No. C102574

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

PEOPLE *ex rel.* YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT,

*Plaintiff, Cross-Defendant, and Appellant,*

v.

SPENCER DEFTY, individually and d/b/a DEFTY FARMS; DIAMOND D GENERAL ENGINEERING, INC.; *et al.*

*Defendants, Cross-Complainants, and Respondents.*

On Appeal from the Superior Court of Yolo County
(Case No. CV20241095, Honorable Timothy Fall, Judge)

# BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND CALIFORNIA FARM BUREAU FEDERATION IN SUPPORT OF RESPONDENTS


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**Pro Hac Vice pending*

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**Certificate of Interested Entities or Persons**

Pursuant to California Rule of Court 8.208, Amicus Curiae Pacific Legal Foundation hereby states that it is a 501(c)(3) nonprofit organization and Amicus Curiae California Farm Bureau Federation is a 501(c)(5) nonprofit organization. Neither has any corporate parents, subsidiaries, or affiliates. There are no entities or parties that have an ownership interest of 10 percent or more in Pacific Legal Foundation or in California Farm Bureau Federation. There are no other entities or persons that must be listed in the Certificate of Interested Entities or Persons.

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## Preliminary Statement

This case raises a simple question: Can a government entity use a state anti-SLAPP statute intended to further protect First Amendment rights to prevent an individual from bringing a good-faith challenge against official government action? Because the First Amendment prevents the government from abridging an individual's right to speak freely and to petition it in the courts, the answer must be no.

In this case, the Yolo-Solano Air Quality Management District (the "District") is a government agency claiming First Amendment protection to do what the First Amendment forbids—shutting down legitimate claims against government action. Although state anti-SLAPP laws were enacted to offer more protection for individuals exercising their First Amendment rights by protecting them against retaliatory and meritless lawsuits, the District now attempts to use these statutory protections to dismiss a lawsuit before it even begins. This inversion of a state anti-SLAPP statute to reduce an individual's First Amendment rights is unconstitutional.

The District invokes California's anti-SLAPP law to prevent judicial review of its actions after enforcing its unofficially promulgated rules against Spencer Defty ("Mr. Defty"). Mr. Defty owns Diamond D General Engineering, Inc., a business that provides agricultural operations services on a contract basis to farmers and ranchers. Resp't Br. of Spencer Defty at 13. Mr. Defty and his wife are also agricultural producers who own and operate their own farm and ranch, Defty Farms, and routinely contract with third parties to obtain agricultural services. *Id.*

Around March of 2024, the District issued Notices of Violations against Mr. Defty and his businesses (collectively the "Respondents") for alleged violations of air quality laws. *Id.* at 18–19. During a settlement meeting scheduled to resolve these issues, the District informed Mr. Defty of an unofficial policy, known as "Policy 24," which effectively revoked unambiguous statutory exemptions to air quality laws for agricultural services. *Id.* at 20. Although the District did not publish or otherwise comply with rulemaking procedures to enact Policy 24, it clarified that the agricultural exemptions that Mr. Defty relied on apply only when the agricultural services are done "on the farm, by the farmer." *Id.* at 15, 17. As a result, Mr. Defty stated that he intended to seek judicial review of the District's action, and the District responded by filing an enforcement action against him. *Id.* at 21. Once Mr. Defty filed a counterclaim for declaratory relief, the District responded with a motion to strike his claims under California's anti-SLAPP statute to prevent him from challenging the District's *de facto* rule. *Id.* at 23–25.

The court below correctly denied the District's motion to strike, recognizing Respondents' challenge "is not a challenge to the issuance of the notices [of violation.] It's a challenge to the law upon which the notices are based." Mot. Hearing Tr. 26:4–5, Oct. 11, 2024. The court stated the issue of whether something—be it a policy, rule, regulation, or statue—is valid law "is something that would be subject to litigation, not competing declarations on an anti-SLAPP motion." *Id*. at 26:7–13.

