Supreme Court Case No. S285484

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

CHARLES COHEN, ET AL.,
Defendants and Petitioners,
vs.
THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
Respondent.

THOMAS SCHWARTZ, INDIVIDUALLY AND AS TRUSTEE THE THOMAS M. SCHWARTZ TRUST DATED MAY 27, 2010, ET AL.,
Real Parties in Interest.

From the Los Angeles County Superior Court, Case No. 22SMCV00736
Hon. Lisa Sepe-Wiesenfeld, Judge
Review of a Decision of the Court of Appeal, Second Appellate District, Division Four, Case No. B330202

OPENING BRIEF ON THE MERITS

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ISSUE PRESENTED

Does Government Code Section 36900, Subdivision (a) Confer upon Private Citizens a Right to Redress Violations of Municipal Ordinances?

SUMMARY OF ARGUMENT

Riley v. Hilton Hotels Corp. (2002) 100 Cal.App.4th 599, 607 correctly held, "… Government Code section 36900, subdivision (a), expressly permits violations of city ordinances to be 'redressed by civil action' and both Cal. Const., art. XI, § 7, and Gov. Code, § 37100, prohibit giving effect to city ordinances that conflict with state law. There is no state law that allows a city to abrogate the right of redress created in the Government Code. We decline to read into the Municipal Code an intent to create an impermissible conflict with state law by abrogating the right to a civil action created by the Government Code."

Division Four of the Second District's decision in *Cohen v. Superior Court* sought to reverse long-standing precedent established in *Riley*. For the following reasons, this Court should reverse *Cohen v. Superior Court* (2024) 102 Cal.App.5th 706.

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Government Code section 36900 expressly gives private citizens the right to seek redress by "civil action" against violations of municipal ordinances:

> Government Code § 36900. Violation as misdemeanor or infraction; Prosecution or redress; Penalties
>
> (a) Violation of a city ordinance is a misdemeanor unless by ordinance it is made an infraction. The violation of a city ordinance may be prosecuted by city authorities in the name of the people of the State of California, or *redressed by civil action.*

(Italics added.)

By enacting Government Code section 36900 in 1949, the California Legislature intended to establish an entirely new scheme governing the enforcement of local city ordinances. Section 36900 replaced sections 769 and 867 of the Municipal Incorporation Act of 1883. Section 867 provided that "The violation of any ordinance of such city or town shall be deemed a misdemeanor, and may be prosecuted by the authorities of such city or town in the name of the People of the State of California, or may be redressed by civil action at the option of such authorities."

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In 1949, by enacting Government Code section 36900, the Legislature adopted a new scheme governing the enforcement of ordinance violations. Government Code section 36900 prevailed over any prior laws and superseded any prior language that restricted the enforcement of municipal ordinances to "the option of said authorities." See, *State v. Conkling* (1861)19 Cal. 501*;* *Sponogle v. Curnow* (1902) 136 Cal. 580; *In re Weymann* (1928) 92 Cal. App. 646.

Government Code section 36900, subdivision (a) unequivocally allows private citizens to enforce an ordinance via civil redress. "A fundamental principle of statutory construction is that '[I]f there is no ambiguity in the language of the statute, 'then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs.' [Citation.] 'Where the statute is clear, courts will not 'interpret away clear language in favor of an ambiguity that does not exist . . . '" *Coble v. Ventura County Health Care Agency* (2021) 73 Cal.App.5th 417, 425–426 [citations omitted].

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The Legislature has recognized that the number of municipal code violations have overwhelmed cities, municipalities, and agency departments. The cities, municipalities, and agencies need help to maintain an effective, efficient, and responsive enforcement of codes. Private citizens need the right of civil redress and action to "deter individuals from letting their properties revert back to an unkempt state or using the property in violation of law." (See, 2003 Cal ALS 60, 2003 Cal SB 567, 2003 Cal Stats. ch. 60; see also, *Code of Civil Procedure* §1021.5 which codified the private attorney general doctrine and created an exception that litigants are to bear their own attorney fees. [*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565, *as modified (Jan. 12, 2005)*]).

