

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

COMMUNITY YOUTH ATHLETIC
CENTER,

Plaintiff and Appellant,

v.

CITY OF NATIONAL CITY, ET AL.,

Defendant and Respondent.

Court of Appeal No. D052584
Considered with No. D052630

Superior Court No. 37-2007-
000764040-CU-EI-SC

Appeal from Superior Court of San Diego County
Honorable William S. Cannon, Judge

APPLICATION OF AMERICAN CIVIL LIBERTIES UNION OF SAN
DIEGO & IMPERIAL COUNTIES AND WESTERN CENTER ON
LAW AND POVERTY FOR LEAVE TO FILE AMICUS CURIAE
BRIEF IN SUPPORT OF PLAINTIFF/APPELLANT; STATEMENT
OF INTEREST; AMICUS CURIAE BRIEF

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TABLE OF CONTENTS

AMICUS BRIEF

I. LAW & PUBLIC POLICY REQUIRE ALLOWING SUBSTANTIAL COMPLIANCE IN THIS SITUATION TO PRESERVE THE PUBLIC’S ACCESS TO COURTS TO CHALLENGE “BLIGHT” TAKINGS OF THEIR PROPERTY. 3

 A. Access to justice is a fundamental right and critical to good government. 3

 B. Because the taking of property for blight may result in discrimination against the property rights of minorities and/or the economically disadvantaged, assuring access to judicial review of such takings is crucial. 7

 C. A key legislative purpose of reverse validation actions is to facilitate the public’s ability to challenge development plans - especially in “blight” takings. 9

 D. Because of these important policies (as well as the reasons in CYAC’s briefs), the trial court erred in not applying the doctrine of substantial compliance to the publication requirements of reverse validation actions. 10

II. CONCLUSION 11

TABLE OF AUTHORITIES

CASES

Alford v. County of San Diego (2007) 151 Cal.App.4th 16..... 1

Boddie v. Connecticut (1971) 401 U.S. 371 4

California Motor Transport Co. v. Trucking Unlimited (1972) 404
U.S. 508..... 4

Carlson v. State (Ind. 1966) 220 N.E.2d 532..... 5

Cruz v. Superior Court (2004) 120 Cal.App.4th 175 1, 4

Elias v. San Bernardino County Flood Control Dist. (1977) 68
Cal.App.3d 70..... 6

Fontana Redevelopment Agency v. Torres (2007) 153 Cal.App.4th
902 1

Harrison v. Springdale Water & Sewer Comm. (8th Cir. 1986) 780
F.2d 1422..... 4

Johnson v. San Diego Unified School Dist. (1990) 217 Cal.App.3d
692 6

Leonardini v. Shell Oil Co. (1989) 216 Cal.App.3d 547 5

Moorpark Unified Sch. Dist. v. Superior Court (1990) 223
Cal.App.3d 954..... 9

Payne v. Superior Court (1976) 17 Cal.3d 908 4

*Stockett v. Association of California Water Agencies Joint Powers
Ins. Authority* (2004) 34 Cal.4th 441..... 5

Sweetwater Valley Civic Assn. v. City of National City (1976) 18
Cal.3d 270..... 8

Thatcher v. Lucky Stores, Inc. (2000) 79 Cal.App.4th 1081 5

STATUTES

Code Civ. Proc., § 862..... 9

Stats. 2006, ch. 595, § 1 10

OTHER AUTHORITIES

1961 Legislative History of Civ. Proc. Code §§ 860-870 9

1998 Legislative History of Civ. Proc. Code § 861.1	9
7 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law	4
Camarin Madigan (2003) <i>Taking for Any Purpose</i>	7
Coucher & Kelly, <i>The Social Contract from Hobbes to Rawls</i> (1994)	4
Jane Jacobs, <i>The Death and Life of Great American Cities</i> (1961)	8
Katherine M. McFarland, <i>Privacy and Property: Two Sides of the Same Coin: The Mandate for Stricter Scrutiny for Government Uses of Eminent Domain</i> (2004) 14 B.U. Pub. Int. L.J. 14.....	7
Laura Mansnerus, <i>Eminent Domain’s Pre-Eminence</i> , N.Y. Times, May 28, 2006.....	8
Magna Carta, 1215	3
Paul Boudreaux, <i>Eminent Domain, Property Rights, and the Solution of Representation Reinforcement</i> (2005)	8
Will Lovell, <i>Note: The Kelo Blowback: How the Newly-Enacted Eminent Domain Statutes and Past Blight Statutes Are a Maginot Line-Defense Mechanism for All Non-Affluent and Minority Property Owners</i> (2007) 68 Ohio St. L.J. 609	8

Application for Leave to File Amicus Brief

The American Civil Liberties Union of San Diego & Imperial Counties and the Western Center on Law and Poverty submit this application for leave to file an amicus curiae brief in support of Plaintiff/Appellant Community Youth Athletic Center (“CYAC”).

