No. 25-_____

In the Supreme Court of the United States

BARRY ROSEN,

Petitioner,

v.

CITY OF HAWTHORNE,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of California

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The California judiciary participates in red-light running camera ticket projects because it collects court fees from alleged violators as do the government entities operating them. "Courts are the central dispute-settling institutions in our society. They are bound to do equal justice under law, to rich and poor alike. . . . Where money determines not merely the kind of trial a [person] gets, but whether [he/she] gets into court at all, the great principal of equal protection becomes a mockery." *Boddie v. Connecticut*, 401 U.S. 371, 389 (1971) (Brennan, J, concurring). The California Court of Appeal limited a motorist's exercise of the Petition Clause with California's anti-SLAPP statute before trial on the merits in a challenge to the government's compliance with the Vehicle Code. It affirmed a trial court's award of $5,500 in anti-SLAPP attorney fees before trial on a declaratory relief proceeding seeking to invalidate a municipal automated traffic citation. It disallowed a challenge on the citation because it asserted the red-light running camera operation was not a crime.

The Questions Presented Are:

1. Whether a state anti-SLAPP statute, imposing $5,500 in attorney fees and striking a portion of a motorist's challenge, amounts to a penalty and prior restraint in a motorist's petition to the government for redress of grievance concerning the validity of $490 criminal-infraction red-light camera ticket under California's Vehicle Code?

2. Whether the California Court of Appeal erred by refusing to declare the motorist the victor over the government because the trial court maintained the declaratory relief action for trial?

3. Whether grant of certiorari is appropriate to certify this question for immediate decision by the California Supreme Court?

LIST OF PROCEEDINGS

Supreme Court of California

No. S290166

Barry Rosen, *Plaintiff and Appellant*, v.
City of Hawthorne, *Defendant and Respondent*

Date of Final Order: May 14, 2025

Court of Appeal of the State of California,
Second Appellate District, Division Seven

No. B337895

Barry Rosen, *Plaintiff and Appellant*, v.
City of Hawthorne, *Defendant and Respondent*

Date of Final Opinion: February 26, 2025

Date of Rehearing Denial: March 14, 2025

Superior Court of the State of California

No. 23STLC01829

Barry Rosen, an individual, *Plaintiff*, v.
City of Hawthorne, a California municipal corporation, *Defendant*

Date of Final Order: February 1, 2024

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PETITION FOR A WRIT OF CERTIORARI

Barry Rosen, a motorist, respectfully petitions for writ of certiorari to review the order of the Los Angeles Superior Court, affirmed with rehearing subsequently denied by the intermediary appellate tribunal; a petition for review was also denied by the California Supreme Court.

OPINIONS BELOW

The Opinion of the California Court of Appeals, Second Appellate District, Division Seven, dated February 26, 2025 is included in the Appendix ("App.") at App.4a. Its March 14, 2025 denial of rehearing is included at App.45a. The California Supreme Court May 14, 2025 order denying review is included at App.1a. Remittitur was issued May 20, 2025. App.2a. The Los Angeles Superior Court order granting motion to strike under California's anti-SLAPP, dated February 1, 2024, is included at App.28a. A prior order on the anti-SLAPP from the limited court, dated September 19, 2023 is included at App.41a.

JURISDICTION

The California Supreme Court, the state court of last resort in California, denied a petition for review on May 14, 2025 (App.1a) and a remittitur was issued by the intermediary state appellate tribunal on May 20, 2025 (App.2a). This Court's jurisdiction is based upon 28 U.S.C. § 1257(a) and Sup. Ct. R. 10(c).

A Writ of Certiorari is appropriate in this case because the Petition Clause of the First Amendment, Due Process Clause of the Fifth Amendment, Confrontation and Right to Testify Clauses of the Sixth Amendment, along with the Privileges and Immunities as well as Due Process and Equal Protection Clauses are implicated. $5,500 in attorney fees were imposed and a portion of the petition stricken by the trial court under a state anti-SLAPP. The decision, affirmed by the intermediary court of appeal, amounts to a penalty and prior restraint, subject to strict scrutiny. As an alternative, a grant of certiorari may be appropriate to certify these questions to the California Supreme Court.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. I

The Petition Clause of the First Amendment to the United States Constitution states:

> Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.