Amici write in support of Respondents because the government's use of an anti-SLAPP law to insulate itself from

judicial review presents a grave threat to Americans' rights to free speech and to petition the government for redress of grievances. The District attempts to violate the fundamental rights and liberties guaranteed by the First Amendment by invoking anti-SLAPP protections to prevent a legitimate challenge to its enforcement proceedings. For these reasons, this Court should affirm the decision of the Superior Court of Yolo County.

**Interest of Amici Curiae**

Pacific Legal Foundation (PLF) was founded in 1973 as a 501(c)(3) nonprofit organization that provides pro bono assistance to defend Americans' liberties when they are threatened by government overreach and abuse. PLF is widely recognized as the largest and most experienced nonprofit legal foundation of its kind. Additionally, PLF has long litigated matters affecting the public interest at all levels of state and federal courts. PLF seeks to ensure that all speakers enjoy the full protection of the First Amendment to the United States Constitution. To that end, PLF has participated in high-profile First Amendment cases as counsel of record, *Minn. Voters All. v. Mansky*, 585 U.S. 1 (2018); *Keller v. State Bar of Cal.*, 496 U.S. 1 (1990), and as amicus, *Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011); *Reed v. Town of Gilbert*, 576 U.S. 155 (2015); *Matal v. Tam*, 582 U.S. 218 (2017); *Iancu v. Brunetti*, 588 U.S. 388 (2019). PLF believes its expertise in First Amendment litigation will aid this Court in the consideration of the constitutional issues presented in this case.

The California Farm Bureau Federation ("Farm Bureau") is a nongovernmental, nonprofit, voluntary membership California corporation whose purpose is to protect

and promote agricultural interests throughout the State of California and to find solutions to the problems of the farm, the farm home, and the rural community. The Farm Bureau is California's largest farm organization, comprised of 54 county Farm Bureaus currently representing approximately 23,000 members in 56 counties. The Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources, and of utmost importance is the balanced treatment of producers in regulatory matters.

Amici curiae also state that no party, nor party's counsel, participated in preparation of or contributed funds for the brief, and that no person or entity aside from Amici Curiae contributed funds for the brief.

**Argument**

The First Amendment to the United States Constitution provides "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people" to "petition the Government for a redress of grievances." U.S. Const. amend. I. The United States Supreme Court began incorporating this prohibition against the States over 100 years ago. *See Gitlow v. New York*, 268 U.S. 652, 666 (1925) ("[F]reedom of speech and of the press . . . are among the fundamental rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the States."). These "rights and liberties" were fully incorporated in 1940 when the Supreme Court recognized "[t]he Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact" laws that violate "liberties

guaranteed by the First Amendment." *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

To bolster protection of these rights, many states have enacted anti-SLAPP laws prohibiting Strategic Lawsuits Against Public Participation ("SLAPPs"). SLAPPs are meritless lawsuits brought to "stop citizens from exercising their political rights or to punish them for having done so." George W. Pring, *SLAPPs: Strategic Lawsuits Against Public Participation*, 7 PACE ENV'T L. REV. 3, 5–6 (1989). "Short of a gun to the head, a greater threat to First Amendment expression can scarcely be imagined." *Gordon v. Marrone*, 590 N.Y.S.2d 649, 656 (Sup. Ct. 1992).

Although anti-SLAPP laws exist to strengthen First Amendment protections, this case highlights how the misapplication of these laws can threaten First Amendment rights. The District's attempt to invoke the anti-SLAPP statute raises two constitutional concerns. First, a government entity's use of anti-SLAPP protections to preclude judicial review of regulatory enforcement actions fundamentally undermines the right of individuals to speak freely and petition the government. Second, when used by the government, application of the anti-SLAPP statute's fee provision unconstitutionally chills speech.

By attempting to leverage the anti-SLAPP statute and the possibility of attorney's fees against Respondents, the District unconstitutionally chills Respondents' First Amendment rights. This Court should affirm the Superior Court of Yolo County's ruling to prevent government entities from invoking anti-SLAPP protections when doing so would stifle meaningful challenges to government action.

