IN THE SUPREME COURT OF CALIFORNIA

NO. S268480

ARNETTE TRAVIS, ET AL.,
PETITIONERS,
v.
BILL BRAND, ET AL.,
RESPONDENTS

After A Decision by the California Court of Appeal,
Second Appellate District, Division Eight
Case Nos. B298104 and B301479

Appeal from the Superior Court of the State of California,
Los Angeles County Case No. BC 665330
The Honorable Malcolm H. Mackey, Judge Presiding

RESPONDENTS' ANSWER BRIEF ON MERITS

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INTRODUCTION

The issue in this action is simple: Should prevailing plaintiffs and defendants be treated the same for an award of attorney fees, as stated by the language of the Political Reform Act? As both the Trial Court and Appellate Court found, pursuant to *Government Code* § 91003, the answer is indisputably, "Yes."

The Court of Appeal correctly acknowledged that the primary issue in this action is uncomplicated, noting:

> The statute here says the trial court *may* award to a plaintiff or a defendant who prevails his costs of litigation, including reasonable attorney fees. The statute means what it says.

Travis, et al v. Brand, et al (2021) 62 Cal. App. 5th 240, 264.

This issue is as clear as the Appellate Court noted; indeed, the statute says both sides (plaintiffs and defendants) are to be treated the same. And, "the statute means what it says." (*Ibid.*)

Petitioners/plaintiffs Arnette Travis and Chris Voisey ("Petitioners") commenced this action seeking injunctive relief against Respondents for alleged violations of the Political Reform Act during a City-wide election in Redondo Beach in 2017, claiming Respondents used improper committee names in campaign materials. The trial court found against petitioners and subsequently awarded attorney fees to respondents. Petitioners appealed and the Court of Appeal upheld the trial court's decision awarding attorney fees by Petitioners to Respondents.

Although the plain meaning of the statute is clearly stated, Petitioners wish to complicate the matter, arguing that caselaw

requires a different standard for plaintiffs than defendants who prevail in cases brought under the Political Reform Act of 1974 ("PRA"), based on a unique 1986 case (*People v. Roger Hedgecock for Mayor Com*. (1986) 183 Cal. App.3d 815). Upholding the decision in *Travis, et al v. Brand, et al* (2021) 62 Cal. App. 5th 240 [Appellate Court Case Nos. B301479 and B29104] ("*Travis*")[1] will in no way undermine California's election disclosure requirements, as Petitioners urge. The award of attorney fees should lie within the discretion of the trial court as the statute provides. And, "the statute means what it says." *Id.* at 264.

The Court in *Hedgecock* dealt with a situation where defendant seeking attorney fees was not truly a prevailing defendant. *Hedgecock* involved a distinguishable situation in which the San Diego District Attorney (DA) initially filed a lawsuit against San Diego mayor Hedgecock, asserting he had failed to report contributions made to his campaign for mayor in violation of the PRA. The DA pursued criminal charges, monetary damages in the amount Hedgecock received and failed to disclose and injunctive relief under *Gov. Code* sections 91003 and 91012. Subsequent to the DA's filing, the Fair Political Practices Commission (FPPC) agreed to prosecute the civil matter itself and **only <u>after</u> the FPPC filed its own action against Hedgecock did the DA dismiss its lawsuit**. Once the DA voluntarily dismissed its civil action, Hedgecock sought attorney fees and costs

[1] The appeal herein is from the decision of the Court of Appeal, Second Appellate District, Division EIGHT, although Petitioners repeatedly and erroneously designate the Division as Three.

as the "prevailing party." The trial court denied Hedgecock's request, because he did not "prevail" - a different prosecuting plaintiff (FPPC) had merely been substituted to proceed with the civil matter, while the DA proceeded with the criminal case, and Hedgcock was later found guilty on several counts. The *Hedgecock* case is not similar to the instant case in any respect; its holding cannot be applied here.