U.S. Const. amend. V

The Due Process Clause of the Fifth Amendment to the United States Constitution states:

> No person shall be . . . deprived of life, liberty, or property, without due process of law.

U.S. Const. amend. VI
The Confrontation Clause

The Confrontation Clause of the Sixth Amendment to the United States Constitution states:

> In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted by the witness against him.

U.S. Const. amend. VI
The Right to Testify

The Right to Testify of the Sixth Amendment to the United States Constitution states:

> In all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor.

U.S. Const. amend. XIV, § 1
The Privileges and Immunities Clause

The Privileges and Immunities Clause of the Fourteenth Amendment to the United States Constitution states

> No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States.

U.S. Const. amend. XIV, § 1
The Due Process Clause

The Due Process Clause of the Fourteenth Amendment to the United States Constitution states:

> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law.

U.S. Const. amend. XIV, § 1
The Equal Protection Clause

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution states:

> . . . nor deny to any person within its jurisdiction the equal protection of the laws.

INTRODUCTION

The California Court of Appeal restrained and limited a motorist's petition for redress of grievances. That proceeding seeks only a declaration of the government's non-compliance with the red-light running camera law. $5,500 in attorney fees were exacted and a portion of his narrowly-tailored single cause of action declaratory relief complaint were struck before trial. The appellate tribunal's justification was to uphold the petition right of the government's right to criminally prosecute a red-light running camera citation. At the criminal trial, the motorist was denied the right to confront the witness against him and testify.

The California Courts used the state's anti-SLAPP statute exact $5,500 in attorney fees against the motorist and restrain, prior to trial, his right to obtain a declaratory relief judgment on that portion of his complaint concerning the allegedly improperly issued citation. The California Court of Appeal justified the exaction and excision *prior to trial* on the declaratory relief complaint because the alleged statutory violations are not crimes. (App.18a). The government brands the motorist vexatious and now seeks about $50,000 in attorney fees. Acquiescing to the motorist's petition, the government has now modified its red-light running camera operation to approximate compliance with only a portion of the statute. To date, both sides have incurred about $300,000 in attorney fees and the city's anti-SLAPP added around 2,200 pages to the record—revealing further statutory non-compliance. The case was filed March 17, 2023 and has yet to reach trial on a single cause of action declaratory relief trial.

Without meaningful access to the courts to resolve questions about the validity of state law and compliance thereof, frustrated citizens are left to resign and pay criminal fines from non-compliant red-light running camera citation which does not bode well. The cost of getting to court is equally applicable to the cost of leaving the court. The matter is of heightened concern as the state judiciary is a benefactor of the challenged red-light running camera operation. State courts collects statutory criminal court fines and stand idle while the red-light running camera operations do not strictly comply with the automated traffic enforcement law. In fact, the separate red-light citation criminal proceeding concluded and the motorist was convicted while this civil declaratory relief action was pending. The criminal citation is also on appeal.

The $5,500 imposed by an anti-SLAPP statute amounts to a penalty that does not pass strict scrutiny, and likely not even a rational basis test. Striking a portion of the single-cause of action declaratory relief complaint serves as a prior restraint because it limits what the motorist may allege in civil court. That restraint does not pass strict scrutiny, and likely not even rational basis. The less burdensome alternative would have been to simply allow the petition to move forward unabated without the $5,500 penalty and restraint on what the motorist may petition. There is no rational basis to punish and retrain motorists by applying the anti-SLAPP to such civil declaratory relief proceedings.

If the red-light running camera operation cannot be challenged as the motorist pled, the city has the ability to impermissibly enter the field of traffic safety reserved exclusively by the state. The state judiciary appears to turn a blind eye. With the anti-SLAPP, the courts appear to encourage the government entities to violate rights because violations of the Vehicle Code likely never succeed in alleging a criminal violation.

