

B336778

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION SEVEN

CARLOS CARACHURE and ANA CARACHURE,
individuals,
Petitioners/Plaintiffs and Appellants,

v.

CITY OF AZUSA, a California general law city,
Defendant and Respondent.

*Appeal from the Superior Court of the State of California
County of Los Angeles, Case No. 22STCP03478
The Honorable Curtis A. Kin, Judge Presiding*

**APPLICATION OF THE LEAGUE OF CALIFORNIA
CITIES AND THE CALIFORNIA STATE ASSOCIATION OF
COUNTIES TO FILE AN AMICUS BRIEF IN SUPPORT OF
DEFENDANT AND RESPONDENT CITY OF AZUSA;
PROPOSED AMICUS CURIAE BRIEF**

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COURT OF APPEAL SECOND APPELLATE DISTRICT, DIVISION SEVEN	COURT OF APPEAL CASE NUMBER: <p style="text-align: center;">B336778</p>
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APPELLANT/ Carlos Carachure and Ana Carachure PETITIONER: RESPONDENT/ City of Azusa REAL PARTY IN INTEREST:	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	
(Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.	


1. This form is being submitted on behalf of the following party (name): League of California Cities and CA State Ass'n of Counties
2. a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b. Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
(4)	
(5)	
<input type="checkbox"/> Continued on attachment 2.	

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: February 18, 2025

 Benjamin P. Fay
 (TYPE OR PRINT NAME)



 (SIGNATURE OF APPELLANT OR ATTORNEY)

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**APPLICATION FOR PERMISSION TO FILE
AMICUS CURIAE BRIEF**

TO THE HONORABLE PRESIDING JUSTICE OF THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA,
SECOND APPELLATE DISTRICT, DIVISION SEVEN:

The League of California Cities (“Cal Cities”) and the California State Association of Counties (“CSAC”) request permission, pursuant to Rule 8.200(c) of the California Rules of Court, to file the attached amicus curiae brief in support of the Defendant and Respondent City of Azusa (“the City”).

Cal Cities is an association of 476 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. Cal Cities is advised by its Legal Advocacy Committee, comprised of 25 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels’ Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

Cal Cities, CSAC, and their member cities and counties have a substantial interest in the outcome of this case because it raises important questions concerning the preservation of an important procedural protection enacted by the Legislature to notify local governments of potential legal challenges to charges for water, sanitation, storm drainage, and sewerage services so local governments have the opportunity to address these potential claims before they turn into expensive litigation. In particular, this case raises the question of whether the pay-under-protest requirement in section 5472 of the Health and Safety Code, which requires a potential plaintiff to notify a local government of a legal objection to a charge by paying that charge under protest before filing a lawsuit, can be ignored by a plaintiff if the plaintiff seeks only equitable relief and not a refund in a lawsuit challenging the charge.

The attached brief will provide the Court with useful information regarding the potential impact to California cities and Counties should the judgment below be reversed. Cal Cities and CSAC believe that their perspective on the issues identified above will assist the Court in its resolution of this appeal. The undersigned counsel has carefully examined the briefs submitted by the parties and represents that this brief by Cal Cities and CSAC, while consonant with the City's arguments, will highlight important points that warrant further consideration. Accordingly, Cal Cities and CSAC respectfully request that the Court grant this application and accept this brief for filing.

In compliance with subdivision (c)(3) of Rule 8.200, the undersigned counsel represents that he authored this brief in its entirety on a pro bono basis; that his firm is paying for the entire cost of preparing and submitting the brief; and that no party to this action, or any other person, authored the brief or made any monetary contribution to help fund the preparation and submission of the brief.

