Case No. S143087
1st Civ. No. A110069

ORIGINAL

IN THE SUPREME COURT OF CALIFORNIA

CLUB MEMBERS FOR AN HONEST ELECTION,

Plaintiffs, Appellants and Cross-Respondents,

vs.

SIERRA CLUB,
A CALIFORNIA NON-PROFIT PUBLIC BENEFIT CORPORATION, ET AL.

Defendants, Respondents and Cross-Appellants.

SUPREME COURT
FILED
MAR - 7 2007
Frederick K.Ohlrich Clerk
Deputy

Appeal From an Order of the San Francisco County Superior Court
Honorable James L. Warren, Judge
Case No. 04-429277

PETITIONERS' REPLY BRIEF

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TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE OF THE STATE OF CALIFORNIA, AND TO THE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Plaintiffs Club Members for an Honest Election ("CMHE") and Robert ("Roy") van de Hoek (collectively, "Plaintiffs") long ago conceded that their Complaint sought personal relief, including removing from office and banning certain Sierra Club directors from holding office for life, installing van de Hoek on the Sierra Club Board of Directors, and compelling Sierra Club to publish, at Club expense, future election-related materials written exclusively by Plaintiffs.[1] (Clerk's Transcript ("CT") 735-739.) The Court of Appeal found that Plaintiffs' Complaint sought personal relief. (Court of Appeal's Opinion ("Op.") at 15-17.) Plaintiffs nevertheless insist that their Complaint was exempt from California's anti-SLAPP statute[2] under Code of Civil Procedure Section 425.17(b) (the "public interest exemption") because "the gravamen of every action which challenges the fairness of elections is brought 'on behalf of the general public.'" (Plaintiffs' Answer Brief ("Answer") at 6.) Plaintiffs' remarkably broad interpretation of the "public interest" exemption – which goes further

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[1] The Petitioners in this action are collectively referred to as "Sierra Club."

[2] Cal. Code Civ. Proc. § 425.16 et seq. (hereinafter, "anti-SLAPP statute").

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than even the Court of Appeal below – would render the anti-SLAPP statute unavailable in *any* election challenge, regardless of plaintiff's personal agenda. Thus, defendants would be deprived of an effective tool to dismiss meritless lawsuits targeting core First Amendment-protected activity.

Plaintiffs were never benevolent litigants suing "solely" on behalf of the public. Instead, Plaintiffs sought a court-ordered scheme giving them editorial control over Sierra Club's future election materials, which would only have benefited them. Nor did Plaintiffs sue to "compel Sierra Club to provide 'reasonable election procedures'" as they incorrectly contend. (Answer at 6-7, 9, 11.) Rather, this small band of disgruntled Sierra Club members – including a candidate in Sierra Club's 2004 national Board of Directors election – disapproved of Sierra Club's protected speech and election activities in connection with that election. Targeting this free speech activity, Plaintiffs alleged that the Club violated the Corporations Code and its internal election rules. (CT 732-735.) But Plaintiffs were entirely unsuccessful. The trial court rejected Plaintiffs' election challenge as a matter of law when it granted Sierra Club's anti-SLAPP motion in part and, concurrently, granted the Club's summary judgment motion in its entirety, dismissing the lawsuit – a decision that Plaintiffs never appealed. (CT 1650-1669.)

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Plaintiffs' Answer offers no serious challenge to Sierra Club's reliance on the plain language of Section 425.17(b) or its explanation of the fundamental errors committed by the Court of Appeal in its flawed interpretation of this exemption. (Petitioners' Opening Brief ("O.B.") at 32-55.) Plaintiffs do not refute Section 425.17(b)'s unambiguous legislative history or any of the published appellate decisions that consistently have limited the availability of the "public interest" exemption to plaintiffs who sue "solely on behalf of the public" and seek no personal relief. To ensure that the anti-SLAPP statute's protections remain available to defendants engaged in political speech and election activities – quintessential First Amendment-protected activity – and prevent the "public interest" exemption from being used by plaintiffs seeking personal relief, this Court should correct the errors made by the Court of Appeal and grant Sierra Club's anti-SLAPP motion in its entirety.