Private citizens need the right of civil redress and action when their local government refuses to even investigate a blatant violation of an ordinance.

STATEMENT OF THE FACTS

The parties, Defendants/Petitioners Charles and Katyna Cohen, and Plaintiffs/Real Parties Tom and Lisa Schwartz own

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homes across the street from each other in the Mandeville Canyon section of Brentwood in the City of Los Angeles. Mandeville Canyon, located in the Santa Monica Mountains, offers beautiful scenic views of Los Angeles, the Santa Monica Bay, Catalina Island, and the entire West L.A. basin.

The Cohens' enjoy incredible views of the Santa Monica Bay, including Catalina Island, and the entire West L.A. basin. But the Cohens' illegal landscaping deprives the Schwartzes of the same incredible views, unreasonably interferes with the Schwartzes' use and enjoyment of their property.

The Schwartzes asked the Cohens to trim some hedges that were obstructing their ocean view. The Cohens have an unobstructed ocean view. The Cohens refused.

In October 2021, the Schwartzes then filed a complaint with the City of Los Angeles because the hedges violate the 6' Department of Building and Safety (LADBS) height limit in the ordinance. (Los Angeles Municipal Code ["LAMC"] § 12.22, subdivision (C)(20). But the City took no action.

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The Schwartzes had no other recourse but to file a civil action.

PROCEDURAL HISTORY

I. The Superior Court Action

The Schwartzes' complaint alleged that the Cohens' illegally high hedges violated LAMC section 12.22(C)(20) and also that the Cohens, failed to obtain the requisite permits before the Cohens removed trees and plants from the parkway fronting their property and replaced them with landscaping non-compliant with the Residential Parkway Landscaping Guidelines adopted by the Los Angeles Board of Public Works, in violation of LAMC section 62.129.

The complaint asserts four causes of action: (1) nuisance; (2) violation of LAMC section 12.22, subdivision (C); (3) violation of LAMC section 62.129; and (4) declaratory relief. With respect to the second and third causes of action, the complaint alleges: "Under Government Code section 36900, a violation of a city ordinance may be redressed by civil action [citing *Riley*]. Plaintiffs are affected private individuals who seek to redress

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Defendants' violation with this action." (Italics omitted.)

The Cohens demurred to each of the causes of action asserted in the complaint, arguing the Schwartzes failed to state sufficient facts to constitute a cause of action.

After a hearing, the trial court sustained the demurrer to the first and fourth causes of action with leave to amend and overruled the demurrer to the second and third causes of action. As to the first cause of action, the trial court observed the Schwartzes "fail[ed] to allege specific facts describing how [the Cohens'] conduct has compromised [their] ability to use and enjoy their property." The trial court concluded the complaint did not plead sufficient facts to state a cause of action for public or private nuisance.

Regarding the second and third causes of action, the trial court declined the Cohens' invitation to depart from *Riley*. Instead, noting the absence of authority to the contrary, the trial court applied *Riley* to conclude the Schwartzes "may assert private causes of action for violations of the Los Angeles Municipal Code as alleged [in their complaint]."

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The trial court also determined the Schwartzes' claim for declaratory relief duplicated their other causes of action and was subject to demurrer.

The Schwartzes filed a first amended complaint and eliminated the claims for nuisance or declaratory relief. The first amended complaint asserts two causes of action: (1) violation of LAMC section 12.22, subdivision (C)(2); and (2) violation of LAMC section 62.169. The Schwartzes sought redress for the Cohens' violations of the LAMC based on section 36900 and *Riley*.

II. The Court of Appeal Petition

In response to the superior court overruling their demurrer, the Cohens filed a petition for writ of mandate in the Court of Appeal. The Court of Appeal issued a peremptory writ of mandate issue lifting the stay in the respondent court and ordering the court to: (1) vacate the portion of its June 1, 2023 order overruling petitioners' demurrer to the second and third causes of action asserted in respondents' original complaint filed May 19, 2022; and (2) enter an order sustaining petitioners' demurrer to the second and third causes of action without leave

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to amend.