JARVIS FAY LLP

Dated: February 18, 2025

By: /s/ Benjamin P. Fay

Benjamin P. Fay
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LEAGUE OF CALIFORNIA
CITIES and CALIFORNIA STATE
ASSOCIATION OF COUNTIES

**AMICUS CURIAE BRIEF OF THE LEAGUE OF
CALIFORNIA CITIES AND CALIFORNIA STATE
ASSOCIATION OF COUNTIES**

I. INTRODUCTION

Section 5471 of the Health and Safety Code provides special procedures for local governments for adopting charges for water, sanitation, storm drainage, and sewerage services—essential services for the maintenance of public health. Section 5472 of the Health and Safety Code provides a procedural protection for these charges, imposing the requirement that before a person can challenge a charge in court, the person must alert the local government imposing the charge of that person's the objection by paying the charge under protest. This requirement serves the important purpose of notifying the local government of a legal objection before a lawsuit has been filed, which gives the local government the opportunity to avoid the lawsuit by addressing the objection.

In this case the plaintiffs filed a lawsuit challenging sewer and sanitation charges of the City of Azusa, and they filed the lawsuit without first paying the charges under protest as required by Health and Safety Code section 5472. Because the plaintiffs had not paid the charges under protest before bringing the lawsuit, the trial court entered judgement for the City.

The plaintiffs argue that because they are seeking equitable relief and not a refund, the pay-under-protest requirement does not apply to them. This argument should be rejected. Pay-under-protest is a mild requirement. It is not onerous, and it serves the purpose of trying to avoid needless

litigation. It should make no difference whether a plaintiff is seeking a refund, equitable relief, or both—a plaintiff should pay the charge under protest, thereby alerting the local government to the legal objection to the charge, and then bring an action in court if the local government does not resolve the objection. Seeking only equitable relief and not a refund should not be a loophole for avoiding this simple requirement.

II. ARGUMENT

A. The pay-under-protest requirement brings legal objections to the attention of the local government early, allowing the government to resolve valid objections and avoid litigation.

The pay-under-protest requirement in section 5472 of the Health and Safety Code protects local governments from needless litigation by requiring a rate payer who believes that a charge for water, sanitation, sewer, or storm drain service is illegal to notify the local government of the objection by paying the disputed charge under protest. This achieves two things: First, it ensures that revenues needed to pay for the essential services of providing clean water, sanitation, sewers, and storm drains are not disrupted every time someone raises a legal objection; and second, by bringing the issue to the local government early, before a lawsuit has been filed, it gives the local government the opportunity to resolve valid claims and avoid expensive litigation. “The payment under protest requirement provides fiscal protection to the collecting entity, as payment received under protest puts the entity on notice that a refund may eventually be

required.” (*Padilla v. City of San Jose* (2022) 78 Cal.App.5th 1073, 1077.)

This procedural protection is particularly important for fees for water, sanitation, sewer, and storm water services because these services are essential for the basic maintenance of public health. Moreover, because article XIII D of the California Constitution (Proposition 218) imposes strict limitations on these fees—requiring that they can be no more than necessary to provide the service for which they are charged (Cal. Const Art. XIII D, § 6(b))—any additional costs imposed by litigation could directly impact the provision of these essential services.

The pay-under-protest requirement in section 5472 of the Health and Safety Code therefore operates to preserve scarce funds for the provision of essential services by local governments and for the public who funds local governments and these services.

B. The pay-under-protest requirement is not onerous and should apply to all claims, regardless of the remedy sought by a plaintiff.

In this case, the plaintiffs object to their sewer and sanitation fees. However, they did not pay these fees under protest, which would have notified the City of Azusa of their concerns and would have given the City the opportunity to consider their objections before a lawsuit was filed. Instead, they proceeded straight to court, seeking a writ of mandate and declaratory relief. They argue that the pay-under-protest requirement does not apply to them because they are not seeking

a refund. But that should not make a difference. The reason for the requirement remains the same: to give the local government the opportunity to consider the objection before litigation is filed.

This is not an onerous requirement. “Payment under protest means giving written notice to the entity imposing the charges, at the time payment is made, indicating the payor believes the charge is invalid and intends to seek a refund.” (*Padilla v. City of San Jose, supra*, 78 Cal.App.5th 1073, 1077.) A person objecting to a charge only has to register the objection when paying the charge. This is simpler than submitting a claim under the Government Claim Act (Gov. Code § 810 et seq.), which requires more information about the claim (see Gov. Code § 910).

