Supreme Court 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

REPLY BRIEF ON THE MERITS

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REPLY ARGUMENT

I. SUMMARY OF REPLY

This Court asked the parties to address, which is whether *Government Code* section 36900(a) "confer upon private citizens a right to redress violations of municipal ordinances?" [1] In other words, the heart of this Court's review is whether all Californians can access the California courts to seek redress for violations of municipal law.

The Schwartzes' position is that Section 36900(a) is a procedural provision and a legislative guarantee that there is the right to seek judicial redress when local ordinances are violated. The Schwartzes' position is based on the language of the statute, its legislative history and long-standing precedent.

On the other hand, the Cohens' Answering Brief argues for a restrictive interpretation that deny affected individuals access to the courts, undermining the Legislature's clear intent to provide a

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[1] *Government Code* §36900(a) provides: "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.)

remedy for those harmed by ordinance violations. The Answering Brief fails to rebut the statute's plain language, legislative history, and public policy supporting a private right of action under Section 36900(a). The Answering Brief relies on a series of cases and statutory interpretation principles to argue that Section 36900(a) does not confer a private right of action. As demonstrated below, these authorities are either inapposite, misapplied, or, in fact, support the Schwartzes' position.

The right to bring a civil action is a cornerstone of our legal system, ensuring that justice is not solely dependent on the resources or priorities of municipal authorities. By expressly allowing violations of city ordinances to be "redressed by civil action" without limiting that right to only the City authorities, the Legislature recognized that private enforcement is essential to the rule of law, public welfare, and the protection of property and community interests. Limiting this right would not only frustrate the statutory text and legislative history, but would also erode the public's confidence in the ability of the courts to provide remedies for unlawful conduct.

For these reasons, and as further detailed below, the Supreme Court should reaffirm the important right of access to the courts embodied in Section 36900(a), and reverse the Court of Appeal's decision.

II. THE COHENS' "PRIVATE ATTORNEY GENERAL STATUTE" ARGUMENT MISTATES THE PURPOSE OF SECTION 36900(a), WHICH PROVIDES THE RIGHT TO REDRESS MUNICIPAL ORDINANCE VIOLATIONS BY CIVIL ACTION

A. Section 36900(a) is not a Private Attorney General Statute

The Cohens' first Answering Brief argument is that the Schwartzes are trying to convert Section 36900(a) into a "private attorney general" statute.

The private attorney general statute "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 of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 933.

In other words, a private attorney general statute, such as *Code of Civil Procedure* Section 1021.5 provides for the recovery of attorney fees in lawsuits that were brought to enforce an important public policy. *Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 634; *Apple, Inc. v. Franchise Tax Bd.* (2011) 199 Cal.App.4th 1, 29.

In contrast, Section 36900(a) functions as a procedural provision rather than a substantive rule. Its purpose is limited to outlining the mechanisms available for enforcing a city ordinance once a violation has occurred. Specifically, the statute identifies two distinct avenues of enforcement: (1) the initiation of a misdemeanor prosecution by the appropriate city authorities, which constitutes a criminal proceeding; or (2) the pursuit of relief through a civil action ("redressed by civil action"), allowing the violation to be addressed in a non-criminal forum.

The Schwartzes did not file this action to enforce a public policy embodied in constitutional or statutory provision. Rather, they filed this action because the Cohens refused to trim their hedges in violation of a local hedge height ordinance (*Los Angeles Municipal Code* §12.22 C.20 (f).)

B. ***Moradi-Shalal* and *Lu* Are Not Private Attorney General Cases**

The Cohens' argue that "*Moradi-Shalal* and *Lu* establish a test applicable whenever a court is asked to decide if a statute confers a private right of action." (AB 30, *Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, *Lu v. Hawaiian Gardens Casino, Inc.* (20100 50 Cal. 4th 592.)

But neither *Moradi* nor *Lu* concerned whether the statutes at issue in those cases were "private attorney general" statutes. Both cases were about whether the statutes at issue, which each concerned specific California state laws, provided a private cause of action. That is a different question that what the Court asked the parties to address, which is whether Section 36900(a) "confer upon private citizens a right to redress violations of municipal ordinances?"