Statement of Interest

The American Civil Liberties Union and its California affiliates are nonprofit, nonpartisan organizations with almost 550,000 members nationwide and over 100,000 members in California. The American Civil Liberties Union of San Diego & Imperial Counties, the local regional affiliate of the ACLU, has over 8,000 members. The ACLU is dedicated to the principles of liberty and equality embodied in the Constitution and our nation’s civil rights laws. The ACLU has been involved extensively as counsel and *amicus curiae* in federal and state litigation on civil liberties and is particularly concerned with preserving the right of access to courts to petition for redress of grievances.

The Western Center on Law and Poverty enforces the rights of low income Californians to health, welfare, and housing. (See, e.g., *Alford v. County of San Diego* (2007) 151 Cal.App.4th 16 [Western Center case in this Court holding county’s indigent health care program could not exclude working poor residents able to pay for only part of their care].) This appeal addresses two areas in which the Western Center has litigated: access to the courts and the misuse of the validation statutes by redevelopment agencies. (*Cruz v. Superior Court* (2004) 120 Cal.App.4th 175 [courts must schedule hearings before denying applications for *in forma pauperis* waivers of courts fees, and should grant waivers when applicants cannot afford fees and necessities of life]; *Fontana Redevelopment Agency v. Torres* (2007) 153 Cal.App.4th 902, 913 [validation judgments cannot compel courts to validate ongoing illegal activity].)

Amici have a strong interest in advocating for civil liberties and equal access to justice. The amicus curiae brief will assist the Court by discussing the law that recognizes the importance of the right to access to the courts generally, including the principle that cases should be adjudicated on the merits whenever possible. In addition, the amicus brief will discuss the specific point that the purpose of the reverse validation process is to facilitate the public's access to courts to challenge local redevelopment plans that affect them and their communities. Finally, because of these policies, the amicus brief will show how the trial court erred in not applying the doctrine of substantial compliance to the publication requirements of the reverse validation action at issue here.

Amicus Curiae Brief

In its appellate briefs, CYAC has thoroughly documented the legal reasons the trial court erred 1) in not finding CYAC substantially complied with the statutory publication requirements; 2) in failing to apply the same “good cause” standard in Code of Civil Procedure section 863¹ as exists in section 473; and 3) in not finding CYAC’s constitutional claims survive despite the trial court’s dismissal of CYAC’s statutory claims. Further argument on those points is unnecessary. Rather, this brief is submitted to inform the Court of the importance of allowing the public access to the courts to challenge redevelopment projects through reverse validation actions and, for this additional reason, the substantial compliance doctrine must apply to the statute’s publication requirement, as it does in multiple other contexts involving the constitutional right of access to court to petition for redress of grievances against the government.

I.

LAW & PUBLIC POLICY REQUIRE ALLOWING SUBSTANTIAL COMPLIANCE IN THIS SITUATION TO PRESERVE THE PUBLIC’S ACCESS TO COURTS TO CHALLENGE “BLIGHT” TAKINGS OF THEIR PROPERTY.

A. Access to justice is a fundamental right and critical to good government.

The first duty of society is justice.

- Alexander Hamilton

Since the Magna Carta, the world has recognized the importance of justice in a free society. “To no one will we sell, to no one will we refuse or delay, right or justice.” (Magna Carta, 1215.) This nation’s founding fathers knew people would never consent to be governed and surrender their right to decide disputes by

¹ All statutory references are to the Code of Civil Procedure unless otherwise noted.

force, unless government offered a just forum for resolving those disputes. (*See* Coucher & Kelly, *The Social Contract from Hobbes to Rawls* (1994).)