Prior to the hearing on the Cohens' petition, the Schwartzes filed a motion to dismiss the action, which the Court of Appeal denied. The Court of Appeal criticized the Schwartzes for failing to dismiss their case in the Superior Court—something that did not appear possible given that the Court of Appeal had already granted the Cohens' writ petition.

The Court of Appeal in *Cohen* reversed *Riley* and ordered the Superior Court to sustain the Cohen's second and third cause of action, which were for LAMC violations, without leave to amend. The Court of Appeal also awarded petitioners are awarded their costs for this original proceeding. (Cal. Rules of Court, rule 8.493(a)(1)(A).)

The Schwartzes petitioned for review to the California Supreme Court. The California Supreme Court granted review on the issue of whether Government Code section 36900, subdivision (a) confers upon private citizens the right to redress violations of municipal ordinances.

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STANDARD OF REVIEW

The court reviews a statutory interpretation question review de novo. *People v. Ollo* (2021) 11 Cal.5th 682, 687; *People v. McDavid* (2024) 15 Cal. 5th 1015, 1023.

ARGUMENT

I. GOVERNMENT CODE SECTION 36900(a) GRANTS PRIVATE CITIZENS THE RIGHT TO REDRESS MUNICIPAL ORDINANCE VIOLATIONS BY CIVIL ACTION

A. Introduction

Government Code section 36900 unequivocally allows private citizens to enforce a violation of an ordinance via civil action. It states: "(a) Violation of a city ordinance is a misdemeanor unless by ordinance it is made an infraction. The violation of a city ordinance may be prosecuted by city authorities in the name of the people of the State of California or *redressed by civil action.* (Italics added.)

In *Riley v. Hilton Hotels Corp.* (2002) 100 Cal.App.4th 599, 607, the court held, ". . . Government Code section 36900, subdivision (a), expressly permits violations of city ordinances to

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be "redressed by civil action." Both our Constitution and the Government Code prohibit giving effect to city ordinances in conflict with state law. (Cal. Const., art. XI, § 7; Gov. Code,§ 37100.) Defendants refer us to no state law that allows a city to abrogate the right of redress created in the Government Code. We decline to read into the Municipal Code an intent to create an impermissible conflict with state law by abrogating the right to a civil action created by the Government Code." *Id.* At 607.

Numerous other published court cases have held that Government Code section 36900, subdivision (a) expressly and explicitly provides that a violation of a city ordinance may be redressed by civil action. See, *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal. App. 4th 1228, 1263-64 (2005) (Government Code section 36900, subdivision (a) "expressly provides that a violation of a city ordinance may be redressed by civil action"); *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal. App. 4th 1157, 1181, n.10 (Measures for the Living Wage Ordinance include a private right of action for aggrieved employees and penalties under Government Code

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section 36900).

B. The Plain, Unambiguous Language of Code Section 36900 Subdivision (a) Confers upon Private Citizens the Right to Redress Violations of Municipal Ordinances

Government Code section 36900, subdivision (a) unequivocally allows private citizens to enforce an ordinance via civil redress.

> "'The basic rules of statutory construction are well established. 'When construing a statute, a court seeks to determine and give effect to the intent of the enacting legislative body.' [Citation.] ' "We first examine the words themselves because the statutory language is generally the most reliable indicator of legislative intent. [Citation.] The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context." [Citation.] If the plain, commonsense meaning of a statute's words is unambiguous, the plain meaning controls.' [Citation.] But if the statutory language

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> may reasonably be given more than one interpretation, ' " 'courts may consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute.'"

Catlin v. Superior Court (2011) 51 Cal.4th 300, 304 (citations omitted).

