Case No. S292779

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

MICHAEL GOGAL, et al.,

PLAINTIFFS, CROSS-DEFENDANTS AND RESPONDENTS,

v.

XINHUI DENG, et al.

DEFENDANTS, CROSS-COMPLAINANTS AND APPELLANTS.

After a Decision by the Court of Appeal, Fourth Appellate District, Division One, Case No. D084158

Reversing a Judgment of the Superior Court of San Diego County, Superior Court Case No. 37-2022-00017670-CU-NP-NC, The Honorable Cynthia A. Freeland

APPLICATION FOR PERMISSION TO FILE BRIEF OF AMICI CURIAE AND BRIEF OF AMICI CURIAE LEGAL AID ASSOCIATION OF CALIFORNIA, JOINED BY NATIONAL HOUSING LAW PROJECT, LEGAL SERVICES OF NORTHERN CALIFORNIA, IMPACT FUND, LAW FOUNDATION OF SILICON VALLEY, EAST BAY COMMUNITY LAW CENTER, LEGAL AID FOUNDATION OF LOS ANGELES, PUBLIC INTEREST LAW PROJECT, CENTRO LEGAL DE LA RAZA, CHILD CARE LAW CENTER, AND NEIGHBORHOOD LEGAL SERVICES OF LOS ANGELES, IN SUPPORT OF PLAINTIFFS, CROSS-DEFENDANTS AND RESPONDENTS

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APPLICATION FOR PERMISSION TO FILE BRIEF OF AMICI CURIAE

Pursuant to rule 8.520(f) of the California Rules of Court, the Legal Aid Association of California (LAAC), joined by National Housing Law Project, Legal Services of Northern California, Impact Fund, Law Foundation of Silicon Valley, Legal Aid Foundation of Los Angeles, East Bay Community Law Center, Public Interest Law Project, Centro Legal de la Raza, Child Care Law Center, and Neighborhood Legal Services of Los Angeles, respectfully request leave to file the accompanying brief in support of plaintiffs, cross-defendants and respondents.[1]

LAAC is a statewide membership organization representing legal aid organizations and other providers of civil legal services to low-income Californians. LAAC's members provide legal assistance to tenants throughout California, including in matters involving eviction, habitability, retaliation, discrimination, unlawful fees and charges, and other violations of tenant-protection laws. LAAC therefore has direct experience with the practical barriers low-income tenants face in enforcing their rights and with the resource constraints affecting organizations that represent them.

LAAC has a substantial interest in this case because the Court's decision may affect the ability of low-income tenants to obtain representation and the ability of legal aid organizations to undertake and sustain tenant litigation. The proposed amici likewise provide legal services and advocacy to low-income Californians, including tenants, and have direct experience with the litigation costs implicated by the question presented.

[1] No counsel for a party authored this brief in whole or in part. No party or party's counsel financially supported this brief, and no one other than *amici* and their counsel contributed financially to this brief.

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The proposed amici's perspective is distinct from that of the parties. They do not seek to duplicate the parties' arguments concerning Code of Civil Procedure section 1032 or Civil Code section 1953. Rather, the accompanying brief addresses the broader access-to-justice consequences of allowing leases to limit prevailing-party cost recovery in advance, particularly for low-income tenants and the legal services providers who represent them.

For these reasons, LAAC and the proposed additional amici respectfully request that the Court grant permission to file the accompanying brief as amici curiae in support of Plaintiffs and Respondents.

STATEMENT OF INTERESTS OF AMICI CURIAE

The Legal Aid Association of California ("LAAC") is a statewide membership organization representing legal aid organizations and other providers of civil legal services to low-income Californians. LAAC advances access to justice by supporting its members through advocacy, training, research, and other efforts to strengthen the delivery of civil legal services throughout California. LAAC's members provide legal assistance to low-income tenants across the State in matters involving unlawful eviction, habitability, retaliation, discrimination, unlawful fees and charges, and other violations of tenant-protection laws. These organizations frequently represent clients who lack the financial resources to retain private counsel or to bear the costs associated with litigation.

LAAC has a substantial interest in this case because the Court's decision will affect the practical ability of low-income tenants and the attorneys who represent them to enforce statutory tenant protections. In particular, whether a residential lease may prospectively waive or limit a

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prevailing tenant's recovery of litigation costs has implications for the resources required to pursue meritorious cases, including cases involving substantial discovery, depositions, expert or investigative work, interpreters, and other litigation expenses.