The cause demonstrated above, leaves the municipality free to violate the Vehicle Code and criminally cite third-parties who are simply unaware of the non-compliance of the red-light running camera. These third-party motorists would likely prefer to pay the approximately $490 citation instead of enduring the petitioner's now three-year saga and expense in accessing the courts. Pure and simple, when the financial cost is too high to enable a person to access the courts, there is a violation of Due Process and Equal Protection as well. The threat of liability has likely already scared away others from filing and maintaining similar cases. The threat here to pay $5,500 and limit the grievance in a non-frivolous action vindicates the Petition Clause and substantially chills others from stepping up. Instead, the city is allowed to violate the Vehicle Code and essentially continue to extort $490 via the criminal court process from each alleged violator—because the California Courts stand idle because Mr. Rosen has only alleged a statutory violation and not a crime against the City.

California's anti-SLAPP as applied by the California Courts to the motorist's Petition Clause exercise is a prior restraint that does not survive strict scrutiny. The city is not vested with any power under the Vehicle Code because Vehicle Code section 21 allows the State to dominate the field of traffic safety on the roads. Full compliance with the red-light running camera law is the only law that allows the city to enter the State-dominated field. While citing alleged violators $490 per criminal violation would appear to serve an important or substantial government interest to reduce traffic accidents, the record shows there are no accidents at the intersection. The intersection happens to be one of the most trafficked in the city—hence the opportunity to tax motorists entering the Federal Interstate freeway or visiting the local Costco. The challenged red-light camera project amounts to a "toll" that was not enacted by the electorate.

The anti-SLAPP (California Code of Civil Procedure sections 425.16, 425.17) improperly dampened the Petition Clause by awarding $5,500 in attorney fees and limiting to the upcoming declaratory relief trial (under Code of Civil Procedure section 1060, *et seq*) to challenging a City's operation of one camera at one intersection. State courts omitted the portions of the motorist's grievance; his declaration sought to invalidate the criminal infraction citation issued as a protected right of the municipality but that was omitted because the motorist had not shown the violation of the California Vehicle Code sections 21455.5, 21455.7 by the city was criminal. Under California Vehicle Code section 21, deviation from the parameters of Vehicle Code sections 21455.5, 21455.7 disallows other public entities to enter the state's field of traffic control with red-light running cameras without full-compliance. Such non-compliance would likely not be a crime thus further chilling petitioners like the motorist.

This petition is an important and continuing legal issue because it involves the First Amendment right to petition the Government for redress of grievances as applied to the City of Hawthorne, a general law city in the County of Los Angeles, State of California, by the Fourteenth Amendment. Privileges and Immunities, Due Process and Equal Protection are also implicated. Granting review would protect the public fisc and assure intergovernmental compliance with public roads and traffic control. Judicial economy suffers and our public treasury suffers from the expenditure of unnecessary and excessive time expended and legal fees incident to the improper and misuse of the special anti-SLAPP motion to strike to challenge a $490 criminal infraction red-light running camera ticket.

The relief sought was to ascertain the validity of one red-light camera ticket and the compliance of a single red-light camera operation that appears to have generated an unverified estimate of $132,000,000 since 2003. The civil declaratory relief action was filed after the City refused to provide public records demonstrating statutory compliance and providing exculpatory evidence. Many of the alleged violators at that red-light camera intersection simply pay criminal fines to the California Courts which are shared with the City of Hawthorne without knowing the Vehicle Code affords protections to them. Sworn peace officers, with the power to stop and cite for red-light running, are required by State law to review and approve tickets. However, the municipality admitted after this case was filed that it does not provide that statutory protection written into the red-light camera law; it also admitted to usurping the resources of other government entities.