Here, the "plain and commonsense meaning" of Section 36900 is that private persons can bring a civil action to redress a violation of a city ordinance under California Government Code § 36900(a). The plain and commonsense meaning of this provision rests on three key textual and structural observations:

Disjunctive Structure: The statute uses the disjunctive "or" to separate two enforcement mechanisms: Prosecution by city authorities; or redress by civil action. The use of "or" means that these are distinct and independent avenues. If the Legislature intended to limit civil redress to city authorities, it could have said so explicitly, as it did in the first clause.

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When the Legislature uses the word "or" in a statute, it generally indicates an intention to designate separate, disjunctive categories or alternative enforcement mechanisms. This interpretation is supported by multiple cases and statutory analyses. For instance, in *Padron v. Osoy* (2025) 110 Cal. App. 5th 677, the court explained that the word "or" in its ordinary sense functions to mark an alternative, such as "either this or that," and connotes separate, dissimilar alternatives.

Similarly, in *In re J.S.* (2024) 100 Cal. App. 5th 246, the court noted that "or" is used to designate separate, disjunctive categories, emphasizing its role in distinguishing between alternatives.

In *Anderson v. Davidson* (2018) 32 Cal. App. 5th 136, the court interpreted the use of "or" in a statute as creating distinct categories, with each category standing independently of the others. The court highlighted that the plain and ordinary meaning of "or" is to mark alternatives, such as "either this or that". Additionally, in Q*uigley v. Garden Valley Fire Protection Dist.* (2017) 10 Cal. App. 5th 1135, the court confirmed that the

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disjunctive "or" renders clauses as alternatives, with each clause being construed independently

Further, in *Gentis v. Safeguard Business Systems, Inc.* (1998) 60 Cal. App. 4th 1294, the court emphasized that the Legislature's use of "or" broadens the scope of a statute by recognizing alternative or separate categories, reinforcing the disjunctive nature of the term. This principle is echoed in *People v. Clark* (2024) 15 Cal. 5th 743, where the court interpreted "or" as indicating alternative ways of satisfying statutory requirements.

Thus, the use of "or" in a statute typically signifies the Legislature's intent to create separate and distinct enforcement mechanisms or categories, rather than combining them into a single, unified approach.

Absence of Limiting Language: The phrase “redressed by civil action” is not qualified by any subject. Unlike the first clause, which specifies “city authorities,” the second clause is open-ended. The omission of a limiting subject implies that any party with standing, including private persons, may bring a civil

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action.

California courts generally avoid inserting omitted language into statutes unless ambiguity exists. In *California Capital Ins. Co. v. Hoehn* (2024) 17 Cal. 5th 207," the court noted that when the Legislature includes a term in one provision but omits it in another, it is presumed that the omission was intentional and conveys a different legislative intent. Similarly, in *People ex rel. Internat. Assn. of Firefighters, etc. v. City of Palo Alto* (2024) 102 Cal. App. 5th 602," the court reiterated that courts should not interpret statutes as if they contained language the Legislature chose to omit, further supporting the principle that omissions are deliberate and meaningful.

Thus, the absence of qualifying language accompanying "or civil authorities" suggests that the Legislature did not intend to create a separate enforcement mechanism beyond what is explicitly stated in the statute. Courts would likely interpret the phrase in the context of the statute as a whole, giving effect to the Legislature's intent without adding or altering its language *Ramos v. Superior Court* (2007) 146 Cal. App. 4th 719, *Quigley*,

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supra, 10 Cal. App. 5th 1135.

Ordinary Meaning of "Redressed": The term "redressed" in legal usage commonly refers to the act of seeking a remedy for a wrong. In civil litigation, this is typically done by the injured party. Thus, the commonsense reading is that those harmed by ordinance violations may seek redress through the courts.

Statutory Interpretation: Courts presume that the Legislature means what it says. If the Legislature had intended to restrict civil enforcement to municipalities, it would have done so explicitly.

In the seventy-five years since the Legislature enacted Government Code section 36900, no published court decisions, except *Cohen v. Superior Court* (2024) 102 Cal. App. 5th 706, have abrogated the right of private citizens to redress municipal code violations.

