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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

CLUB MEMBERS FOR AN HONEST ELECTION, Plaintiff and Appellant, v. SIERRA CLUB, a California non-profit public benefit corporation, et al., Defendants and Appellants.	A110069 (San Francisco County Super. Ct. No. 429277)

This litigation concerning the conduct of an election to the board of directors of the Sierra Club, a public benefit corporation, was brought by a candidate for membership on the board of directors and an unincorporated association, Club Members for an Honest Election (hereafter CMHE), against the corporation itself and six members of the board of directors (hereafter collectively Sierra Club). CMHE now appeals an order granting in part a special motion to strike under the anti-SLAPP statute. Sierra Club appeals from the partial denial of the motion to strike. We affirm.

PROCEDURAL BACKGROUND

Sierra Club is the nation's largest environmental organization with approximately 750,000 members and a budget of $95 million. Since its foundation in 1892, the organization has combined educational and recreational activities with political activism in support of conservation.[1] In recent decades it has played an important political role in

[1] We note that, heedless of environmental impacts, both parties filed briefs that were printed on only one side on the page. (See Cal. Rules of Court, rule 14(b)(11)(B).)

promoting policies and programs for the protection of clean air, water, wilderness and parks. The Club is governed by a 15-member board of directors. Only the president of the board is paid for services as a director. All directors serve for three-year terms on a rotating basis so that the Club holds elections for five positions on the board every year. A nominating committee appointed by the board of directors chooses a slate of candidates. Other members may stand for election by submitting a petition with the requisite number of signatures.

Member participation in yearly elections is generally low. In the five-year period of 1999 through 2003, the percentage of voting members has ranged from 8.7 percent to 10.1 percent of the total membership. Because of this low participation, a small element of the membership has the potential power of exerting disproportionate influence by actively voting for particular candidates. In 2003, the board of directors was divided between a majority supporting the leadership of the executive director, Carl Pope, and a minority seeking a new direction for club activities. The plaintiffs describe the minority as consisting of political caucuses favoring population stabilization and a more rigorous return to the founding principles of the organization. But other members describe the minority faction as representing an anti-immigration and animal rights agenda that is not shared by the mass of the membership. In January 2004, 13 former presidents of the Sierra Club signed a letter to the Sierra Club president warning of "an organized effort to elect Directors of the Sierra Club from outside the activist ranks of Sierra Club members" in the next annual election. Ballots for the 2004 election were then scheduled to be mailed in February with the requirement that they be returned by April 21st.

The board of directors held a special meeting on January 30, 2004, to consider issues related to the next annual election and took two actions that the plaintiffs challenged in these proceedings. First, the board upheld a ruling of an "inspector of election," one of three officials earlier appointed by the board to monitor the upcoming election, that approved the request of a member to circulate an article by Drusha Mayhue

to all chapter newsletters. The article cautioned that, because of the low member participation in elections, the club was "vulnerable to take-over efforts by people and parties with narrow, personal, one issue agendas." It proceeded to claim that two directors were engaged in efforts to "hijack the agenda chosen by a majority of Sierra Club members" in favor of an anti-immigration and animal rights agenda.

Secondly, the board approved an "urgent election notice" to be attached to the front of election materials, which warned of "an unprecedented level of outside involvement and attention to the Sierra Club's Board of Directors' election" and named a number of outside groups that "may be attempting to intervene" in the election. Though the notice itself did not mentioned specific candidates, the ballot materials included the statements of three candidates who disclaimed a personal interest in being elected and asked that members vote for the nominating committee slate or against candidates supported by extremist groups. For example, a past president, Phillip Berry, referred to "narrow-focused takeover proponents now on the Board" and asked, "The solution? I'm not asking for your vote. Rather, vote for only Nominating Committee candidates, including Aumen, O'Connell and Renstrom. They will safeguard what the Club has stood for and prevent a tyranny by the would-be subverters." Barbara Herz submitted a similar statement. Morris Dees, of the Southern Poverty Law Center, stated that he was "running to urge that you vote against the 'greening of hate' " and against three named candidates supported by anti-immigration groups.