Likewise, the other case upon which Petitioners rely, *Community Cause v. Boatwright* (1987) 195 Cal. App. 3d 562, is not helpful to Petitioners. In *Boatwright*, a citizens group sued a state assemblyman for violations of the PRA, specifically failing to report an interest in a partnership and income in his statement of economic interest. The trial court entered judgment for defendant and awarded attorney fees and costs. On appeal, the attorney fee award was reversed. Plaintiff sought *damages* (not injunctive relief) against Boatwright pursuant to section 91004, *not* section 91003 which is the statute at issue in the instant matter. *Government Code* §91004 provides that "any person who intentionally or negligently violates any of the reporting requirements of the Act shall be liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount not more than the amount or value not properly reported." Section 91004 has no applicability to the instant case.

Clearly, section 91004 does not contain any provision for the awarding of attorney fees by a prevailing party. A successful plaintiff or prevailing defendant in a Section 91004-sanctioned

lawsuit for *damages (not injunctive relief)* must rely upon section 91012 for an award of attorney fees. Here, Section 91003 is the relevant section, not Section 91004, and Respondents need not rely on Section 91012 to recover attorney fees, since section 91003 itself provides for attorney fees.

The underlying facts in this campaign-related case are straight forward and supported the trial judge's findings and decision after trial. On appeal, the Appellate Court found that the decision was supported by those facts and that the trial judge's award of attorneys' fees was supported by the facts and the law.

Despite Petitioners' lofty assertions that they filed their lawsuit to apprise the public of the truth, and their hollow claims that the *Travis* decision will effectively punish plaintiffs from suing to enforce the PRA and that only wealthy individuals and corporations will bring suits to enforce the PRA, it is petitioners themselves who have been deceptive, who have sought to punish Respondents, and who have used wealthy corporations to circumvent the intent of the PRA. It is they who were found by the trial judge to be "shills" in a "sham" lawsuit. It is they who claimed they filed the lawsuit as concerned citizens, testifying under oath in trial that they did not know who was paying for the lawsuit, followed by their counsel testifying under oath in trial that other entities (RB Waterfront, a subsidiary of CenterCal, owned by Fred Bruning and Jean Paul Wardy) were paying for the lawsuit, and it was they, who, a few weeks after their sworn trial testimony, stated in other sworn testimony (declarations opposing respondents' motions for attorney fees) that they actually knew all

along that the other entities were paying for the prosecution of the lawsuit, and that they had previously given written consent for such a financing arrangement.

This case boils down to the trial court's proper role in weighing the evidence presented and using its discretion to deny injunctive relief to the petitioners and enter Judgment against them, finding that Travis and Voisey were "shills" for a developer who brought and financed a frivolous, bad faith and "sham" lawsuit against the respondents, who opposed the developer's waterfront project. The Honorable Malcom H. Mackey found the lawsuit "frivolous, unfounded and unreasonable." (AA1776) After finding the respondents did not violate any provisions of the PRA, the trial court awarded attorneys' fees to them, as allowed by statute. (*Government Code* §91003 and *Code of Civil Procedure* §1021.5). The Court of Appeal held that the trial court's award of attorneys' fees to the prevailing respondents was supported by the acts and law. This honorable Court should find the same and affirm the Judgment of the Court of Appeal, as the decision constitutes well-settled California law.

STATEMENT OF FACTS

A. Respondents Prevailed at Trial

In a 2017 Redondo Beach municipal election, a political action committee Rescue Our Waterfront P.A.C. ("Rescue") successfully campaigned for a ballot measure, which was also supported by the two candidates, Bill Brand (for Mayor) and Nils Nehrenheim (for City Council). After the election, two citizens

(Arnette Travis and Chris Voisey) sued the committee and candidates claiming the candidates had controlled the committee, which had used an improper title for itself. Travis and Voisey also sued Wayne Craig, the principal of Rescue, as well as Brand's campaign committee (Brand For Mayor 2017) and volunteer treasurer, Linda Moffat.

The ballot measure approved building restrictions in the City's harbor and pier areas. The lawsuit sought injunctive relief against the defendants by way of compelling defendants to amend their campaign statements and also sought attorneys' fees as private attorney general action. The trial court vindicated the political action committee and Craig and the candidates, Brand and Nehrenheim (including Treasurer Moffat and Brand's Mayoral Committee) and awarded attorneys' fees to the prevailing defendants, following a hearing on a motion for attorneys' fees.