C. Government Code Section 36900's Legislative History

The Schwartzes' position is that Section 36900 is not ambiguous, meaning that it may <u>not</u> "reasonably be given more

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than one interpretation." *Catlin, supra,* 51 Cal.4th at 304. However, if the Court was to determine that the statute is ambiguous regarding whether a private person can bring a civil action to seek redress for violation of a local ordinance, then the next step is consider "'various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute.'" *Id.*

As discussed below, the legislative history supports the interpretation that civil actions are not limited to those filed by the local governmental authorities.

1. The Municipal Incorporation Act

Before the Legislature enacted Government Code section 36900 in 1949, the Municipal Incorporation Act of 1883 (the "MIA") of California applied to cities. (Stats. 1883, p. 269). Subdivision 1 of section 862 of the MIA empowered cities "to pass ordinances not in conflict with the constitution and laws of this state or of the United States." Subdivision 14 of the same section empowered such cities "to impose fines, penalties and forfeitures

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for any and all violations of ordinances; to fix the penalty at fine or imprisonment or both; but no such fine shall exceed $ 300, nor the term of imprisonment exceed three months."

Section 867 of the same act provided that "The violation of any ordinance of such city or town shall be deemed a misdemeanor, and may be prosecuted by the authorities of such city or town in the name of the People of the State of California, or may be redressed by civil action at the option of such authorities." (Request for Judicial Notice ["RJN"], Exh. 1, Vol. 1 pp. 16; Exhibit C, Vol. 6 pp. 1862).

2. In 1949, the Legislature Enacted Government Code Section 36900 to Override the MIA

On January 26, 1949, Senator R. R. Cunningham, chair of the Senate Committee on Local Government, introduced Senate Bill 750 at the request of the California Code Commission. (RJN Exhibit C, Vol. 6 pp. 1785, 1814).

Senate Bill 750 was intended to "consolidate and revise the law relating to the organization, operation, and maintenance of a system of state and local government…" (*Id.*).

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Senate Bill 750's repeated intent was also "to repeal acts and parts of acts specified therein." (*Id.*).

Government Code section 36900 is one of the statutes that enacted as part of Senate Bill 750. This statute since 1949 has governed the prosecution and redress of ordinance violations and rendered the MIA obsolete.

3. Deletion of "at the option of said authorities"

During the legislative process for Senate Bill 750 in 1949, the phrase "at the option of said authorities" was deleted from Government Code section 36900. (RJN Exh. 1, Vol. 1 pp. 16; Exhibit C, Vol. 6 pp. 1862).

As a result, the statute as enacted states: "Violation of a city ordinance is a misdemeanor unless by ordinance it is made an infraction. The violation of a city ordinance may be prosecuted by city authorities in the name of the people of the State of California *or redressed by civil action*." *Government Code* §36900(a) [Italics added].

Code of Civil Procedure section 1858 states the "general rule" for construction of statutes as follows: "In the construction

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of a statute . . . the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted . . . ." See, *Manufacturers Life Ins. Co. v. Superior Court* (1995) 10 Cal. 4th 257, 274 [citing *Code of Civil Procedure* §1858 as one of the "[w]ell established canons of statutory construction" and describing it as a "mandate"]; and *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal. 4th 342, 349 [office of judge neither to insert nor to omit].) ". . . [C]ourts are not at liberty to impute a particular intention to the Legislature when nothing in the language of the statute implies such an intention." *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal. App. 4th 644, 658; *Crusader Ins. Co. v. Scottsdale Ins. Co.* (1997) 54 Cal. App. 4th 121, 133-34 .

Courts may not rewrite the statute to conform to an assumed intent that is not expressed in its words. *People v. Leal* (2004) 33 Cal.4th 999, 1008. To do so would be to engage in judicial legislation, which is beyond the proper role of the judiciary. (See *In re Christian S.* (1994) 7 Cal.4th 768, 782.)

