



March 17, 2023

The Honorable Patricia Guerrero,
Chief Justice, and Associate Justices
Supreme Court of the State of California
350 McAllister Street
San Francisco, California 94102-3600

Re: *AIDS Healthcare Foundation v. City of Los Angeles, et al.*
Supreme Court Case No. S278269
Court of Appeal Case No. B311144
Letter in Support of Petition for Review

To the Honorable Chief Justice Patricia Guerrero and the Associate Justices of the Supreme Court of the State of California:

This case presents a simple question: when land use permits or applications are approved due to corruption, do citizens have the ability to remedy the results of that corruption? Applying a common-law test, a line of related cases has held that the answer to that question is no, unless citizens were able to both uncover the corruption and file a complaint within ninety days. Because, as a practical matter, this results in citizens being unable to adequately and vigorously enforce the voter-approved Political Reform Act (“PRA”) as to corruption in land use permitting, contrary to the explicit purposes of the PRA, this Court should grant review and reconsider the proper standard for evaluating the applicable statute of limitations in suits to enforce the PRA.

The Interest of Consumer Watchdog in Review

Consumer Watchdog is a non-profit, non-partisan charitable citizen organization incorporated in California in 1985. As part of its mission, Consumer Watchdog works to root out and remedy instances of governmental corruption, including by supporting legislation to address corruption, and by bringing suits in order to uncover and rectify corruption. The Political Reform Act is the key California law concerning governmental corruption, and thus Consumer Watchdog has a strong interest in ensuring that suits under the PRA are not unjustly cut off from substantive consideration by court-created doctrines that preclude members of the public, such as Consumer Watchdog, from adequately and vigorously enforcing the PRA.

The Standards of the “Gravamen” Test for Determining Applicable Statutes of Limitations Preclude Adequate, Vigorous Enforcement of the Political Reform Act

The underlying facts of this case demonstrate why it is essential not to preclude PRA suits challenging land use approvals gained through corruption, unless brought in an unreasonably short amount of time, by importing a ninety-day statute of limitations from a different statute (Gov. Code § 65009). For many years, at least two members of the Los Angeles City Council, Jose Huizar and Mitchell Englander, engaged in a pattern of egregious misconduct that, ultimately, resulted in both men receiving extensive prison sentences for their corrupt actions. (Petition, pp. 8–9.) While Huizar and Englander will pay for their misdeeds, the real estate developers who bribed the councilmen have, to this point, only been rewarded for their misconduct—their approvals have not been revoked, and the L.A. City Council has not taken any action to address those approvals. (*Id.* at pp. 9–10.) The ultimate upshot of precluding the vast majority of suits challenging corruption in land use permitting is to encourage more developers to engage in the same misconduct, given the lack of consequences for the developers here.

As described in AIDS Healthcare Foundation’s (“AHF”) petition, “corruption in land use and building regulation” was recognized as a serious problem in California when voters passed the PRA. (Petition, pp. 7–8.) Indeed, the ballot pamphlet for the PRA specifically identified, as part of “The Problem” the PRA sought to remedy, the influence of “land developers” on “city councils.” (State of California, Office of the Secretary of State, *California Voters’ Pamphlet / June 4, 1974 Primary Election*, p. 36, available at <https://tinyurl.com/36drdvkn>.) But despite the hopeful conclusion of the Department of Justice in 1979 that the PRA had put an end to “blatant political payoffs” (Petition, p. 8), nearly fifty years later, California and Los Angeles remain rife with land use permitting corruption (as evidenced by the underlying facts). The mechanical application of the common law “gravamen” test to suits challenging such corruption is part of the reason such corruption remains prevalent today, decades after being identified as a serious problem.¹

Amongst the policies animating the PRA are that: “(a) State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to

¹ The “gravamen” test asks courts to “identify the nature of [a] cause of action” in order to determine the applicable statute of limitations. (*AIDS Healthcare Foundation v. City of Los Angeles* (2022) 86 Cal.App.5th 322, 337, citations and quotations omitted.) Here, the court concluded that the “gravamen of AHF’s action is an attack on, or review of, the [planning and land use management] committee’s decisions related to permitting and real estate project approvals,” and that “Section 65009 [and its ninety-day statute of limitations] applies directly to that challenge.” (*Id.* at pp. 337–38.)

their wealth; (b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Gov. Code § 81001.)