## I. Using Anti-SLAPP Laws to Avoid Judicial Review of Government Enforcement Actions Violates the First Amendment

The District's attempt to use the anti-SLAPP statute to strike a lawsuit against it based on its regulatory activity unconstitutionally insulates government action in violation of the First Amendment rights to free speech and to petition the government. Where an individual files a countersuit against the government which can reasonably be characterized as a good-faith effort to petition the government for a redress of grievances, it is necessarily protected by the First Amendment and ought to be *per se* immune from an anti-SLAPP motion to strike.

That is not to say government agencies are categorically prohibited from invoking the anti-SLAPP statute. California's anti-SLAPP law "extends to statements and writings of governmental entities and public officials on matters of public interest and concern that would fall within the scope of the statute if such statements were made by a private individual or entity." *Vargas v. City of Salinas*, 46 Cal. 4th 1, 17 (2009). Specifically, the law applies to a governmental body "when a public entity's act is one taken in furtherance of the right of free expression[.]" *City of Montebello v. Vasquez*, 1 Cal. 5th 409, 425 n.13 (2016). Thus, when the public entity is neither speaking nor petitioning, the anti-SLAPP statute does not apply. *Shahbazian v. City of Rancho Palos Verdes*, 17 Cal. App. 5th 823, 826 (2017). Further, the anti-SLAPP motion to strike may only be used when "the speech or petitioning activity itself is the wrong complained of, and not just evidence of liability or a step leading to some different act for which

liability is asserted." *Park v. Bd. of Trs. of Cal. State Univ.*, 2 Cal. 5th 1057, 1060 (2017). Failing to distinguish between challenged governmental decisions and the speech that leads to them or thereafter expresses them "would chill the resort to legitimate judicial oversight over potential abuses of legislative and administrative power." *Id.* at 1067 (internal quotations and citation marks omitted).

Additionally, California recognizes a distinction between "action taken by a government body and the expressive conduct of individual representatives." *Vasquez*, 1 Cal. 5th at 425. This is because "holding acts of governance to be protected activity under [the state anti-SLAPP] 'would significantly burden the petition rights'" of those seeking review of government actions. *Id.* at 425–26 (citing *San Ramon Valley Fire Prot. Dist. v. Contra Costa Cnty. Employees' Retirement Ass'n*, 125 Cal. App. 4th 343, 357 (2004)). The court expressed concern only about "burdening actions challenging government decisions, not the acts of individual officials." *Id.* at 426. In other words, acts of governance are not protected speech, whereas opinions of individual legislators are.

Here, the District attempts to apply the anti-SLAPP law beyond these limits. Official government action is not covered by the ruling in *Vargas* because it "is not expressive activity of the kind that might be engaged in by private individuals or entities." *Id.* at 425 n.13. A regulatory enforcement action by a municipality is the exercise of sovereign power; it is not the assertion of a private viewpoint or akin to an individual's petition to the government. A lawsuit challenging such action—or the official policies the alleged violation of which precipitated that action—is not a SLAPP but rather a

traditional means of checking state power through the judiciary. *See Shahbazian*, 17 Cal. App. 5th at 826 ("We conclude section 425.16 does not protect a governmental entity's decision to issue or deny permits, and we agree with the trial court that granting a special motion to strike in these circumstances would chill citizens' attempts to challenge government action.").