1. PLAINTIFFS IGNORE THE PLAIN LANGUAGE OF SECTION 425.17(b), ITS LEGISLATIVE HISTORY, AND ALL PUBLISHED APPELLATE DECISIONS, WHICH MAKE CLEAR THAT A COMPLAINT SEEKING ANY PERSONAL RELIEF MUST SATISFY THE RIGORS OF THE ANTI-SLAPP STATUTE.

A. Plaintiffs' Statutory Interpretation Improperly Reads The Word "Solely" Out Of Section 425.17(b).

Section 425.17(b) provides that it does not apply to any action "brought *solely* in the public interest or on behalf of the general public if all of the following conditions exist[.]" (Emphasis added.) Plaintiffs' interpretation renders the word "solely" surplusage, violating a basic rule of

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statutory construction. City and County of San Francisco v. Farrell, 32 Cal.3d 47, 54 (1982). As used in Section 425.17(b), "solely" modifies both the phrase "in the public interest" and "on behalf of the general public." It would make little sense for the Legislature to have provided that an action "in the public interest" must be brought "solely" for that purpose, but if an action is brought "on behalf of the general public" plaintiffs may seek any personal relief they choose. This interpretation would render the first phrase useless, because a plaintiff would simply invoke the second phrase, as Plaintiffs have done here. Moreover, in subdivision (1), which immediately follows, the statute expressly provides that the exemption is only available if "the plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member."

Only this narrow construction of Section 425.17(b) is consistent with the legislative history establishing that the "public interest" exemption is available "when people are acting only in the public interest as private attorneys general, and are not seeking any special relief for themselves." (Sierra Club's Motion for Judicial Notice ("MJN") Exh. A at MJN0094-MJN0095 (Senate Judiciary Committee Analysis, S.B. 515 (May 7, 2003))); Soukup v. Law Offices of Herbert Hafif, 39 Cal.4th 260, 279 (2006) (when interpreting anti-SLAPP statute courts should look to the Legislature's intent "as exhibited by the plain meaning of the actual words

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of the law"). Plaintiffs' interpretation would completely change the meaning of the statute, in contravention of its plain language and legislative history, and should be rejected.

B. Plaintiffs' Complaint Was Brought To Advance Plaintiffs' Personal Interests And Not "Solely In The Public Interest Or On Behalf Of The General Public" As Section 425.17(b) And Subsection (1) Narrowly Proscribe.

Plaintiffs readily admit that personal "relief would have been gained by Plaintiff van de Hoek and CMHE had the Court ruled in favor of the Plaintiffs and had it granted two of many alternative types of relief sought." (Plaintiffs' Answer Brief to Petition for Review at 8-9 (emphasis omitted); Answer at 4 ("there has been *some* personal gain sought by" Plaintiffs (emphasis in original).) The Court of Appeal below specifically noted that "portions of the prayer" were "calculated to give plaintiffs and their allies an advantage in intra-club politics." (Op. at 15-16; O.B. at 30-32.)

Indeed, far from suing "solely in the public interest or on behalf of the general public," Plaintiffs' Complaint expressly sought injunctive relief that would judicially install Plaintiff van de Hoek and four other failed candidates on Sierra Club's national Board of Directors. (CT 735-739.) Once installed, those unelected individuals could vote on issues affecting Sierra Club's $95 million budget, although they were rejected by the Club's membership in a landslide. (CT 884-886.) Benefiting themselves alone, Plaintiffs sought an injunction giving them the sole power to dictate the editorial content of a future "Urgent Election Notice," a Club newsletter

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editorial, as well as an introduction to the ballot for Sierra Club's 2005 election or remedial election, to be published at Club expense. (CT 737-738.) This highly personal relief reflected Plaintiffs' personal interest, private gain and quest for political power, and certainly would not have benefited anyone else in the Club, let alone the general public. As all other appellate courts to consider this issue have recognized, the mere presence of personal relief in a complaint deprives plaintiffs of the anti-SLAPP immunity provided by the "public interest" exemption. (O.B. at 27-28 (citations omitted).)