The right to justice is embodied in the Constitution of the United States. To “establish justice” is set forth as one of our nation’s four primary goals. The Due Process Clause guarantees no one shall be deprived of life, liberty or property except by “due process of law.” The Fourteenth Amendment guarantees “equal protection of the laws.” The federal Constitution also requires that citizens have access to the means of enforcing any legal right a state has created. (*Boddie v. Connecticut* (1971) 401 U.S. 371 [91 S.Ct. 780, 28 L.Ed.2d 113].) These fundamental federal rights are protected against state action by both the due process and equal protection clauses of the federal Constitution. (*See* 7 Witkin, *Summary of Cal. Law* (9th ed. 1988) *Constitutional Law*, §§ 139, 444, pp. 197, 630.) Accordingly, federal courts recognize a constitutional right of access to court to petition for redress of grievances. The “right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition.” (*California Motor Transport Co. v. Trucking Unlimited* (1972) 404 U.S. 508, 510 [92 S.Ct. 609, 30 L.Ed.2d 642].) Because “the right to petition is ‘among the most precious of the liberties safeguarded by the Bill of Rights,’ ... the right of access to the courts shares this ‘preferred place’ in our hierarchy of constitutional freedoms and values.” (*Harrison v. Springdale Water & Sewer Comm.* (8th Cir. 1986) 780 F.2d 1422, 1427.)

The California Constitution further guarantees access to justice. Article I, section 7(a), grants all persons the right of due process, including the right of adequate access to the means of enforcing substantive rights. (*See* 7 Witkin, *supra*, at § 493, pp. 683-684.) Article I, section 7(a), also guarantees persons equal protection under law. Therefore, California courts likewise uphold “a constitutional right of access to the courts for all persons.” (*Payne v. Superior Court* (1976) 17 Cal.3d 908, 914; *see also, e.g., Cruz v. Superior Court, supra*, 120 Cal.App.4th at p. 180 [“Access to justice is a fundamental and essential right

in a democratic society. It is the responsibility of government to ensure that all people enjoy this right.”] [italics omitted].)

The Judiciary is the appointed means of providing the fundamental right of justice as enshrined in the constitutions and common law. The courts are, in many respects, the means by which the people of this nation assure their most fundamental individual rights. “Courts from time immemorial have been the refuge of those who have been aggrieved and oppressed by official and arbitrary actions under the guise of governmental authority.” (*Carlson v. State* (Ind. 1966) 220 N.E.2d 532, 533-534.) In short, the right of access to the courts is fundamental to our government and our constitution.

For this reason, Code of Civil Procedure section 4 directs that the Code’s “provisions and all proceedings under it are to be liberally construed, with a view to effect its objects and to promote justice.” As a result, “it is beyond dispute that the strong public policy of this state favors open access to the courts for the resolution of conflicts.” (*Leonardini v. Shell Oil Co.* (1989) 216 Cal.App.3d 547, 566.) California thus adheres to a “strong policy against disposing of cases on procedural deficiencies rather than trying cases on the merits.” (*Thatcher v. Lucky Stores, Inc.* (2000) 79 Cal.App.4th 1081,1085.) That policy requires courts to apply a substantial compliance standard to technical procedural requirements, particularly in disputes between individuals and the government, which uniquely invoke the constitutional right to petition for redress of grievances.

For example, California courts have long upheld a substantial compliance standard with respect to the notice of claim statutes, which impose procedural hurdles before plaintiffs may take legal action for damages against state or local government. As the California Supreme Court emphasized, the “claims statute ‘should not be applied to snare the unwary where its purpose has been satisfied.’” (*Stockett v. Association of California Water Agencies Joint Powers Ins. Authority* (2004) 34 Cal.4th 441, 446.) Consequently, “courts employ a test of substantial rather than strict compliance in evaluating whether a plaintiff has met the demands

of the claims act. [Citations.] If the claim satisfies the purpose of the act without prejudice to the government, substantial compliance will be found.” (*Elias v. San Bernardino County Flood Control Dist.* (1977) 68 Cal.App.3d 70, 74.) Therefore, as this Court has noted, where the government has not been prejudiced and “the purposes of the claims statute are effectuated, its requirements should be given a liberal construction in order to permit full adjudication of the case on its merits.” *Johnson v. San Diego Unified School Dist.* (1990) 217 Cal.App.3d 692, 697 [citing cases].)

This principle has been applied to find substantial compliance in situations involving defects much more significant than the glitch that occurred in this case. For example, Government Code section 945.4 requires plaintiffs to present their claims to “the public entity” allegedly responsible for their damages. In a case where the plaintiff sought damages from a flood control district but presented his claim to the county rather than the district, the court found that plaintiff had substantially complied with the statute. Although “the District is a legal entity separate and apart from the county,” as a practical matter “the county board of supervisors and all county officers are ex officio the board of supervisors and officers of the District and as such are empowered to perform the same duties for the District as they perform for the county,” and thus “the claim may be deemed to have been presented to the board of supervisors as the governing body of the District.” (*Elias v. San Bernardino County Flood Control Dist.*, *supra*, 68 Cal.App.3d at p. 75.) The Court of Appeal thus reversed the dismissal of the case, allowing it to be decided on the merits. (*Id.* at p. 77.)