The District's reliance on *Takhar v. People ex rel Feather River Air Quality Management District* is misplaced for two reasons. 27 Cal. App. 5th 15 (2018). First, Mr. Takhar's claims directly challenged the government's supposedly protected enforcement activity, *id.* at 21–22, whereas Mr. Defty simply challenges the District's legal interpretation. Mr. Defty does cite to the District's investigatory and enforcement activities, but only to explain how the challenged legal position was developed and to show how he has standing to raise the dispute. Resp't Br. of Spencer Defty at 21–25. Second, in *Takhar*, the plaintiff did not argue the government's action chilled his constitutional rights. *Id.* at 23. The government was the sole party raising a constitutional challenge. *Id.*

Applying the anti-SLAPP law to strike a challenge to official action violates the First Amendment by chilling protected challenges and insulating the government from accountability. *See Park*, 2 Cal. 5th at 1067 (warning that conflating government actions and speech would unconstitutionally chill speech). Permitting the government to invoke the anti-SLAPP statute to strike such a claim invites governmental actors to suppress allegations of constitutional violations under the guise of procedural efficiency. It creates an asymmetry where the government may act against

individuals, but individuals cannot meaningfully respond in court without facing dismissal. This is precisely the type of abuse the First Amendment prohibits. California's anti-SLAPP statute cannot be interpreted to override the fundamental right to challenge state action in court.

The rights to free speech and to petition the government are two sides of the same coin. All petitioning, including petitioning via legal challenge, is a form of speech, but not all speech is a form of petitioning. Therefore, whenever a governmental action violates citizens' right to petition, it necessarily violates their free speech rights. *Cf. Wayte v. United States*, 470 U.S. 598, 610 n.11 (1985) ("[A]lthough the right to petition and the right to free speech are separate guarantees, they are related and generally subject to the same constitutional analysis."). If Respondents' counterclaim against the District can reasonably be interpretated as a petition for a redress of grievances, California's anti-SLAPP must yield because the First and Fourteenth Amendments "protect[ ] the citizen against the state itself and all of its creatures," including local Air Quality Management Districts. *See West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 634, 637 (1943). Municipal organizations may have "important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights." *Id.*

Additionally, should a court find a particular claim is based on protected speech, the court is to analyze the "merit of the claim" by determining whether the nonmovant "establish[ed] a probability of success." *Shahbazian*, 17 Cal. App. 5th at 830. This "minimal merit" analysis is insufficient to truly determine whether a claim has merit. A litigant must

prove a "likelihood of prevailing on the merits" while facing the "threat of attorneys fees" and "without the benefit of discovery." *Bonni v. St. Joseph Health Sys.*, 13 Cal. App. 5th 851, 864 (2017), *rev'd in part*, 11 Cal. 5th 995 (2021).

Determining whether a claim has minimal merit is similar to summary judgment. *Sweetwater Union High School Dist. v. Gilbane Bldg. Co.*, 6 Cal. 5th 931, 940 (2019). The court is limited to determining "whether the [nonmovant] has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment." *Id.* The court does not "weigh evidence or resolve conflicting factual claims[,]" instead, it "accepts the [nonmovant's] evidence as true, and evaluates the [movant's] showing only to determine if it defeats the [nonmovant's] claim as a matter of law." *Id.* During this process, the nonmovant "may not rely solely on its complaint . . . its proof must be made upon competent admissible evidence." *Id.* (citation omitted). The court does not analyse the evidence beyond the analysis required to determine whether the nonmovants claim is prohibited as a matter of law. *Id.*

This standard can prove problematic because discovery is stayed once a party files a special motion to strike. *See* Cal. Civ. Proc. Code § 425.16(g). While the nonmovant may request specified discovery upon a noticed motion with good cause, *see id.*, the nonmovant bears the burden of explaining to the court what additional facts the requested discovery would purportedly uncover and why such information is necessary to oppose the anti-SLAPP motion. *See Six4Three, LLC v. Facebook, Inc.*, 109 Cal. App. 5th 635, 659 (2025) (striking a discovery request under the anti-SLAPP statute where counsel

provided "conclusory comments" that the requested evidence would "'fill' unspecified evidentiary gaps"). Because the litigant bringing the claim bears the burden of proving both minimal merit and the necessity for any discovery in the case, there is substantial uncertainty regarding whether a *prima facie* case can be made on an anti-SLAPP motion. If the government is able to file anti-SLAPP motions in cases like this one, the uncertainty of prevailing on the motion may deter individuals from asserting their constitutional right to bring good-faith claims against the government.

