the application of general standards to specific parcels of real property." (*Horn*, 24 Cal.3d at p. 614.) Because these decisions "affect[] the relatively few" and are "determined by facts peculiar to the individual case," the court determined subdivision approvals are adjudicatory, rather than legislative. (*Ibid.*)

A structural feature of legislative and policy-level government decision-making is that those decisions may burden some entities and interest groups more than others. Here, the City made a decision to change its procedure for approving oil

well permits within the discretion afforded the City under the municipal code. These changes affect how the City processes all new oil drilling applications and were not made with respect to any one applicant in particular. The City did not issue these changes with respect to the facts and circumstances around one or a few particular applicants, and these changes did not affect the particular adjudication of individual applications, which still will be entitled to individualized consideration.

Whether in the context of legislative decision-making or issuing policy guidance, the long-standing rule from *Bi-Metallic* and *San Diego* allows agencies to make decisions based on questions of policy and fact without requiring that every single individual for whom the decision is relevant has an independent seat at the table. This is especially true in the case of informal policy guidance such as ZA Memo No. 133, which did not even implicate individual property rights.

C. Recognition of the Due Process Right Claimed By CIPA Would Wreak Havoc With Local Government Decision-making in the Land-Use Context.

Conferring a property interest on each stakeholder affected by local government changes in administrative practice, such as modifications to permitting procedures, would dramatically alter local governments' capacity to exercise municipal authority across a range of land use-related functions. If this Court adopts CIPA's position, the basic authority of local governments across

the state will be placed in jeopardy; municipal functions could be significantly impaired as a result of municipalities' potential legal liability for exercising those functions.

By recognizing a potential due process property interest in the local governments' decision-making process, judicial adoption of CIPA's novel theory would make local governments vulnerable to due process lawsuits from each of the innumerable private interests governed by land use law whenever a city or county changes a procedure or practice. This would jeopardize a vital function of every local government – to regulate local land-use decisions based on its judgment of the best policy, through a set of procedures aimed at implementing that policy in light of local and state legislative mandates. Here, the Los Angeles Department of City Planning is responsible for "preparing, maintaining, and implementing a General Plan for the development of the City of Los Angeles."[2] The General Plan serves as a "constitution for development" and is the "foundation for all land use decisions" for the city.[3] The memorandum issued by the Department of City Planning to alter permitting

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[2] City of Los Angeles, Department of City Planning, *About*, <http://planning.lacity.org> [as of Sept. 10, 2018].

[3] City of Los Angeles, Department of City Planning, *General Plan*, <http://planning.lacity.org> [as of Sept. 10, 2018].

procedures is but one decision within a broad array of community plans, ordinances, and other procedures designed to fulfill the City's vision of land use. By lending credibility to due process challenges to amendment of such procedures, the trial court's decision has the potential to undermine the City's entire land use governance structure. The Department of Planning governs zoning and land use decisions for residential areas, community centers, downtown areas, commercial areas, industrial areas, transit stations, and historic districts.[4] Under CIPA's theory, a wide array of policies governing discretionary municipal decisions could confer protectable property interests on parties who lack any legal entitlement to approval of their activities under applicable laws.

California specifically provides local governments broad discretion in permitting. Government Code § 65800, the statute that allows cities and counties to create zoning law, states in part, "[T]he legislature declares that in enacting this chapter it is its intention to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters." (Gov. Code § 65800.) This

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[4] See, e.g., City of Los Angeles, Department of City Planning, *General Plan Framework Element: Chapter 3: Land Use*, <https://planning.lacity.org/cwd/framwk/chapters/03/03.htm> [as of Sept. 10, 2018].

exemplifies the State's general delegation of broad municipal authority over land use decisions, including permitting. CIPA's theory would be flatly inconsistent with this authority. Conferring a protected property interest in a procedure for future permit processing would have significant negative impacts on local governments; it would impede their ability to perform basic functions well within their municipal authority. The ruling could have an extremely intrusive effect on the ability of cities and counties to make changes to discretionary procedures based on policy determinations, and even on their ability to revise procedures based on a judgment that prior practice may have been unlawful or legally questionable, as these revisions would be open to due process challenges.