C. Section 36900(a) Does Not Deputize Private People

The Cohens' argue that the Schwartzes seek to make Section 36900(a) a private attorney general statute and "deputize every resident of California to enforce any city ordinance." (AB 31) The Schwartzes are not asking this Court to make Section 36900(a) a

private attorney general statute. Section 36900, by its clear and unmistakable language, authorizes someone to seek civil redress for those who violate civil ordinances. In the seventy-five years since the Legislature enacted 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.

The Cohens' argues that, if a city government cannot enforce its own ordinances, it can amend them to provide a private right of action. The Cohens' argue that the City has decided not to "deputize the public to police hedge heights." (AB 42) The Cohens' argue that upholding *Riley* would "open[] the floodgates to private enforcement by any private party. . . . "

Riley does not deputize the public to police other people's hedge heights. Riley does not deputize citizens to arrest and prosecute people.

Riley does not create a citizen's police force. Riley gives people the right to seek relief in the courts, i.e., civil redress, against those who violate their rights where the City cannot or refuses to enforce its ordinances. Because government entities lack

the resources to deal with every violation of a local ordinance, removing the civil redress rights under Section 36900 would allow scofflaws, like the Cohens to violate ordinances without fear of a penalty.

III. *RILEY* AND SUBSEQUENT AUTHORITY

The Cohen seek to repudiate *Riley v. Hilton Hotels Corp.* (2002) 100 Cal.App.4th 599, arguing it was poorly reasoned and failed to apply the "Moradi-Shalal test." The Cohens' argues that, if a city government cannot enforce its own ordinances, it can amend them to provide a private right of action. The Cohens' argue that the City has decided not to "deputize the public to police hedge heights." (AB 42) The Cohens' argue that upholding Riley would "open[] the floodgates to private enforcement by any private party. . . ."

Riley does not deputize the public to police other people's hedge heights. *Riley* does not deputize citizens to arrest and prosecute people. *Riley* does not create a citizen's police force. Riley gives people the right to seek relief in the courts, *i.e.*, civil redress, against those who violate their rights where the City cannot or refuses to enforce its ordinances. Because government

entities lack the resources to deal with every violation of a local ordinance, removing the civil redress rights under Section 36900 would allow scofflaws, like the Cohens to violate ordinances without fear of a penalty.

Riley correctly interpreted the plain language of Section 36900(a) and as discussed below is consistent with statutory construction principles. Subsequent cases have followed *Riley*, including *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, and *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, and which recognize a private right of action under Section 36900(a).

The Cohens' critique is based on policy preferences, not legal error.

IV. THE *MORADI-SHALAL* AND *LU* CASES DID NOT CONCERN SECTION 36900(a)

The Answering Brief invokes *Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287 and *Lu v. Hawaiian Gardens Casino, Inc.* (2010) 50 Cal.4th 592 to argue for a stringent standard for private rights of action. Both cases concerned state

statutes with comprehensive regulatory schemes and did not address municipal ordinance enforcement.

This Court stated in *Lu* that a "violation of a **state** statute does not necessarily give rise to a private cause of action." *Lu, supra*, 50 Cal.4th at 596 (emphasis added). *Lu* concerned Labor Code section 351[2] ,which statute concerns that employee gratuities and tip pooling. The plaintiff in *Lu* was a card dealer at a casino. He alleged that his employer violated Labor Code section 351 by enforcing a mandatory tip pooling policy, which Labor Code section 351 prohibits.

The plaintiff argued that private causes of action were "implicitly created" in section 351. This Court concluded that it did not because the statute did not contain language that provided for civil actions. Rather, the Labor Code provided that the California Labor Commissioner can recover these penalties through hearings

[2] Labor Code, section 351 provides in pertinent part: "No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for."

or independent civil actions brought in the name of the people of California.[3]

In *Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, this Court addressed whether Insurance Code section 790.03(h) (which part of the Unfair Insurance Practices Act) created a private cause of action for unfair ("bad faith") insurance claims practices. This Court held that the California Legislature did not intend to create a private right of action under that statute because statute provided for "'administrative regulation and discipline.'" *Id.* at 295-296.