Therefore, in certain circumstances, even presentation to the wrong “public entity” may constitute substantial compliance, where the purpose of the statute was satisfied and the government was not prejudiced. If such an error does not defeat adjudication on the merits, neither should the minor procedural glitch that occurred here. In this case, the published notice informed the public that the deadline to join the lawsuit was one business day *earlier* than the actual deadline.

Such an inadvertent error prejudiced neither the government nor the public. The City does not dispute it was properly served. The public was not misled into believing the deadline to respond was later than it actually was. The purpose of the notice provisions of the reverse validation statute was satisfied, and no one was actually prejudiced. Accordingly, as with the notice of claim statutes, the settled doctrine of substantial compliance should apply to this case. If substantial compliance applies to cases involving recovery of damages for injury done by the government, it should apply equally to cases seeking to prevent the government from doing wrong in the first instance.

B. Because the taking of property for blight may result in discrimination against the property rights of minorities and/or the economically disadvantaged, assuring access to judicial review of such takings is crucial.

Our country's founders believed property rights were closely related to the concept of liberty and, for that reason, they constructed a government to protect their citizens' liberty and property. (25 Camarin Madigan (2003) *Taking for Any Purpose?* ["For many of the framers, property was intrinsically related to liberty."].)

Though government has the power of eminent domain to take property for the public good with just compensation, abuse of this power threatens fundamental rights to property, livelihood, security, association and even the basic right to happiness. (See Katherine M. McFarland, *Privacy and Property: Two Sides of the Same Coin: The Mandate for Stricter Scrutiny for Government Uses of Eminent Domain* (2004) 14 B.U. Pub. Int. L.J. 142, 151 ["The concern over the abuse of eminent domain is more than an argument about the importance of property rights."].) Moreover, the governmental power to take and redevelop property as "blighted" may present significant opportunities for abuse, especially given a "loose definition of 'blight.'" (Will Lovell, *Note: The Kelo Blowback: How the Newly-Enacted Eminent Domain Statutes and Past Blight Statutes Are a Maginot*

Line-Defense Mechanism for All Non-Affluent and Minority Property Owners (2007) 68 Ohio St. L.J. 609, 612-613.) Blight takings may effectively transfer property from middle-to-low income property holders to wealthy and politically connected developers. (See McFarland, *supra*, at p. 151 [“Condemnations for private gain are a public welfare issue.”]); *see also* Laura Mansnerus, *Eminent Domain’s Pre-Eminence*, N.Y. Times, May 28, 2006, at 14NJ, p. 1 [“There’s much to [sic] cozy a relationship between local officials and wealthy developers.”].) These characteristics of blight takings raise serious concerns of social justice and the public welfare in general. (See, e.g., *Sweetwater Valley Civic Assn. v. City of National City* (1976) 18 Cal.3d 270 [rejecting City’s attempt to declare an economically profitable golf course blighted].)

Moreover, the taking of property for blight may well have a disparate adverse effect on minorities and the poor. First, it is possible that a blight taking “unequally harms the economically deprived classes and enriches the wealthy, ranging from the developers and their investors to the future, affluent tenants of those developments.” (Lovell, *supra*, 68 Ohio St. L.J at p. 628.) Second, such takings can advantage the politically savvy and exploit the politically unsavvy and underrepresented who often live and work in “blighted” areas. (*Ibid.*, citing Paul Boudreaux, *Eminent Domain, Property Rights, and the Solution of Representation Reinforcement* (2005) [“[T]he poor people in the community, most of whom are African American or Latino, don’t have the [political] clout that the developers have.”].) Finally, it may well be that “these redevelopment efforts disparately impair minorities over whites.” (Lovell, *supra*, 68 Ohio St. L.J at p. 628; *see also* Jane Jacobs, *The Death and Life of Great American Cities* (1961) [criticizing the disproportionate effect against minorities caused by redevelopment efforts].)

