Case No:

IN THE SUPREME COURT OF CALIFORNIA

DAVID BYRNE et al.,

Plaintiffs and Appellants

v.

LESLIE RULE et al,

Defendant and Respondent

Second Appellate District, Division 6, Case No. B332962

On Appeal from the Superior Court for the State of California

County of Ventura, Case No. 2023CUMC8352, Hon. Ben Coats

PETITION FOR REVIEW

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PETITION FOR REVIEW

Petitioner Leslie Rule petitions this Court for review following the decision of the Court of Appeal, Second Appellate District, filed in that court on 23 July, 2025. A copy of the decision of the Court of Appeal is attached hereto as Annex "A". While not initially to be published, the court agreed to publish that decision following a request from the Plaintiffs on 5 August 2025.

ISSUES PRESENTED FOR REVIEW

The Court is respectfully requested to grant this Petition for Review so as to decide and settle three important issues of California '*anti-SLAPP*' law under California Code of Civil Procedure § 425.17:

> **Issue (1): In assessing whether an action is brought *"solely in the public interest or on behalf of the general public"* for the purposes of § 425.17(b), whether the court is entitled to take into account matters not appearing in a plaintiff's pleading (for example, a plaintiff's political motivation for bringing the action).**
>
> **Issue (2): Whether "*private enforcement is necessary*" for the purposes of § 425.17(b)(3) in circumstances where a public entity (in this case, the District Attorney) has already investigated and made findings on the issue in dispute, and the Defendants have already made undertakings in response.**
>
> **Issue (3): Whether reference to Cal Gov. Code § 54960 and 54960.1 under § 425.16(c)(2), disapplying the normal rule on attorney's fees, is in fact a reference to the entirely of Chapter 9 of the Government Code such that any action brought pursuant to any section of the Brown Act avoids the anti-Slapp attorney's fees rules.**

In addition, Issue (1) gives rise to serious conflict with at least five other Court of Appeals judgments on the same issue. The Plaintiffs themselves assert that Issues (1) and (3) raise issues of first impression.

WHY REVIEW SHOULD BE GRANTED

Petitioner Rule disclosed serious improprieties by the former Mayor of Ojai. Those improprieties were the subject of substantial news reports, and directly concerned Ms Sabrina Venskus, counsel for the Plaintiffs in this action.

The Plaintiffs (represented by Ms Venskus) then brought this action against Petitioner rule, seeking declarations that the Petitioner violated the Brown Act, and injunctions in relation to the same. This was in the context of very heated City Council sessions, in which supporters of the mayor continued to level those very accusations against the Petitioner at session after session, whilst those concerned by the improprieties contended on the Petitioner's behalf that her actions had been in furtherance of the Brown Act.

The Petitioner's position is that this is an archetypal case of an action brought not in the public interest, but to silence political speech. It is the very type of case the anti-SLAPP provisions at §425.16 and §425.17 were meant to constrain.

The trial court agreed. By opinion dated 3 October 2023 it granted the Defendants' motion to strike, also awarding attorney's fees which were subsequently assessed.

The Court of Appeal disagreed by opinion filed on 23 July 2025. In fact, it held that, in considering the test for the public interest exemption under §425.17(b):

1) The court cannot consider a plaintiff's motivations in bringing the action: "*The relief appellants seek—not their motivation to seek that relief—is the extent of the court's inquiry here.*"

2) In fact the court cannot consider <u>any</u> matter outside a plaintiff's pleadings: "*Our Supreme Court has made clear that determining whether the exception applies is a "threshold," <u>pleading-based determination</u>—not a contested evidentiary proceeding*" [emphasis added].

That approach, as set out in full below, is inconsistent with at least 5 previous judgments of the Courts of Appeal.

Indeed, in applying for the Court of Appeal's judgment to be published (which was granted), the Plaintiffs suggested it was the first judgment to address the relevance of a Plaintiff's motivations to the test under §425.17(b) (although for the reasons below, it is not). It is, however, the first and only judgment to reach the conclusions that it did, albeit that those conclusions are not consistent with previous decisions, and there are elements which are novel.

The Plaintiffs likewise stated in applying for publication that the Court of Appeal's decision on attorney's fees, that the ordinary attorney's fees provisions following a successful motion under §425.16 should not apply in this case, was "*the first opinion to address the issue of whether attorneys' fees are available as a sanction under the Anti-SLAPP statute against litigants seeking to enforce the Brown Act*."

This matter plainly satisfies the three key tests for consideration by the Supreme Court:

1) First, these are important questions of law which will permanently shape the scope of the Anti-Slapp provisions.

2) Second, there are now judgments with conflicting and irreconcilable approaches at the Court of Appeal level. If not resolved by the Supreme Court both plaintiffs and defendants will suffer considerable uncertainty and unnecessary legal risk.

3) Third, various aspects of the Court of Appeal's opinion, in relation both to Issue (1) and Issue (3) are issues of first impression.

Those issues will now need to be resolved. This is a straightforward and clear case which unambiguously invokes the relevant legislation. It is respectfully submitted that the Supreme Court should seize this opportunity to answer the questions posed.

STATEMENT OF THE CASE

(i) Background to the action

In the Fall of 2022, the Ojai City Council enacted an ordinance ("**the Ordinance**") approving a real estate Development Agreement with a local developer by a vote of 4-1, with only the former Mayor, Betsy Stix, voting NO.

There remained an organised and dedicated group in Ojai opposed to the Ordinance. In early December 2022, Sabrina Venskus, a local Ojai attorney (and counsel for the Plaintiffs in this action), led a successful effort to gather signatures to place a ballot initiative ("**the Initiative**") on the City's election calendar. The express purpose of the Initiative was to overturn the City's Ordinance adopting the Development Agreement.

Days later, Sabrina Venskus also filed a lawsuit on behalf of a local nonprofit called "Simply Ojai" against the City. The lawsuit sought to invalidate the Ordinance and Development Agreement – on the alleged basis that the Ordinance and Development Agreement violated CEQA (the Cal. Environmental Quality Act) ("**the CEQA Litigation**").

In early December 2023 Petitioner Rule won election to the City Council for District 1 of the City of Ojai. She had not campaigned in reference to the Ordinance and indeed knew little about it prior to taking her seat.

The week of December 5, 2022, former Mayor Stix, exercising her unilateral prerogative to add items to the City Council's agenda, added a closed session item to discuss the now already-pending CEQA Litigation. She set the first closed session for December 13, 2023, the first day of the newly elected Council.

Thus, the first of three closed sessions, on an important topic, was set to convene on the very first day Rule and two other new Councilmembers took office – without Rule's knowledge.

During the open City Council session on December 13, 2022, which always precedes a closed session, there were calls for former mayor Stix recuse herself from all City matters concerning the CEQA Litigation and plaintiff Simply Ojai.

It was pointed out that the former Mayor's election campaign manager was also the manager and sole employee of Simply Ojai; her assistant election campaign treasurer was Simply Ojai's treasurer; the Simply Ojai treasurer had contributed money to the Mayor's re-election campaign; and that former Mayor Stix's position on the Development Agreement matched with the position of Simply Ojai – the plaintiff in the CEQA Litigation – which was adverse to the City's now-established law, i.e., the Ordinance. Former Mayor Stix declined to recuse herself.