On March 3, 2004, the CMHE and a petition candidate in the election, Robert "Roy" van de Hoek, filed a complaint for injunctive relief in the San Francisco Superior Court and a first amended complaint within two weeks thereafter. The amended complaint alleged that the Sierra Club had distributed "information opposing candidates and supporting other candidates using Sierra Club's resources" without giving other candidates an opportunity to offer contrasting views. In particular, it complained of the distribution of the Mayhue article, the urgent election notice in ballot materials, and

statements of "three fake Board candidates." These actions were alleged to violate the standing rules of the Sierra Club as well as Corporations Code sections 5520, 5523, and 5615.

The plaintiffs asked for a preliminary injunction prohibiting the Sierra Club from seating any candidates who are elected as a result of the 2004 election "until this matter is finally decided by the court" and regulating the conduct of the present and future elections so as to prevent the use of any statement in election materials that "disparages or promotes any candidate or candidates without giving all other candidates both an equal opportunity to respond in kind and equal Sierra Club resources to do so." In addition, the complaint asked for an affirmative injunction requiring the Sierra Club "to give all disparaged candidates and all candidates disadvantaged by promotion of other candidates" an equal opportunity to air their views.

The Sierra Club responded by filing a motion to strike pursuant to the anti-SLAPP statute. (Code Civ. Proc., § 425.16.) Following a hearing in April 2004, the trial court issued an order dated June 11, 2004, denying plaintiffs' application for a preliminary injunction and granting in part the motion to strike. The court ruled that certain specified portions of the plaintiffs' prayer for injunctive relief "ask for Sierra Club to stifle the speech of those who would or have spoken and [ask] that Sierra Club essentially censor the speech of those who would speak in the future. As such, these specific portions of plaintiffs' first amended complaint are barred by California's anti-SLAPP statute."

On September 2, 2004, the plaintiffs filed a second amended complaint directed primarily at the then-completed election to the board of directors. The first cause of action asked for a determination of the validity of the election pursuant to Corporations Code section 5617; the second cause of action asked for declaratory relief; and the fourth cause of action alleged an unfair business practice. The prayer sought declaratory relief and extensive injunctive relief, which we will examine more closely later in this opinion. The third cause of action sought relief primarily against two individual directors, Nick

Aumen and Jan O'Connell, who successfully ran for re-election as candidates sponsored by the nominating committee. It alleged that they breached a fiduciary duty by voting for the challenged actions of the board taken at the January 30, 2004, meeting and asked for an injunction to unseat them from the board and bar them from running in future elections.

Sierra Club filed a second motion to strike the second amended complaint under the anti-SLAPP statute, and both parties also filed motions for summary judgment. The trial court ruled on the motions in separate orders issued on February 23, 2005. Ruling that voting of the board of directors is a protected activity under the First Amendment, the court granted the Sierra Club's anti-SLAPP motion to strike the third cause of action based on the voting record of the two directors, Aumen and O'Connell, and also ordered stricken a single paragraph of the first cause of action, which contained a sentence referring to the voting of the board of directors. In other respects, the court denied the motion to strike. The trial court also denied the plaintiffs' motion for summary judgment against the Sierra Club and granted the Sierra Club's motion for summary judgment against CMHE and Robert van de Hoek.

Subsequently, Sierra Club moved for an award of attorney fees and costs associated with the successful portions of the two anti-SLAPP motions. The trial court granted the motion by ordering CMHE and van de Hoek to pay an award of attorney fees and costs in the total amount of $37,010.76.

CMHE filed a notice of appeal from the order entered February 23, 2005, partially granting the Sierra Club's second motion to strike under the anti-SLAPP statute. Sierra Club then filed a notice of cross-appeal from the entirety of the same order.