V. RESPONSE TO THE COHEN'S STATUTORY INTERPRETATION ARGUMENTS

A. The Cohens' Reliance on Moradi-Shalal and Lu Is Misplaced

Based on *Lu* and *Moradi-Shalal,* the Cohens argue that whether a statute provides for a private cause of action for its

[3] *Labor Code* § 225.5 authorizes the Labor Commissioner to recover these penalties through hearings or independent civil actions brought in the name of the people of California. *California Code of Regulations*, Title 8, § 13693 provides that if an employer fails to pay gratuities owed to employees, the Labor Commissioner may proceed against the employer's surety bond to recover the unpaid gratuities. This regulation specifically allows the Labor Commissioner to take action to ensure compliance with § 351 and § 353, which governs accurate recordkeeping of gratuities (8 CCR § 13693).

violation must be stated in "unmistakable terms." (AB 15-17) However, the Lu case actually held that a statute can provide for a private cause of action in either "'clear, understandable, unmistakable terms' … **or more commonly, a statute may refer to a remedy or means of enforcing its substantive provisions, i.e., by way of an action**." *Lu, supra* 50 Cal.4th at 597 (emphasis added).

In both *Lu* and *Moradi-Shalal,* the plaintiffs had filed the lawsuits against the defendant for violating the substantive statute at issue. In *Lu,* the plaintiff alleged that the defendant had violated *Labor Code* section 351 by enforcing a mandatory tip pooling policy. *Lu, supra* 50 Cal.4th at 595. In *Moradi-Shalal,* the plaintiff was injured in an automobile accident caused by the defendant insurance company's insured. In other words, the plaintiff was a "third-party" claimant, and she alleged that the insurer violated *Insurance Code* § 790.03(h) by not in good faith settling her claim. Thus, in both cases, the plaintiffs were suing the defendants for substantive violation of the statutes.

The Answering Brief invokes *Moradi-Shalal* and *Lu* to argue for a stringent standard for private rights of action. However, both

cases involved statutes with comprehensive regulatory schemes and explicit enforcement mechanisms, unlike Section 36900(a), which is open-ended and lacks exclusivity. The absence of limiting language and the structure of Section 36900(a) distinguish it from the statutes at issue in *Moradi-Shalal* and *Lu*.

In contrast, the Schwartzes do not allege that the Cohens violated Section 36900, which is a remedy statute for the violation of local laws. Section 36900(a)'s first clause expressly states that "city authorities" may prosecute violations of ordinances, but the second clause does not likewise mention "city authorities" when specifying those violations may also be "redressed by civil action." The Legislature's omission of any reference to "city authorities" in the second clause unequivocally demonstrates it did not intend to restrict the right to sue under the statute to city authorities, because they already had the constitutional right to do so. (See *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1117, 81 Cal.Rptr.2d 471, 969 P.2d 564 ["Where different words or phrases are used in the same connection in different parts of a statute, it is presumed the Legislature intended a different meaning"].)

Also, the California Constitution provides that municipalities have power to "invoke an appropriate civil remedy to coerce obedience to the mandates of its ordinances or regulations adopted in the exercise of the police power as expressly granted to it by the California constitution. Cal. Const., art. XI, §7 (granting cities' plenary authority to govern, subject only to the limitation that they exercise this power within their territorial limits and subordinate to state law); see also *Stockton v. Frisbie & Latta*, 93 Cal. App. 277, 289 (1928) (A "municipal corporation or a county or a township may, . . . invoke an appropriate civil remedy to coerce obedience to the mandates of its ordinances or regulations . . . ")

For the above reasons, the "unmistakable" standard should not apply to answering the Court's question whether Section 36900(a) confers upon private citizens a right to redress violations of municipal ordinances, including because Section 36900 was enacted thirty-nine years before *Moradi-Shalal*.

B. Section 36900(a) is Not Ambiguous

A statute is considered ambiguous when its language is reasonably susceptible to more than one interpretation. See, e.g., *Gutierrez v. Carmax Auto Superstores California* (2018) 19

Cal.App.5th 1234, 1249 (citing *Merced Irrigation Dist. v. Superior Court* (2017) 7 Cal.App.5th 916, 924-926).

The Cohens contend that the statute is ambiguous because "[N]owhere in the statute does it squarely identify who may seek redress 'by civil action.'" (AB 18) This argument ignores both the statutory text and established principles of statutory construction.