Because the First Amendment guarantees the right to access the courts for redress of grievances by petitioning the government, application of the anti-SLAPP law here violates Respondents' rights. "The Petition Clause protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes." *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 387 (2011). "Objectively baseless litigation" seeking to interfere with the legal rights of another are not protected forms of petitioning, *see id.* at 390, but reasonable challenges to exercises of governmental authority are not baseless. *USA Waste of Cal., Inc. v. City of Irwindale*, 184 Cal. App. 4th 53, 65 (2010). "Actions to enforce, interpret or invalidate governmental laws are generally not subject to being stricken under the anti-SLAPP statute. If they were, efforts to challenge governmental action would be burdened significantly." *Id.* Thus, "[t]o extend the anti-SLAPP statute to litigation merely challenging the application, interpretation, or validity of a statute or ordinance would expand the reach of the statute way beyond any reasonable parameters." *Id.* at 66.

Here, the District's anti-SLAPP motion is being used as a SLAPP because it aims to prevent Respondents "from exercising their political rights," Pring, *supra*, at 5–6, to petition the court to address "the law upon which the [District's enforcement action is] based." Mot. Hearing Tr. 26:4–5. By failing to distinguish between an official government decision and speech leading to that decision, the District's position "chill[s] the resort to legitimate judicial oversight[.]" *Park*, 2 Cal. 5th at 1067.

Governments may not use anti-SLAPP statutes to strike a private party's lawsuit challenging the legality of governmental enforcement actions because enforcement actions arise from the exercise of sovereign power, not from protected petitioning activity. *See Pleasant Grove City v. Summum*, 555 U.S. 460, 468 (2009). Additionally, although government entities may in certain circumstances invoke the anti-SLAPP statute, its application must be prohibited where the result would chill legitimate challenges to governmental authority and improperly immunize state action from judicial scrutiny. The District's abuse of anti-SLAPP laws in this case unconstitutionally chills the Respondents' First Amendment rights to speak freely and to petition the government—the very evil anti-SLAPP laws were created to prevent.

## II. When Used by the Government, Application of the Anti-SLAPP Statute's Fee Provision Unconstitutionally Chills Speech

Courts evaluate anti-SLAPP motions through a two-step process. *See Park*, 2 Cal. 5th at 1061. First, the movant must show that the legal challenge arises from the exercise of its constitutional right to speak or to petition on public issues

under either the federal Constitution or the California Constitution. Cal. Civ. Proc. Code § 425.16(b). Second, if the movant carries this initial burden, the nonmovant must show that its legal claims have "minimal merit." *Park*, 2 Cal. 5th at 1061. After this two-step analysis, a prevailing movant is entitled to attorney's fees and costs under the anti-SLAPP statute. *See* Cal. Civ. Proc. Code § 425.16(c). A prevailing nonmovant is not entitled to attorney's fees for defending against a motion to strike unless the plaintiff establishes that the anti-SLAPP motion was frivolous or was brought solely to cause a delay. *Id.*

The anti-SLAPP statute normally protects free speech rights as applied to individuals, but when the government attempts to invoke state anti-SLAPP protections, the fee provision unduly burdens the First Amendment rights of those it aims to protect. Although the second step of the anti-SLAPP analysis considers the merits of the nonmovant's claim, the possibility of paying attorney's fees under the statute may deter private individuals from bringing lawsuits against the government in the first place.

Further, a private plaintiff suing the government typically will not be entitled to recover attorney fees even if it prevails against the government's motion to strike. *See id.* § 425.16(c) (nonmovants may only recover fees when the movant's motion is frivolous or brought solely to cause delay, but prevailing movants are automatically entitled to attorney's fees). Litigants must spend additional resources defending against the government's motion and must pay for the government's attorney's fees if it loses on the motion. Because of the additional costs associated with defending an anti-

SLAPP motion, the government's filing of such motions against private litigants with good-faith arguments will have a chilling effect and infringe on the people's right to petition the government under the First Amendment. Thus, at a minimum, the fee provision of California's anti-SLAPP statute should not be applied where the government is the movant.