In the case of ZA Memo No. 133, a property owner has the right to procedural due process only after it submits an oil drilling permit application to the City for discretionary approval. Before an application has been submitted, any right to procedural due process is merely hypothetical. Allowing parties to override local government authority at such an early stage would interfere dramatically with municipal discretion over land use decisions. The Court of Appeal should decline CIPA's invitation to substantially alter the scope of municipal authority in California.

D. CIPA's Novel Theory Would Jeopardize Local Governments' Settlement Authority, Contrary to Established Law and Sound Public Policy

This case arose in the context of a settlement,[5] making CIPA's case even weaker. The power to enter into settlements to address legal risk—including in situations where a settlement contemplates or relates to a change in policy or procedure—is a core feature of local government authority. To the extent CIPA's arguments attack the power of local governments to manage legal risk and enter into settlements, it threatens essential functions that are key to cities' and counties' ability to govern. Upholding the lower court's ruling could also have chilling implications for cities and counties deciding whether to settle cases in the future. Parties would be motivated to assert due process challenges in the context of a wide range of matters where a third party's lawsuit might in some way affect future procedures relevant to their interests. Cities and counties must be able to protect their and their constituents' interests, fiscally and otherwise, through

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[5] As noted by the City, CIPA's cross-complaint attacked the City's "litigation decisions and strategy, including the City's decision to engage in settlement discussions with the Nonprofits." (City's Opening Brief at p. 38-9.) CIPA now claims their alleged injury does not arise from "the settlement agreement *per se*" but admits they are alleging injury from a policy issued "pursuant to [the City's] *decision to settle* legal claims." (Respondents' Brief at p. 28 [emphasis added].)

policy changes or settlement negotiations. Conferring a protectable property interest in the outcome of a case such as this one, or in the right of an intervenor to obtain a judgment, may significantly impede local governments' ability make these types of decisions.

In California, it is "well-established public policy . . . that settlements of litigation are favored and should be encouraged." (*Villa v. Cole* (1992) 4 Cal.App.4th 1327, 1338 [refusing to overturn a summary judgment against a defendant alleging malicious prosecution during a settlement between the plaintiff and the city in part because it would discourage future settlements].) Further, the authority of local governments to settle cases is deeply entrenched in law and public policy. (Gov. Code § 949 ["The governing body of a local public entity may compromise, or may delegate the authority to its attorney or an employee to compromise, any pending action."]; see also *Whitson v. City of Long Beach* (1962) 200 Cal.App.2d 486, 505 ["[G]enerally speaking, a municipality has the power to settle and compromise claims in its favor or against it where there is a bona fide reasonable doubt or dispute as to the validity thereof or the amount due with respect thereto."].)

In this case, CIPA alleged in its cross-complaint, and the trial court suggested, that the settlement agreement between the City of Los Angeles and the Nonprofit Groups was invalid

because CIPA had a property interest in procedures allegedly affected by the settlement. (Order at p. 4-5, 7-9; City's Opening Brief at p. 38-40, 42-45.) This reasoning, if upheld, would make local governments wary of settling cases, for fear of direct and collateral attacks on settlements by entities or interest groups not included in the settlement. It could also motivate a slew of requests for intervention in lawsuits by stakeholders attempting to insert themselves into settlement discussions and stymie potential resolutions. Local governments may be forced to engage in needless litigation instead of coming up with mutually beneficial solutions between the government and opposing parties, draining valuable resources and stripping cities and counties of their right to settle cases.

While a local government may not unlawfully "contract away the municipality's police power" or "improperly circumvent[] the public's interest," the City has not done so here. (11 Michael A. Zizka et al., State and Local Government Land Use Liability (2017) § 11:2; see also *108 Holdings, Ltd. v. City of Rohnert Park* (2006) 136 Cal.App.4th 186, 194.) In *108 Holdings,* intervenor property owners challenged a municipal settlement agreement between a city and a plaintiff environmental interest group on the theory that the agreement improperly bargained away the city's police power. (*108 Holdings*, 136 Cal.App.4th at p. 194.) The City of Rohnert Park had adopted a new General Plan,

which the plaintiffs challenged, alleging that adoption of the plan violated CEQA. (*Id.* at p. 190.) The city and the plaintiffs entered into a settlement agreement, which "affect[ed] the City's interpretation and implementation of its General Plan." (*Id.* at p. 191.) Because the settlement agreement restricted the city's General Plan, intervenor property owners challenged the settlement, arguing that it improperly surrendered municipal authority. (*Id.* at p. 194.) The court noted that a contract that surrenders or abnegates municipal control over the police power is impermissibly contrary to public policy, and therefore such a contract would be invalid. (*Ibid.*) The court found, however, that the settlement agreement did not surrender or abnegate municipal control. (*Id.* at p. 196.) Although the settlement implicated changes to the General Plan, the city retained authority to make changes to the General Plan at a later date if it so chose. (*Ibid.*) Thus, the court found that the settlement agreement was not invalid. (*Ibid.*)