B. Respondents Prevailed at The Court of Appeal

The Court of Appeal affirmed the award of attorney fees and costs to respondents as against petitioners, Travis and Voisey. It accepted all evidence supporting the trial court's order, disregarding contrary evidence and drawing all reasonable inferences to affirm the trial court. It did not reweigh the evidence. It found that if substantial evidence supports factual findings, those findings must not be disturbed on appeal. *Schmidt v. Superior Court* (2020) 44 Cal. App. 5th 570, 581.

The appellate court found that substantial evidence supported the trial court's finding Rescue was a general purpose committee. It found that the trial court could properly determine

Rescue was a general purpose committee that did not need to reclassify itself, and that Rescue was not involved in running the principal campaign for Measure C.

The appellate court further found that sufficient evidence showed neither Nehrenheim nor Brand controlled Rescue. Neither had significant influence over Rescue, neither shared office space with Rescue, and neither controlled or had significant influence over Rescue's messaging. The appellate court found that there was ample evidence that demonstrated neither candidate acted jointly with Rescue in making expenditures, and neither had access to Rescue's money. E-mails defendants exchanged between each other bolstered the trial court finding that the candidates did not control Rescue.

Additionally, the Court of Appeal affirmed the trial court's award of attorney fees to respondents, stating, "we uphold the trail court's exercise of its discretion to award attorney fees to the defendants, who were unquestionably the prevailing parties." *Travis, supra*, at 264.

I. ARGUMENT: *TRAVIS* WAS CORRECTLY DECIDED AND SHOULD BE AFFIRMED

A. The Statute Says What It Means and Means What It Says

Respondents prevailed against petitioners at trial. The clear meaning of Section 91003 authorizes the fee award in favor of the prevailing defendants (respondents herein). While petitioners claim they must pay fees only if their lawsuit was "frivolous,

unreasonable, or without justification," they misread the statute (section 91003). No such finding is required under the section.

Petitioners cite *People v. Roger Hedgecock for Mayor Com*. (1986) 183 Cal. App. 3d 810 and *Community Cause v. Boatwright* (1987) 195 Cal. App.3d 562 for their position that their lawsuit must be frivolous, unreasonable or without justification for respondents to be entitled to attorney fees. These arguments are unavailing, because in *Hedgecock,* the defendant seeking attorney fees was not truly a "prevailing" defendant. The San Diego District Attorney (DA) initially filed a lawsuit against San Diego mayor Hedgecock, asserting he had failed to report contributions made to his campaign for mayor in violation of the PRA, pursuing criminal charges and monetary damages in the amount Hedgecock received and failed to disclose. Subsequently, the FPPC agreed to prosecute the matter itself and **only after the FPPC filed its own action against Hedgecock did the DA dismiss its lawsuit**. At that point, because the DA voluntarily dismissed its action, Hedgecock sought attorney fees and costs as the "prevailing party." Hedgecock's request was denied because he did not "prevail" - a different prosecuting plaintiff had merely been substituted to proceed with the matter. The *Hedgecock* case is not similar to the instant case in any respect; its holding cannot be applied here.

Likewise, *Community Cause v. Boatwright* (1987) 195 Cal. App. 3d 562, is not helpful to Petitioners, because it does not involve the statute at issue here. In *Boatwright*, a citizens group sought *damages* (not injunctive relief) against a state assemblyman for violations of the PRA under Section 91004, *not*

section 91003, but lost. The trial court's award of attorney fees and costs to defendant was reversed on appeal. Section 91004 provides that "any person who intentionally or negligently violates any of the reporting requirements of the Act shall be liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount not more than the amount or value not properly reported." *Government Code* §91004. However, Section 91004 does not contain any provision for the awarding of attorney fees by a prevailing party. A successful plaintiff or prevailing defendant in a Section 91004-sanctioned lawsuit for *damages (not injunctive relief)* must rely upon section 91012 for an award of attorney fees. Here, Section 91003 is at issue, not Section 91004, and Respondents need not rely on Section 91012 in order to recover attorney fees.