The Council then went into closed session. Immediately, former Mayor Stix recommended that the City hire a new law firm called Shute, Mihaly and Weinberg that she had contacted personally to "*look at the Development Agreement with a new set of eyes*" – not to defend or advise the City on the CEQA litigation. Hiring new counsel to "*look at the Development Agreement*" was not covered by the closed session Statement.

The Council, including Plaintiff Rule, then (tacitly) agreed to accept Mayor Stix's suggestion to hire her recommended new law firm.

Consequently, at the end of the third closed session on January 10, 2023, Rule pointedly asked Mayor Stix, "*Where did you get the recommendation for this law firm?*" Former Mayor Stix responded, "*Sabrina."* That is, Sabrina Venskus – the lawyer for the plaintiff, Simply Ojai, in the CEQA Litigation – against the defendant City. As above, Ms Venskus is also counsel for the Plaintiffs in this litigation.

Accordingly, on January 24, 2023, in open session of the Council, Plaintiff Rule made a public statement reporting non-confidential information about the closed sessions. Rule then handed out a written statement that included Mayor Stix's statement that she had co-operated with Venskus, lawyer to the plaintiff suing the City, to hire a law firm to give advice to the City she was suing. That statement noted that the former Mayor had furthermore taken advantage of a closed session to hide that fact. Rule, through her lawyer, also submitted one letter to the City Attorney at the beginning of that Council meeting and one follow-up letter about the meeting a few days later.

Due to public outcry over the improprieties of their Council, the District Attorney for Ventura County became involved in the controversy. After interviewing City witnesses and reviewing the documentary evidence, the District Attorney cited the City for violations of the Brown Act in all three closed sessions by way of letter dated 15 May 2023.

The matter was widely reported in the local news. Former Mayor Stix did not run for re-election, and the candidate who ran in her stead was defeated.

On April 28, 2023, seven residents of the Ojai Valley – led by attorney Sabrina Venskus (Mayor Stix's "friend") – filed this suit against Rule (and her attorney Jon Drucker, who had served her *pro bono* from January through April 2023) for Declaratory Relief, alleging that Rule had violated the Brown Act when she disclosed – in a public Council Meeting and letters relating thereto – information from the three closed sessions of December 2022 and January 2023.

(ii) <u>The Anti-Slapp Motion and the Opinion of the Honorable Ben Coats</u>

Petitioner Rule made a special motion to strike pursuant to Code Civ. Proc. § 425.16. That came before the Honorable Ben Coats who, on 3 October 2023, grated the motion to strike.

He noted that "*Defendants claim that this is a 'political effort to silence a political opponent.*'" Citing *Sandlin v. McLaughlin* (2020) 50 Cal.App.5th 805, 823 fn 5, he held that "*Personal political agendas and motivations may make the public interest exemption inapplicable.*"

He found that the Plaintiffs did not meet their burden under concluded that, "*Given the nature of the case, the special interests of the parties, and the lack of supporting declarations submitted by plaintiffs, they have not met their burden of establishing that the narrowly construed exemption of § 425.17(b) applies and this case was brought 'solely in the public interest.'"*

He went on to find that the Plaintiffs could not demonstrate a probability of prevailing on the claim. He concluded that Petitioner Rule had not breached any duty of confidentiality, nor the Brown Act, stating "*This Court makes the specific finding that the information disclosed by Ms. Rule and Mr. Drucker did not concern existing litigation as identified on the closed session agendas and this*

information was outside the limited scope of the closed session exceptions for meetings with legal counsel regarding pending litigation."

That conclusion, although challenged by the Plaintiffs, was not altered on appeal.

(iii) The Appeal and the Opinion of the Court of Appeal

The Plaintiff appealed to the Court of Appeal, on all aspects of the Hon. Judge Coates' ruling.

They did not dispute that as a matter of law, "*Personal political agendas and motivations may make the public interest exemption inapplicable,"* but contended that they had no such agenda or motivation.

The Court of Appeal, by judgment filed 23 July 2025 and modified on 19 August 2025, held that the public interest exemption under Code Civ. Proc. § 425.17(b) applied. The court made no findings as to the Plaintiffs motivations, instead concluding that they were not relevant as a matter of law.

The Court of Appeal did not ask itself the distinct question as to whether or not the complaint had been brought "*solely in the public interest*" and instead analysed only the ensuing three factors at Code Civ. Proc. § 425.17(b)(1)-(3).

Crucially, as part of its consideration of § 425.17(b)(1), it held that "*The relief appellants seek—not their motivation to seek that relief—is the extent of the court's inquiry here.*" At no point elsewhere in the judgment did the court make that enquiry.

In other words, the Court of Appeal held that the findings as to political motivation - which had underpinned the judgment of the Hon. Coats - were as a matter of law not matters which could have bearing on the analysis of the public interest exemption.

The Court of Appeal also concluded that, although the District Attorney issued a cease and desist letter in respect of the very matters under dispute, with which the Petitioner agreed, because he did not *"commence an action" (*i.e. bring legal proceedings*)* private enforcement was therefore

necessary under § 425.17(b)(3). In other words, it concluded that nothing less than formal legal proceedings by a public authority could render private enforcement unnecessary

It also concluded that despite the wording of § 425.16(c)(2) and the normal rule regarding attorney's fees following a successful anti-Slapp motion, not only this action but any action brought under the entirety of Chapter 9 of the California Code is exempt from the fee protections normally provided to successful applicants.

The Court of Appeal did not go on to consider the merits of the claim, even provisionally, under § 425.16. On 19 August 2025 the third sentence under the heading 'DISPOSITION' was modified to read *"We express no opinion on the merits of the first amended complaint or the respondents' defenses thereto."*

The Petitioner now respectfully asks permission to appeal to this court.

ARGUMENT

A. Summary of Argument

(i) Issue (1)

The public interest exemption under §425.17 is deliberately narrow in scope. It applies only to actions "*brought solely in the public interest or on behalf of the general public if all of the following conditions exist…".* By contrast the California Legislature has commanded, and this Court has repeatedly reaffirmed, that the anti-SLAPP statute under §425.16 must be "*construed broadly*" to further its goal of encouraging "continued participation in matters of public significance." (Code Civ. Proc. § 425.16, subd. (a).)

The Petitioner in this case argued, and succeeded in the trial court, that an action which is brought to further a personal political agenda of the Plaintiffs may not be "*solely*" in the public interest. As set out above, counsel for those Plaintiffs was the very subject matter of the speech acts which the Plaintiffs seek to injunct. The trial court found that the Plaintiffs had motivations which rendered the action not solely in the public interest.

The Court of Appeals, however, took a different approach entirely. It did not conclude that the Plaintiffs lacked that motivation, or that any motivation was not sufficiently operative to fall foul of the requirements under § 425.17(b), but that political motivation — of any extent or any degree — was simply irrelevant to the question as to whether an action was brought solely in the public interest:

> "*The relief appellants seek—not their motivation to seek that relief—is the extent of the court's inquiry here.*"

In fact, the Court of Appeals went further and held that the court could not even consider matters outside the strict pleading of the complaint: "*Our Supreme Court has made clear that determining whether the exception applies is a "threshold," pleading-based determination—not a contested evidentiary proceeding*" [emphasis added].