This personal relief sought by Plaintiffs should have instantly deprived them of the anti-SLAPP immunity provided by this exemption. Undaunted, Plaintiffs insist that their Complaint sought "to compel Sierra Club to provide legal and reasonable election procedures," thereby satisfying the express requirements of Section 425.17(b)(1). (Answer at 6-9.) Plaintiffs' insistence that their lawsuit would – had they prevailed – have created new law benefiting everyone, proves too much. (Id.) It is the kind of generic claim any litigant could assert and thereby avoid the anti-SLAPP statute, regardless of the personal relief sought by the complaint. *Every* lawsuit has the potential of creating new law that will benefit future litigants. The Legislature did not intend that such a consequence would suffice to avoid the anti-SLAPP statute's protections.

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Even if this Court could ignore the impermissibly expansive interpretation Plaintiffs proffer and the personal relief found in their Complaint, Plaintiffs still cannot satisfy the requirements of Section 425.17(b)(1) because, contrary to their repeated claims, Plaintiffs never sued to "compel Sierra Club to provide legal and reasonable election procedures." (Answer Brief at 6-7, 9, 11.)

Plaintiffs' mischaracterization of their lawsuit began in the trial court. (Appellants' Combined Response and Reply Brief in the Court of Appeal ("AR") at 14.) The trial court specifically refuted the notion that Plaintiffs' lawsuit concerned the reasonableness of the Club's election procedures, asserting, "[t]he issue before this Court is whether Sierra Club violated the California Corporations Code and not whether the Club's Standing Rules are proper or not." (CT 1656.) Not surprisingly, Plaintiffs fail to explain how seeking a court order that would remove duly elected volunteer directors from office and allow only Plaintiffs to control the editorial content of future election materials, to be distributed to the Club's membership at Club expense, would benefit anyone except themselves.

Due to the personal nature of the relief sought by Plaintiffs, as explained in considerable detail in Sierra Club's Opening Brief (O.B. at 37-46), Plaintiffs' reliance on Ferry v. San Diego Museum of Art, 180 Cal.App.3d 35, 45 (1986), Braude v. Automobile Club of Southern California, 178 Cal.App.3d 994, 1012 (1986), and Hammond v. Agran, 99

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Cal.App.4th 115, 122 (2002), is entirely misplaced. Indeed, in their Answer, Plaintiffs not only fail to respond to Sierra Club's analysis of how these cases are readily distinguished, but they also make no attempt whatsoever to harmonize the fundamental differences in language and application between Section 425.17(b) and Code of Civil Procedure Section 1021.5. (Answer at 7, 12-13.)

In an entirely new argument, Plaintiffs now attempt to characterize their request for the removal of Sierra Club volunteer directors Aumen and O'Connell as a "penalty," which Section 425.17(b)(1) classifies as "not constitut[ing] greater or different relief for the purposes of this subdivision." (Answer at 15.) Plaintiffs' argument would fundamentally change the meaning of the word "penalties" contemplated by the Legislature when it enacted Section 425.17(b)(1).

The terms "fine" and "penalty" are "frequently used synonymously to refer to forms of pecuniary punishment." Sanders v. PG&E, 53 Cal.App.3d 661, 677 (1975) (internal citation omitted). Seeking a court-ordered removal of elected directors from office is certainly not akin to the kind of "penalties" envisioned by Section 425.17(b)(1). As used in Section 425.17(b)(1), the word "penalties" reflects civil penalties available to plaintiffs, acting as private attorneys' general, suing to enforce certain environmental statutes, such as Proposition 65. MJN Exh. A at MJN0094-MJN0095 (Senate Judiciary Committee Analysis, S.B. 515 (May 1, 2003));