The California Courts, with a blind-eye to the City of Hawthorne, use the anti-SLAPP to abridge the First, Fifth, Sixth and Fourteenth Amendments. The courts are clogged, attorney fees mount, third-party motorists suffer, while the City continues to violate state law. There is no practical access to the Courts given the kerfuffle. Standing idle insulates the City of

Hawthorne and permits the California Court's use the state anti-SLAPP statute to effectively shut out challenges that provided a portion of the nearly $132,000,000 to the state judiciary. The anti-SLAPP exacted a $5,500 penalty and imposes a prior restraint on the Petition Clause. Only this Court can end this misguided project.

STATEMENT OF FACTS

Barry Rosen, a motorist, (the "Motorist") was cited about three years ago with a criminal infraction red-light running camera ticket at a busy traffic signal adjacent to the entrance of a freeway connecting to the Federal highway system and a Costco (the "Intersection"). Public records indicate there are no records of accident, and if any appear to take place, they are because of an overly short yellow-light timing of the traffic signal at the Intersection—in other words, the existence of traffic safety did not appear at the Intersection. The City appears to have selected the Intersection because of the volume of vehicles traversing the City. The City collects fines from the red-light running camera, also known as an automated traffic enforcement system ("ATES") while another government entity actually controls the traffic signal and timing. The Motorist identified through research that the ATES at the Intersection is not in compliance with Vehicle Code § 21455.5(c)(2)(E) which requires only a governmental entity (*i.e.*, the City), in cooperation with a law enforcement agency, to oversee the establishment or change of signal phases and the timing thereof. The City is not in exclusive control of the traffic signal at the Intersection. More specifically, other public records produced after litigation commenced, showed the traffic signal at the Intersection is part of the El Segundo Area Intelligent Transportation System Project where the Los Angeles County is the lead agency. Other violations of the Vehicle Code include the use of non-sworn peace officers, such as parking enforcement staff, to issue the criminal citations for running a red light—power vested only in sworn peace officers—in conformance with the state's ATES law. Additional violations include yellow-light timing and the use of signage which do not appear to conform with the ATES law.

At the anti-SLAPP hearing, the trial judge appeared to unknowingly identify the Motorist established a probability that the plaintiff will prevail on the claim, *i.e.* that the Motorist achieved the victory in procuring public records demonstrating noncompliance and having a trial set on the declaratory relief proceeding; the trial court acknowledged the purpose of the Motorist's lawsuit had already been achieved:

> . . . look, besides what plaintiff counsel is saying, I found some colorable technical problems here that, you know, there is exposure here for the city. You know, for the plaintiff, he's going to have to pay that ticket. But, maybe there is some horse trading here as far as maybe you can fix the light, maybe you can talk about attorney fees and move on with your lives.

(App.57a-58a).

The trial court appeared to misperceive that certain documentary evidence provided during the anti-SLAPP were actually procured after filing the lawsuit and actually identified key facts proving the City was not conforming with provisions allowing for cities to enter the State-dominated field with red-light running cameras: Vehicle Code § 21455.5(c)(2)(E). It was because it was evidence produced in the anti-SLAPP *after* the lawsuit commenced, which should have been produced pre-filing in response to a public records act request and the documents prove the ATES at the Intersection is unlawful as it is not being operated by the City as statutorily required by California law.

The criminal citation trial took place in the interim and the Motorist was convicted of running a red-light without the Sixth Amendment opportunity to question the non-sworn civilian who issued the red-light camera ticket. *Melendez-Diaz v. Massachusetts,* 557 U.S. 305 (2009). The Motorist was also denied the Sixth Amendment right to testify on his own behalf at the criminal infraction trial.

The City opposition briefs improperly branded the Motorist as vexatious without acknowledging the shortcomings of the red-light running camera operation. The California Court of Appeal, in affirming the $5,500 attorney fees and striking a portion of the complaint, indicated the alleged statutory violations of the red-light running camera law are not crimes. At the eve of a previously set trial date, the City added time to the yellow-light—one of the statutory violations alleged—but the civil trial on the declaratory relief proceeding has yet to take place. Case management for that civil trial was recently set for January 5, 2026 for the alleged criminal-infraction traffic violation that took place September 6, 2022 and declaratory relief complaint filed March 20, 2023. (App.164a).