Hedgecock and *Boatwright* relied on the U.S. Supreme Court case, *Christiansburg Garment Co. v. EEOC* (1978) 434 U.S. 412, 421-422, which held a court must find a plaintiff's claims under Title VII of the Civil Rights Act to be frivolous, unreasonable, or groundless to award attorney fees to the defendant. Even if that were the applicable standard by which defendants would be entitled to receive an award of attorney fees, they have met that standard. In the trial court's August 8, 2019 Order Re: Motions for Attorneys Fees, Non-C.C.P. 1033.5 Costs and C.C.P. 1033.5 costs, it ruled, "3. The instant lawsuit filed against the Defendants was frivolous, unreasonable and groundless and Plaintiffs were found to be shills for Redondo Beach Waterfront LLC." (AA 565-570)

But, in 1994, the U.S. Supreme Court considerably limited *Christiansburg* in *Fogerty v. Fantasy, Inc.* (1994) 510 U.S. 517. The decision in *Fogerty* observed *Christiansburg*'s holding stemmed from its civil rights context: "Oftentimes, in the civil rights context, impecunious 'private attorney general' plaintiffs can ill afford to litigate their claims against defendants with more resources (*Id.* at 524). The high court contrasted this special setting with a more typical civil litigation, where plaintiffs 'can run the gamut from corporate behemoths to starving artists.' (*Ibid.*) The same is true of prospective defendants, the court observed.

The appellate court held the statute in this case is not like the statute in *Christiansburg*. It is more like the one in *Fogerty*. It held that "California election law disputes are more like the ordinary civil litigation setting in *Fogerty*: generalizations about plaintiffs and defendants are doubtful. This is true in this case and as a general matter." *Travis, supra*, at 264.

The meaning of the statute is clear. It says the trial court may award to a plaintiff or a defendant who prevails his costs of litigation, including reasonable attorney fees. (*Gov. Code* section 91003) The statute means what it says. There is no language written in secret disappearing ink that one can only find by shining a black light on the code book – the statute is written in plain English and must be given its plain meaning: the prevailing party is entitled to attorney fees at the discretion of the trial court, whether he is a plaintiff or a defendant. Period. As stated in *DaFonte v. UpRight Inc.* (1992) 2 Cal. 4th 593, 601: "the plain meaning of words in a statute may be disregarded only when that

meaning is repugnant to the general purview of the act or for some other compelling reason." There is no such compelling reason to disregard the plain words in *Gov. Code* section 91003 here, and the statute means what it says.

As the *Fogerty* decision puts it, prevailing plaintiffs and prevailing defendants are to be treated alike, and attorney fees are to be awarded to prevailing parties only as a matter of the trial court's discretion. (*Fogerty, supra*, at 534.) *Christiansburg* and *Fogerty* discuss the different statutes involved as to why the results and treatment of defendants and plaintiffs are different in allowing awards of attorney fees. *Christiansburg* argues that plaintiffs in a civil rights action may very well be less financially able to prosecute actions than employers and therefore justifies the extra hurdle for prevailing defendants to recover fees. *Christiansburg, supra*, at 418-419. *Fogerty* explains that in the copyright arena, the successful defense of an infringement action may further the policies of the Copyright Act every bit as much as a successful prosecution and therefore justifies treating the sides equally in awarding attorney fees. *Fogerty, supra,* at 527. Justice Thomas' concurring opinion in *Fogerty* points out that the court "should acknowledge that *Christiansburg* mistakenly cast aside the statutory language to give effect to equitable considerations" and that the Court "adopts the correct interpretation of the statutory language in [*Fogerty*]", observing that the statutory language "gives no indication that prevailing plaintiffs and defendants are to be treated differently." *Id.* at 538.

Here, as in *Fogerty*, the statutory language gives no indication that prevailing plaintiffs and defendants are to be treated differently. Further, in the arena of elections and campaign disclosures, the defense by service-minded but cash-poor candidates may further the PRA as much as, if not more so, than enforcement by plaintiffs seeking to harass opposing political candidates.

When statutory language is clear and unambiguous, there is no need for construction and courts should not indulge in it. *Rojo v. Kliger* (1990) 52 Cal.3d 65, 73. The appellate court therefore upheld the trial court's exercise of its discretion to award attorney fees to the defendants (respondents herein), who were unquestionably the prevailing parties.