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see e.g., Hartwell Corp. v. Superior Court, 27 Cal.4th 256, 278 n.10 (2002). Indeed, in the legislative history that Plaintiffs ignore, when Sierra Club lent its support to the legislation that became Section 425.17(b), it specifically observed that the statute's language ensured that "pathbreaking environmental laws such as the California Environmental Quality Act, Proposition 65, and others – which are not and could never be SLAPP tools – would not be unfairly crippled by misuse of the SLAPP law." MJN Exh. B (Letter from Bill Magavern, Senior Legislative Representative, Sierra Club, to Ellen Corbett, California Assembly Committee on Judiciary Chair (June 17, 2003).)

Even if Plaintiffs' request for the court-ordered removal of duly-elected Sierra Club board members were somehow construed to be a penalty and not "greater or different relief" for the purposes of Section 425.17(b)(1), the other personal relief sought – including a court order requiring Sierra Club to surrender editorial control over future election materials, to be written exclusively by Plaintiffs and distributed to all Club members at Club expense – does not remotely qualify as a "penalt[y]" under this statute.

Plaintiffs also insist that this personal relief should be overlooked because it is pled in the alternative. (Answer at 14.) Yet, Sierra Club was obligated to defend against this potential relief. When it created Section 425.17(b), the Legislature anticipated that plaintiffs with a personal agenda

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would be unable to resist the temptation to include relief personal to them, and it expressly sought to make the "public interest" exemption unavailable to any plaintiff "motivated by personal gain." (MJN Exh. A at MJN0055 (Senate Judiciary Committee Analysis, S.B. 515 (July 1, 2003).) Plaintiffs acted precisely as the Legislature anticipated; their Complaint is not exempt from the rigors of the anti-SLAPP statute.

Because Plaintiffs cannot begin to satisfy the strict requirements of Section 425.17(b) and subdivision (1), this Court need not address Plaintiffs' contention that they also satisfied subdivisions (2) and (3). (Answer at 7-9.)

2.
PLAINTIFFS CANNOT DEFEND THE ERRORS CREATED BY THE COURT OF APPEAL'S FLAWED INTERPRETATION OF SECTION 425.17(b).

Sierra Club fully briefed the multiple errors made by the Court of Appeal in adopting its own "principal thrust or gravamen of the cause of action" test in place of the plain language of Section 425.17(b), and confirming – but ignoring – the personal relief sought in Plaintiffs' Complaint. (O.B. at 32-55.) Having apparently chosen to instead advocate their own, equally flawed interpretation of Section 425.17(b), Plaintiffs largely ignore Sierra Club's analysis. Sierra Club will not repeat it here.

In their minimalist defense of the Court of Appeal's interpretation of Section 425.17(b), Plaintiffs simply agree that the Court's "principal thrust or gravamen of the cause of action" test is appropriate, relying on Martinez

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v. Metabolife Int'l, Inc., 113 Cal.App.4th 181, 188 (2003). Yet Martinez never analyzed Section 425.17(b); rather, it addressed the starkly different "threshold" showing required in Section 425.16. It is irrelevant.

As explained in detail in the Opening Brief (O.B. at 47-49), which Plaintiffs do not refute, the "principal thrust or gravamen of the cause of action" test adopted by the Court of Appeal appears nowhere in the plain language of Section 425.17(b), and the legislative history is unambiguous that the court's inquiry instead must focus on the "relief" pled. E.g., MJN Exh. A at MJN0046-MJN0047 (Assembly Committee on Judiciary Analysis, S.B. 515 (June 30, 2003).) As Sierra Club also explained, the Court of Appeal's flawed interpretation of the "public interest" exemption renders it as broad as Section 425.16. (O.B. at 34-37.)