"Where different words or phrases are used in the same connection in different parts of a statute, it is presumed the Legislature intended a different meaning." *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1117. The court determined that the statute at issue (California's anti-SLAPP statute, Code of Civil Procedure section 425.16) was not ambiguous even though two of the four clauses defining "'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue'" explicitly include an "issue of public interest." *Id.* at 1111-12. The court emphasized that the statute's language clearly encompasses any cause of action arising from statements or writings made before, or in connection with issues under consideration by, official

proceedings, without imposing a separate "public issue" requirement. *Id.* at 1123.

The court reasoned that the absence of the "public interest" language in clauses (1) and (2) indicates that the Legislature did not intend to impose a separate "public issue" requirement for those clauses. The court emphasized that the Legislature's use of different language in clauses (3) and (4) demonstrates its intent to apply the "public interest" limitation only to those clauses, not to clauses (1) and (2). This interpretation aligns with the "last antecedent rule," which states that qualifying words or phrases are applied to the words or phrases immediately preceding them and not to others more remote.

Here, the first clause of Section 36900 of the second sentence expressly states "city authorities" may prosecute violations of ordinances, but the second clause does not likewise mention "city authorities" when specifying those violations may also be "redressed by civil action." The Legislature's omission of "city authorities" in the second clause demonstrates it did not intend to restrict the right to *redress by civil action* to only "city authorities."

C. Response to the Cohens' "passive voice" argument

The Cohens contend that, under the reasoning of *Coso Energy Developers v. County of Inyo* (2004) 122 Cal.App.4th 1512, the passive voice in Section 36900(a) creates ambiguity as to who may bring a civil action. However, *Coso Energy* itself recognizes that passive voice does not necessarily create ambiguity where the statutory scheme or context makes the actor clear: "A sentence or clause written in the passive voice is not necessarily ambiguous." *Id.* at 1525. The court in *Coso Energy* found ambiguity only where the actor was indefinite or unknown, but also acknowledged that legislative intent and statutory context can resolve such ambiguity. *Id.*

Here, the deletion of "at the option of said authorities" from the predecessor statute and the absence of limiting language in Section 36900(a) make clear the Legislature's intent to allow private enforcement.

The Cohens next rely on *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171 to support their ambiguity argument. That case, however, involved a

different statutory context—regulation of medicinal cannabis businesses—not the right to seek civil redress for ordinance violations. The principles of statutory construction cited in *Medical Marijuana* do not override the plain meaning of Section 36900(a) in its own context.

The Cohens cite *Julian v. Mission Community Hospital* (2017) 11 Cal.App.5th 360, *Noe v. Superior Court* (2015) 237 Cal.App.4th 316, and *Lagrisola v. North American Financial Corp.* (2023) 96 Cal.App.5th 1178 for the proposition that statutory language or legislative history must clearly indicate an intent to create a private right of action. These cases involved statutes with comprehensive regulatory schemes and explicit enforcement mechanisms, unlike Section 36900(a), which is open-ended and lacks exclusivity.

Moreover, none of the Cohen's cases interpret the phrase "civil redress" or address the unique legislative history of Section 36900(a).

Accordingly, the Cohens' passive voice argument fails. The statutory text, its evolution, and interpretive principles confirm

that Section 36900(a) authorizes private enforcement actions for ordinance violations.

D. Reply to Cohen's Response to Plain Language Arguments

1. The Disjunctive "Or"

Section 36900(a)'s second sentence provides: "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." (emphasis added)

The Cohens contend that "or" means that city authorities may choose between criminal or civil enforcement. However, the "use of the word 'or' in a statute indicates an intention to use it disjunctively so as to designate alternative or separate categories." *White v. County of Sacramento* (1982) 31 Cal.3d 676, 680 (emphasis added).

The Schwartzes' response is that if the Legislature intended to restrict civil actions to city authorities, it would have kept the original draft of Section 36900(a), which was: "The violation of any city ordinance of such city shall be deemed a misdemeanor. Such a violation and may be prosecuted by the city authorities of such city

in the name of the people of the State of California, or may be redressed by civil action, at the option of said authorities." [RJN, Exh. 1, Vol. 1 pp. 16; Exhibit C, Vol. 6 pp. 1862].