REASONS FOR GRANTING THE PETITION

Application of California's anti-SLAPP to the Motorist's declaratory relief proceeding conflicts with the Petition Clause along with the Privileges and Immunities, Due Process and Equal Protection clauses under the First, Fifth, and Fourteenth Amendments of the U.S. Constitution. That civil petition was filed prophylactically as the criminal proceedings on such violations were set up as, and ultimately resulted in, violations of the Confrontation and Right to Testify guarantees under the Sixth Amendment of the U.S. Constitution. Using that state anti-SLAPP law, $5,500 was imposed on the Motorist and the portion of his declaratory relief action seeking to invalidate the citation was removed. Since *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938) involved the constitutional power of federal courts to supplant state law with judge-made rules, it made no difference whether the rule was technically one of substance or procedure; "the touchstone was whether it 'significantly affects the result of a litigation.' *Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 406 (2010). The opinion affirming the trial court, goes on to state the alleged statutory violation committed by the City is not a crime. (App.18a). Whether classified as substantive or procedural, the state anti-SLAPP significantly affects the result of the litigation because it chills the Motorist's challenge to the ATES by placing the debt and restricting the application of the declaratory relief proceeding.

The First Amendment provides, in relevant part, that "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances." We have recognized this right to petition as one of "the most precious of the liberties safeguarded by the Bill of Rights," *Mine Workers v. Illinois Bar Assn.*, 389 U.S. 217, 222 (1967), and have explained that the right is implied by "[t]he very idea of a government, republican in form," *United States v. Cruikshank*, 92 U.S. 542, 552 (1876). The Petition Clause has a long history in our jurisprudence, as are its limitations; reciting historical precedent for the Petition Clause and applying it in the libel context, *McDonald v. Smith*, 472 U.S. 479, 485 (1985), "the right to petition is guaranteed; the right to commit libel with impunity is not."

The right to petition has been applied when interpreting other federal laws. In the antitrust context, for example, "the Sherman Act does not prohibit . . . persons from associating . . . in an attempt to persuade the legislature or the executive to take particular action with respect to a law that would produce a restraint or a monopoly." *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 136 (1961). Courts would not "lightly impute to Congress an intent to invade . . . freedoms" protected by the Bill of Rights, such as the right to petition. *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 138 (1961). This antitrust immunity "shields from the Sherman Act a concerted effort to influence public officials regardless of intent or purpose." *Mine Workers v. Pennington*, 381 U.S. 657, 670 (1965). When expounding on the *Noerr-Pennington* doctrine in *BE & K Const. Co. v. N.L.R.B.*, 536 U.S. 516, 526-527 (2002), sham litigation was not afforded the protection in the NLRA context citing to *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 737, 747 (1983), *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 511 (1972). "Immunity did not extend to illegal and reprehensible practices which may corrupt the judicial process." *BE & K Const. Co. v. N.L.R.B.*, 536 U.S. 516, 525 (2002) citing to *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 513 (1972). The California Courts did precisely that: it allowed the City to continue its non-compliance with the Vehicle Code while punishing the Motorist. The trial court acknowledged the Motorist had raised technical issues with the operation of the ATES when assessing the $5,500 exaction and excising the citation from the declaratory relief prayer.

The $5,500 assessed is a violation. Relying on related precedent in the Second Amendment contract, the use of the anti-SLAPP is akin to the California statute struck down by the Federal Court in the *South Bay Rod & Gun Club, Inc. v. Bonta*, 646 F.Supp.3d 1232, 1239 (2022) ("The threat of being ordered to pay the government's attorney's fees and costs in a non-frivolous § 1983 action to vindicate Second Amendment rights substantially chills First Amendment rights."). The $5,500 exaction by the California Court of Appeal chills the Motorist's right under the Petition Clause. Fees embedded in ordinances for parades similarly face a "heavy presumption" against validity akin to a prior restraint. *Forsyth County, Georgia v. Nationalist Movement*, 505 U.S. 123, 130 (1992) citing to *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). "The danger of censorship and of abridgment of our precious First Amendment freedoms is too great" to be permitted.

Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 553.

Excising part of the Motorist's claim is equally violative. The analysis for access to the courts under the Petition Clause is a "cognate right" with the Speech Clause, *Borough of Duryea, PA v. Guarnieri*, 564 U.S. 379, 388 (2011), in the context of public employment. There are limitations here too. Under *Wayte v. United States*, 470 U.S. 598, 611, when "'speech' and 'nonspeech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms." *United States v. O'Brien*, 391 U.S. 367, 376-377 (1968). Government regulation is justified:

> . . . if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

Because the Motorist is allowed to try his civil action for declaratory relief, the government has to justify the assessment of the $5,500 exaction and limitation to not allow the judgment to include a declaration concerning the actual criminal citation; his claim moves forward only on the City's compliance with the ATES law—albeit with the necessity to pay $5,500 in government attorney fees and to also face a criminal trial on the citation. The Motorist alleges the City has no power under the Vehicle Code to operate the ATES yet the California Court of Appeal has not explained or justified how the anti-SLAPP may nonetheless further the City's interest to prosecute alleged violators. Even if there were an important or substantial interest for the City to advance traffic and public safety with red-light running tickets, it would still be facing that challenge at civil trial.

This right to petition is so important to our system of government that the courts have shielded citizens from liability even with the position promoted was wrongful. *Eaton v. Newport Bd. of Educ.*, 975 F.2d 292, 298 (6th Cir 1992) *cert. denied* 508 U.S. 957. When the government, like the intermediate court of California, imperils basic constitutional rights, the courts have not required a series of injured parties to litigate the permissible scope of the statute or administrative interpretation but have nullified the unconstitutional action and required the government to start in the first instance with a statute or interpretation that will not so overhang free express that the legitimate exercise of constitutionally protected rights is suppressed. *Wolff v. Selective Service Local Bd. No. 16*, 372 F.2d 817, 824-825 (1967). As here, it is appropriate to nullify the trial court and intermediate court of appeal to preserve the legitimate exercise of the Motorist in his challenge to the ATES.

I. CALIFORNIA COURT'S PARTIAL GRANT OF CITY'S MOTION TO STRIKE IS A PRIOR RESTRAINT OF MOTORIST'S PETITION CLAUSE RIGHT.

"Any system of prior restraints of expression comes to the Court bearing a heavy presumption against its constitutional validity." *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). The opinion not only assesses $5,500 it goes on to state the "complaint alleges the City failed to comply with the requirements of Vehicle

Code section 21455.5 and 21455.7, but the alleged violations are not crimes." (App.18a). In other words, to move forward the Motorist must pay $5,500 in attorney fees and cannot petition for redress because statutory violations are not crimes. This violates the Petition Clause because it limits the Motorist's petition for redress of grievance.

Furthermore, when the California Court of Appeal affirmed the trial court's order with leave to amend and set a trial date, the California courts appear to have conceded the Motorist is likely meritorious and certainly not frivolous. Under California law, granting a defendant anti-SLAPP *and* granting plaintiff leave to amend is the functional equivalent of a denial of the state anti-SLAPP motion because there is no implied right for leave to amend. *Martin v. Inland Empire Utilities Agency* (2011) 198 Cal.App.4th 611, 625-626 ("we believe that granting leave to amend the complaint *after the court finds the defendant had established a prima facie case* would be jamming a procedural square peg into a statutory round hole.") "Where the evidence submitted for the motion enables the plaintiff demonstrate the requisite probability of prevailing on the merits of her defamation claim, the policy concerns against amendment in the anti-SLAPP context do not apply because the plaintiff's suit—shown to be likely meritorious—is not a strategic lawsuit against public participation." *Martin v. Inland Empire Utilities Agency* (2011) 198 Cal.App.4th 611, 627 citing to *Nguyen-Lam v. Cao* (2009) 171 Cal.App.4th 858, 862-863. Here, the trial court erred because it granted the City's motion to strike and granted the Motorist leave to amend—which the *Martin* court agreed is the functional equivalent of the denial of the anti-SLAPP.