Plaintiffs respond that they "disagree[]" with the "parade of horribles" outlined by Sierra Club (Answer at 14), but they do not explain *why* substituting the Court of Appeal's highly subjective "principal thrust or gravamen" test for the plain language of Section 425.17(b) – which simply asks the trial court to inquire whether the complaint includes *any* personal relief – would not exponentially increase the likelihood that First Amendment-protected activities would be exempted from the protection of the anti-SLAPP statute. (O.B. at 52-55.) This Court need not look further than the Court of Appeal's decision below confirming the personal relief pled in Plaintiffs' Complaint, yet still finding three of the causes of action

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exempt under Section 425.17(b) – ample evidence that courts will misapply the "public interest" exception in situations involving core political speech if they focus on the cause of action pled rather than the relief sought.

Given the fundamental nature of the conduct protected by the anti-SLAPP statute – such as the political speech and election activities targeted here – virtually any complaint could be disguised as one brought on behalf of the public. Under Section 425.17(b), the sole question for a trial court is whether a complaint is brought "solely in the public interest," as determined by whether the complaint includes personal relief for the plaintiff. If it does, to safeguard the defendant's constitutionally-protected conduct, the complaint must satisfy the rigors of the anti-SLAPP statute, including the stay of discovery, right to appeal, and recovery of attorneys' fees. Cf. Cal. Code Civ. Proc. § 425.17(e).

3.
ALL FOUR CAUSES OF ACTION IN PLAINTIFFS' COMPLAINT INVOLVED FIRST AMENDMENT ACTIVITY PROTECTED BY CALIFORNIA'S ANTI-SLAPP STATUTE.

Plaintiffs contend that this Court need not interpret Section 425.17(b) because Sierra Club's underlying conduct is not protected by the anti-SLAPP statute. (Answer at 14.)[3] But Plaintiffs misunderstand the

[3] This issue is not "fairly included" in the issues on review before this Court. Cal. R. Ct. 8.516(a)(1). Nevertheless, because this Court can readily determine that all four causes of action arose from Sierra Club's constitutionally-protected political speech and election activities in connection with a public issue, this Court should resolve this issue as a matter of law rather than remand to the Court of Appeal.

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"threshold" showing that a defendant must make to come within the protection of Section 425.16.

Section 425.16 involves a "two-step process" to determine whether a special motion to strike should be granted. Equilon Enterprises LLC v. Consumer Cause, Inc., 29 Cal.4th 53, 66 (2002). First, defendant must make a prima facie showing that the "cause[s] of action ... aris[e] from" the defendant's actions "in furtherance of that [defendant's] right of ... free speech ... in connection with a public issue." Cal. Code Civ. Proc. § 425.16(b)(1). Defendant need only demonstrate the applicability of the statute, not that defendant's conduct was "constitutionally protected under the First Amendment as a matter of law," Navellier v. Sletten, 29 Cal.4th 82, 94-95 (2002) . Once defendant satisfies this "threshold" showing, plaintiff must establish "a probability that the plaintiff will prevail on the claim[s]." Cal. Code Civ. Proc. § 425.16(b)(1). Plaintiffs failed to satisfy this "second prong" as a matter of law. See infra Section 4.

The Court of Appeal below correctly affirmed the trial court's conclusion that Plaintiffs' third cause of action for breach of fiduciary duty implicated Sierra Club's First Amendment-protected political speech, satisfying the "threshold test" of Section 425.16. However, when it found that Plaintiffs' first, second and fourth causes of action were exempt under Section 425.17(b), it necessarily did not decide whether these factually duplicative claims also met the "threshold test."

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All four causes of action in Plaintiffs' Complaint arose from Sierra Club's funding and publication of the "Urgent Election Notice" and Mayhue article – constitutionally-protected free speech activity in a public forum. Cal. Civ. Proc. Code § 425.16(e)(3), (4). (CT 732-735.) Plaintiffs alleged that this political activity violated the Club's internal rules and the California Corporations Code.[4] Yet by conceding below that these materials "qualify as free speech activity in a public forum" (AR 13, 15) – as the trial court and Court of Appeal also acknowledged (CT 1664; Op. at 17-19) – there can be no serious dispute that all four of Plaintiffs' claims readily satisfied the "threshold" test of Section 425.16. Sierra Club's Board of Directors authorized the election-related speech and conduct at issue here through the *votes* of its individual directors. Voting in favor of the Club's election activities, volunteer Sierra Club directors Aumen and O'Connell joined the majority of the Board in approving this activity, yet only these directors were personally targeted by Plaintiffs for their votes. These actions readily qualify for the anti-SLAPP statute's protection. Navellier, 29 Cal.4th at 89 ("[i]n the anti-SLAPP context, the *critical* consideration is whether the cause of action is based on the defendant's protected free speech or petitioning activity") (emphasis in original).