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Thus, any interpretation that seeks to add to or subtract from the express terms of Section 36900 must be rejected. The Legislature's deliberate choice of language—and its omission of alternative phrasing—must be respected. The statute means what it says, and it says what it means.

The obvious intent of deleting "at the option of said authorities" was that the Legislature intended that a violation of a local ordinance could be enforced by a civil action that was brought by anyone, just not the city's "authorities." By enacting Government Code section 36900, the Legislature struck, repealed, and rendered the words "at the option of said authorities" null and void.

D. Government Code section 36900 Established a New Scheme Allowing Private Citizens the Right to Redress Violations of Municipal Ordinances

By enacting Government Code section 36900, the Legislature manifested an intention to implement a completely new scheme governing who can enforce violations of ordinances. The Legislature, in enacting Government Code section 36900

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effectively declared that Government Code section 36900 shall prevail over any prior laws. (See, *State v. Conkling, supra*, 19 Cal. at 501 ("Where a statute repeals or supersedes certain sections of a previous statute, a mere declaration in a still subsequent statute that the repealing statute *shall not repeal* these sections, is not a law reviving them or enacting them. There can be no law without a legislative intent that it become a law; and such intent must be manifested by language declaring the legislative will."); [Italics added]; *Sponogle v. Curnow* (1902) 136 Cal. 580, 584.

Where the Legislature revises a statute and omits language that was previously included, courts presume that the omission was intentional and that the Legislature intended to change the law. This principle is well-established in California jurisprudence. As the California Supreme Court set forth in *Carter v. Stevens* (1930) 208 Cal. 649, and reaffirmed in *Wood v. Roach* (1932) 125 Cal. App. 631, 638, "[T]he omitted parts cannot be revived by construction but are to be considered as annulled." Similarly, in *Stead v. Curtis* (1911) 191 F. 529, the

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court emphasized that when a statute is amended and certain provisions are removed, those provisions are deemed repealed and cannot be judicially restored.

This canon of statutory interpretation reflects a fundamental respect for legislative intent. Courts do not presume that the Legislature acts inadvertently; rather, they assume that each word added or removed from a statute carries deliberate meaning. Thus, when the Legislature enacts a revised statute that omits prior limiting language, it is presumed to have intended a broader or different scope.

Applying this principle to the enactment of Section 36900, the Legislature's decision not to include language limiting civil actions to those brought by "authorities" is significant. If the Legislature had intended to preserve such a limitation, it could have done so explicitly. Its failure to do so indicates an intent to broaden the class of potential plaintiffs. The omission of the term "authorities" must therefore be read as a conscious decision to allow civil actions to be brought by other parties, including private individuals or entities.

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To interpret Section 36900 as still implicitly limiting civil actions to "authorities" would be to contravene the Legislature's clear intent and to judicially reinsert language that the Legislature chose to remove. Such an interpretation would violate the principle articulated in *Wood v. Roach* and related cases, which prohibit courts from reviving omitted statutory language through construction.

In sum, the Legislature's omission of the term "authorities" in the revised statute is not a mere oversight—it is a substantive revision that must be given full effect. Section 36900 should therefore be interpreted to permit civil actions by parties beyond just governmental authorities.

E. The Legislature Recognized the Right of Private Citizens to Seek Civil Redress of Municipal Code Violations

The Legislature recognizes that private citizens need a statutory mechanism to enforce local ordinances, particularly when a local government fails to enforce the law. For example, *Code of Civil Procedure* section 1021.5 codified the private attorney general doctrine and created an exception that litigants

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are to bear their own attorney fees. *Graham, supra,* 34 Cal.4th at p. 565.

> "'[T]he private attorney general doctrine 'rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award for attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible.'" *Id.*

The doctrine aims to promote lawsuits for public policy by rewarding attorneys who win these cases and prevent worthy claimants from being silenced or stifled by a lack of legal resources. (*Id.* at pp. 565, 568.)

