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SEAN B. HECHT
CO-EXECUTIVE DIRECTOR, EMMETT CENTER ON CLIMATE CHANGE AND THE ENVIRONMENT
EVAN FRANKEL PROFESSOR OF POLICY AND PRACTICE
CO-DIRECTOR, FRANK G. WELLS ENVIRONMENTAL LAW CLINIC

SCHOOL OF LAW
BOX 951476
LOS ANGELES, CALIFORNIA 90095-1476
Phone: (310) 794-5272
email: hecht@law.ucla.edu

March 7, 2019

Justices of the Court of Appeal
Second District Court of Appeal for the State of California, Division Five
Ronald Reagan State Building
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

RE: Request for Publication of Unpublished Opinion: Case No. B282822
Youth for Environmental Justice et al. v. California Independent Petroleum Association (Decision filed February 15, 2019)

Dear Honorable Justices:

The League of California Cities respectfully requests that the unpublished opinion in this case be published. 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 identified this case as having such significance, and believes the Court's opinion ("Opinion") is worthy of publication because it meets several of the standards set forth in California Rule of Court 8.1105, subd. (c).

As the League represents hundreds of cities throughout the state, it is uniquely situated to provide municipal governments' views on this opinion's value to courts, litigants, government agencies, and other parties throughout the state. The issues in this appeal implicate core decision-making powers critical to cities throughout California. The Opinion reaffirms, in a new context, principles that underpin the well-established authority of cities to

engage in settlement negotiations, and to adopt and amend administrative procedures relating to land use, without fear of specious litigation threats.

Respondent California Independent Petroleum Association (CIPA) alleged that the settlement between the City of Los Angeles and environmental justice plaintiffs, and the application of routine municipal decisionmaking represented by the policy underlying and motivating that settlement, violated its members' due process rights. The Opinion readily satisfies several of the standards in California Rule of Court 8.1105, subd. (c) that govern when a Court of Appeal opinion should be certified for publication. Specifically, the Opinion applies an existing rule of law to a set of facts significantly different from those stated in published opinions, involves a legal issue of continuing public interest, and reaffirms a principle of law not applied in a recently reported decision. (See Rules of Court, Rule 8.1105, subds. (c)(2), (c)6, (c)(8).)

First, the Opinion holds that the lawsuit, as an attack on the settlement agreement, is aimed at activity protected by the anti-SLAPP statute. While this holding of the Opinion applies settled legal principles, it does so in a novel context relating to a matter of substantial public concern, meeting the standards set out in Rule of Court 8.1105, subds. (c)(2) ("[a]pplies an existing rule of law to a set of facts significantly different from those stated in published opinions"), (c)(6) ("[i]nvolves a legal issue of continuing public interest"), and (c)(8) ("[i]nvokes a previously overlooked rule of law, or reaffirms a principle of law not applied in a recently reported decision").

Here, CIPA intervened in the underlying lawsuit and claimed for itself a special "due process right under the California Constitution to have a decision on the merits in the aforementioned litigation" that, it asserted, needed to be vindicated by an injunction preventing enforcement of settlement terms. (Opinion, at p. 21.) We are aware of no other decision raising this novel type of assertion. Publication of this opinion will provide guidance on the application of the anti-SLAPP statute, by demonstrating that a party's status as an intervenor in litigation does not change the application of the anti-SLAPP law to "any written or oral statement or writing made before a . . . judicial proceeding" and "any written or oral statement or writing made in connection with an issue under consideration or review by a . . . judicial body. . . ." (Code Civ. Pro. § 425.16, subds. (e)(1), (e)(2).)

Notably, by focusing its inquiry on the precise framing of CIPA's concerns in its cross-complaint, the Opinion also reaffirms the important principle that

courts must evaluate the complaint itself, and not post hoc recharacterizations of a party's argument, to determine whether a complaint is aimed at protected activity. By explaining the application of the anti-SLAPP statute to the cross-complaint challenging the settlement in this case, the Opinion's discussion thus both "[a]pplies an existing rule of law to a set of facts significantly different from those stated in published opinions" and "reaffirms a principle of law not applied in a recently reported decision." (California Rule of Court 8.1105, subds. (c)(2), (c)(8).)

The Opinion's discussion of protected activity under the anti-SLAPP statute also "involves a legal issue of continuing public interest." (Rule of Court 8.1105(c)(6).) The action that CIPA engaged in here—challenging a settlement in order to escape what it saw as an adverse policy outcome—is one that cities encounter frequently and expect to encounter in the future. The public has an interest in ensuring that parties are deterred from filing facially unmeritorious litigation against public agencies that waste municipal and judicial resources.