The court's opinion in *108 Holdings* is instructive here. There, the court found that the city could lawfully make policy changes to settle a dispute with an advocacy group even though the settlement had implications for changes to land use regulations that affected third-party intervenors. Absent a settlement that effects a surrender of municipal police power for future decision-making, local governments retain wide authority

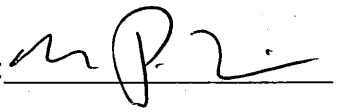
to settle cases. In this case, on the other hand, adoption of CIPA's argument—and not the settlement—has the potential to "surrender" or "abnegate" municipal control over decision-making by requiring the City to give up authority over core municipal functions. Moreover, as explained by the City in its Opening Brief, under any interpretation of the settlement, neither the settlement nor ZA Memo No. 133 affects any cognizable property right of CIPA or its members—whether a right to a specific administrative process or a right to a judgment on the merits of the underlying lawsuit. (City's Opening Brief at p. 43-51, 37-40.) The Court of Appeal should resist CIPA's invitation to strip settlement authority from cities and counties by empowering third parties to challenge good-faith settlements.

III. Conclusion

The reasoning expressed by the trial court in denying Appellants' anti-SLAPP motions undermines the broad and well-established authority of California cities and counties to regulate and govern land use for the general welfare under their police powers. If the Court of Appeal does not strongly reject CIPA's alleged property interest in future discretionary decision-making procedures, cities and counties will face substantial burdens the law has never before required. Opening the door to due process claims for the most minor of municipal policy adjustments, including simple procedure changes and lawsuit settlements, will

have a chilling effect on the ability of local governments to perform routine tasks well within their authority. For all the foregoing reasons, amici urge the Court of Appeal to reverse the trial court's decision and provide guidance to the lower courts on these important issues.

Dated: September 12, 2018

By: 

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CERTIFICATE OF COMPLIANCE

(California Rules of Court 8.204(c)(1))

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) of the California Rules of Court, the enclosed brief of a*mici curiae* League of California Cities and California State Association of Counties is produced using 13-point Roman type including footnotes and contains approximately 6,355 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the Microsoft Word computer program used to prepare this brief.

Dated: September 12, 2018

By: _____

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League of California Cities
California State Association
of Counties

PROOF OF SERVICE

YOUTH FOR ENVIRONMENTAL JUSTICE;
SOUTH CENTRAL YOUTH LEADERSHIP COALITION;
CENTER FOR BIOLOGICAL DIVERSITY,
Cross-Defendants and Appellants,

CITY OF LOS ANGELES; CITY OF LOS ANGELES DEPT. OF CITY PLANNING; MICHAEL J. LOGRANDE, et al.;
Cross-Defendants and Appellants,

vs.

CALIFORNIA INDEPENDENT PETROLEUM ASSOCIATION;
Cross-Complainant, and Respondent.

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and am not a party to the within action; my business address is 405 Hilgard Avenue, Los Angeles, California 90095. On September 12, 2018, I served true copies of the following document(s) described as:

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF APPELLANTS; PROPOSED BRIEF OF LEAGUE OF CALIFORNIA CITIES & CALIFORNIA ASSOCIATION OF COUNTIES

on the parties in this action as follows:

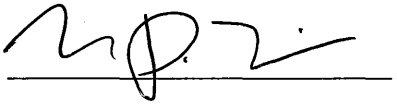
SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Mailing Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with UCLA School of Law's practice for collecting and processing correspondence for mailing. On the next business day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY ELECTRONIC SERVICE: I caused a copy of the document described above to be sent via TrueFiling's electronic service system to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on September 12, 2018, at Los Angeles, California.



Meredith J. Hankins

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U.S. MAIL SERVICE LIST

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