In describing the PRA’s “purposes,” voters stated they were enacting the PRA for the purpose of providing “[a]dequate enforcement mechanisms . . . to public officials and private citizens in order that this title will be vigorously enforced.” (Gov. Code § 81002.) Yet, as this case and a line of preceding cases demonstrates (see Petition, pp. 12–13), courts have repeatedly refused to allow claims seeking to remedy government corruption to proceed where a shorter statute of limitations exists concerning the “gravamen of the action.” In doing so, adequate, vigorous enforcement of the PRA by private citizens has been continuously precluded as a matter of judicial policy, contrary to the expressed purpose of the voters.

Indeed, as AHF describes (Petition, pp. 9–10), there do not appear to be any effective mechanisms here for either public officials or private citizens to “set the [corrupt] official action aside as void.” (Gov. Code § 91003.) In this case, the lack of effective mechanisms for private citizens is the direct result of the common law “gravamen” test. The Court of Appeal noted that the corruption of Englander and Huizar was not publicly known until revealed in 2020 as the result of a federal criminal investigation. (*AIDS Healthcare Foundation, supra*, 86 Cal.App.5th at p. 328.) When the corruption was revealed, neither Huizar nor Englander had taken any official acts since 2018. (*Id.* at p. 329.) Thus, under the “gravamen” test as traditionally applied, even a citizen PRA suit filed the day after the findings of the federal investigation were revealed, challenging the approvals gained by corruption, would have been barred by the statute of limitations. It is utterly absurd to apply a very short statute of limitations to challenging corrupt acts that did not become publicly known until after that short limitations period had already run.²

Rote mechanical application of the “gravamen” test is how the Court of Appeal in this case somehow concluded that the ninety-day statute of limitations in “Section 65009 does not conflict with, or otherwise take away from, the original PRA, practically or

² The appellate court noted that AHF had raised an argument at the trial court that the statute of limitations should be tolled, but AHF did not raise the issue on appeal. While this Court “normally will not consider an issue that the petitioner failed to timely raise in the Court of Appeal” (Cal. Rules of Court, rule 8.500(c)(1)), Consumer Watchdog urges the court to consider whether the statute of limitations should be tolled in cases where corruption was not publicly known within the applicable limitations period, in light of the important substantive rights at stake, and the absurd results of not tolling the limitations period.

otherwise.” (*AIDS Healthcare Foundation, supra*, 86 Cal.App.5th at p. 340.) As noted *supra*, the PRA was passed with the express purpose of providing private citizens with mechanisms adequate to “vigorously enforce” the PRA. It begs credulity to argue, in the face of cases like *Ching v. San Francisco Bd. of Permit Appeals (Harsch Inv. Corp.)* (1998) 60 Cal.App.4th 888, and the underlying case here, that the ninety-day statute of limitations in section 65009 does not ‘practically take away from the original PRA.’ In fact, as history has evidenced, section 65009 (and similar statutes with very short statutes of limitations) will preclude adequate and vigorous enforcement of the PRA by private citizens in the vast majority of situations—regardless of whether the underlying allegation of corruption was well-founded (as here).

The Court of Appeal refused to consider the public policy consequences of its decision, stating that it was merely engaging in statutory interpretation of clear language. (*AIDS Healthcare Foundation, supra*, 86 Cal.App.5th at pp. 340–41.) Because of the relevant “gravamen” jurisprudence, the appellate court was in fact precluded from considering policy implications. Because the “gravamen” test is based in common law, this Court on review need not be similarly bound to ignore the grave, absurd, and contrary to voter intent policy consequences of applying the test here. Rather, on review, this court should consider the PRA’s animating policies of preventing public officials from making corrupt, biased decisions, and its purpose of ensuring that private citizens be able to adequately and vigorously enforce the PRA, in order to determine the proper standard for evaluating the applicable statute of limitations.

Therefore, Consumer Watchdog urges this Court to grant review in order to reconsider the proper standards for evaluating the applicable statute of limitations for claims challenging corrupt land use permitting decisions brought pursuant to the PRA, in light of the expressed purposes of that voter-approved initiative, so as to ensure that private citizens have adequate mechanisms to vigorously enforce the PRA.

Respectfully submitted,



Ryan Mellino

Attorney for Consumer Watchdog

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 6330 San Vicente Blvd., Suite 250, Los Angeles, California 90048.

On March 17, 2023, I served the foregoing document described as

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on the interested parties in this action, as follows:

SEE ATTACHED SERVICE LIST

IF VIA ELECTRONIC SERVICE: I served the document via TrueFiling.

IF VIA U.S. MAIL: I placed a true copy of the foregoing document in a sealed envelope addressed to each party as set forth on the attached service list. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing at Los Angeles, California. I am readily familiar with the firm's practice of collection and processing correspondences for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

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

Executed on March 17, 2023, at Los Angeles, California.



Kaitlyn Gentile

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