The Legislature's removed the phrase "at the option of said authorities"—which appeared in the predecessor Municipal Incorporation Act. The deletion of "authorities" must be presumed intentional, because, "[i]n interpreting statutory language, a court must not 'insert what has been mitted, or ... omit what has been inserted.'" *Pieri v. City and County of San Francisco* (2006) 137 Cal.App.4th 886, 892 [citing *Code of Civil Procedure* §1858].

The omission of limiting language in the second clause reflects a legislative intent to broaden standing for civil enforcement. The disjunctive "or" in Section 36900(a) does not merely offer city authorities a choice of enforcement method. Its structure and language indicate that the Legislature intended to create two distinct enforcement pathways—criminal prosecution by public authorities and civil action, including by private parties. Limiting civil enforcement to city authorities would frustrate the statute's remedial purpose and leave private parties without recourse for violations not prosecuted criminally. The broader

reading, allowing private litigants to bring civil actions, ensures effective enforcement and vindicates legislative intent.

2. The "*Omission*" Rule

The Cohens' next argument concerns what is being described for brief as "Omission Rule," which is defined as follows: "In interpreting statutory language, a court must not "insert what has been omitted, or ... omit what has been inserted." *Code of Civil Procedure* §1858. This Court applied the Omission Rule in *California Capital Ins. Co. v. Hoehn* (2024) 17 Cal.5th 207, which similarly quoted *Cornette v. Department of Transportation* (2001) 26 Cal.4th 63: "When one part of a statute contains a term or provision, the omission of that term or provision from another part indicates the Legislature intended a different meaning." *Hoehn*, *supra*, 17 Cal.5th at 221 (quoting *Cornette*, *supra*, 26 Cal.4th at 73).

The Cohens' argument appears to be that this Court considered multiple interpretive rules in that case. But the decisive point is that the Court applied the Omission Rule in interpreting *Code of Civil Procedure* section 473(d), which is one the "interlocking set of statutes and judicial rules" that provide for

relief from judgment. As the Court noted, a number of provisions include express time limits by which relief must be sought, but section 473(d), unlike other subsections, did not contain a time limit applies to motions to vacate for improper service. The Court stressed that courts must not "insert what has been omitted, or omit what has been inserted." *Hoehn*, *supra*, 17 Cal.5th at 221 (citing *Code of Civil Procedure* §1858). Moreover, the court's decision was also based on the particularities of *Code of Civil Procedure* section 473(d) - namely, the court's inherent power to vacate void judgments and make and modify rules governing the exercise of that power. *Id.* at 222. ("When the Legislature codified that power in section 473(d), there is no indication that it intended to preclude courts from continuing to exercise their rule-making authority by reconsidering the correctness of time limits judicially imposed on that power.")

Similarly, *Cornette* reaffirmed that courts may not rewrite statutes to conform to presumed intent. There, despite the California Law Revision Commission's recommendation to reserve loss-of-design-immunity determinations to the court, the Legislature declined to do so. The Court concluded that legislative

silence and omission were deliberate. (*Cornette*, *supra*, 26 Cal.4th at 72–74.)

Cornette further applies here because the phrase "at the option of said authorities" from the predecessor statutes was not included by the Legislature in enacting Section 36900(a) in 1949.

Applied here, the omission of "by city authorities" from the phrase "redressed by civil action" is not accidental. It reflects a deliberate legislative choice to allow private enforcement. If the Legislature intended to limit redress to actions brought by municipal authorities, it would have said so—just as it did elsewhere in the statutory scheme. Courts cannot supply words the Legislature chose to omit. To do so would violate the fundamental rule that statutory interpretation begins and ends with the text. The plain language of Section 36900(a) gives the Schwartzes the right to seek civil redress for the Cohens' violation of Los Angeles Municipal Code section 12.22, and this Court should enforce that right as written.

The Cohens criticize the Schwartzes for meaning to cite specifically to the dissent's use of the Omission Rule in *People ex rel. Internat. Assn. of Firefighters, etc. v. City of Palo Alto* (2024)

102 Cal.App.5th 602. The dissent relied on a valid California Supreme Court case, *In re Jennings*, 34 Cal.4th 254 (2004), which held, "It is a settled rule of statutory construction that where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes." *Firefighters, supra*, 102 Cal.App.5th at 631 (quoting *In re Jennings*, 34 Cal.4th 254, 273).