F. **The Terms "Civil Action or Civil Redress" Traditionally Refer to the Right of Private Parties to Enforce Violations of Law.**

The term "civil action" is defined in Code of Civil Procedure section 30 as: "A civil action is prosecuted by one party against another for the declaration, enforcement or protection of a right,

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or the redress or prevention of a wrong." This definition emphasizes that civil actions include legal proceedings initiated by private parties to address grievances and enforce rights.

In *Thornton v. California Unemployment Ins. Appeals Bd.* (2012) 204 Cal.App.4th 1403, the court clarified that "civil action" refers to an action that arises out of an obligation or an injury and is prosecuted for the declaration, enforcement, or protection of a right, or the redress or prevention of a wrong, but not for the punishment of a public offense. *Id.* at 1413 ("'[C]ivil action' means '[a]n action brought to enforce, redress, or protect a private or civil right; a noncriminal litigation'....Thus, the term 'civil action' covers the following: (1) [S]uits at law or in equity.... (2) Certain adversary proceedings that take place during a probate proceeding....(3) Actions for declaratory relief....(4) Actions for divorce (dissolution of marriage)....'").

This distinction underscores that civil actions are primarily concerned with private rights and remedies rather than criminal penalties. *Id.*

Historically, at early common law, "legal" causes of action

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typically involved lawsuits in which the plaintiff sought to recover money damages to compensate for an injury caused by the defendant's breach of contract or tortious conduct, whereas "equitable" causes of action sought relief such as injunctions or specific performance *ZF Micro Solutions, Inc. v. TAT Capital Partners, Ltd* (2002) 82 Cal.App.5th 992, 1000. This historical context supports the notion that civil actions are a fundamental mechanism for private parties to enforce their rights and seek remedies for wrongs. In conclusion, the terms "civil action" or "civil redress" traditionally refer to the right of private parties to enforce violations of law. This interpretation is consistent with statutory definitions, legislative intent, and historical common law principles, which collectively emphasize the role of civil actions in protecting and enforcing private rights.

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II. *LU V. HAWAIIAN GARDENS CASINO* AND *MORADI–SHALAL V. FIREMAN'S FUND INS. COMPANIES* DO NOT AFFECT PRIVATE CITIZENS' RIGHTS UNDER SECTION 36900 TO REDRESS VIOLATIONS OF MUNICIPAL ORDINANCES

The cases of *Lu v. Hawaiian Gardens Casino, Inc.* (2010) 50 Cal.4th 592, and *Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, illustrate a critical principle in California statutory interpretation: **not all statutory violations confer a private right of action**. This principle is especially relevant when evaluating whether individuals can sue under specific state statutes or municipal ordinances such as Government Code section 36900.

In *Lu*, the California Supreme Court interpreted Labor Code section 351, which governs the handling of gratuities. While the statute clearly prohibits employers from retaining tips left for employees, the Court held that it does **not** create a private right of action for employees to recover withheld gratuities. The Court emphasized that the Legislature had not expressed an intent to authorize such lawsuits, and enforcement was left to the Labor

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Commissioner.

Similarly, in *Moradi–Shalal*, the Court held that Insurance Code section 790.03(h), which outlines unfair claims settlement practices, does not provide a private cause of action for insureds or third parties. The Court reversed prior precedent and clarified that enforcement of these provisions lies with the Insurance Commissioner, not private litigants.

Lu and *Moradi–Shalal* provide rulings that **the existence of a statutory duty does not automatically imply a corresponding private remedy**. Courts must find legislative intent—either explicit or implied through statutory language and legislative history—to recognize a private right of action.

Neither *Lu* nor *Moradi–Shalal* addressed Government Code section 36900, which provides for the enforcement of municipal ordinances. "'Cases are not authority for propositions not considered.'" *B.B. v. City of Los Angeles* (2020) 10 Cal.5th 1, 11 (citation omitted). A case is not authority for propositions neither considered nor discussed in the opinion and must be "understood in the light of the facts and the issue then before the

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court." *Ginns v. Savage* (1964) 61 Cal.2d 520, 524, fn. 2. If an issue is not presented, cases cannot be treated as "'authority for propositions not considered.'" *Geiser v. Kuhns* (2022) 13 Cal.5th 1238, 1252. Therefore, these cases do not limit or preclude private citizens from seeking redress under Section 36900. In fact, the absence of any discussion of section 36900 in these decisions suggests that its enforcement mechanisms remain intact and unaffected.