That approach is an error of law:

1) It is inconsistent with the language of motivation within § 425.16, which refers to "*lawsuits brought primarily to chill the valid exercise of the constitutional rights*";

2) It is inconsistent with the restrictive language of §425.17(b), and the word "*solely*";

3) It turns the test under §425.17(b) into a pleading formality;

4) The Court of Appeal misapplied the test under §425.17(b), conflating the additional requirements at §425.17(b)(1)-(3) with the prior question as to whether or not a claim is "*solely in the public interest*";

5) The above results in obvious absurdities, such a plaintiff who has admitted bringing an action solely to settle a score being found to have brought it solely in the public interest, because he or she shrewdly chose not to plead that admission.

Further, it is inconsistent with the following five previous Courts of Appeal opinions:

i) *Sandlin v. McLaughlin* (2020) 50 Cal.App.5th 805

ii) *Holbrook v. City of Santa Monica (2006)* 144 Cal.App.4th 1242, 51 Cal.Rptr.3d 181

iii) *Cruz v. City of Culver City* (2016) 2 Cal.App.5th 239.

iv) *Ingels v. Westwood One Broadcasting Services, nc. (2005)* 129 Cal.App.4th 1050

v) *Lindsay v. Patenaude & Felix APC* (2024), 107 Cal.App.5th 335

(ii) Issue (2)

The Court of Appeal imposed a binary approach to assessing whether "*private enforcement was necessary*" for the purposes of § 425.17(b)(2). If a public entity had already taken enforcement action then private enforcement would not be necessary, but if a public entity had not, then private enforcement would be.

If that was the test, the statute would have said so. "*Necessity*" must be a broader concept, taking into account all the circumstances of the case. Here, where the District Attorney had written a cease and desist letter that the Petitioner agreed to comply with (and did comply with), the Plaintiffs have not even alleged any subsequent breach after January 2023, and did not bring the suit for 4 months after those alleged breaches, private enforcement by way of injunctive and declaratory relief was clearly unnecessary.

(iii) Issue (3)

The Court of Appeal held that a reference to sections 54960 and 54960.1 of the California Government Code in §425.16(c)(2) was, because §§ 54960 and 54960.1 in turn referred to enforcement under Chapter 9, a reference to the entirety of the Brown Act. In other words, the Court of Appeal held, for the first time, that any suit brought pursuant to any provision of the Brown Act escaped the normal rule that attorney's fees were recoverable following a successful anti-Slapp motion.

That is wrong as a simple matter of statutory construction. If § 425.16(c)(2) was meant to apply to an entire chapter of the California Government Code, it would have said so (as it does in relation to Chapter 2).

Further, §§ 54960 and 54960.1 have particular requirements as to standing and do not permit claims against individuals (as opposed to members of legislative bodies collectively). That is clear by reading the following provisions.

They also contain, by virtue of § 54960.2, extremely restrictive enforcement hurdles in relation to past actions (i.e. declaratory relief).

Even if none of the above were true, an action could not have been brought against John Drucker by virtue of § 54960 because he was not a member of a legislative body, and so it is obvious that § 54960 is not interchangeable with § 54963, or any other Section of Chapter 9.

The effect of this finding would be to remove deliberate costs protections against frivolous claims arising from an entire Chapter of the Government Code. It is inconsistent with both the wording and the intention of the statute.

B. ISSUE (1) – CORRECT LEGAL APPROACH

(i) The language of § 425.16 is language of motivation

The Anti-Slapp provisions are concerned first and foremost with actions "*brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances*." (Code Civ. Proc. § 425.16, subd. (a).)

That section deliberately uses the language of motivation, identifying transgressing lawsuits by their purpose, by the reason they were brought. It is impossible to understand the section if one excludes the motivations behind the lawsuits in question. A court cannot determine whether a lawsuit has been "*brought primarily to chill the valid exercise of the constitutional rights of freedom of speech"* if it cannot enquire as to the reasons for bringing it. It is a contradiction in terms.

It must always be open to the court to consider motivation when assessing the anti-SLAPP provisions. A court cannot assess whether or not the provisions under §425.16 have been abused pursuant to § 425.17, if it cannot assess whether the action falls within the purposes of § 425.16 in the first place.

The Court of Appeal's ruling that "*The relief appellants seek—not their motivation to seek that relief—is the extent of the court's inquiry here"* must be wrong. A court may well decide that the specific motivations of a plaintiff in any given case do not cause the test under §425.17(b) to fail, but it cannot be barred from considering those motivations at all.

Of course, in this case a proper consideration of those motivations lead to the conclusions of the trial court.

(ii) The word "*solely*" in §425.17(b) means "*solely*"

As a simple matter of logic, an action is not brought "*solely"* in the public interest if it is brought to further a particular, specific agenda of a plaintiff not shared by the general public.

An obvious reason why a plaintiff (whether a private individual or a corporation) might bring a suit which "*chill[s] the valid exercise of the constitutional rights of freedom of speech*" (Code Civ. Proc. § 425.16), is to silence or intimidate a political opponent. That fact is almost inherent to the SLAPP acronym, a "*strategic lawsuit against public participation*".

It must be open to the court to consider whether that is the case, in order to properly assess whether or not the action is indeed "*solely*" in the public interest.

(iii) The test under §425.17(b) becomes a pleading formality

On the Court of Appeal's approach, that the enquiry is solely a "*'threshold', pleading-based Determination*" the courts' analysis becomes an exercise in formality.

The Court of Appeal made that conclusion based on the following dicta from *Club Members for an Honest Election v. Sierra Club* (2008) 45 Cal.4th 309, 316 "*If a complaint satisfies the provisions of the applicable exception, it may not be attacked under the anti-SLAPP statute*", with the court emphasising the word '*complain*t'. With respect, that puts far too much emphasis on a single word, appearing in a section of the opinion dedicated to setting out the history and general effect of the statute.

The court likewise seems to have taken the term "*threshold*" from *People ex rel. Strathmann v. Acacia Research Corp*. (2012) 210 Cal.App.4th 487, 499, where it was said *"[T]he public interest exception is a threshold issue based on the nature of the allegations and scope of relief sought in the prayer*." But "*threshold*" is plainly used to make clear that the consideration of § 425.17(b) comes before a full consideration of the merits, not that the exercise is confined to how the plaintiff has phrased their pleadings. Indeed, the term "*nature of the allegations*" makes clear that the question is *not* simply asked in relation to the words in the pleadings, but a wholistic analysis.

It is difficult, for example, to see how on the court of appeal's approach any claim which (1) sought injunctive relief, (2) for an alleged breach any provision to do with public administration where (3) the District Attorney or Attorney General had not brought legal proceedings, would ever fail to satisfy the public interest exemption under § 425.17(b). But those are the very types of complaint most likely to interfere with free political expression.