The Court of Appeal ruling in *Travis* demonstrates the clear record that *Government Code* section 91003 provides for attorney fees to prevailing defendants without any additional hurdle, such as showing plaintiff's lawsuit to be "frivolous, unreasonable and groundless." But, even so, the trial court did make that finding because that petitioner's lawsuit was "frivolous, unreasonable and groundless," thus entitling Respondents to attorney fees in any event.

Travis creates no confusion or uncertainty of when prevailing parties are entitled to attorney fees under section 91003. It is within the discretion of the trial court to award these fees. Here, the trial court read the plain meaning of the statute, applied it to the facts and evidence at trial and awarded Respondents their attorney fees. The law is clear. The Court

properly exercised its discretion, and the appellate court ruled that substantial evidence supported the trial court's factual findings and award of attorney fees to defendants. In sum, this honorable Court can and should find the same and affirm the appellate court's decision.

B. *Travis* Upholds the Intent of the 40-year old Political Reform Act

The Political Reform Act of 1974 was passed as a comprehensive political package by the voters of California in June, 1974 to end corruption in politics. Its provisions regulated campaign finance, lobbying activities and conflicts of interests. The campaign activities and personal financial affairs of state and local officials were subject to greater scrutiny, and the law was to be enforced by the newly created Fair Political Practices Commission. In 1977, the Legislature added provisions to the original version, including some that required candidates and committees to disclose their identities on campaign literature.

What was once political reformers' method of "putting an end to corruption in politics" has now become a tool of moneyed interests to weaponize the PRA to abuse, threaten, thwart, and chill public political expression and involvement of residents in local government affairs.

The actions of the Petitioners and their cohorts against the Respondents were never a "robust enforcement of the Act's provisions, consistent with the Legislature's intent." Instead, this was a high-priced political vendetta against the Respondents, calculated to bankrupt them, and funded by a major mall

developer whose waterfront project was overwhelmingly rejected by the voters of a small beach town.

Petitioner Arnette Travis is a retired stock broker and Chris Voisey is the Founder and CTO of his own company that services Fortune 500 companies. Redondo Beach Waterfront, LLC (RBW) is a large company whose partners, CenterCal Properties, LLC and Westport Capital, were partners in a Redondo Beach waterfront project estimated to be worth $400 million, and who manage well over $3 billion in other assets.

Redondo Beach Waterfront, LLC and CenterCal Properties, LLC are run by Fred Bruning ("Bruning") and Jean Paul Wardy ("Wardy") who had proposed taking over the City's public shoreline and harbor on a 99-year lease, and replacing the City's historic pier and small "mom and pop" shops with a huge 525,000 square foot concrete "waterfront project." The public was opposed to the project. Bruning is a California attorney and CEO of CenterCal Properties LLC . He is a principal of RBW. Redondo Beach Waterfront LLC is a subsidiary of CenterCal Properties LLC. Wardy is a member of both entities. Bruning was intimately involved in the formulation of the plan for RBW's "waterfront" development, its overall strategy to secure all necessary approvals and entitlements from the City of Redondo Beach, and RBW's efforts to obtain public support for the project.

In 2016, residents organized to stop the waterfront project and to support candidates for local office who would do the same. An

initiative named Measure C was placed on the City's March 7, 2017 ballot, to protect views, public parks and the residents' quality of life in general. RBW was the sponsor and major financial contributor to the "No on C" campaign, using attorney Bradley Hertz, of The Sutton Law Firm (Petitioners' counsel at the trial of this matter and the appeal to the Second Appellate District) as its "Assistant Treasurer" and legal counsel. (AA138) Unbeknownst to Respondents, RBW was also paying Hertz to file and prosecute a "private enforcement" lawsuit against the Respondents. For his services as Assistant Treasurer in 2016 and 2017, Hertz was paid over $90,000.00 by Redondo Beach Waterfront, LLC's committee. In all, RBW spent over $525,000.00 opposing Measure C. On the last day of trial, Hertz testified his client was RBW and that RBW was paying his legal fees to prosecute the lawsuit against respondents.

On the other hand, Respondents are of simple means, attempting to serve their communities – Bill Brand is a medically-retired airline worker, Linda Moffat is a housewife, Nils Nehrenheim is a lifeguard and Wayne Craig is a real estate agent. Respondents volunteer hundreds of hours of their time to make their community a better place for all residents – conduct that should be lauded, not attacked.