In *Zhang v. Superior Court* (2013) 57 Cal.4th 364, the California Supreme Court clarified that while *Moradi–Shalal* bars private actions under the Unfair Insurance Practices Act (UIPA), it does not immunize insurers from liability under the Unfair Competition Law (UCL), provided the claim is based on conduct that violates laws other than the UIPA. *Id.* at 381-82. This decision reinforces the idea that **plaintiffs may pursue alternative statutory remedies**—such as the UCL—when direct enforcement under a specific statute is barred.

Thus, while *Lu* and *Moradi–Shalal* limit private enforcement under their respective statutes, they do not

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undermine the rights of private citizens to enforce municipal ordinances or pursue alternative statutory remedies where legislative intent supports such actions.

III. THE LEGISLATURE, NOT THE COURTS, SHOULD CLARIFY ANY ALLEGED AMBIGUITY

Government Code section 36900 contains no ambiguity. "[T]he fact that ""a statute can be applied in situations not expressly anticipated by [the Legislature] does not demonstrate ambiguity. It demonstrates breadth."" [Citations.]" *Siskiyou County Farm Bureau v. Department of Fish & Wildlife* (2015) 237 Cal.App.4th 411, 433.

The Legislature, not the courts, should clarify the meaning of an existing statute if the statute contains ambiguous language. (*Id.* at p. 930 [noting the significance of the "ambiguity that existed in the language and legislative history of" the existing statute]; *In re J.C.* (2016) 246 Cal.App.4th 1462, 1479–1480 [when the language of a voter-adopted ballot initiative was ambiguous and there were "solid arguments both for and against" a certain interpretation, the Legislature's enactment clarifying

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the ambiguity was a clarification of existing law, not a change].)

Goldstein v. Superior Court (2023) 93 Cal. App. 5th 736, 749.

CONCLUSION

The Schwartzes respectfully request that Court uphold *Riley* and the People's right to seek civil redress under Government Code section 36900 (a).

DATED: June 20, 2025

Respectfully submitted,

By: /s/ Keith J. Turner
Keith J. Turner
Attorneys for Real Parties in Interest Thomas and Lisa Schwartz

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204 and Rule 8.504 of the *California Rules of Court*, I hereby certify that this Opening Brief on the Merits is produced using 13-point Century Schoolbook font; its lines are at least one-and-a-half-spaced; and it contains approximately 5,407 words (as counted by the Microsoft Office Word program used to generate this brief), which is less than the maximum amount of words permitted by the rules of court.

DATED: June 20, 2025

Respectfully submitted,

By: /s/ Keith J. Turner
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Attorneys for Real Parties in Interest Thomas and Lisa Schwartz

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PROOF OF SERVICE

I am employed in the County of Los Angeles, in the State of California. I am over the age of 18 and not a party to the within action; my business address is 11878 La Grange Ave., 2nd Floor, Los Angeles, CA 90025; and my email address is je@turner.law

On the below date I served the foregoing document:

OPENING BRIEF ON THE MERITS

on all parties in this action as detailed in the below service list.

[X] **BY ELECTRONIC SERVICE:** I caused such document(s) to be delivered to the email address(es) listed below through the Court's TrueFiling electronic filing system, which addresses are known to the sender to be the email address of the recipient(s) registered with TrueFiling to be served electronically.

[] **BY U.S. MAIL:** I am readily familiar with this firm's practice for the collection and the processing of correspondence for mailing with the U.S. postal service. It is deposited for collection with the U.S. postal service on that same day with postage thereon fully prepaid for delivery by first-class mail at Los Angeles, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one business day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 20 2025 in Los Angeles, California.

/s/ Justin Escano
Justin Escano

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