A court would not be allowed to look beyond the relief sought, and so it would simply be a matter of the plaintiff's attorney ensuring that there was no claim for particular pecuniary loss, that the allegations alleged something bearing on the public interest, and that they did not accidentally plead a matter which could be seized upon to negate the contention that the matter was brought solely in the public interest.

In this case, for example, the Plaintiffs pleaded breaches of attorney client privilege, without ever identifying the disclosure they said violated that privilege. The Court of Appeal then used that bare assertion to find that §425.17(b)(2) was made out.

As set out below, it is notable that there are at least two judgments of the Court of Appeal where the suits likewise sought injunctive relief for breaches of the Brown Act (*Holbrook v. City of Santa*

Monica, supra, 144 Cal.App.4th and *Cruz v. City of Culver City, supra,* 2 Cal.App.5th 239) but where the court concluded that despite the ostensibly neutral framing, the plaintiffs in reality sought particular benefit for themselves.

(iv) The Court of Appeal misapplied the test under §425.17(b)

It is clear on the face of §425.17(b) that the court is to first conduct an analysis as to whether or not the claim has been brought "*solely in the public interest or on behalf of the general public*", which is a question both prior to and distinct from the analysis of the three ensuing requirements at §425.17(b)(1)-(3). Only then does it move on to consider the three additional requirements.

That is clear from the judgment in *Lindsay v. Patenaude & Felix APC* (2024), 107 Cal.App.5th 335, 346:

> *The inquiry does not end with our conclusion that the action was brought solely in the public interest or on behalf of the general public. We still must consider whether each of the three enumerated conditions of the public interest exception have been met.*

The Court of appeal, however, treated the test as if it was only to ask the questions at §425.17(b)(1)-(3), and if its answers were affirmative then the exception was made out. That approach is incorrect, and this is apparent from the section.

For example, the question as to whether "*Private enforcement is necessary and places a disproportionate financial burden on the plaintiff*" can say nothing at all about whether or not the action is "*solely in the public interest".* An action could be brought solely in the public interest, but not require private enforcement because a public entity had already taken sufficient steps.
In other words, satisfying the requirements at §425.17(b)(1)-(3) does not satisfy the initial requirement that a claim be brought "*solely in the public interest or on behalf of the general public*".
It is only if that first, prior, question is answered in the affirmative, that one then asks the supplementary questions at §425.17(b)(1)-(3). That is consistent with the public interest exception being "narrow one" (*Sierra Club*, supra, 45 Cal.4th at p. 316)

Questions about motivation come first, at the initial consideration as to whether or not the claim was solely in the public interest. Only if those motivations do not negate the exemption (and/or there is no other reason to conclude that the action is not solely in the public interest) does one then ask whether or not the plaintiff seeks greater relief than that sought for the general public, whether the matter would enforce an important right affecting the general public, and so on.

It is for that reason that the approach of the trial court was correct. The Hon. Ben Coates asked the first question, whether the action was brought "*solely in the public interest or on behalf of the general public*" and concluded it was not. He therefore did not need to examine the three ensuing requirements.

The Court of Appeal made an error by taking the inverse approach, criticizing the trial court because it "*did not analyze these three conditions when it declined to apply the exception."* It did not need to analyze those conditions.

Indeed, by only analyzing the three conditions, the Court of Appeal in fact failed to examine whether or not the action was solely in the public interest, the primary question. That is why the Court of Appeal found no space to evaluate the Plaintiffs' motives in bringing the claim – it had mistakenly excluded the stage where that is properly done.

(v) Absurdities and injustice will result

On the Court of Appeal's approach a plaintiff could bring a claim *only* to persecute a political opponent, with no interest at all for the public interest. That plaintiff could even admit, in a social media post (or a declaration), that such was his exclusive motivation.

However, because the court would be confined to an analysis of the pleadings only, so long as the plaintiff did not *plead* that persecution was his aim (and only sought injunctive relief etc), a court would be obliged to make a positive finding that his action was "*solely in the public interest,"* and indeed that he was acting as a "*private Attorney General*" (Assem. Com. on Judiciary, Rep. on Sen. Bill No. 515, as amended July 27, 2003, p. 12). That would be absurd and unjust, and go against the entire intention of the legislature in drafting the anti-Slapp provisions.

A court must be entitled to take into account matters outside the pleadings, including evidence of motivation and agenda, in assessing the test under §425.17(b). A plaintiff cannot himself determine, by the style of his pleadings, whether his claim is "*brought solely in the public interest*."

C. ISSUE (1) - CONFLICTING COURTS OF APPEAL OPINIONS

Further, the Court of Appeal's approach in this case is straightforwardly inconsistent with numerous other Court of Appeal judgments. To the extent the Court of Appeal's approach is supported by the judgment in *Tourgeman v. Nelson & Kennard* (2014) 222 Cal.App.4th 1447, that judgment is also inconsistent with the below.

First, it is inconsistent with the judgement in *Sandlin v. McLaughlin* (2020) 50 Cal.App.5th 805, 823 which held that political motivations gave the petitioner in that case a personal stake in relief which was otherwise ostensibly neutral:

> *Although the accuracy of Real Parties in Interest's candidate statements qualifies as a public issue because it impacts a local election, the record suggests Petitioner also had a personal stake in the outcome of the litigation and, relatedly, the upcoming election. 5 To the extent that was the case, he could not rely on section 425.17's exemptions.*

Footnote 5 to the above paragraph reads:

> *True, Petitioner was not a candidate for office, but he was a prominent leader in the "Yes on B" campaign, he filed the Referendum Case challenging the ballot arguments against Measure B, and he filed the writ petition in the instant action challenging Real Parties in Interest's candidate statements. Given the parties' history as political opponents and Petitioner's filing of not one, but two lawsuits against Pope, we question whether he met his burden of establishing his petition was an "action brought solely in the public interest or on behalf of the general public."*

There are two important conclusions which flow from this:

1) The court looks beyond the bare nature of the relief to assess whether a claim is brought solely in the public interest. Although the Plaintiff was not a candidate in any election nor did he have any financial interest in the outcome, he had a personal stake by virtue of his political interest (i.e. motivation) in that outcome such that the purportedly neutral relief he sought was not in fact neutral.

2) The court is perfectly entitled to look beyond the pleadings to the past behaviour of a Plaintiff and the "*record*" and "*history*" behind the suit, in assessing the above.

Both of those things are entirely inconsistent with the Court of Appeal's conclusions in this case (and *Tourgeman*, if interpreted correctly*)*, that "*The relief appellants seek—not their motivation to seek that relief—is the extent of the court's inquiry*" and that the analysis is strictly a "*pleading-based determination*".

Second, the Court of Appeal's approach is inconsistent with the reasoning in *Holbrook v. City of Santa Monica (2006)* 144 Cal.App.4th 1242, 1250 where city councillors sought to curtail city Council meetings lasting past 11:00pm, citing violations of the Brown Act:

> *The trial court concluded that this exception did not apply because the action was not brought solely in the public interest, as it concerned Holbrook and Katz's preferences for particular working hours. We agree that the action is certainly not brought solely in the public interest, as Holbrook and Katz complain extensively in their declarations about the burden that late-running meetings impose upon them as public officials.*

Again, two things emerge from the above:

1) While the remedy sought was purportedly neutral (a simple change to meeting hours) and the plaintiffs did not seek any financial remedy, the court found that considering the Plaintiff's preferences (i.e. subjective motivations), it was not a claim brought solely in the public interest.