Here, Respondents filed a counterclaim to address the District's enforcement against him of an unpublished policy. Respondents are exercising their First Amendment right to petition the government in court to challenge a government agency's actions. Unlike the District, Respondents have limited resources to exercise their rights, which is why anti-SLAPP statutes typically protect individuals rather than government entities. Yet the District attempts to misuse California's anti-SLAPP law to silence Respondents' legitimate claim against the District. While Respondents can defend their claim on the merits under the anti-SLAPP statute, the District's use of the anti-SLAPP law is unconstitutional because it chills activity protected by the First Amendment.

Importantly, the First Amendment protects "the right of *the people*" to "petition *the Government* for a redress of grievances." U.S. Const. amend. I (emphasis added). It does not confer an analogous right to the government to petition against the people. *See McCutcheon v. FEC*, 572 U.S. 185, 206 (2014) ("the First Amendment does not protect the government"); *see also Columbia Broad. Sys., Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94, 139 (1973) (Stewart, J., concurring) ("The First Amendment protects the press *from* governmental interference; it confers no analogous protection *on* the Government.") (emphasis in original).

Because the First Amendment sets a floor for the protection of individual rights, California's Constitution cannot be interpreted to expand the rights of government entities when doing so diminishes the rights of the people. California's Constitution protects the right of every "person" to "freely speak, write and publish his or her sentiments on all subjects." Cal. Const. art I. § 2. The courts have interpreted this provision to also protect government entities and public officials for the purpose of California's anti-SLAPP statute. *See Santa Clara Waste Water Co. v. Cnty. of Ventura Env't Health Div.*, 17 Cal. App. 5th 1082, 1088 (2017). That does not mean the government is immune from lawsuits, however. *See Shahbazian*, 17 Cal. App. 5th at 826 (clarifying that governments can only seek protection when they are engaging in speech or petitioning activity). Allowing the government to use the anti-SLAPP statute in cases like this one would extend the statute beyond constitutional limits because it would have a chilling effect on legitimate challenges against government action.

Respondents unquestionably have a First Amendment right to petition a government agency to challenge its rulemaking procedures. *See, e.g.*, *Summum*, 555 U.S. at 467. The First Amendment imposes mandatory obligations on the state that cannot be constrained either by state constitution or statute. *Id*. at 468–69; *Cantwell*, 310 U.S. at 303. This Court should reject the District's invitation to expand state anti-SLAPP laws when doing so will undermine an individual's rights to free speech and to petition the government.

Other state courts similarly recognize that government entities are not entitled to First Amendment protections and

thus hold that they cannot use anti-SLAPP laws against private individuals. *See, e.g.*, *Clark Cnty. v. 6635 W Oquendo LLC*, 544 P.3d 900, 902 (Nev. 2024) (reasoning that the statute's purpose is to protect "'participation by *citizens* in government' and 'giv[e] the people the right to petition the government for redress of grievances [consistent with] the First Amendment . . . [so] affording the *government* anti-SLAPP protection would appear to be contrary to the Legislature's purpose in enacting the anti-SLAPP statutes"') (internal citations omitted); *Moriarty v. Mayor of Holyoke*, 883 N.E.2d 311, 316 (Mass. App. 2008) (rejecting the government's right to invoke an anti-SLAPP statute because the statute protects the constitutional right of "*citizens* to seek redress *from the government* for grievances") (emphasis in original); *Crosby v. Town of Indian River Shores*, 358 So. 3d 444, 447 (Fla. App. 2023) (holding that governments cannot invoke anti-SLAPP statutes because the First Amendment protects citizens' speech, not government speech).