Petitioners have a long history of attacking Mayor Brand and his supporters, with constant unfavorable opinions presented on social media, newspaper letters to the editor, opposition letters to the appointment of Brand to the California Coastal Commission and public comment periods at City Council meetings during agenda and non-agenda items. Their harassment of Mayor Brand

continues to this day. In the most recent municipal election in March 2021, Petitioner Voisey ran against Brand for mayor of the City of Redondo Beach in the latest attempt to harass Mayor Brand, while he was battling cancer, which is widely known in the community.[2]

Following the success of Measure C (57.13% of voters assured its passage, and thereby the loss of RBW's Waterfront project), CenterCal, Bruning, Wardy, RBW and its Assistant Treasurer, attorney Hertz, continued their efforts against incumbent Mayor Brand and his supporters, including other Respondents. Hertz, through another shill, Michael Cahalan, filed a Complaint with the Fair Political Practices Commission (FPPC) against Brand, his campaign, his Treasurer Moffat, Craig and ROW PAC in January 2017. In June 2017, this lawsuit, using identical language, was filed against the same defendants, and adding Nehrenheim. The administrative complaint and the civil lawsuit were filed even though Hertz knew ROW PAC filed its committee designation as a general purpose committee and it was not a primarily formed committee, such that the claimed violations of the PRA could not be substantiated. The FPPC Complaint has since been dismissed and found to be baseless as well.[3]

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[2] Petitioner Voisey filed Recipient Committee Campaign Statement (Form 460) on August 2, 2021, which demonstrates that Fred Bruning continues to financially support Voisey in his harassment efforts against Brand. On page 4 of the Form 460, Bruning is listed as donating $950 to Voisey's mayoral campaign against Brand. Additionally, page 8 of the Form 460 shows a payment of $5,856.75 owed by Voisey and paid by an anonymous third party, who most insiders believe is Bruning/ RBWaterfront/CenterCal/Wardy/Westport Capital. (Motion Requesting Judicial Notice, Ex. 2)

[3] The FPPC's No Action Closure Letter dated April 8, 2021 acknowledges the allegations have been disproven. (Motion Requesting Judicial Notice, Ex. 1)

For years, petitioners publicly declared their intention "to get to the truth" about the actions of the Respondents. Secretly financed by the mall developer, their chance to prove their claims collapsed in a large thud when a 5 day trial ended with the trial judge declaring Petitioners "shills" for the developer and the lawsuit "a sham." (AA567)

In enforcing the clear language of the PRA, and recognizing how the Petitioners acted as shell plaintiffs in a sham lawsuit, acknowledging how Petitioners abused its provisions to punish Respondents for their political speech, the judge awarded Respondents their attorney fees and costs as allowed by Government Code section 91003 and Code of Civil Procedure section 1021.5. Not a single provision of the PRA was undermined; instead, the protections afforded grass-root organizations and local residents engaged in political free speech activities was upheld by the judge – what the PRA was always meant to do.

Travis is consistent with the PRA provisions and affords financial protection to targeted grass-root organizations and local residents when they participate in local political activities. They should not feel threatened or be financially ruined from well-financed special interests masquerading as "enforcers" of the PRA, and whose true interests are to protect their own pocket books.

Petitioners' Opening Brief belies their deceptive conduct. The PRA's private attorney general enforcement actions envision registered voter individual residents bringing these types of cases to vindicate wrongs in the election process. It does not envision

corporations initially preparing legal Complaints without named plaintiffs, subsequently searching for sympathetic registered voters to slap their names on the complaint as plaintiffs and pretend to prosecute the action, which is fully funded and actually prosecuted and strategized by a wealthy corporation and its owners. Yet, the Opening Brief laments that "*Travis* actively discourages private enforcement [because] [u]nder *Travis*, only **wealthy** individuals **and corporations** will bring suits to enforce the Political Reform Act, since they are the only plaintiffs who can survive a judgment saddling them with defendant's fees." (emphasis added) (Opening Brief at 8) Certainly, Section 91003 only envisions *individual registered voters* – not corporations – so corporations are never entitled to bring such lawsuits against candidates. Yet, here, that is exactly what occurred, in a perversion of the private attorney general provisions of the PRA.