2) The court looked beyond the pleadings to the plaintiff's declarations, to discern their true motives.

As above, both of those things are entirely inconsistent with the Court of Appeal's conclusions in this case (and *Tourgeman*, if interpreted correctly), that "*The relief appellants seek—not their motivation to seek that relief—is the extent of the court's inquiry*" and that the analysis is strictly a "*pleading-based determination*".

Third, the Court of Appeal's approach is inconsistent with the judgment in *Cruz v. City of Culver City* (2016) 2 Cal.App.5th 239.

The relief sought in that case was declaratory relief in relation to an allegation of a breach of the Brown Act (as in this case) in relation to a request by a church to change the parking arrangements on a certain street, Farragut Drive (page 243):

> *In November 2014, plaintiffs filed a complaint seeking declaratory relief that the city and its five council members had violated the Brown Act by discussing the church's letter and by acting upon it by placing it on the agenda for the next meeting, even though the 2013 parking regulations did not provide for such action.*

The court, however, looked beyond the bare nature of the relief – declaratory relief that there had been a violation of the Brown Act — to the fact that the plaintiffs in that case were residents of Farragut Drive and so had a particular interest in the outcome, (page 250):

> *Distilled, plaintiffs alleged that the council had no authority to hear an appeal by the church regarding the Farragut Drive Parking restrictions, and asked the city to stop taking further actions in that regard. Keeping the parking restriction at status quo would directly benefit plaintiff Farragut Drive homeowners. In short, plaintiffs sought personal relief in the form of a halt to any attempts by the church to undo the long-standing parking restrictions.*

In other words, the question for the court was not limited to ostensibly neutral form of the relief sought which (declarations that the Brown Act had been breached), but whether that relief in fact would result in a benefit to the plaintiffs by virtue of matters not apparent in the prayer for relief.

That is inconsistent with the Court of Appeal's approach in this case, that the "*[The Plaintiffs] seek no relief or advantage for themselves that is different than that sought for the public at large….*" because *"The first amended complaint focuses solely and entirely on enforcing the Brown Act's closed session requirements."*

As is apparent from *Cruz*, the fact that a party seeks a declaration as to the breach of the Brown Act does not mean they have satisfied the test under §425.17(b)(1), if those declarations are meant to further a personal stake different from that of the general public. These are inconsistent decisions.

Fourth, the Court of Appeal's approach in this case is inconsistent with both the expressed legislative intention, and the judgment in *Ingels v. Westwood One Broadcasting Services, Inc. (2005)* 129 Cal.App.4th 1050, 1066. The court held:

> *"'…Since the statute already exempts actions filed by public prosecutors, it should provide a parallel protection when people are acting only in the public interest as private attorneys general, and are not seeking any special relief for themselves." ' " The public interest criteria also make clear that suits motivated by personal gain are not exempted from the anti-SLAPP motion." (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 515 (2003–2004 Reg. Sess.) as amended May 1, 2003, pp. 13–14, italics added.)*

That, again, is the language of motive, both from the court and the Committee on the Judiciary. It goes without saying that the above requires an analysis of motive as such, not whether the relief sought is pleaded in an ostensibly neutral way. It is incompatible with the Court of Appeal judgment in this case (and *Tourgeman*, if interpreted correctly) that "*The relief appellants seek—not their motivation to seek that relief—is the extent of the court's inquiry*". The form of relief may make it obvious that a suit is motivated by personal gain, but the enquiry is not constrained (as above) to the form of relief.

Fifth, the Court of Appeal's approach in this case (and in *Tourgeman*, if interpreted correctly by the court) is inconsistent with the judgment in *Lindsay v. Patenaude & Felix APC* (2024), 107 Cal.App.5th 335. As above, that judgment makes clear that the question as to whether an action is solely in the public interest for the purpose of § 425.17(b) must be answered prior to consideration

of the three factors at § 425.17(b)(1)-(3). Here the Court of Appeal treated the three conditions at § 425.17(b)(1)-(3) as sufficient for establishing that an action is solely in the public interest.

In summary, the approach of the Court of Appeal in this case is inconsistent with at least 5 other judgments of the Courts of Appeal. That is likely to cause significant confusion. A court which followed *Sandlin v. McLaughlin* would find that a politically motivated suit failed to satisfy the requirements of §425.17(b), whilst a court that followed the Court of Appeal judgment in this case would hold those motivations to be irrelevant, and potentially that the action did satisfy the requirements of §425.17(b).

A court that followed *Holbrook v. City of Santa Monica* and considered matters arising from the parties' declarations or affidavits might find that a claim was not brought solely in the public interest, whilst another court which followed the Court of Appeal in this case, and so only considered the pleadings, might find that it was brought solely in the public interest — on precisely the same pleadings and the same facts. And so on with the other cases.

The Supreme Court should take this opportunity to resolve this obvious confusion.

D. ISSUE (2) – CORRECT LEGAL APPROACH

On the Court of Appeal's approach, the answer to §425.17(b)(3) is binary. Either a public entity has initiated commenced an action to enforce the statute, in which case private enforcement is unnecessary, or a public entity has not, in which case private enforcement is necessary. "*While the District Attorney wrote a cease-and-desist letter to the council after this action was filed concerning alleged violations of section 54963, it did not "commence an action" to enforce the statute.*"

But clearly the test as to whether "*private enforcement is necessary*" is not a test simply as to whether or not a public entity has brought legal action — or the statute would say so. Obviously if a public entity has initiated formal legal proceeding private enforcement will almost always be unnecessary. That does not mean it is the only action which satisfies the requirement of adequate enforcement.

Necessity is a broader concept going to whether in all the circumstances legal proceedings are required to assert or protect the right. To the Petitioner's knowledge, there is no California case which has set out a legal test to which both parties can refer when assessing whether enforcement action by a public entity has been sufficient to render private enforcement necessary or unnecessary.

This creates confusion and unnecessary legal risk for all parties. A judgment from this court would give clarity to parties to potential litigation, as well as to public entities that are empowered to take enforcement action. On the Court of Appeal's test, those public entities are rendered substantially redundant, as no action less than formal legal proceedings (or equivalent) amounts to adequate enforcement. Formal legal action is also disproportionately expensive for all parties, including public entities. That should not be considered the only response sufficient to render private enforcement unnecessary.

The Petitioner will say that in this case, taking into account the remedy sought and the relevant background, private enforcement was not necessary.

Ventura District Attorney's office conducted a formal investigation into the three closed sessions and Councilmember Rule's statements about those meetings. The District Attorney ordered the City Council to refrain from conducting the very discussions in closed session about which Councilmember Rule and Attorney Drucker complained.

The Ventura District Attorney also ordered Petitioner Rule not to breach any rule of confidentiality, nor the provisions of the Brown Act – the very remedy sought in this case. Petitioner Rule agreed not to do so.

