[*Update: The Second District Court of Appeal, Division 5 has rejected all the amicus curiae brief applications filed in this case, including this brief. We will leave this post, and the link to the brief, up on this blog so that anyone interested may see our arguments, but the brief will not be considered in the case.*]

The Frank G. Wells Environmental Law Clinic at UCLA School of Law filed an *amici curiae* brief with the California Court of Appeal yesterday in a procedurally complex case involving oil drilling in the City of Los Angeles. David Kaye (UCLA Law ‘18) and Sunjana Supekar (UCLA Law ‘19) contributed to the research and drafting of this brief while enrolled in UCLA’s environmental law clinical course.

An oil well pumps in a newly constructed neighborhood near Shell Oil Company Alamitos No. 1 discovery well on Signal Hill in Long Beach on May 30, 2003. (David McNew/Getty Images)

In 2015, a coalition of nonprofit groups (Youth for Environmental Justice, South Central Youth Leadership Coalition, and the Center for Biological Diversity) sued the City of Los Angeles, alleging the City was “rubber-stamping” applications for oil drilling within city limits in violation of CEQA. Eventually, the City voluntarily amended its administrative policy for processing oil drilling applications, and the City and the nonprofit groups settled the case.

However, a trade group representing independent oil producers, the California Independent Petroleum Association (CIPA) intervened and sought to halt the settlement and change in policy. CIPA argued their members’ constitutional right to due process was allegedly being infringed by the City’s decision to amend their informal policies.

Like many states, California has an “anti-SLAPP” statute designed to protect the public’s constitutional rights to free speech and petition from suits designed to chill public participation (known as Strategic Litigation Against Public Participation or “SLAPP” suits) because the Legislature has found it to be in “the public interest to encourage continued participation in matters of public significance.”

Both the City and the nonprofit groups filed anti-SLAPP motions against CIPA, arguing CIPA’s cross-complaint was designed to chill public participation in the City’s decision-making process. The Los Angeles Superior Court denied the City and

nonprofits’ motions, and both groups appealed this denial to the Court of Appeal.

Along with my colleague Sean Hecht and clinic students David Kaye and Sunjana Supekar, we wrote an amicus brief on behalf of two groups representing local governments throughout California. The League of California Cities is an association of 475 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The California State Association of Counties (CSAC) is a non-profit corporation whose membership consists all 58 California counties.

Both the League and CSAC were concerned on behalf of their member cities and counties with the reasoning expressed by the Superior Court in denying the anti-SLAPP motions, which suggested that CIPA had a property interest in the City’s informal administrative policies. Our brief explains that local governments have broad authority to regulate for the general welfare, especially in the land use context. We argue that the due process theory expressed by CIPA would be contrary to established law and would not be in the public interest, as explained below in an excerpt from our brief:

> *The existence of an uncodified administrative permit application-processing practice does not create a due process right in the use of that practice in future permit proceedings where there is no legal entitlement to the substantive benefit of obtaining a permit. [The City’s amended informal guidance] allows for a hearing if changes or modifications to a permit will be made. Otherwise, existing permits are not implicated at all. And CIPA’s members do not have a due process right to any aspect of future discretionary permitting procedures. In determining the likelihood of success on the merits of CIPA’s due process claim, the trial court suggested that possible financial costs and delays on future applications for discretionary approvals could constitute cognizable property interests. The trial court’s written statement of decision also suggests there is a protected property interest in certain administrative procedures, even where those procedures are, and always have been, developed pursuant to the government’s discretionary decision-making authority. These conclusions are contrary to well-settled law.*
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> *CIPA’s due process theory would be devastating to the interests of cities and counties across the state for two primary reasons. First, broadening*

the category of cognizable property interests giving rise to due process causes of action would improperly limit local governments’ ability to create and amend their policies. Such a broad view of property interests could severely constrain government agencies from managing their own discretionary approval processes and policies. Second, it would have a chilling effect on local governments’ ability to resolve litigation challenging government policies and practices. The court’s decision essentially holds that a government’s conduct to resolve a lawsuit is not protected activity for purposes of the SLAPP statute when a third party disagrees with the policy or practice. This determination thus exposes parties as targets for retaliatory lawsuits based on their settlement activities and strips them of anti-SLAPP protections.

Please see our full brief here for further context on our arguments. The case is currently pending oral argument and future updates can be found on the Court of Appeal’s online docket for the case.