LAAC therefore submits this brief to provide the Court with the perspective of California's civil legal services community on the practical access-to-justice consequences of the legal issues presented here. LAAC does not seek to duplicate the parties' arguments concerning the interpretation of Code of Civil Procedure section 1032 and Civil Code section 1953. Rather, LAAC seeks to explain how the Court's interpretation of those provisions may affect the ability of low-income tenants to obtain representation and meaningfully enforce the rights afforded to them under California law.

No party or counsel for a party authored this brief in whole or in part or made a monetary contribution intended to fund its preparation or submission. No person or entity other than LAAC or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

Respectfully submitted,

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Document received by the CA Supreme Court.

TABLE OF CONTENTS

Page

APPLICATION TO FILE AMICUS BRIEF 1

STATEMENT OF INTERESTS OF AMICI CURIAE.....2

BRIEF OF AMICI CURIAE LEGAL AID ASSOCIATION OF CALIFORNIA, JOINED BY NATIONAL HOUSING LAW PROJECT, LEGAL SERVICES OF NORTHERN CALIFORNIA, IMPACT FUND, LAW FOUNDATION OF SILICON VALLEY, LEGAL AID FOUNDATION OF LOS ANGELES, EAST BAY COMMUNITY LAW CENTER, PUBLIC INTEREST LAW PROJECT, CENTRO LEGAL DE LA RAZA, CHILD CARE LAW CENTER, AND NEIGHBORHOOD LEGAL SERVICES OF LOS ANGELES, IN SUPPORT OF PLAINTIFFS, CROSS-DEFENDANTS AND RESPONDENTS 5

INTRODUCTION 5

ARGUMENT.....6

I. PREVAILING-PARTY COSTS ARE AN IMPORTANT PRACTICAL COMPONENT OF ACCESS TO JUSTICE FOR LOW-INCOME TENANTS 6

II. ADVANCE COST WAIVERS ARE PARTICULARLY PROBLEMATIC IN THE RESIDENTIAL LEASING CONTEXT.....10

III. ADVANCE COST WAIVERS WOULD UNDERMINE THE EFFECTIVE ENFORCEMENT OF TENANT RIGHTS 11

CONCLUSION.....14

CERTIFICATE OF WORD COUNT.....16

PROOF OF SERVICE.....17

Document received by the CA Supreme Court.

TABLE OF AUTHORITIES

Page

CASES

DeSaulles v. Community Hospital of the Monterey Peninsula
(2016) 62 Cal.4th 1140, 1157 6

Williams v. Chino Valley Independent Fire Dist.
(2015) 61 Cal.4th 97, 104–105 7

Henrioulle v. Marin Ventures, Inc.
(1978) 20 Cal.3d 512, 519.....10

In re Head
(1986) 42 Cal.3d 223, 227.....12

Vasquez v. State
(2008) 45 Cal.4th 243, 317–18 12

STATUTES

Code Civ. Proc.
§ 1032(b) 6, 13
§ 1033.5(a) 7
§ 1033.5(c)(2)–(4) 13

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Document received by the CA Supreme Court.

TABLE OF AUTHORITIES
(continued)

Page

Judicial Council of Cal., *Sargent Shriver Civil Counsel Act Evaluation* 23 (2020), *available at* https://courts.ca.gov/system/files?file=file/shriver-legislative-report_june-30-2020.pdf 12

Document received by the CA Supreme Court.

BRIEF OF AMICI CURIAE LEGAL AID ASSOCIATION OF CALIFORNIA, JOINED BY NATIONAL HOUSING LAW PROJECT, LEGAL SERVICES OF NORTHERN CALIFORNIA, IMPACT FUND, LAW FOUNDATION OF SILICON VALLEY, LEGAL AID FOUNDATION OF LOS ANGELES, EAST BAY COMMUNITY LAW CENTER, PUBLIC INTEREST LAW PROJECT, CENTRO LEGAL DE LA RAZA, CHILD CARE LAW CENTER, AND NEIGHBORHOOD LEGAL SERVICES OF LOS ANGELES, IN SUPPORT OF PLAINTIFFS, CROSS-DEFENDANTS AND RESPONDENTS

INTRODUCTION

LAAC and the other amici submit this brief because the question presented has important consequences for access to justice. Prevailing-party cost recovery helps make it possible for low-income tenants to obtain representation and enforce the rights California law gives them. If landlords may require tenants to waive or substantially limit that recovery in advance, the costs of enforcing tenant-protection laws may instead fall on tenants and the legal aid organizations and attorneys who represent them.