[4] In their Answer, Plaintiffs concede that their second and fourth causes of action arose from the same operative facts alleged in their first cause of action. (Id. at 12.) Plaintiffs' third cause of action, dismissed by the trial and appellate court, also was based on these same facts. (CT 734.)

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Governor Gray Davis Com. v. American Taxpayers Alliance, 102 Cal.App.4th 449, 461 (2002), is particularly illustrative on this issue. The plaintiff there also brought an election challenge, alleging violations of California's Political Reform Act's campaign spending rules. Determining that the plaintiff's action arose "from purported acts in furtherance of the right of free speech associated with campaign contributions," the Court of Appeal observed that "[w]ith the legality of appellant's exercise of a constitutionally protected right in dispute in the action, the threshold element in a Section 425.16 inquiry has been established."

Plaintiffs insist the Court of Appeal erred in affirming the trial court's determination that the third cause of action for breach of fiduciary duty arose from protected activity. (Answer at 15-18.) Their reliance on Foundation for Taxpayer and Consumer Rights v. Garamendi, 132 Cal.App.4th 1375 (2005), and City of San Diego v. Dunkl, 86 Cal.App.4th 384 (2001), to support their contention that the anti-SLAPP statute was not implicated by this voting activity is thoroughly misplaced. (Answer at 17-18.) In Garamendi, an insurance company intervened in an action and filed an anti-SLAPP motion, yet failed to satisfy the threshold burden of showing that the action arose from protected activity because *its conduct or speech was not the target of plaintiff's complaint*. The intervenor's anti-SLAPP motion was deemed frivolous by both the trial and appellate court. Id. at 1392-1395.

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Similarly inapposite, Dunkl involved a successful legal challenge to a proposed voter initiative that posed "no threat to the proponents' constitutional rights." 86 Cal.App.4th at 394-395. Both the trial court and the court of appeal understandably found that defendants' anti-SLAPP motion was moot and need not be resolved because plaintiffs were entitled to summary judgment in their favor. Id. at 403.

Far from being actions "insulated from review," as Plaintiffs mischaracterize Sierra Club's approval of its 2004 election activities (Answer at 18), both the trial and appellate court reviewed and upheld Sierra Club's constitutionally-protected voting activities.

4.
THE COURT OF APPEAL PROPERLY AFFIRMED THE TRIAL COURT'S EXPRESS FINDING THAT PLAINTIFFS FAILED TO SHOW A PROBABILITY OF PREVAILING ON THEIR CLAIMS.

Plaintiffs claim the Court of Appeal committed a "temporal error" when it affirmed the trial court's order granting Sierra Club's summary judgment motion and, without further analysis, also affirmed in part the order granting the anti-SLAPP motion. (Answer at 19.) Yet, there can be no dispute that the trial court – independently of its order granting Sierra Club's summary judgment motion – determined that Plaintiffs could not prevail on their third cause of action *as a matter of law.* (CT 1668.) The trial court's order granting Sierra Club's anti-SLAPP motion (in part) and its summary judgment motion (in its entirety), was not based on the resolution of any factual dispute between the parties. The operative facts

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were not in dispute. (CT 1652-1653, 1656-1660.) Indeed, Sierra Club relied on the same evidence for both motions. (CT 1652-1653.) Collectively, all four causes of action in Plaintiffs' Complaint alleged that Sierra Club violated the law by voting to allow the Club to spent money on election information, including the "Urgent Election Notice" and the Mayhue Article. (CT 732-735.) Because the trial court determined, as a matter of law, that "Sierra Club's actions were consistent with and expressly authorized by the Corporation Code Section 5526 and the Club's Standing Rules" (CT 1659), when it affirmed the trial court's granting of Sierra Club's anti-SLAPP motion, the Court of Appeal properly determined that "plaintiffs had no probability of success in pursuing the claim." (Op. at 19.)