In the circumstances there was no need for private enforcement, nor would any court grant injunctive relief. That is without even considering the fact that the Plaintiffs waited over 4 months to bring a claim seeking injunctive relief, and that it has now been over two years without even an allegation of a purported breach so as to render an injunction necessary.

The Court of Appeal should have taken those matters into account, instead of applying a mechanistic test of whether or not a public entity had initiated legal proceedings.

E. ISSUE (3) – CORRECT LEGAL APPROACH

"*The Brown Act was created under a chapter of the Government Code. This chapter shall be known as the Ralph M. Brown Act*." Gov. Code, § 54950.5. The Ralph M. Brown Act chapter includes numerous sections and sub sections set forth in the Government Code. Code of Civil Procedure section 425.16(c)(2) exempts only actions brought under two sections of the chapter from the mandatory fee provision set forth in Code of Civil Procedure Section 425.16(c).

The trial court appropriately began its analysis by quoting §§ 425.16(c)(1) and (2) in its entirely. § 425.16(c)(2), applies, by its express terms, to actions brought under an enumerated list of sections and chapters of the Government Code. The list includes only actions "*brought pursuant to Section 11130, 11130.3, 54960, or 54960.1 of the Government Code, or pursuant to Chapter 2 (commencing with Section 7923.100) of Part 4 of Division 10 of Title of the Government Code*." (Code Civ. Proc. §425(c)(2))

The list of statutes and chapters contained in § 425.16(c)(2) omits any reference to the "Ralph M. Brown Act" chapter, generally, or Government Code 54963, specifically. The Court must infer the legislature chose to omit both.

Plaintiffs argued the express statutory reference to Government Code sections 54960 and 54960.1 in § 425.16(c)(2) is meant to exclude fee awards arising from any action under the entire chapter. If the legislature meant to exclude any action under the chapter whatsoever, it would have cited to the Chapter just as it did in regard to actions under "Chapter 2 (commencing with section 7923.100) of Part 4 of Division 10 of Title of the Government Code."

The Court of Appeal concluded that because § 54960 contained a reference to the entire chapter, that reference to the entire chapter should be imported to § 425.16. That simply does not work as a matter of interpretation.

First, § 54960 contains a requirement as to standing which § 54963 does not. The Plaintiffs never pleaded, argued, or established that they were "*interested persons*" for the purposes of section § 54960.

Second, § 54960 contains, by virtue of § 54960.2, numerous procedural hurdles for obtaining a declaration in respect of past action, including that, "(*3) The time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b) has expired and the legislative body has not provided an unconditional commitment pursuant to subdivision (c).*"

Those requirements were not satisfied in this case.

Third, §§ 54960 and 54960.1 do not refer to an individual, instead referring collectively to "*members of a legislative body*" — while section 54963 does refer to individuals. That §§ 54960 and 54960.1 are aimed at the legislative body itself, rather than the individuals which comprise it, is evident from the following section. Even if that was not the case, John Drucker could not have been the subject of a suit pursuant to §§ 54960 or 54960.1.

Therefore Plaintiffs could not have brought an action under § 54960, nor could they have amended their claim to do so.

The Court of Appeal's conclusion that the exclusion under § 425.16(c)(2) was therefore meant to apply to *any* section of the Brown Act, including provisions which, like § 54963, have their own enforcement procedures, is straightforwardly wrong. Simply reading one section ahead, it becomes clear that §§ 54960 and 54960.1 have enforcement criteria unique to them, and so they are not interchangeable with any and every other section of the Brown Act.

Like the other conclusions of the Court of Appeal in this case, this finding mechanistically disapplies substantial protections provided by the anti-Slapp provisions to entire swathes of claims, simply by virtue of the manner in which they are pleaded (in this case, any suit brought under the Brown Act of any description). That approach has no precedent in law, and is inconsistent again with both the wording and the intention of the relevant statutes.

CONCLUSION

This Petition raises important questions of law which will have a serious and lasting effect on the operation of the anti-SLAPP legislation, from the public interest exemption to fees considerations.

There is now serious inconsistency between different judgments of the Courts of Appeal on the correct approach to the public interest exemption under § 425.17(b), with at least five judgments taking a different approach.

Finally, Issue (1) and Issue (3) contain matters of first impression in this important area.

It is respectfully submitted that the Supreme Court should give these matters consideration.

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.504(d)(1) of the California Rules of Court, I hereby certify that this brief contains 8,038 words inclusive of footnotes and of the tables of content and title page. In making this certification, I have relied on the word count of the computer program used to prepare the petition.

DATED: September 2, 2025

By /s/

Steven Rood

Attorney for the Petitioner

ANNEX A

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

DAVID BYRNE et al., Plaintiffs and Appellants, v. LESLIE RULE et al., Defendants and Respondents.	2d Civil No. B332962 (Cons. w/B335099) (Super. Ct. No. 2023CUMC008352) (Ventura County)

Appellants are seven residents of the City of Ojai and its environs.[1] They sued respondent Leslie Rule, a member of the Ojai city council, and her attorney, respondent Jonathan Drucker, for declaratory and injunctive relief after respondents disclosed information Rule acquired in a closed session meeting of

[1] Plaintiffs and appellants are: David Byrne; Vickie Carlton-Byrne; Thomas D. Mashburn; Douglas LaBarre; Joel Maharry; Gerald Schwanke; and Leslie Ferraro.

the council. Appellants alleged the disclosures violated the Brown Act's confidentiality provisions. (Gov. Code,[2] § 54963.)

Respondents moved to strike appellants' first amended complaint as a politically motivated "SLAPP" suit. (Code Civ. Proc., § 425.16.) Appellants opposed the motion, arguing their suit fell within the exception for actions "brought solely in the public interest or on behalf of the general public." (*Id.*, § 425.17, subd. (b).) The trial court found appellants failed to meet their burden of establishing the public interest exception applied and granted the motion to strike. It awarded respondents attorney's fees and costs, finding appellants' action did not fall within the statute barring fees and costs in Brown Act enforcement actions. (*Id.*, § 425.17, subd. (c)(2); Gov. Code, § 54960.)

We will vacate the order granting the anti-SLAPP motion. Appellants' allegations and the relief they seek places their action within the public interest exception regardless of their political motivations. We will also vacate the order awarding attorney's fees and costs to respondents.

FACTUAL AND PROCEDURAL HISTORY

As we explain below, our review is de novo. We draw our factual summary from appellants' first amended complaint.

Allegations

The Ojai city council approved a development agreement with The Becker Group, Inc. and affiliated entities (Becker) in October of 2022. The agreement granted Becker entitlements to develop four different projects within the city.

City council elections were held in November of 2022. Four of the five seats were contested. Voters reelected Betsy Stix as

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[2] All further references are to the Government Code unless otherwise indicated.

mayor and elected three new members to the council: Rachel Lang, Andrew Whitman, and respondent Leslie Rule.

A nonprofit organization called Simply Ojai filed a petition for writ of mandate in December of 2022 challenging the agreement with Becker Group (*Simply Ojai* action). It named the City of Ojai and the council as respondents and Becker as real party in interest.[3] A petition seeking a referendum to overturn the agreement was presented to the city with the required signatures.

