

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
NORTH COUNTY**

**MINUTE ORDER**

DATE: 07/25/2012

TIME: 10:27:00 AM

DEPT: N-31

JUDICIAL OFFICER PRESIDING: Timothy M. Casserly

CLERK: Trish Dietrich

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2011-00060539-CU-WM-NC** CASE INIT.DATE: 12/27/2011

CASE TITLE: **Page vs. Tri-City Healthcare District**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

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**APPEARANCES**

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The Court, having taken the above-entitled matter under submission on 7/20/12 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The court issues the following ruling on the motion to strike complaint as SLAPP suit of Defendant Tri-City Healthcare District against Plaintiff Leon James Page:

Defendant's motion to strike the complaint as SLAPP suit is denied.

Defendant's request for judicial notice is granted. Plaintiff's request for judicial notice is granted.

Plaintiff's objection to the affidavit of Martin M. Nielsen is overruled. Plaintiff's objections to the declaration of Larry B. Anderson are overruled. Defendant's objections are overruled.

This case arises out of Defendant's response to the alleged misconduct of one of Defendant's board directors. Plaintiff is a taxpayer and resident in the City of Carlsbad and pays taxes that support Defendant. (Comp., ¶ 4.) Defendant is a public healthcare district and therefore, a political subdivision of the State of California. (Comp., ¶ 5.) Defendant is governed by an elected Board of Directors ("Board"). (Comp., ¶ 6.) The Board is comprised of seven elected officials: (1) RoseMarie V. Reno, (2) Larry Shallock, (3) Cyril Kellett, (4) George Coulter, (5) Charlene Anderson, (6) Randy Horton, and (7) Kathleen Sterling. (Comp., ¶ 6.) Horton was elected to the Board in 2010 and his four-year term ends in 2014. (Comp., ¶ 7.)

The powers of the Board are set by Article 2 of Chapter 2 of Division 23 of the Health and Safety Code. (Comp., ¶ 8.) The Board conducts some business in closed executive sessions, including (1) conducting conferences with and directing legal counsel and real property negotiators, (2) conducting public employee performance evaluations, and (3) obtaining briefing on audit reports and trade secrets. (Comp., ¶ 9.)

On April 28, 2011, the Board in closed session voted to prohibit Horton from participating and voting in closed sessions meetings of the Board. (Comp., ¶ 11.) Since then, the Board has excluded Horton from

closed sessions conducted on May 26, 2011, June 16, 2011, June 30, 2011, July 28, 2011, August 15, 2011, August 23, 2011, August 25, 2011, September 22, 2011, September 27, 2011, September 29, 2011, October 4, 2011, and December 20, 2011. (Comp., ¶ 12.) Additionally, Defendant announced it would not provide Horton with legal defense or indemnity if he was sued in his official capacity. (Comp., ¶ 13.) Defendant denied Horton the stipends provided to attend meetings. (Comp., ¶ 14.) Defendant spends money on security personnel to prevent Horton from participating in closed session meetings of the Board. (Comp., ¶ 15.) As a result of Horton's exclusion, Plaintiff and similarly situated individuals have been denied meaningful representation on the Board, and the Board's voting rights have been reallocated, disenfranchising a segment of the voting public. (Comp., ¶ 16.)

Plaintiff sent a letter to Defendant giving notice of his intent to sue as a taxpayer representative if Defendant did not cease the exclusion of Horton from closed session meetings. (Comp., ¶ 20.) Director Charlene Anderson then made a statement to the San Diego Union Tribune regarding why the board voted to exclude Horton. (Comp., ¶ 21.) Defendant's CEO Larry B. Anderson and Director Reno wrote to Plaintiff's employer, the County of Orange, suggesting that Plaintiff be investigated for unethical conduct in sending the cease and desist letter to Defendant. (Comp., ¶ 22.) Orange County Counsel Nicholas Chrisos responded to Defendant, stating, "I have reviewed its contents and do not believe that the allegations contained in the letter warrant any investigation of Mr. Page." (Comp. ¶ 23.)