On the purely legal question that Plaintiffs lost – and didn't appeal – the Court of Appeal's determination was entirely correct and should not be disturbed.

5. SIERRA CLUB'S ELECTION MATERIALS ARE "POLITICAL WORKS" INDEPENDENTLY PROTECTED BY SECTION 425.17(d).

Section 425.17(d) provides a separate and independent basis for this Court to approve Sierra Club's reliance on the anti-SLAPP statute. Subdivision (d) provides an exemption broadly protecting "political works" that otherwise fall within the "public interest" exemption created by Section 425.17(b).

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Plaintiffs do not refute the substantive analysis offered by Sierra Club that the Mayhue Article and "Urgent Election Notice," on which all of Plaintiffs' claims are based, constitute "political works," comfortably within the broad scope of Section 425.17(d), as a matter of law. (O.B. at 61-66.) Plaintiffs merely contend that Sierra Club waived this independent defense. (Answer at 20-21.) Sierra Club twice prevailed in the trial court against Plaintiffs' assertion of the "public interest" exemption, and consequently had no need to brief this issue there. (CT 711;1690.) The parties fully briefed this issue in the Court of Appeal.

This Court granted review of this case, in part, to resolve Sierra Club's reliance on Section 425.17(d) – an issue left entirely unanswered by the Court of Appeal. As an independent basis for protecting Sierra Club's use of the anti-SLAPP statute in this case, this Court should also resolve this important issue of public policy as a matter of law. Adams v. Murakami, 54 Cal.3d 105, 115 n.5 (1991) (reviewing court may resolve pure questions of law arising on undisputed facts).

6.
CONCLUSION

This Court should reject Plaintiffs' and the Court of Appeal's flawed and expansive interpretations of Section 425.17(b). Both ignore the plain language used by the Legislature to narrowly proscribe the "public interest" exemption. Those who engage in political speech and election activities –

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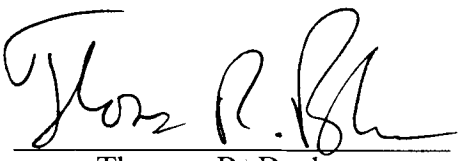
core conduct protected by the First Amendment – must be able to rely on the anti-SLAPP statute to protect against the kind of chilling and meritless litigation that Plaintiffs have forced Sierra Club to endure. Alternatively, this Court should protect Sierra Club's "political works" under the exemption provided by Section 425.17(d).

Dated: March 7, 2007

By: 
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CERTIFICATE OF WORD COUNT

Pursuant to California Rule of Court 8.520(c)(1), the text of this brief, including footnotes and excluding the caption, table of contents, tables of authorities and this Certificate, consists of 4,169 words in 13-point Times New Roman type as counted by the Microsoft Word 2002 word-processing program used to generate the text.

Dated: March 7, 2007

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I, Natasha Majorko, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am employed in the City and County of San Francisco, State of California, in the office of a member of the bar of this court, at whose direction the service was made. I am over the age of eighteen (18) years, and not a party to or interested in the within-entitled action. I am an employee of DAVIS WRIGHT TREMAINE LLP, and my business address is 505 Montgomery Street, Suite 800 San Francisco, California 94111. I caused to be served the following document:

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NATASHA MAJORKO

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350 McAllister Street
San Francisco, CA 94102-3680

[M] Hon. James L. Warren
Judge of the San Francisco Superior Court,
Dept. 301
Civil Division
400 McAllister Street
San Francisco, CA 94102-3680