Other California cases agree with the Schwartzes' position that courts cannot interpret a statute to include words the Legislature omitted. See, *Geneva Towers Ltd. Partnership v. City and County of San Francisco* (2003) 29 Cal.4th 769, 780 ("It is not within our province to interpret the statute as if it contained language that the Legislature chose to omit."); and *Ryze Claim Solutions LLC v. Superior Court* (2019) 33 Cal.App.5th 1066, 1072("'In interpreting statutes, our primary goal is to give effect to the Legislature's intent in enacting the law." [Citation] ("[W]e presume the Legislature intended everything in a statutory scheme, and we should not read statutes to omit expressed

language or include omitted language…") to reinforce this interpretive approach.

These cases are following the statutory interpretation rule provided by *Code of Civil Procedure* section 1858, which directs judges to ascertain and declare the content of statutes without inserting or omitting language. This statutory provision further supports the notion that omissions in legislative drafting are deliberate and meaningful.

Next, the Cohens citing *Coso Energy, supra,* the Cohens argue that the choice not to use the same words twice in the sentence could be due to an intent to avoid redundancy. (*Id.*, 122 Cal.App.4th at 1525.) But their argument ignores that Section 36900(a) was originally drafted by the California Code Commission: "The violation of any city ordinance of such city shall be deemed a misdemeanor. Such a violation and may be prosecuted by the city authorities of such city in the name of the people of the State of California, or may be redressed by civil action, ***at the option of said authorities.***" [RJN, Exh. 1, Vol. 1 pp. 16; Exhibit C, Vol. 6 pp. 1862(emphasis added)].

3. Meaning of "Redressed"

The Cohens next criticize the Schwartzes' argument that "redressed" in Section 36900(a) refers to civil litigation involving an "injured party", not necessarily a government authority. The Cohen cite to statutes that expressly provide that a particular government agency or department is authorized to seek civil redress for violations: *Business & Professions Code* §26152.2(a), which specifies that the Attorney General, city attorney, or county counsel may bring actions to redress violations; *Labor Code* §181(a), which authorizes a public prosecutor to prosecute actions for violations; *Labor Code* §§1160–1160.9, which empower the Agricultural Labor Relations Board to redress unfair labor practices; and *Water Code* § 31142.50(c), which allows the Sierra Lakes County Water District to seek redress for ordinance violations.

In each of these statutes, the legislature has clearly identified which government entity is empowered to enforce the statute through civil action.

In contrast, Section 36900(a) does not specify that only a governmental agency or department may seek civil redress for

violation of an ordinance. The statute is silent as to which party—governmental or private—may bring a civil action for redress. This lack of specificity distinguishes Section 36900(a) from the statutes cited by the Cohens.

The explicit designation of government agencies in the Cohens' cited statutes demonstrates a legislative intent to limit enforcement authority to those entities. The absence of such designation in Section 36900(a) means that the statute does not restrict the right to seek civil redress solely to governmental agencies or departments. Instead, it leaves open that other parties, including private individuals, may have standing to enforce the ordinance through civil action.

4. The Legislature Could Have Restricted Civil Enforcement to Municipalities Explicitly

The Cohen's "finally" argument contends that the absence of explicit statutory language conferring a private right of action under Section 36900(a) precludes such a right, relying on *Lu* and *Moradi-Shalal*. This position misapplies both the statutory text and the controlling case law.

As noted above, Section 36900(a) could have easily been

drafted to explicitly define who can seek redress by civil action, e.g., City authorities may prosecute a violation of an ordinance by in the name of the people of the State of California or they can seek redress by civil action."

As discussed above, both *Lu* and *Moradi-Shalal* concerned state statutes with comprehensive regulatory schemes and explicit enforcement mechanisms, unlike § 36900(a), which is open-ended and lacks exclusivity. *Lu* held that a statute may provide for a private cause of action in "clear, understandable, unmistakable terms" or by referring to a remedy or means of enforcement, such as "by way of an action." *Lu, supra* 50 Cal.4th at 597. Section 36900(a) expressly refers to redress "by civil action," which is sufficient under *Lu* to confer a private right of action.