Because the trial court and intermediate court of appeal allowed the case to move to trial, the $5,500 and limitations imposed upon the Motorist (*i.e.* to disallows a declaration on the validity of the citation) demonstrate the claim is not a sham, illegal, or fashioned to corrupt the judicial process. Sham litigation was not afforded the protection. *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 737, 747 (1983), *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 511 (1972). Protection also does not extend to illegal and reprehensible practices which may corrupt the judicial process." *BE & K Const. Co. v. N.L.R.B.*, 536 U.S. 516, 525 (2002) citing to *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 513 (1972). By partially granting the anti-SLAPP, the Motorist confirmed he is entitled to protection because his action is not a sham. However, by imposing the exaction and excising a portion of his proceeding, his exercise of the Petition Clause right is abridged with a violative monetary exaction and limitation as to what grievances he may present.

II. CALIFORNIA COURT'S USE OF THE STATE ANTI-SLAPP STATUTE DOES NOT SURVIVE STRICT SCRUTINY, AND LIKELY NOT RATIONAL BASIS.

The Government must adopt the least restrictive means of achieving a compelling state interest, *McCullen v. Coakley*, 573 U.S. 464, 478 (2014), rather than a means substantially related to a sufficiently important interest. Applying that test in *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595, 618 (2021), this Court looked at the association right in charity tax disclosures; it found "California has not considered alternatives to indiscriminate up-front disclosures. . . . the State's interest in amassing sensitive information for its own convenience is weak. . . . the protections of the First Amendment are triggered not only by actual restrictions on the ability to join with others to further shared goals. The risk of a chilling effect on association is enough." In the same vain, this analysis may be applied to the Motorist's access to the California Courts to challenge the ATES. If the state court interest is to limit frivolous litigation, it did not achieve that goal because it allowed the litigation to move forward. There was enough merit to persuade a trial judge to move forward. In doing so, judicial economy suffers as do the parties. Furthermore, the state anti-SLAPP statute has an exception, which would have been applicable had it been fully considered. For instance, if the following California anti-SLAPP provision was considered as an alternative the Motorist's proceeding would move forward unscathed, without an exaction or excision.

If a complaint satisfies the provisions of the applicable exception [of Code of Civil Procedure section 425.17(b)], it may not be attacked under the anti-SLAPP. *Tourgeman v. Nelson & Kennard* (2014) 222 Cal.App.4th 1447. The City duped the trial court in advocating Code of Civil Procedure section 425.17 does not apply to this action; the City misrepresented the statutory exemption when replying to the Motorist opposition, in much the same fashion as it misinterprets compliance with the red-light camera ticket law. The trial court appears to have missed the entire exemption. In other words, here is the strict scrutiny analysis, which corresponds with an exemption in the California anti-SLAPP statute: Code of Civil Procedure section 425.17(b)(1) to (3) reads as follows:

(b) Section 425.16 does not apply to any action brought solely in the public interest or on behalf of the general public if all of the following conditions exist:

(1) The plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member. A claim for attorney's fees, costs, or penalties does not constitute greater or different relief for purposes of this subdivision.

(2) The action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons.

(3) Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter.

The City's anti-SLAPP does not apply to the Motorist's challenge to the ATES at the Intersection because (1) the Motorist is not seeking any relief greater than or different from the relief sought by the general public; (2) the Equitable Relief Proceeding, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary on the general public or a large class of persons by declaring the City's operation of the ATES at the Intersection as *ultra vires* and conflicting with the State's domination of the field under Vehicle Code section 21; and (3) the

Motorist incurred (at that time) $45,000 in attorney's fees and costs relative to his private enforcement, through the anti-SLAPP which is disproportionate given the citation alone is likely under $500 plus traffic school. The Motorist fits squarely within the Legislative exemption of Code of Civil Procedure section 425.17(b)(1) through (3). The trial court, as the Court of Appeal, could have foregone the imposition of $5,500 and removal of the citation challenge. This was a less restrictive means and viable alternative, which is consistent with the State's compelling interest: the Legislature put into the anti-SLAPP. The prior restraint would not overcome strict scrutiny because an alternative exists in the statute.