This brief explains three related concerns. First, litigation costs can affect whether legal aid organizations and private attorneys are able to undertake and sustain meritorious tenant cases, particularly cases requiring substantial discovery, depositions, interpreters, experts, investigators, or trial preparation. Second, allowing such limitations to be imposed in residential leases is particularly problematic because tenants generally agree to lease terms before any dispute arises and often have limited ability to negotiate those terms. Third, making tenant representation more difficult can affect not only tenants and their advocates, but also the judicial system, because represented cases are more likely to settle and less likely to proceed to trial.

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For these reasons, advance limitations on prevailing-party cost recovery risk creating a practical barrier to the enforcement of tenant-protection laws. The Court should reject a rule that permits landlords to impose that burden on tenants before any dispute exists.

ARGUMENT

I. PREVAILING-PARTY COSTS ARE AN IMPORTANT PRACTICAL COMPONENT OF ACCESS TO JUSTICE FOR LOW-INCOME TENANTS

LAAC's interest in this issue stems from a broader access-to-justice concern: California's tenant-protection system depends not only on substantive rights, but on a functioning ecosystem of legal aid organizations and private attorneys willing and able to enforce those rights. The costs of litigation can affect whether counsel is able to take on and sustain that representation. LAAC's members provide civil legal services to Californians with limited financial resources, including tenants facing eviction, displacement, and other serious consequences. Private attorneys also play an important role in expanding access to representation for low- and moderate-income litigants, including through contingency arrangements, reduced-fee representation, pro bono work, and other forms of representation that make counsel available to tenants with limited resources. Preserving reasonable avenues for prevailing tenants to recover litigation costs helps ensure that the cost of enforcing tenant protections does not itself become a barrier to obtaining counsel.[2]

[2] Code Civ. Proc., § 1032, subd. (b); *DeSaulles v. Community Hospital of the Monterey Peninsula* (2016) 62 Cal.4th 1140, 1157.

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The scale of the need for legal services is substantial. The State Bar's 2024 *Justice Gap Study* found that nearly three-quarters of California households experienced at least one civil legal problem in the preceding year, with housing problems affecting 33 percent of California households overall and 38 percent of renter households.[3] Yet Californians received no or inadequate legal help for approximately 85 percent of their civil legal problems, underscoring the significant gap between the need for legal assistance and the resources available to meet it.[4] At the same time, the financial feasibility of representation can affect whether meritorious cases are pursued at all. The *Justice Gap Study* found that, among civil legal problems for which Californians consulted lawyers, approximately one in five were considered by the lawyer to present a valid case but not to be financially worthwhile to pursue.[5]

The fact that a tenant does not pay an attorney's full hourly rate does not mean litigation is cost-free. Housing cases can require significant resources for discovery, depositions, records, interpreters, expert testimony, and trial preparation.[6] For legal aid organizations, these costs come out of limited budgets that must serve many clients; for private attorneys, they can affect whether a case is financially feasible to take. When those costs cannot be recovered, it can be harder to sustain representation, especially in

[3] State Bar of California, *The 2024 California Justice Gap: Understanding California's Unmet Civil Legal Needs* 26 (2025).

[4] Id. at 7–8.

[5] State Bar of California, *The 2024 California Justice Gap: Understanding California's Unmet Civil Legal Needs* 8 (2025).

[6] Code Civ. Proc., § 1033.5, subd. (a); *Williams v. Chino Valley Independent Fire Dist.* (2015) 61 Cal.4th 97, 104–105 (explaining that recoverable costs include expenses such as deposition costs, witness fees, and interpreter fees).

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cases that require extensive litigation. The resource demands of housing litigation are reflected in the scale of legal aid providers' work: from 2020 through 2024, State Bar-funded legal aid organizations closed 302,577 housing cases and assisted 358,931 people, resulting in approximately $129 million in economic recoveries and $199 million in savings for clients.[7] Prevailing-party cost recovery helps offset these expenses, allowing legal aid organizations and private attorneys to undertake and sustain meritorious tenant litigation and provide tenants with meaningful access to counsel. Preserving this mechanism is therefore particularly important where enforcing tenant rights may require substantial litigation expenditures.