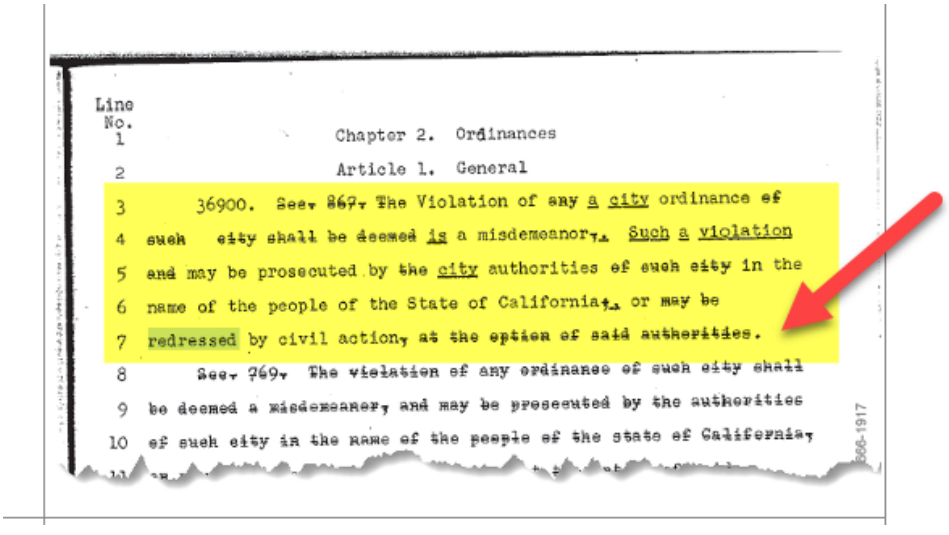
The Statutory Construction Principles discussed provide that courts must not "insert what has been omitted, or ... omit what has been inserted." *Pieri, supra,* 137 Cal.App.4th at 892 [citing *Code of Civil Procedure* §1858]. As a result, the omission of "by city authorities" from the civil redress clause is presumed intentional and broadens the class of potential plaintiffs.

VI. SECTION 36900'S LEGISLATIVE HISTORY CONFIRMS THE RIGHT OF PRIVATE ENFORCEMENT

A. Deletion of "At the Option of Said Authorities" Was Deliberate and Substantive

The original language of Section 36900(a) before it was enacted expressly limited enforcement of civil action to the "authorities": "The violation of any city ordinance of such city shall be deemed a misdemeanor. Such a violation and may be prosecuted by the city authorities of such city in the name of the people of the State of California, **or may be redressed by civil action, at the option of said authorities**." (emphasis added).

The Cohens seek to erase the fact that "at the option of said authorities" was deleted when the statute was enacted:



Line No.

Chapter 2. Ordinances

Article 1. General

36900. ~~See. 869. The~~ Violation of any a city ordinance ~~of such city shall be deemed~~ is a misdemeanor. Such a violation and may be prosecuted by the city authorities ~~of such city~~ in the name of the people of the State of California, or may be redressed by civil action, ~~at the option of said authorities.~~

~~See. 769. The violation of any ordinance of such city shall be deemed a misdemeanor, and may be prosecuted by the authorities of such city in the name of the people of the state of California,~~

[RJN, Exh. 1, Vol. 1 pp. 16; Exhibit C, Vol. 6 pp. 1862]

The California Code Commission, was the predecessor California agency to the California Law Revision Commission, drafted Section 36900 as part of Title 4 to the *Government Code* for the California Legislature.

The California Code Commission stated in its letter presenting the draft of Section 36900(a) that "strikeout type indicates deleted material." [RJN, Exhibit C, Vol. 6 pp. 1843].

The deletion of "authorities" the from civil action provision in Section 36900 should be deemed to be a deliberate act by the Legislature, especially when the prior law restricted enforcement to city authorities, in determining the intent and scope of Section 369800(a).

This assertion is contradicted by the legislative history and principles of statutory interpretation. The deletion of "at the option of said authorities" from the predecessor statutes was a deliberate act by the Legislature, and the effect was to provide a statute which plainly allows for private individuals to seek redress separate from government authorities. See *Wood v. Roach* (1932) 125 Cal. App. 631, 638 ("…[W]here a statute is revised and some

parts omitted, and it was clearly the intention to cover the whole subject revised, the omitted parts cannot be revived by construction, but are to be considered as annulled."); *Carter v. Stevens* (1930) 211 Cal. 281, 286–287 ("In construing statutes it is a cardinal rule that the words of the statute must be given a meaning that is germane to the subject-matter of legislation and consistent with rational deductions.").