California's anti-SLAPP, like others around the country, are to promote judicial economy and reduce frivolous litigation. As this record demonstrates, judicial economy was not achieved. The government flooded the trial court and its own anti-SLAPP revealed more statutory non-compliance. There is likely no rational basis for the courts to be burdened by such government's anti-SLAPP when a declaratory relief trial would have simplified trial. This declaratory relief action was filed March 20, 2023 concerning an alleged criminal infraction on September 4, 2022 and trial has yet to take place—a case management conference is set for January 5, 2026. Whether under strict scrutiny, or even rational basis, there is likely no reason the government may justify to use the California anti-SLAPP against such pure declaratory relief proceedings.

Even if the California courts refuse to acknowledge this, granting certiorari, allows this Court to certify it as a question to the California Supreme Court.

III. THE QUESTIONS PRESENTED ARE EXCEPTIONALLY IMPORTANT.

"We ought not to pass on questions of constitutionality . . . unless adjudication is unavoidable." *Matal v. Tam*, 582 U.S. 218, 231. Leaving the decision on whether anti-SLAPP infringes on the Petition Clause for such declaratory relief judgments by government actors should not be left for another day.

This is exceptionally important because the intent of the state anti-SLAPP is to promote judicial economy and reduce litigation costs. Here, judicial economy has not been served with the partial grant and imposition of a $5,500 attorney fee award and nearly three-year lag to trial. To date, both sides have incurred about $300,000 in attorney fees and the city's anti-SLAPP added 2,200 pages to the record—revealing further statutory non-compliance. The case was filed March 20, 2023 and has yet to reach trial on a single cause of action declaratory relief trial. Case management was set for January 5, 2026 for an alleged criminal infraction that took place September 4, 2022. The public fisc suffered. There is no judicial check on intergovernmental compliance with public roads and traffic control—cities are entering the field of traffic control dominated by the State without any check whatsoever. It is up to citizens like the Motorist to exercise the First Amendment right to petition the Government for redress of grievances. Judicial economy suffers and our public treasury suffers from the expenditure of unnecessary and excessive time expended and legal fees incident to the improper and misuse of the special anti-SLAPP motion to strike to challenge a $490 criminal red-light running camera ticket.

Furthermore, it should be noted the record has not revealed the existence of traffic accidents justifying the red-light running camera at the Intersection. This proceeding seeks declaratory, *i.e.* noncoercive relief, to ascertain the validity of one red-light camera ticket and the compliance of a single red-light camera operation that appears to have generated an unverified estimate of $132,000,000 since 2003. Many of the alleged violators at that red-light camera intersection simply the Court the criminal fines without knowing the Vehicle Code affords protections to them. Sworn peace officers, with the power to stop and cite for red-light running, are required by State law to review and approve tickets. However, the municipality admitted after this case was filed that it does not provide that statutory protection written into the red-light camera law; it also admitted to usurping the resources of other government entities. California Courts would likely feel the financial pinch incident to their share of the $132,000,000 from such *ultra vires* red-light running camera operations.

This Court may put an end to this by confirming the California Court's imposition of attorney fees and limitation on the grievance violate the Petition Clause, Privilege and Immunities, Due Process and Equal Protection clauses of the First, Fifth, and Fourteenth Amendments of the U.S. Constitution. The civil proceeding was filed to preserve the Motorist's Confrontation and Right to Testify under the Sixth Amendment of the U.S. Constitution. The orders of the trial court and intermediate appellate court are prior restraints and do not survive strict scrutiny. There is likely no rational basis for not having allowed the single cause of action declaratory relief complaint to move forward. Grant of Certiorari would allow this prior restraint to be eliminated or in the alternative sent back as certified questions to the California Supreme Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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