Moreover, LAAC's experience working with legal aid organizations confirms that these concerns are not merely theoretical. LAAC surveyed legal aid organizations regarding the practical effects of limitations on prevailing-party litigation-cost recovery. Responding organizations reported cases in which the costs of successfully representing a tenant exceeded the amount recoverable under a contractual or other limitation and identified full recovery of litigation costs as important or very important to their ability to represent low-income tenants. They also reported that unrecoverable costs can affect their ability to undertake litigation requiring subpoenas, depositions, third-party witnesses, and other case-related expenses and, given limited litigation budgets, could require organizations to decline cases involving substantial expenditures or proceed without tools necessary for effective representation. Respondents further identified potential consequences for impact litigation addressing systemic

[7] State Bar of California, Legal Services Trust Fund Commission, *Strengthening Legal Aid: Five Years of Strategic Investment: 2020–2024 Legal Services Trust Fund Commission Impact Report* 11 (2026).

Document received by the CA Supreme Court.

violations of tenants' rights. These experiences illustrate the practical effect of shifting litigation costs onto legal aid organizations: contractual limitations on a prevailing tenant's recovery can reduce the resources available to enforce tenant protections, even where the tenant ultimately prevails.

Hence, the policy concern is not simply whether an individual prevailing tenant receives an additional financial recovery after judgment. It is also about the effect of cost recovery on the broader availability of counsel. If a lease provision can eliminate cost recovery before a dispute even arises, attorneys and legal aid organizations may have to account for that additional unrecoverable expense when deciding whether and how to take a case. For some providers, that may mean absorbing the expense; for others, it may affect the scope of representation, the resources devoted to the matter, or whether the case is economically feasible to pursue at all.

In sum, California's tenant-protection laws are meaningful only when tenants can realistically use them, as described in Section III below. For many low-income tenants, that depends on whether they can obtain legal assistance from both legal aid organizations and private attorneys willing to take on cases involving tenants with limited financial resources. When litigation costs cannot be recovered even by a prevailing tenant, meritorious cases can become more difficult for both legal aid organizations and private attorneys to pursue. There is little policy justification for allowing contractual provisions to impose that additional financial barrier to representation, particularly when doing so may chill enforcement of the very tenant protections California law is intended to provide.

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II. ADVANCE COST WAIVERS ARE PARTICULARLY PROBLEMATIC IN THE RESIDENTIAL LEASING CONTEXT.

An advance waiver of prevailing-party costs asks tenants to give up an important protection before they know they will ever need it. That is especially troubling in the housing context. California courts have recognized that residential tenants may have substantially less bargaining power than landlords, particularly where affordable housing is scarce.[8] A tenant seeking housing is trying to secure a place to live, not negotiate the financial consequences of a lawsuit that may never happen. In today's housing crisis, it is unrealistic to assume that a tenant will recognize that a provision in a standard lease could later affect the tenant's ability to enforce legal rights. The tenant does not know whether a dispute will arise or what enforcing those rights might require. Yet the lease can require the tenant to give up cost recovery before any of those questions exist. By the time the provision becomes consequential, the tenant may have little or no practical opportunity to revisit it.

The consequences also extend beyond the individual lease. If landlords can require tenants to waive or cap prevailing-party costs, those provisions could become routine terms of residential leases. In a housing market where tenants may have limited ability to negotiate lease terms, the practical effect could be especially significant. The Court's decision therefore could affect tenants throughout the rental market, allowing landlords to make limits on cost recovery a condition of obtaining housing.

Nor does making the waiver "mutual" make it a neutral allocation of risk. A landlord and a low-income tenant may face the same contractual cap

[8] *Henrioulle v. Marin Ventures, Inc.* (1978) 20 Cal.3d 512, 519.

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but have profoundly different abilities to absorb the costs of litigation. A landlord may have business resources, insurance, and established relationships with counsel, while a tenant may have little ability to bear substantial unrecovered costs. Formal mutuality therefore can obscure a significant practical imbalance: the same limitation may impose a manageable cost on a landlord while placing a serious barrier in the path of a tenant seeking to enforce legal rights.

The concern, then, is not simply that a tenant may agree to an unfavorable contractual term. It is that the term can be imposed before any dispute exists and can limit the resources available to enforce rights the tenant may later need to assert. Those consequences become particularly significant when the tenant depends on counsel to enforce those rights. Section III addresses that practical problem and the resulting burden that advance cost limitations can place on legal aid organizations and the tenants they serve, along with the intent of the Legislature.