DISCUSSION

In this appeal, we are called upon to review only the order granting the *second* anti-SLAPP motion, though the award of attorney fees and costs was predicated on both

motions.[2] CMHE challenges the portion of the order striking the third cause of action and paragraph No. 148 of the first cause of action. In its cross-appeal, Sierra Club challenges the denial of the motion to strike with respect to other portions of the second amended complaint.

We begin with the partial denial of the motion. Sierra Club argues that the entire second amended complaint arises from the defendants' exercise of their free speech rights about a matter of public concern and therefore was subject to a motion to strike under the anti-SLAPP statute, Code of Civil Procedure section 425.16. CMHE argues that the complaint does not come within the anti-SLAPP statute for alternative reasons: it does not seek to restrict free speech, and it comes within the exception to the anti-SLAPP statute defined in Code of Civil Procedure section 425.17, subdivision (b).[3] We conclude that the latter argument has merit and do not reach the other issues presented by the application of the anti-SLAPP statute to the second amended complaint.[4]

A. Section 425.17, subdivision (b)

1. Legislative Background

The anti-SLAPP statute was designed to prevent the judicial process from being used to chill the exercise of the rights to petition and free speech under the state and

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[2] We reject the Sierra Club's contention that the filing of the second amended complaint was barred by the first anti-SLAPP motion since Code of Civil Procedure section 425.16 does not permit amendment of the pleadings after the court finds the requisite connection to protected speech. (*Roberts v. Los Angeles County Bar Assn.* (2003) 105 Cal.App.4th 604, 612 [129 Cal.Rptr.2d 546]; *Simmons v. Allstate Ins. Co.* (2001) 92 Cal.App.4th 1068, 1073-1074 [112 Cal.Rptr.2d 397].) The plaintiffs were clearly authorized to seek a determination of the validity of the election pursuant to Corporations Code section 5617, a form of relief that was not at issue in the earlier pleadings. Moreover, we note that the Sierra Club did not raise the issue in the trial court and therefore has waived the right to raise it on appeal.

[3] Unless otherwise indicated, all further citations are to the Code of Civil Procedure.

[4] Sierra Club argues that, since the trial court ruled that section 425.17 did not apply to the first motion to strike, plaintiffs are barred by the doctrine of direct estoppel from relitigating the application of this statutory exemption as a defense to the second motion to strike. (*Sabek, Inc. v. Engelhard Corp.* (1998) 65 Cal.App.4th 992, 997 [76 Cal.Rptr.2d 882].) However, the second anti-SLAPP motion addressed issues regarding the validity of the Club election which were raised for the first time in the second amended complaint by its request for relief under Corporations Code section 5617. Any claim of issue preclusion would have at best very limited application. In any event, the Sierra Club did not raise the bar of direct estoppel in the trial court and we consider the issue waived.

federal Constitutions. It provides generally that claims arising from the defendant's acts in furtherance of these constitutional rights are subject to a special motion to strike, unless the court determines that the plaintiff has established a probability that the plaintiff will prevail on the claim. The broad language of the statute, however, led to unexpected applications. In 2003, the Legislature found that there had been a "disturbing abuse" of the anti-SLAPP statute and, in particular, businesses were using the anti-SLAPP device against "specified public interest actions." (Assem. Com. on Judiciary, Rep. on Sen. Bill No. 515 (2003-2004 Reg. Sess.) as amended June 27, 2003, p. 2.) Section 425.17 was enacted to exempt certain kinds of actions from the anti-SLAPP law. (See *Blanchard v. DIRECTV, Inc.* (2004) 123 Cal.App.4th 903, 913 [20 Cal.Rptr.3d 385].)

Subdivision (b) of section 425.17, which applies to public interest actions, provides: "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. . . . [¶] (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."

The three conditions of subdivision (b) closely correspond to the factors for determining eligibility for a fee award under the private attorney general doctrine codified in section 1021.5.[5] The legislative history establishes that the statute was in fact

[5] Section 1021.5 provides in pertinent part: "Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement . . . are such as to make the award appropriate, . . ."