On October 27, 2011, Larry Anderson presented to the Board a renunciation of Horton and Director Kathleen Sterling in which he accused them of placing the interests of their constituents above those of Defendant. (Comp., ¶ 24.) The Board then voted to consider allowing Horton to only participate in closed sessions votes on specific items as determined by the majority vote immediately before the closed session would be held. (Id.) On December 20, 2011, the Board voted to exclude Horton from the closed session meeting on all closed session items except one agenda item. (Comp., ¶ 25.) Horton was consequently excluded from participating in (1) a hearing on the reports of the Hospital Medical Audit or Quality Assurance Committees, (2) a conference with legal counsel on litigation matters, (3) a conference with legal counsel concerning exposure to litigation, and (4) approval of prior board closed session minutes. (Id.)

This lawsuit followed. Plaintiff "brings this public interest, private attorney general/taxpayer lawsuit to obtain a declaration of rights and a permanent injunction prohibiting [Defendant] from unlawfully (1) excluding duly-elected Members of [Defendant's Board] from participating and voting in closed session meetings conducted by [Defendant's] legislative body; (2) preventing duly-elected Members from meaningfully representing the voters who elected them; and (3) denying duly-elected Members the same rights, privileges, and powers afforded to other Members of [Defendant's Board]." (Comp., ¶ 2.) Plaintiff filed the complaint for declaratory and injunctive relief. Defendant now moves to strike the complaint as SLAPP suit.

The only thing that a defendant needs to show to invoke the protection of the SLAPP statute is that the plaintiff's lawsuit "arises from" defendant's exercise of free speech or petition rights as defined in CCP § 425.16(e). *Equilon Enterprises, LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 61. A defendant has the burden to establish both that the suit arises from conduct described in CCP § 425.16 and that it is not subject to the exceptions contained in CCP § 425.17. *Brill Media Co., LLC v. TCW Group, Inc.* (2005) 132 Cal.App.4th 324, 330.

The anti-SLAPP statute protects all petition-related activity before a governmental body whether or not the statements involve a public issue: "(A)ll that matters is that the First Amendment activity take place in an official proceeding or be made in connection with an issue being reviewed by an official proceeding."

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Briggs v. Eden Council for Hope & Opportunity (1999) 19 Cal.4th 1106, 1116.

Per CCP § 425.16(e), an "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes:

- (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law;
- (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;
- (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest;
- (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

An anti-SLAPP motion lies against a "cause of action" or "claim" or "complaint" arising from protected speech or petitioning activity. See CCP § 425.16(b) (1), (3) & (f). Defendant argues the complaint constitutes a strategic lawsuit against public participation because the board's vote to censure Horton is conduct qualifying for protection under the First Amendment. "This lawsuit challenges governmental speech and legislative action on the part of an elected board majority to sanction a board member for undisputed misconduct." (Mot., 4:23-24.) Although governmental speech and legislative action at agency meetings are protected activity, the applicability of section 425.16 is subject to any relevant exceptions. C. Civ. Proc. § 425.17.

The Legislature enacted section 425.17 to control the abuse of the anti-SLAPP statute. The statute creates an exception to section 425.16 that protects public interest lawsuits from anti-SLAPP motions. The statute states in pertinent part:

(b) Section 425.16 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:

- (1) 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. A claim for attorney's fees, costs, or penalties does not constitute greater or different relief for purposes of this subdivision.
- (2) The action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons.
- (3) Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter.

C. Civ. Proc. § 425.17.

This complaint is brought solely in the public interest. (Comp., ¶ 2.) Plaintiff seeks no relief for himself other than any relief he would realize as a member of the public. (Comp., 10:21-11:11.) Plaintiff seeks to enforce the rights of the voters to have their chosen representative participate in closed session meetings of the Board. (Comp., ¶¶ 11, 16.) Plaintiff supports that private enforcement is necessary as Defendant claims absolute authority over the alleged discipline of Horton. (Horton Dec., p. 11.) The right to be represented by the persons of the voters' choosing is a core democratic value. See Reynolds v. Sims (1964) 377 U.S. 533, 555. Plaintiff's complaint satisfies the provisions of section 425.17 and therefore may not be attacked under the anti-SLAPP statute. See Club Members For An Honest Election v. Sierra Club (2008) 45 Cal. 4th 309, 315.

**IT IS SO ORDERED:**

*Timothy M. Casserly*

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Judge Timothy M. Casserly