Petitioners prosecuted this action on behalf of a developer (RB Waterfront) of a 525,000 square foot waterfront project proposed for Redondo Beach that was defeated at the polls. At the trial, Judge Mackey found in favor of all Respondents and denied all relief to Petitioners and subsequently awarded costs, including attorney fees under Government Code section 91003 and Code of Civil Procedure section 1021.5 to Respondents as the "prevailing parties." Judge Mackey found the lawsuit was frivolous, unfounded, unreasonable, and that Petitioners were shills and shams for the developer.

In reality, Appellants were acting as fake frontmen for the developer whose project was at the center of the Measure C

initiative, to avoid dismissal based on an anti-SLAPP motion. Appellants and their attorney knew very well that at the time they filed their lawsuit, it was frivolous and without foundation. Hertz, an experienced election law and political practices attorney, had reviewed all the relevant campaign materials and required FPPC filings. Hertz was also knowledgeable about the intricacies of the PRA and how committees are organized and how, when and if they must file reports with the FPPC. He specifically knew that a general purpose committee could review its activities on a prospective basis so as to not transform into a primarily-formed committee based on its expenditures prior to an election. Yet, knowing all this, Appellants still filed their baseless lawsuit, in an attempt to punish Respondents and silence their important right to free speech. Such conduct should not be rewarded.

C. ***Travis*** **Should Be Affirmed on Public Policy Grounds**

From its inception, the lawsuit was frivolous, unreasonable and without foundation. Petitioners, and their counsel, knew prior to filing the lawsuit that it was groundless and there was no basis for their claims. They knew the lawsuit was brought in bad faith due to their own personal vendetta against candidates and citizens who held opposing political viewpoints from Petitioners and their financiers. They also believed that they had nothing to lose in filing the lawsuit because a large mall developer would foot the bill and if they unexpectedly lost the lawsuit, Petitioners believed they would not have to pay any sums to Respondents by claiming fees and costs were not reciprocal.

The facts in *Travis* are clear evidence of how the PRA was hijacked and abused by petitioners and their multi-billion dollar cohorts to carry out a personal vendetta against a newly elected Mayor and Councilman to pressure these elected officials to change their policies or be saddled with years of expensive litigation. Petitioners masqueraded as enforcers of the PRA to denigrate, malign, financially strap and discourage their political opponents. The PRA was not intended to dissuade public participation in the political process, but this is what would happen in anyone can simply file a lawsuit, mislead the courts and community about who is funding it, and then suffer no consequences for abusing the system.

D. Petitioners' Request for the Supreme Court to Substitute Its Judgment for that of the Trial Court on Factual Issues such as Frivolousness Is Inappropriate

Remarkably, Petitioners even go a step further and request this Court reverse the trial court's finding that Petitioners' case was frivolous. This request is made "in the interest of judicial economy." (Opening Brief p. 8) This request is unreasonable and inappropriate and should be ignored by this Honorable Court.

Judge Mackey made the factual findings that the lawsuit was "frivolous, unreasonable and without foundation." He even further described Petitioners as shills for the developer in a sham lawsuit. (AA 565-570) Deference is given to factual findings of trial courts because those courts generally are in a better position to evaluate and weigh the evidence. *People v. Louis* (1986) 42 Cal. 3d 969, 986.

Petitioners claim their lawsuit was never frivolous because they really, truly believed they were right. Yet, the term "frivolous" has been defined to mean: "(A) totally and completely without merit or (B) for the sole purpose of harassing an opposing party." (*Code of Civil Procedure* section 128.5(b)(2)). As discussed *supra*, Petitioners have a long history of harassing Mayor Brand and his supporters, which continues to the present, and they certainly intended to do so by filing and prosecuting this lawsuit.

E. Attorneys Fees Were Appropriately Awarded to Respondents

Petitioners claim that *Travis* enunciates a new standard for attorneys' fees. It does not. The appellate court opined that often the issue with an attorney fee is the amount, for example, did the court correctly calculate the hours, the hourly rate, and the total award. In that situation, the standard of review for attorney fee awards is for abuse of discretion. (E.g., *Connerly v. State Personnel Bd*. (2006) 37 Cal. 4th 1169, 1175) Petitioners have never argued that the court's fee calculation was inaccurate in amount. Instead, they contend a fee award of even one cent was improper and argue that respondents are not entitled to attorney fees.