In *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 935 [154 Cal.Rptr. 503, 593 P.2d 200], the Supreme Court noted that these statutory criteria create a three-

drafted to mirror these established parameters for a public interest action. (Assem. Com. on Judiciary, Rep. on Sen. Bill No. 515, *supra*, as amended June 27, 2003, pp. 11-12; Sen. Com. on Judiciary, Rep. on Sen. Bill No. 515 (2003-2004 Reg. Sess.) pp. 13-14.) *Blanchard v. DIRECTV, Inc., supra,* 123 Cal.App.4th 903, 914, observes, "[t]he Legislature 'sharply defined' the public-interest exception of subdivision (b) of section 425.17 by reference to the three 'factors corresponding to the state's private attorney general statute' so that subdivision (b) 'parallels the existing exception for actions by the attorney general and public prosecutors.' [Citation.] The three conditions of Code of Civil Procedure section 425.17, subdivision (b)(1) through (3) mirror the three elements for determining the eligibility for a fee award under the private attorney general doctrine as codified in section 1021.5."

The terms "public interest" and "general public" in section 425.17, subdivision (b) have counterparts in the terms "public interest" and "public issue" appearing in section 425.16, subdivisions (a), (b), and (e)(3) and (4). It is reasonable to infer that the Legislature intended that terms used in such closely related statutes would have a consistent meaning. "When used in a statute words must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear, and the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." (*People v. Black* (1982) 32 Cal.3d 1, 5 [184 Cal.Rptr. 454, 648 P.2d 104]; see also *Jackson v. Department of Justice* (2001) 85 Cal.App.4th 1334, 1347 [102 Cal.Rptr.2d 849,]; *People v. Mendoza* (2000) 78 Cal.App.4th 918, 929 [93 Cal.Rptr.2d 216].)

This appeal raises two general issues of statutory interpretation of section 425.17, subdivision (b): (1) the meaning of the term "public interest," and (2) the scope of language excluding plaintiffs with a personal stake in litigation from the exemption. The

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part test: "we must consider whether: (1) plaintiffs' action 'has resulted in the enforcement of an important right affecting the public interest,' (2) 'a significant benefit, whether pecuniary or nonpecuniary has been conferred on the general public or a large class of persons' and (3) 'the necessity and financial burden of private enforcement are such as to make the award appropriate.' "

legislative background establishes that decisional law construing section 1021.5 and the "public interest" language of section 425.16 is directly relevant to these issues of interpretation of section 425.17.

2. Public Interest Language

We find legal authority construing both section 1021.5 and section 425.16 that supports CMHE's contention that the public interest language in section 425.17 embraces the present case. We begin with *Braude v. Automobile Club of Southern Cal.* (1986) 178 Cal.App.3d 994 [223 Cal.Rptr. 914], which held that section 1021.5 applied to a suit to set aside the election of members of the board of directors of a large mutual benefit corporation and to compel the adoption of revised bylaws guaranteeing fair elections. The defendant Automobile Club of Southern California was a mutual benefit corporation comparable in size (though somewhat larger) to the Sierra Club, which similarly had a board of 12 directors, serving without compensation for staggered three-year terms. The plaintiffs contended that the Club management manipulated the outcome of elections and were successful in securing comprehensive revisions to the bylaws to permit all members to be nominated and stand for election to the board.

The *Braude* court held that the suit " 'resulted in the enforcement of an important right affecting the public interest' " within the meaning of section 1021.5. (*Braude v. Automobile Club of Southern Cal., supra,* 178 Cal.App.3d 994, 1012.) "Fair and reasonable election procedures are fundamental to the proper governance of not only 'for profit' corporations but 'nonprofit' corporations, including labor unions. The members of such bodies should have a reasonable opportunity to be nominated and elected to the board of such an entity. These rights are important rights affecting the public interest." (*Ibid.*; see also *Ferry v. San Diego Museum of Art* (1986) 180 Cal.App.3d 35, 45 [225 Cal.Rptr. 258], [quotes *Braude* at length].)