B. "No Substantive Change" Statements in Various Documents Should Not Override the Statutory Text

The Cohens cited to six other documents in the legislative history that include the statement "no substantive change" was being made to the Municipal Incorporation Act of 1883 when it was being replaced in the 1949. (AB 34-39). However, the deletion of a key phrase, "at the option of said authorities," was a substantive change.

As recognized in *Wood v. Roach* (1932) 125 Cal.App.631, omitted statutory language is presumed annulled and not revived by construction. *Id.* at 638. The Answering Brief's reliance on "no substantive change" statements in legislative reports does not override the plain meaning and effect of the statutory text.

The Cohens cite *People v. Dillon* (1983) 34 Cal.3d 441, a criminal case involving the felony-murder rule, to argue that legislative history can rebut the presumption of substantive change. However, *Dillon* is inapposite because it involved a different statutory context and does not address the principles at issue here. The majority opinion in *Dillon* recognized that the court was deviating from the standard presumption that deleting an express provision of a statute intended a substantial change in the law. *Id.* at 467. The court did so because it found that the California Code Commission did not actually intend to remove the felony murder statute from the revised Penal Code of 1872. *Id.* at 471. The majority opinion expressly recognizes that the decision was based on a "shaky" historical foundation, and that, " from the standpoint of consistency the outcome of this analysis leaves much to be desired." *Id.* at 471-472, fn. 19.

Here, the situation is materially different, because the legislative history does not show that the phrase "at the option of said authorities" was accidentally or inadvertently removed from Section 36900(a). On the contrary, the history confirms the

Legislature's intent to remove obsolete restrictions and allow private enforcement.

VII. POLICY CONSIDERATIONS AND PRACTICAL IMPLICATIONS SUPPORT PRIVATE ENFORCEMENT

A. Private Enforcement Is Necessary and Consistent with Legislative Intent

The Cohens argue that only city authorities should enforce ordinances to avoid a flood of litigation. This argument is contrary to the Legislature's recognition that municipal resources are often overwhelmed and that private enforcement is necessary to deter violations and protect public interests. The Legislature codified the private attorney general doctrine in *Code of Civil Procedure* Section § 1021.5, recognizing the importance of private actions to effectuate public policy. See *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565-66.

Moreover, the statute has been in effect for 75 years, and the "floodgates" argument is unsupported by any evidence of harm to municipal governance. Private enforcement is necessary to deter violations and protect public interests, especially where municipal resources are limited.

/ / /

B. The Nuisance Argument Is a Red Herring

The Answering Brief suggests that injured parties can always sue for nuisance. However, not all ordinance violations constitute nuisance, and Section 36900(a) provides a distinct statutory remedy for violations of municipal law. Limiting enforcement to nuisance actions would frustrate the Legislature's intent and leave many violations without an effective remedy. Moreover, cases such as *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920 and *Sapiro v. Frisbie* (1928) 93 Cal.App.299 recognize the longstanding right of private persons to seek redress for ordinance violations.

Finally, the Cohens cite *Pacifica Homeowners' Assn. v. Wesley Palms Retirement Community* (1986) 178 Cal.App.3d 1147 and *Taliaferro v. Salyer* (1958) 162 Cal.App.2d 685 to argue there is no natural right to air, light, or an unobstructed view. However, *Pacifica* also recognizes that local governments may protect views and provide light and air through the adoption of height limits. *Pacifica, supra,* 178 Cal.App.3d at 1152. The Los Angeles Municipal Code expressly provides such protection.

/ /

VIII. CONCLUSION

The statutory text, legislative history, and public policy all support a private right of action under Section 36900(a). The Answering Brief fails to rebut these points and relies on arguments that are unsupported by law or fact. The Supreme Court should reverse the Court of Appeal and reaffirm the right of private citizens to seek civil redress for municipal ordinance violations.

DATED: November 26, 2025

Respectfully submitted,

By: /s/ Keith J. Turner
Keith J. Turner
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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 Reply 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 5,792 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: November 26, 2025

Respectfully submitted,

By: /s/ Keith J. Turner
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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:

REPLY 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.

[X] **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 November 26, 2025 in Los Angeles, California.

/s/ Justin Escano
Justin Escano

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