Second, the Opinion affirmed, in a novel context, older holdings by California courts articulating the broad scope of California cities' police power, as well as the scope of that authority more specifically in the context of regulation of oil drilling. This aspect of the Opinion, too, meets the standards of Rule of Court 8.1105, subds. (c)(2) ("[a]pplies an existing rule of law to a set of facts significantly different from those stated in published opinions"), (c)(6) ("[i]nvolves a legal issue of continuing public interest"), and (c)(8) ("… reaffirms a principle of law not applied in a recently reported decision"). While the Court's analysis applies established law, the discussion in the Opinion compellingly reaffirms the application of the principle in the context of oil drilling, an issue of significant and ongoing public concern and municipal action, meeting these standards for publication.

Finally, the Opinion contains an insightful and important application of principles articulated in *Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155 and *Allen v. City of Beverly Hills* (9th Cir. 1990) 911 F.2d 367, establishing the conditions under which municipal regulation does or does not confer a property interest, protected by due process, on a permittee or other party. As the Court noted, "[t]he imposition of additional burdens does not itself create protected property rights where none otherwise exist." The Opinion provides an incisive analysis of how that principle applies in the context of a change in municipal policy for processing permits. This analysis,

too, meets the standards of Rule of Court 8.1105, subds. (c)(2), (c)(6), and (c)(8), since it applies the principles from established caselaw to a new set of facts, reaffirms those principles from cases more than 15 years old, and addresses a matter of significant and continuing interest to cities, which often face lawsuits making due process claims relating to city decisionmaking and will benefit from the clarity of the Opinion's reasoning.

We are confident that this analysis will be useful to cities, courts, and permittees in a variety of contexts as they assess their approaches to permitting and seek to understand the circumstances in which city action will or will not give rise to a property right protected by due process. The trial court's reasoning, and CIPA's arguments on appeal, represented a significant departure from the traditional understanding of city authority and would have seriously undermined the right cities have always had to employ, and adapt, land use policies and procedures to protect the general welfare of California residents. Moreover, the Opinion confirms, in the specific context of oil drilling and more generally, that 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.

We appreciate the Court's consideration of this request.

Sincerely,

Sean B. Hecht
Meredith J. Hankins
Frank G. Wells Environmental Law Clinic
UCLA School of Law
Attorneys for League of California Cities

PROOF OF SERVICE

Youth for Environmental Justice, et al. v. City of Los Angeles, et al.
Case No. B282822

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. March 7, 2019, I served true copies of the following document(s) described as:

Request for Publication of Unpublished Opinion

on the parties in this action as follows:

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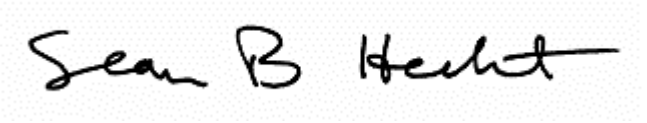
BY ELECTRONIC SERVICE: I caused a copy of the document described above to be sent via TrueFiling's electronic service system to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission 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 March 7, 2019, at Los Angeles, California.



Sean B. Hecht

TRUEFILING SERVICE LIST

Adam B. Wolf
PEIFFER ROSCA WOLF ABDULLAH CARR & KANE
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
awolf@prwlegal.com

Shana D. G. Lazerow
COMMUNITIES FOR A BETTER ENVIRONMENT
120 Broadway, Suite 2
Richmond, CA 94804
slazerow@cbecal.org

Counsel for Respondent Youth for Environmental Justice

Deepak Gupta
Daniel Townsend
GUPTA WESSLER PLLC
1900 L Street, NW, Suite 312
Washington, DC 20036
T: (202) 888-1741; F: (202) 888-7792
daniel@guptawessler.com

Counsel for South Central Youth Leadership Coalition

Maya Golden-Krasner
CENTER FOR BIOLOGICAL DIVERSITY
660 S. Figueroa Street, Suite 1000
Los Angeles, CA 90017-3464
mgoldenkrasner@biologicaldiversity.org

Kassia R. Siegel
CENTER FOR BIOLOGICAL DIVERSITY
1212 Broadway, Suite 800
Oakland, CA 94612
ksiegel@biologicaldiversity.org

Counsel for Respondent Center for Biological Diversity

Jennifer Kathleen Tobkin
Amy Brothers
Patrick Hagan
CITY OF LOS ANGELES, OFFICE OF THE CITY ATTORNEY
701 City Hall East
200 North Main Street, Room 701
Los Angeles, CA 90012
jennifer.tobkin@lacity.org
amy.brothers@lacity.org
patrick.hagan@lacity.org

Counsel for Respondent City of Los Angeles

Jeffrey Dintzer
Matthew Wickersham
ALSTON & BIRD
333 S Hope Street, 16th Floor
Los Angeles, CA 90071
matt.wickersham@alston.com
jeffrey.dintzer@alston.com

Counsel for Appellant California Independent Petroleum Association