A separate line of authority holds that the public interest/public issue language of Code of Civil Procedure section 425.16 may apply, under some circumstances, to statements made within a private organization, "especially when a large, powerful organization may impact the lives of many individuals." (*Church of Scientology v.*

Wollersheim (1996) 42 Cal.App.4th 628, 650 [49 Cal.Rptr.2d 620], disapproved on other grounds in *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5 [124 Cal.Rptr.2d 507, 52 P.3d 685].) In *Macias v. Hartwell* (1997) 55 Cal.App.4th 669 [64 Cal.Rptr.2d 222], an unsuccessful candidate for election to office of a union local with 10,000 members brought a defamation action against the winning candidate based on a flyer distributed to union members pertaining to her qualifications for office. Rejecting the argument that the flyer did not involve a public issue, the court held: "The public issue was a union election affecting 10,000 members and her qualifications to serve as president." (*Id.* at pp. 673-674.)

In *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468 [102 Cal.Rptr.2d 205], the former manager of a homeowners' association brought a defamation action against association members and directors and a private club of homeowners based on statements circulated to about 3,000 members of the association. The court nevertheless held that the allegedly defamatory statements concerned matters of public interest "because each of the allegedly defamatory statements concerned the manner in which a large residential community would be governed . . . ." (*Id.* at pp. 474-475.)

The court in *Du Charme v. International Brotherhood of Electrical Workers* (2003) 110 Cal.App.4th 107 [1 Cal.Rptr.3d 501], conducted an exhaustive examination of pertinent case law and found that *Macias* and *Damon* fell into a relatively small group of cases "in which First Amendment activity is connected to an issue of interest to only a limited but definable *portion* of the public, a *narrow* segment of society consisting of the members of a private group or organization . . . ." (*Du Charme, supra,* at p. 118.) In such cases, the court held that the public interest/public issue criterion of section 425.16, subdivision (e)(3) and (4) requires that "the constitutionally protected activity must, at a minimum, occur in the context of an ongoing controversy, dispute or discussion, such that it warrants protection by a statute that embodies the public policy of encouraging *participation* in matters of public significance." (*Du Charme, supra,* at p. 119, fn. omitted.)

In *Du Charme* the court held that the defamatory action was not made in the required context because it concerned no more than an internet posting about an employee termination having no connection with union governance. In contrast, the case at bar comes squarely within the test proposed by *Du Charme*. CMHE challenged election procedures on the ground that they constituted an unfair manipulation of an election to defeat candidates advancing views at odds with those of the existing board of directors. Whether or not the claim had merit, it concerned participation of members in an ongoing controversy and therefore involved statements "in connection with an issue of public interest" within the meaning of section 425.16, subdivision (e)(3) and (4) as construed by *Du Charme.* By the same standard, the present case comes within the public interest criteria of section 425.17, subdivision (b).

3. Personal Stake

The provisions of section 425.17, subdivision (b), present a separate issue of whether a plaintiff's personal stake in litigation is so significant as to deprive the litigation of the character of a public interest action. The issue is posed directly by the requirement of subdivision (b)(1) that 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," and it arises implicitly under the introductory language of subdivision (b), which refers to "any action brought *solely* in the public interest" and under subdivision (b)(3), which requires that "[p]rivate enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter." The latter provision is closely parallel to section 1021.5, subdivision (b), which requires the court to consider whether "the necessity and financial burden of private enforcement [is] such as to make the award [of attorney fees] appropriate . . . ." Case law construing this provision in section 1021.5 is thus directly relevant to interpretation of subdivision (b)(3) and may offer some guidance to interpretation of the related provisions of the introductory language and subdivision (b)(1).