The council issued notices and agenda for closed sessions on January 9, 2023, and January 10, 2023. The agendas listed "Conference with Legal Counsel; Existing Litigation" as a discussion item and identified the *Simply Ojai* action by name. The agendas listed "Conference with Legal Counsel; Initiating Litigation" as another discussion item. The city council then held closed sessions on those dates. The city attorney and all five members attended.

The council held a regularly scheduled meeting on January 24, 2023. Rule disseminated a written statement to members of the public that included "an extensive and detailed discussion of confidential and privileged information she obtained" from the closed sessions on January 9 and 10. She "began verbally disclosing confidential closed session information" during the meeting. The city attorney directed her to stop but she refused. Rule then moved to allow disclosure but none of her colleagues seconded the motion.

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[3] *Simply Ojai v. City of Ojai, et al.* (Super. Ct. Ventura County, 2022, No. 2022CUWM00572740). Ojai Bungalows, L.P. and Green Hawk, LLC were also named as real parties in interest.

Respondent Drucker, an attorney, attended the January 24 meeting as well. He gave members of the public a 12-page letter he wrote on behalf of Rule entitled, "City Council Closed Sessions and the Duty of Disclosure." The letter included "an extensive and detailed discussion of confidential and privileged information obtained by [Rule]" on January 9 and 10. Drucker then discussed the letter's contents during the public comment period. He wrote a second letter on January 27 containing the same information. Both were posted on a website called "Transparent Ojai," published in the Ojai Valley News newspaper, and circulated on social media.

Drucker attended the council's regular meeting on April 25, 2023. He admitted during public comment that he had disclosed confidential closed session communications. Rule again moved unsuccessfully to waive closed session confidentiality.

Brown Act Complaint and Anti-SLAPP Motion

Appellants filed this action three days after the April 25 regular meeting. They sought a declaration that respondents violated section 54963 of the Brown Act when they disclosed information acquired by Rule in closed session. Appellants also sought an order enjoining further disclosures.

Respondents moved to strike the first amended complaint under the anti-SLAPP statute. (Code Civ. Proc., § 425.16.) They submitted declarations describing the seven plaintiffs (i.e., appellants) and their counsel as politically aligned with those opposing the Becker developments. In response, appellants argued their action fell within the statute's public interest exception, which applies to actions "brought solely in the public interest or on behalf of the general public." (*Id.*, § 425.17, subd. (b).) The trial court found appellants did not meet their burden

to establish the exception applied and granted the motion to strike.

Attorney's Fees Motion

Respondents moved for attorney's fees under the fee-shifting provision of the anti-SLAPP statute. (Code Civ. Proc., § 425.16, subd. (c).) Appellants opposed the motion on the grounds that subdivision (c) excluded actions brought under section 54960 of the Brown Act. The trial court granted the motion, finding the Brown Act exception did not apply because appellants sought relief only under section 54963, not section 54960. It awarded respondents attorney's fees of $78,885.00.

DISCUSSION

Closed Sessions Under the Brown Act

The Brown Act requires the legislative body of any city, county, or other local agency to meet and conduct its business in public. (§ 54953, subd. (a).) The body may meet in closed session only if one or more exceptions apply. (§ 54962.) Among the exceptions are meetings "to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation." (§ 54956.9, subd. (a).) The agency must post an agenda 72 hours before any regular meeting. (§ 54954.2, subd. (a)(1).) The agenda must contain "a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session." (*Ibid*.)

The Brown Act defines litigation as "any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator." (§ 54956.9, subd. (c).) Litigation is considered "pending" when: litigation "has been initiated

formally" against the agency; "there is significant exposure to litigation"; the agency "is meeting only to decide whether a closed session is authorized"; or when the agency "has decided to initiate or is deciding whether to initiate litigation." (*Id.*, subd. (d).) The legislative body must "state on the agenda or publicly announce the paragraph of subdivision (d) that authorizes the closed session" before holding it. (*Id.*, subd. (g); § 54957.7.)

"A person may not disclose confidential information that has been acquired by being present in a closed session . . . to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information." (§ 54963, subd. (a).) "'[C]onfidential information' means a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter." (*Id.*, subd. (b).) Violations of section 54963 "may be addressed by the use of such remedies as are currently available by law, including, but not limited to . . . [i]njunctive relief to prevent the disclosure of confidential information." (*Id.*, subd. (c)(1); see § 54960, subd. (a) ["[A]ny interested person may commence an action . . . for the purpose of stopping or preventing violations . . . of this chapter"].)

Public Interest Exception to Anti-SLAPP Statute

Appellants' first amended complaint sought to enjoin respondents from disclosing confidential information in violation of section 54963. They contend their action falls within the public interest exception to the anti-SLAPP law. We agree.

"Code of Civil Procedure, section 425.16 provides a procedure for the early dismissal of what are commonly known as SLAPP suits (strategic lawsuits against public participation)—litigation of a harassing nature, brought to challenge the exercise of protected free speech rights. The section is thus informally

labeled the anti-SLAPP statute." (*Fahlen v. Sutter Central Valley Hospitals* (2014) 58 Cal.4th 655, 665, fn. 3.) "In 2003, the Legislature enacted section 425.17 to curb the 'disturbing abuse' of the anti-SLAPP statute. [Citation.] This exception statute covers both public interest lawsuits . . . and 'commercial speech.'" (*Club Members for an Honest Election v. Sierra Club* (2008) 45 Cal.4th 309, 316 (*Sierra Club*), quoting Code Civ. Proc., § 425.17, subds. (a)-(c).) We review whether appellants' action falls within the exception de novo. (*Tourgeman v. Nelson & Kennard* (2014) 222 Cal.App.4th 1447, 1458 (*Tourgeman*).)

The public interest exception is codified at Code of Civil Procedure section 425.17, subdivision (b). It applies "to any action brought solely in the public interest or on behalf of the general public if all of the following conditions exist: [¶] (1) The plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member. . . . [¶] (2) The action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons. [¶] (3) Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter." (*Id.*, § 425.17, subd. (b).) "[B]ecause section 425.17(b) is a statutory exception to section 425.16, it should be narrowly construed." (*Sierra Club*, *supra*, 45 Cal.4th at p. 316.) "We look to the allegations of the complaint and the scope of relief sought in order to determine whether the public interest exception applies." (*Cruz v. City of Culver City* (2016) 2 Cal.App.5th 239, 249.)

We first look to whether appellants "seek any relief greater than or different from the relief sought for the general public."