The appellate court found that it was required to construe the statutory requirements for an attorney fee award. Thus, its review is independent. (See *Connerly, supra*, 37 Cal. 4th at p. 1175).

The trial court awarded fees under *Government Code* section 91003 and under *Code of Civil Procedure* section 1021.5. These statutes are alternative bases for the fee award. The

appellate court affirmed the award under *Government Code* section 91003 and did not consider whether attorney fees were allowed under *C.C.P* section 1021.5.

The appellate court reiterated that subdivision (a) of the *Government Code* section 91003 provides: "The court may award to a plaintiff or defendant who prevails his costs of litigation, including reasonable attorney's fees." That section applies to cases seeking injunctive relief to enjoin violations or to compel compliance with the provisions of the Political Reform Act (section 91003(a).) The appellate court held that "the section applies because Travis and Voisey sought injunctive relief under that law." (*Travis, supra,* at 264)

CONCLUSION

Based on the foregoing, Respondents NILS NEHRENHEIM, BILL BRAND, BRAND FOR MAYOR 2017, LINDA MOFFAT respectfully request that the Opinion of the Court of Appeal be affirmed.

Dated: August 23, 2021

JEANNE L. ZIMMER

Jeanne L. Zimmer

Attorney for Respondent,
NILS NEHRENHEIM

Dated: August 23, 2021 STEVAN COLIN

By: s/ Stevan Colin

STEVAN COLIN
Attorney for
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BILL BRAND, BRAND
FOR MAYOR 2017 and
LINDA MOFFAT

VI. CERTIFICATE OF WORD COUNT

Pursuant to rule 8.204(c) and 8.486(a)(6) of the California Rules of Court, I hereby certify that the Respondents' Brief contains 5,463 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare this brief.

Dated: August 23, 2021

Jeanne L. Zimmer

Attorney for Respondent,
NILS NEHRENHEIM

PROOF OF SERVICE

(CCP sections 1013(a) and 2015.5; FRCP 5)

I am employed in the City of Los Angeles, County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 5901 W. Century Blvd., # 1200, Los Angeles, Calif. 90045.

On August 23, 2021, I served the following document:

RESPONDENTS' ANSWER BRIEF ON MERITS

on the interested parties: (See attached Service List)

( ) (by mail) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail in Los Angeles, California to be served on the parties as indicated on the attached service list. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. 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 day after date of deposit for mailing in affidavit.

( ) (via overnight delivery) As follows: I placed said sealed envelope for the collection on the date hereof following ordinary business practices for overnight delivery via Overnight Express and/or Federal Express to the offices of the addressee noted above.

(X) (By Electronic Filing and/or service) I served a true copy, with all exhibits, electronically on designated recipients listed on the attached Service List.

Executed on August 23, 2021 at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Raul Arreola

Raul Arreola

SERVICE LIST

Arnette Travis, et al., v. Bill Brand, et al.,

California Supreme Court Case No.: S268480

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Los Angeles, Calif. 90013-1213

Supreme Court of California
350 McAllister Street
San Francisco, Calif. 94102-4797

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **TRAVIS v. BRAND (REDONDO BEACH WATERFRONT)**
Case Number: **S268480**
Lower Court Case Number: **B298104**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **zimmerj@cmtlaw.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	Respondents Answer Brief on Merits
REQUEST FOR JUDICIAL NOTICE	Resp. Mtn Req Judicial Notice-Decl of Colin-Proposed Order

Service Recipients:

Person Served	Email Address	Type	Date / Time
Stevan Colin Gabriel & Associates 110360	stevan.colin@gabriel-law.com	e-Serve	8/23/2021 3:18:10 PM
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Bobak Nayebdadash Law Office of Bobak Nayebdadash 257976	bobakdadash@gmail.com	e-Serve	8/23/2021 3:18:10 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

8/23/2021
Date

/s/Jeanne Zimmer

Signature

Zimmer, Jeanne (123321)

Last Name, First Name (PNum)

Carlson & Messer LLP

Law Firm