The body of case law dealing with the necessity-and-financial-burden criterion of section 1021.5 begins with *Woodland Hills Residents Assn., Inc. v. City Council, supra,*

23 Cal.3d 917, 941, which held that " '[a]n award on the "private attorney general" theory is appropriate when the cost of the claimant's legal victory transcends his personal interest, that is, when the necessity for pursuing the lawsuit placed a burden on the plaintiff "out of proportion to his individual stake in the matter." [Citation.]' " (Quoting *County of Inyo v. City of Los Angeles* (1978) 78 Cal.App.3d 82, 89 [144 Cal.Rptr. 71].) A later Supreme Court case contains language that might be read as narrowing the financial burden criterion to a calculus of financial burdens and incentives. *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 321 [193 Cal.Rptr. 900, 667 P.2d 704], stated that the requirement "focuses on the financial burdens and incentives involved in bringing the lawsuit." In *Williams v. San Francisco Bd. of Permit Appeals* (1999) 74 Cal.App.4th 961 [88 Cal.Rptr.2d 565], the court reasoned that *Press* did not hold that pecuniary factors "are the *only* type of personal interests that would disqualify a litigant from a fee award." (*Williams, supra,* at p. 970.) The plaintiff sought to block a large development on property adjacent to his residence. Under these circumstances, the court held that the plaintiff's interest in protecting the "aesthetic integrity" of his neighborhood and his "access to light, air and views[] constitute[d] an 'individual stake' equally as significant as a purely pecuniary one" (*id.* at p. 971) and therefore disqualified him from the recovery of attorney fees under section 1021.5.

The *Williams* interpretation of *Press* was followed in *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (2000) 79 Cal.App.4th 505 [94 Cal.Rptr.2d 205]. The court read *Woodland Hills* and *Press* as saying that "[w]hile the traditional focus of personal interest . . . is on financial interest, personal interest can also include specific, concrete, nonfinancial interests, including environmental or aesthetic interests." (*Id.* at p. 514.) However, the court held that a nonfinancial interest "will not be considered sufficient to block an award of attorney fees under the financial burden criterion unless certain conditions are met. That interest must be specific, concrete and significant, *and* these attributes must be based on *objective* evidence." (*Id.* at p. 516.)

Hammond v. Agran (2002) 99 Cal.App.4th 115 [120 Cal.Rptr.2d 646], applied the analysis of *Williams* and *Families Unafraid* to facts presenting a close parallel to the

present case. A candidate for city council, Agran, was drawn into protracted litigation when a political rival challenged his candidate statement in the voters' pamphlet. The trial court severely edited the statement, but Agran won the election anyway and later prevailed on appeal. The court held that he had a personal stake in the trial court litigation because he had a "pressing immediate need" to have a suitable candidate's statement in the voters' pamphlet, (*id.* at p. 128) and later had an "intense personal interest[]" in defending the accuracy of the statement on appeal for the sake of his political reputation. (*Id.* at p. 129.) However, the appeal also concerned "the important issue" of whether Elections Code section 13307 allowed a statement of the candidate's views on local controversies. (*Hammond*, *supra*, at p. 119.) The portion of the appeal addressing this legal issue concerned "litigation over a point that readily transcended his personal stake in his own particular candidate's statement, and will necessarily inure to every voter who reads a ballot pamphlet in a local election wondering what policies a candidate intends to pursue in office." (*Id.* at p. 132.) The court therefore allowed Agran attorney fees for appellate work pertaining to the scope of Elections Code section 13307.

We consider that *Williams*, *Families Unafraid*, and *Hammond* apply directly to interpretation of the term "necessary" in subdivision (b)(3) of section 425.17 since this provision is closely parallel to section 1021.5 (see also *Blanchard v. DIRECTV, Inc.*, *supra*, 123 Cal.App.4th 903, 915-916), but also provide some guidance for the application of section 425.17, subdivision (b)(1) and the introductory language of subdivision (b). Unlike subdivision (b)(3), these provisions do not entail the issue of financial burden but rather broadly exclude from the coverage of the statute plaintiffs with a personal stake in a cause of action. The term "relief" in subdivision (b)(1) appears to apply to relief of all kinds, whether pecuniary or nonpecuniary. The statutory language requires simply that the relief is not "different from the relief sought for the general public or a class of which the plaintiff is a member." Similarly, the phrase "*solely* in the public interest" in the introductory language of subdivision (b) appears to contemplate that any kind of personal stake in the action takes a litigant outside of the shelter of section 425.17. (Emphasis added.)