In sum, “one of the perceived problems of eminent domain is that it is often used against the poor and politically unsophisticated, who are often unable to mount a legal challenge.” (See Boudreaux, *supra*, at pp. 20-21.) Because these

disadvantaged groups have less political or economic power to contest such takings, takings for blight redevelopment may be invalid but often lack any legal challenge. None of this is to take a position on the merits of National City's blight designation. Indeed, it is premature to take such a position precisely because the trial court refused to address the merits. However, the significant issues at stake and the potential for abuse of the government's power make it all the more important to uphold the public policy in favor of adjudicating disputes on the merits in the absence of any prejudice to the government or public arising from minor procedural glitches.

C. A key legislative purpose of reverse validation actions is to facilitate the public's ability to challenge development plans - especially in "blight" takings.

Code of Civil Procedure section 862 provides: "Any party interested may, not later than the date specified in the summons, *appear and contest the legality or validity* of the matter sought to be determined." (Code Civ. Proc., § 862 [emphasis added].) The summary of the original legislative intent of the statute confirms its purpose is to: "Authorize[] interested person to commence such [validating] proceedings if the public agency has not acted within the time allowed." (1961 Legislative History of Civ. Proc. Code §§ 860-870 at 18, 22 [Legis. Counsel, Rep. on Assem. Bill No. 1412 (1961 Reg. Sess.) p. 1.; Governor's Office Bill Memo. on Assem. Bill No. 1412 (1961 Reg. Sess.) p. 1].) While the legislative purpose is also to assure that such challenges are brought promptly, in exchange, the Legislature wants to assure a real and accessible opportunity for the public to contest the validity of such plan. (*See* 1998 Legislative History of Civ. Proc. Code § 861.1 at pp. 26-27 [Assem. Com. on Judiciary, Background Info. Worksheet on Assem. Bill. 2049 (1998 Reg. Sess.)] [amending statute because of concerns public was not challenging bond plans due to notices that did not clearly identify the matter and due to fear of financial retribution]; *see also Moorpark Unified Sch. Dist. v. Superior Court* (1990) 223 Cal.App.3d 954, 960 [purpose of timeliness].)

Finally, as stated in the Opening Brief of the CYAC, the Legislature revised the Health and Safety Code in 2006 to “lower the barrier” to legal challenges specifically to blight redevelopment designations and to “increase opportunities to review” such findings and plans. In particular, the Legislature explained: “The legislative purpose of these statutory amendments and additions is to increase the opportunities for oversight of redevelopment activities by property owners, residents, voters, the Attorney General, and other public agencies and officials.” (Stats. 2006, ch. 595, § 1 [2006 Cal. ALS 595].) Thus, the Legislature has specified its intent and purpose to facilitate public challenges to redevelopment plans through reverse validation actions, further supporting the application of a substantial compliance rule to this case.

D. Because of these important policies (as well as the reasons in CYAC’s briefs), the trial court erred in not applying the doctrine of substantial compliance to the publication requirements of reverse validation actions.

Here, the trial court threw out the only legal action challenging the validity of National City’s “blight” designation, thereby insulating defendant’s redevelopment activities from any judicial review on the merits. Ironically, the trial court did this for a minor technical defect in a publication notice – the notice designed to encourage the very type of action brought by the CYAC.

Apart from the reasons for reversal explained in CYAC’s briefs, the trial court’s decision contravened fundamental public policies in favor of resolving disputes on the merits, especially in the context of citizen suits against the government, including but not limited to challenges to blight takings and redevelopment plans that are subject to abuse at the expense of minorities and the disadvantaged. Our civil society depends on the right of access to the courts, including the right of access to the courts for the protection of property. For all these reasons, the trial court erred in not applying the doctrine of substantial

compliance to the publication requirements of the reverse validation action at issue here and in dismissing this case without deciding the merits.

II.

CONCLUSION

For all the above reasons and the reasons in the CYAC's appellate briefs, this Court should reverse to allow the CYAC to litigate the merits of its claims.

Dated: August 5, 2008

By _____
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CERTIFICATE OF COMPLIANCE

Undersigned counsel hereby certifies this application and brief contains 4,087 words, including footnotes. Counsel relies on the word count of the word processing program used to prepare this brief.

Dated: _____

By _____
DAVID BLAIR-LOY

Declaration of Service

I, Justine Morgan, declare: I am over 18 years of age, employed in the County of San Diego, California, in which county the within-mentioned delivery occurred, and not a party to the subject cause. My business address is P.O. Box 87131, San Diego, CA 92138-7131. I served the foregoing brief, of which a true and correct copy of the document filed in the cause is attached, by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

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