III. ADVANCE COST WAIVERS WOULD UNDERMINE THE EFFECTIVE ENFORCEMENT OF TENANT RIGHTS.

The concerns created at the outset of the landlord-tenant relationship have consequences once a dispute arises. As discussed above, prevailing-party cost recovery helps preserve the ability of legal aid organizations and private attorneys to represent tenants with limited resources. An advance cost waiver can undermine that function by shifting the financial burden of enforcing tenant rights onto tenants and those representing them. A meritorious claim may require discovery, records, interpreters, experts, investigators, or other litigation expenses. If those costs cannot be recovered even when the tenant prevails, the practical burden of enforcing the right increases.

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California's tenant-protection laws depend on counsel who can enforce them. Those protections do not enforce themselves. A Judicial Council evaluation of California's Sargent Shriver Civil Counsel Act found that, in a randomized study, 67% of cases involving full tenant representation settled, compared with 34% of cases involving self-represented tenants, while only 3% of represented cases went to trial, compared with 14% of self-represented cases.[9]

This illustrates that access to counsel affects not only the tenant's ability to obtain relief, but also how cases proceed through the judicial system. If advance cost waivers make tenant representation less financially feasible, fewer tenants may be able to obtain counsel. That, in turn, may increase the number of cases proceeding without representation and, based on the Judicial Council's findings, increase the likelihood that those cases will proceed to trial rather than settle. A rule that makes representation more difficult therefore risks imposing additional burdens not only on tenants and their advocates, but also on courts.

The consequences therefore extend beyond the allocation of costs in an individual case. Private enforcement gives substantive tenant protections practical force: it allows courts to apply those protections, establishes consequences for unlawful conduct, and helps ensure that statutory rights are meaningful in practice. The California Supreme Court has likewise recognized that private enforcement can be essential to effectuating important statutory rights and that the financial burden of such enforcement can make private actions practically infeasible.[10] A rule permitting

[9] Judicial Council of Cal., *Sargent Shriver Civil Counsel Act Evaluation* 23 (June 2020).

[10] *See In re Head*, 42 Cal.3d 223, 227 (1986); *Vasquez v. State*, 45 Cal.4th 243, 317–18 (2008).

Document received by the CA Supreme Court.

landlords to eliminate prevailing-party cost recovery in advance would place an additional cost on that enforcement mechanism, while shifting that cost to tenants and the attorneys and organizations who represent them.

The concern also extends to the court's ability to award costs based on the circumstances of the case. California's statutory cost framework gives courts a role in determining the costs properly recoverable by a prevailing party, including whether particular costs are reasonably necessary and reasonable in amount.[11] A contractual limitation should not prevent the court from applying that framework and awarding the costs warranted by the litigation. For low-income tenants and their representatives, that limitation can have consequences beyond the individual award: when a court cannot award costs that reflect the actual demands of the litigation, the unrecovered costs may instead fall on the legal aid organization or private attorney who represented the tenant. In this way, an advance cost waiver can constrain not only the tenant's recovery, but also the court's ability to apply the statutory cost framework and the capacity of counsel to enforce tenant rights.

The concern, then, is not simply that a prevailing tenant may recover less. It is that advance cost waivers can shift the costs of enforcing California law onto tenants and the attorneys and nonprofit organizations responsible for vindicating their rights. That shift makes it harder for tenants to exercise rights the Legislature has established and, in turn, harder for the legal services system to make those rights meaningful. A rule that permits landlords to impose that burden before any dispute exists therefore risks weakening the practical realization of tenant protections themselves.

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[11] Code Civ. Proc., §§ 1032, subd. (b), 1033.5, subd. (c)(2)–(4).

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CONCLUSION

The policy implications of this case extend beyond the allocation of litigation costs between individual landlords and tenants. California's tenant-protection laws are meaningful only if tenants can realistically enforce the rights those laws establish. For low-income tenants, that enforcement often depends on legal aid organizations and private attorneys having the resources to pursue litigation that may require substantial time and expense.

Allowing landlords to eliminate or substantially limit prevailing-party cost recovery would shift those costs onto tenants and the legal services providers who represent them. It would make meritorious cases harder to pursue, make complex litigation more difficult to sustain, and place additional strain on already limited legal-services resources. Those burdens, in turn, could reduce tenants' ability to obtain the full relief the Legislature intended.

Amici therefore urge the Court to reject advance contractual limitations on prevailing-party cost recovery. Doing so would help ensure that California's tenant-protection laws remain enforceable in practice, not merely rights that exist on paper.

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CERTIFICATE OF WORD COUNT

I certify that this Amicus Brief consists of 4,012 words, including footnotes, according to the computer program used to prepare this brief.

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

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(typed)	(signature)

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