Applying this requirement to a lawsuit seeking equitable relief will not hinder prospective plaintiffs. All a prospective plaintiff has to do is pay under protest, and then, if the local government does not address the problem, the prospective plaintiff can bring a lawsuit in which the claimant can seek equitable relief and a refund. In contrast, not applying this requirement deprives the local government of this important opportunity to avoid costly litigation.

The appellant’s argument that applying this requirement to claims for equitable relief would prevent plaintiffs from obtaining complete relief does not make sense, because it will not prevent a plaintiff from seeking equitable relief, once they have paid under protest. On the other hand, allowing plaintiffs to ignore this requirement if they seek only equitable relief and not a refund would deprive local governments of the procedural

protection section 5472 is intended to provide and would allow plaintiffs to proceed with a lawsuit without first providing the local government with notice of the objection and an opportunity to address it before litigation. This would only benefit those who prefer litigation over settlement, and it would hurt everyone else, including the taxpaying public who must pay for it.

C. The Sixth District of the Court of Appeal has already implicitly held that the pay-under-protest requirement in section 5472 of the Health and Safety Code applies to claims for equitable relief and this Court should explicitly affirm that conclusion.

In *Los Altos Golf & Country Club v. County of Santa Clara* (2008) 165 Cal.App.4th 198, the plaintiffs challenged the defendants' sewer rates. They sought a refund, declaratory relief, and a writ of mandate. (*Id.* at 202.) The trial court sustained a demurrer without leave to amend because the plaintiffs had not paid under protest as required by section 5472 of the Health and Safety Code. (*Ibid.*) The Sixth District noted that "[t]he plain language of section 5472 ... contemplates payment under protest, followed by an action if the payer is unable to secure a refund." (*Id.* at 205.) The Court affirmed the trial court's decision sustaining the demurrer without leave to amend, even though the plaintiffs had sought both a refund and equitable relief. (*Id.* at 207-08.) This Court should now explicitly hold what the Sixth District implicitly held: That the pay-under-protest requirement in section 5472 of the Health and Safety Code applies to all claims challenging charges for water, sanitation, storm drainage,

or sewer services adopted under section 5471 of the Health and Safety Code, regardless of the remedy sought by the plaintiff, whether equitable relief or a refund.

III. CONCLUSION

Health and Safety Code section 5472 provides an important procedural protection that seeks to avoid unnecessary litigation. The appellants want to create a loophole in this protection for claims for equitable relief. The pay-under-protest requirement, however, is not onerous, and it does not prevent plaintiffs from asserting their claims, provided they first pay under protest. Cal Cities and CSAC therefore urge this Court to affirm the trial court's judgment to preserve this important protection.

JARVIS FAY LLP

Dated: February 18, 2025

By: /s/ Benjamin P. Fay

Benjamin P. Fay

Attorneys for Amicus Curiae

LEAGUE OF CALIFORNIA

CITIES and CALIFORNIA STATE

ASSOCIATION OF COUNTIES

CERTIFICATE OF WORD COUNT

I certify that this application and brief contains a total of **1,342** words, as indicated by the word count feature of Microsoft Word, the computer program used to prepare the application and brief. This word count excludes the cover page, tables, signature blocks, and this certification pursuant to California Rules of Court, rule 8.204(c)(1).

Dated: February 18, 2025

/s/ Benjamin P. Fay

DECLARATION OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States and employed in the County of Alameda; I am over the age of eighteen years and not a party to the within entitled action; my business address is Jarvis Fay LLP, 555 12th Street, Suite 1630, Oakland, California 94607.

On February 18, 2025, I served the within:

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ASSOCIATION OF COUNTIES TO FILE AN AMICUS
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VIA TRUEFILING: I caused a copy of the document to be sent to the parties listed above via the Court-mandated vendor, truefiling.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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Honorable Curtis A. Kin
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Executed on February 18, 2025 at Oakland, California.



Jennifer Dent