



CITIZENS AGAINST  
LAWSUIT ABUSE

January 11, 2018

Honorable Tani Cantil-Sakauye, Chief Justice  
and the Associate Justices  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4783

**Re: Amicus Letter of California Citizens Against Lawsuit Abuse in  
Support of Petition for Review of *The People of the State of California v.  
Atlantic Richfield Co., et al.*, Court of Appeal Sixth Appellate District Case  
No. H040880, Supreme Court of the State of California Case No. S.246102**

Dear Chief Justice Cantil-Sakauye and Associate Justices of the Court:

Pursuant to Rule 8.500(g) of the California Rules of Court, California Citizens Against Lawsuit Abuse ("CALA") submits this amicus letter in support of the petition for review by defendants and petitioners ConAgra Grocery Products Company, NL Industries, Inc., and The Sherwin-Williams Company ("the Companies" or "Petitioners").

#### **Statement of Interest of Amicus**

CALA is a nonpartisan grassroots movement of concerned citizens and businesses who are fighting against lawsuit abuse in California. CALA serves as a watchdog to challenge abuses within our civil justice system, and engages the public and the media to deliver the message that lawsuit abuse is alive and well in California — and that all Californians are paying the price. CALA members and supporters represent a broad and diverse cross section of Californians. They own small retail stores and hotels, manufacturing firms, real estate brokerages, trucking companies, and more. However, the bulk of CALA's supporters are several thousand consumers concerned about the impacts of lawsuit abuse.

As set forth more fully below, the citizens of California face significant risks as a result of the decision of the Sixth District Court of Appeal (the "Decision"), including potential health risks from wholesale abatement of even intact lead-based paint, and a reduction in property values of all pre-1981 properties. In addition, California's businesses and economy will suffer from the reductions in tax revenue. For these reasons, CALA urges this Court to review the Decision.





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**The court's abatement plan creates unnecessary risks to the public.** There is no pressing public safety issue that warrants judicial usurping of a successful legislative program. In fact, the enforcement of local building regulations and the State's current program to minimize lead exposure have drastically reduced the number of children with elevated blood lead levels. The court's unprecedented abatement plan, which orders the abatement of even intact lead paint, puts the health of California's children at risk. The court's plan would actually expose children to more lead dust, not less, as studies by the U.S. Department of Housing and Urban Development ("HUD") show. The vast majority of states around the country – and HUD – favor keeping lead paint covered rather than removing it. Currently, HUD will not pay to abate windows with intact lead paint.

**The Decision will lower property values.** The Decision, which labels more than 3 million homes in ten jurisdictions as public nuisances, will cause property values across California to plummet. Property owners are required to disclose the existence of a nuisance when selling a property. In addition, the trial court requires that any properties that do not participate in the abatement plan, "should be deferred for actionable lead hazard control until the property owner vacates or sells the property." Homeowners may not be able to take out a second loan or home equity line of credit. Sellers may be forced to lower the sale price if the home appraises lower than a buyer's offer. This phenomenon will not be restricted to the 10 jurisdictions. Under existing law, pre-1978 properties in California are *presumed* to contain lead-based paint. (17 Cal. Code Regs. 35043.) The trial court expanded that presumption to pre-1981 homes and held that lead-based paint -- even in an intact condition on certain friction surfaces -- poses an imminent risk of harm and is a nuisance. Although this ruling applies only to the 10 jurisdictions, it has placed the legal status of intact lead paint throughout the State in question, and buyers across the State will be wary of purchasing pre-1981 properties.

**California's economy will suffer from the lost property tax revenue.** California lost property tax revenue from depressed home values will undoubtedly cause critical public services to be cut. The Decision is likely to impair local governments' ability to provide education, public safety, and other services residents demand and need. K-12 spending per pupil in California is tied to the Proposition 98 funding guarantee, and would fall dramatically should The Decision be upheld. This would force school districts in the state to cut programs such as music, physical education, and art, reduce class offerings, and lay off staff. These cuts are likely to disproportionately affect lower-income communities just when the average blood lead levels of minorities and the poor are coming in line with the average blood lead levels of the general population.



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**The Decision rewards slumlords at the expense of responsible property owners.**

The Decision places property owners with 10 or more housing code violations at the front of the line to get their properties inspected and abated. This will create a situation in which law-abiding citizens who have maintained their properties will have to endure crashes in property values and wait in line while the bad actors get rewarded for willfully failing to maintain their properties.

For the reasons set forth above, CALA urges this Court to review the case in order to restore order and predictability for California's property owners and tenants, and to put law making on the critical issues of housing and public health back in the hands of the legislature.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ken Barnes', is written over a horizontal line.

Ken Barnes  
Executive Director,  
California Citizens Against Lawsuit Abuse