The California Supreme Court has not directly decided whether the Constitution permits governments to seek protection under its anti-SLAPP laws; it has merely held that the government is entitled to the remedy provided by the statute. *See Vargas*, 46 Cal. 4th at 17. In *Vargas*, the California Supreme Court clarified that "[w]hether or not the First Amendment of the federal Constitution or article I, section 2 of the California Constitution *directly* protects government speech in general or the types of communications of a municipality that are challenged here" are "significant constitutional questions that we need not and do not decide." *Id.* (emphasis in original). Rather than go through the

constitutional analysis, the Court narrowly held that the statutory remedy extends to governmental entities to the same extent as private individuals. *Id.* at 18.

The Sixth District of the Court of Appeal has since held that *Vargas* forecloses categorical exclusion of government actors from the anti-SLAPP's protection. *See Laker v. Bd. of Trs. of Cal. State Univ.*, 32 Cal. App. 5th 745, 767 n.16 (2019).[1] Additionally, several California appellate courts "have held that government entities do have First Amendment rights, including the right to petition" in applying the anti-SLAPP statute. *See San Diego Cnty. Water Auth. v. Metro. Water Dist. of S. Cal.*, 12 Cal. App. 5th 1124, 1161 (2017) (citing cases). These protections only apply to acts "taken in furtherance of the right of free expression[.]" *Vasquez*, 1 Cal. 5th at 425 n.13. The government does not engage in protected activity when a lawsuit arises from its actions as opposed to "the speech or votes of public officials." *San Ramon Valley Fire Prot. Dist.*, 125 Cal. App. 4th at 347. This Court should reject the District's attempt to invoke anti-SLAPP protections when doing so would chill the First Amendment rights of members of the public.

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[1] In 2005, the California Legislature confirmed that the anti-SLAPP statute allows public entities to make a special motion to strike in Cal. Civ. Proc. Code § 425.18(i), a section dealing with "SLAPPback" actions. *See Blue v. Off. of Inspector Gen.*, 23 Cal App. 5th 138, 154 (2018). However, the statute must still be interpreted in light of the First Amendment's guarantees. Here, the Court should hold that the statute's attorney fee provision does not apply to the government, because of its unconstitutional chilling effect, and otherwise prohibit the government from invoking anti-SLAPP protections where doing so undermines the First Amendment rights of the public.

Although there are circumstances under which government entities may invoke California's anti-SLAPP law, its application must be prohibited where the result would chill legitimate challenges to governmental authority and improperly immunize state action from judicial scrutiny. Moreover, the anti-SLAPP statute's fee provision cannot apply to the government because of its unconstitutional chilling effect on private speech. For these reasons, this Court should affirm the Superior Court of Yolo County's ruling and prevent a local government entity from abusing anti-SLAPP laws in ways that impugn the First Amendment rights of individuals.

## Conclusion

Amici Curiae Pacific Legal Foundation and California Farm Bureau Federation respectfully submit that this Court should affirm the October 11, 2024, order of the Superior Court of Yolo County together with such other and further relief as the Court deems reasonable, proper, and just.

DATED: December 19, 2025.

Respectfully submitted,

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**Certificate of Compliance**

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the foregoing BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND CALIFORNIA FARM BUREAU FEDERATION IN SUPPORT OF RESPONDENTS is proportionally spaced, has a typeface of 13 points or more, and contains 4,649 words.

DATED: December 19, 2025.

/s/ Damien M. Schiff
Damien M. Schiff

**Declaration of Service**

I, Katherine Turnbill, declare as follows:

I am a resident of the State of Indiana, employed in Sacramento, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 555 Capitol Mall, Suite 1290, Sacramento, California 95814.

On December 19, 2025, I caused a true copy of the Brief Amicus Curiae of Pacific Legal Foundation and California Farm Bureau Federation in Support of Respondents, to be electronically delivered via Truefiling upon the following:

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 19th day of December, 2025, at Indianapolis, Indiana.