(Code Civ. Proc., § 425.17, subd. (b)(1).) The first amended complaint contains a single cause of action against respondents for violating section 54963. Appellants seek two types of relief: (1) a declaration that respondents violated the statute "by disclosing confidential communications obtained from closed sessions of the Ojai City Council"; and (2) an injunction prohibiting such disclosures going forward, as well as orders directing respondents "to identify each person with whom [they] shared confidential communications." They seek no relief or advantage for themselves that is different than that sought for the public at large. (See *Sierra Club*, *supra*, 45 Cal.4th at p. 317 [public interest exception did not apply to action seeking to install plaintiffs on board of directors of non-profit organization].) The first amended complaint focuses solely and entirely on enforcing the Brown Act's closed session requirements. (See *Tourgeman*, *supra*, 222 Cal.App.4th at p. 1461 [exception applied to action seeking to prevent respondents from violating Fair Debt Collection Practices Act (FDCPA) in the future].) The relief appellants seek—not their motivation to seek that relief—is the extent of the court's inquiry here.

We next look to whether "[t]he action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons." (Code Civ. Proc., § 425.17, subd. (b)(2).) It would. "A city council needs freedom to confer with its lawyers confidentially in order to obtain adequate advice, just as does a private citizen who seeks legal counsel, even though the scope of confidential meetings is limited by this state's public meeting requirements." (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 380 (*Roberts*).) "The public interest is served by the privilege because it permits local

government agencies to seek advice that may prevent the agency from becoming embroiled in litigation, and it may permit the agency to avoid unnecessary controversy with various members of the public." (*Id.* at pp. 380-381.)

The first amended complaint alleges respondents disseminated privileged and confidential information obtained by Rule during closed sessions. This included oral statements she and Drucker made during open sessions and written remarks distributed to the public both physically and over the internet. If successful, appellants' action will allow the court to discern whether respondents violated section 54963, and if so, to craft injunctive relief that will guide the parties (and public) at this troublesome intersection of two important policies. "Open government is a constructive value in our democratic society. [Citations.] The attorney-client privilege, however, also has a strong basis in public policy and the administration of justice." (*Roberts*, *supra*, 5 Cal.4th at p. 380.)

Lastly, we look to whether "[p]rivate enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter." (Code Civ. Proc., § 425.17, subd. (b)(3).) Our Legislature expressly authorized "[t]he District Attorney or any interested person" to "commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of [the Brown Act] by members of the legislative body of a local agency or to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body." (§ 54960, subd. (a).) While the District Attorney wrote a cease-and-desist letter to the council after this action was filed concerning alleged

violations of section 54963, it did not "commence an action" to enforce the statute. Appellant's private enforcement action is thus consistent with the aims of both section 54960 and the public interest exception. (See *Tourgeman*, *supra*, 222 Cal.App.4th at p. 1464 [action seeking only injunctive and declaratory relief relating to respondents' debt collection practices was "fully consistent both with Congress's intent in enacting FDCPA and the Legislature's intent in enacting the UCL and section 425.17"].)

The trial court did not analyze these three conditions when it declined to apply the exception. It first cited *Sandlin v. McLaughlin* (2020) 50 Cal.App.5th 805, noting correctly that "[p]ersonal political agendas and motivations may make the [exception] inapplicable." "Given the nature of the case, the special interests of the parties, and the lack of supporting declarations submitted by [appellants]," the court found, "they have not met their burden of establishing that the narrowly construed exemption of [section 425.17, subdivision (b)] applies and this case was brought solely in the public interest." This was error.

Appellants bore the burden to establish the exception applied. They did not, however, bear the burden to produce *evidence* supporting this position. "[T]he public interest exception is a threshold issue based on the nature of the allegations and scope of relief sought in the prayer." (*People ex rel. Strathmann v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 499; see *Cruz v. City of Culver City* (2016) 2 Cal.App.5th 239, 249 ["We look to the allegations of the complaint and the scope of relief sought in order to determine whether the [exception] applies"]; accord, *Tourgeman*, *supra*, 222 Cal.App.4th at p. 1460.) The trial court appears to have conflated appellants' burden to establish

the exception with their burden to prove the likelihood of prevailing on their claims, or, more specifically, to produce evidence rebutting the motion's declarations and exhibits.

Our Supreme Court has made clear that determining whether the exception applies is a "threshold," pleading-based determination—not a contested evidentiary proceeding. (See *Sierra Club*, *supra*, 45 Cal.4th at p. 316, italics added ["If a *complaint* satisfies the provisions of the applicable exception, it may not be attacked under the anti-SLAPP statute"].) "If a plaintiff's lawsuit comes within section 425.17, subdivision (b), it is exempt from the anti-SLAPP statute, and thus, a trial court may deny the defendants' special motion to strike without determining whether the plaintiff's causes of action arise from protected activity, and if so, whether the plaintiff has established a probability of prevailing on those causes of action under section 425.16, subdivision (b)(1)." (*Tourgeman*, *supra*, 222 Cal.App.4th at p. 1460.)

Attorney's Fees Award

Having concluded the public interest exception applies, we reverse the order awarding attorney's fees to respondents. We would reverse the award even if the exception did not apply.

"A defendant who prevails on a special motion to strike . . . shall not be entitled to attorney's fees and costs if that cause of action is brought pursuant to Section . . . 54960 . . . of the Government Code." (Code Civ. Proc., § 425.16, subd. (c)(2).) Section 54960, subdivision (a) states in pertinent part: "The district attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations *of this chapter*." (§ 54960, subd. (a), italics added.) "This chapter" refers to the Brown Act generally, which falls

entirely within Chapter 9 of Division 2, Part 1 of the Government Code. The first amended complaint seeks declaratory and injunctive relief related to alleged Brown Act violations—specifically, respondents' disclosing of confidential information acquired by Rule in closed session. (§ 54963.) The action falls within the exception. Even if appellants had cited the incorrect statute (they did not), the error could easily have been cured by amendment. (See *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081 [the trial court abuses it discretion if there is a reasonable possibility appellant could cure the defect by amending the pleading to state a cause of action].)

DISPOSITION

Judgment is reversed. The matter is remanded to the trial court with directions to enter an order denying the special motion to strike and the motion for attorney's fees. We express no opinion on the merits of the first amended complaint. Appellants shall recover their costs on appeal.

NOT TO BE PUBLISHED.

CODY, J.

We concur:

GILBERT, P. J.

BALTODANO, J.

Benjamin J. Coats, Judge
Superior Court County of Ventura

Law Office of Brian Acree, Brian Acree; Law Office of Herb Fox, Herb Fox; and Venskus & Associates, Sabrina D. Venskus, for Plaintiffs and Appellants.

S.C. Johnson & Associates, Stephen C. Johnson; Law Office of Jon E. Drucker, Jon E. Drucker, for Defendants and Respondents.

ANNEX B

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

DAVID BYRNE et al., Plaintiffs and Appellants, v. LESLIE RULE et al., Defendants and Respondents.	2d Civil No. B332962 (Cons. w/B335099) (Super. Ct. No. 2023CUMC008352) (Ventura County) ORDER CERTIFYING OPINION FOR PUBLICATION (No Change in Judgment)

THE COURT*:

The opinion in the above-entitled matter filed on July 23, 2025, was not certified for publication in the Official Reports. For good cause, pursuant to California Rules of Court, rules 8.1105 and 8.1110, it now appears the opinion should be published in the Official Reports. It is so ordered.

There is no change in the Judgment.

CERTIFIED FOR PUBLICATION.

GILBERT P.J. BALTODANO, J. CODY, J.