4. Application to the Second Amended Complaint

The first, second and fourth causes of action present essentially identical issues with respect to the application of section 425.17. The first cause of action of the second amended complaint alleged that the 2004 election violated provisions of the Corporations Code and the Sierra Club's bylaws and standing rules. The second cause of action seeks the remedy of declaratory relief regarding these alleged violations. The fourth cause of alleged an unfair business practice predicated on the same violations of statute, bylaws and standing rules alleged in the first cause of action.

The second amended complaint contained a single prayer for relief for the first, second and fourth causes of action, which we must examine closely because of its broad, complex and unusual nature. As might be expected, the prayer seeks a declaration that the election was invalid because of violations of the Corporations Code and the Club's own bylaws and standing rules. Similarly, it seeks an injunction assuring that in future elections the ballot materials will include "a statement written by Petition candidates that is equal in space and prominence to any statement on the same ballot extolling the virtues of Nominating Committee candidates." With respect to the 2005 election, it sought to include a statement "by plaintiffs," equal in length to "the introduction in the 2004 ballot that extolled the virtues of the Nominating Committee Candidates."

In addition, the prayer asked for one of four alternative forms of injunctive relief. Each proposed order called for unseating the directors elected in the 2004 election. The first alternative order asked that these directors be replaced by the candidates receiving the next most votes in the election; one of these candidates was the plaintiff, van de Hoek. The second proposed order asked that the Club be governed on an interim basis by 10 directors, and the third and fourth orders called for remedial election for directors. Three proposed orders sought an order prohibiting the unseated directors from running as candidates in the 2005 election, and an overlapping set of three orders sought to compel the Sierra Club to distribute a publication and 2005 ballot materials, written by the plaintiffs, that would neutralize the Mayhue article and the contested 2004 ballot materials.

We consider that section 425.17, subdivision (b), applies to the present case to the extent that the plaintiffs were seeking an adjudication of the validity of the election and the establishment of fair procedures in future elections. An action defined by these objectives qualifies as an action brought in the public interest as closely analogous language of sections 1021.5 and 425.16 has been interpreted by *Braude* and *Du Charme.* Again, an action to determine the legality of election procedures transcends any personal stake that the plaintiffs may have had in the election and benefits the broader membership of the club and other nonprofit organizations. Such an objective of adjudicating the legality of election procedures is closely analogous to the appellate litigation over the scope of the Election Code provision at issue in *Hammond*, *which is persuasive authority for interpretation of the parallel language of subdivision (b)(3)*. We consider that an action to determine the validity of election procedures is also addressed "solely" to the public interest within the meaning of the introductory language of subdivision (b) and comes within subdivision (b)(1) because it does not seek relief different from that sought for the general public or the Club membership.

The more difficult question is posed by the portions of the prayer that were calculated to give plaintiffs and their allies an advantage in intra-club politics. We refer, first, to the alternative form of injunction that called for seating van de Hoek on the board and, secondly, to provisions in three of the four alternative injunctions that would bar the elected directors from running in 2005 elections and would require that materials written by the plaintiffs be included in an article and ballot materials distributed to Club members in the 2005 election.

There can be no doubt that these portions of the prayer seek a personal advantage for van de Hoek and CMHE. Van de Hoek had a personal stake in the litigation to the extent that he sought an order appointing him as director. Following *Hammond*'s interpretation of the analogous language of section 1021.5, it is clear that a litigant bringing an action to promote or defend his own candidacy for elected office has a personal stake in the action that precludes it from being regarded as a public interest action. Though *Hammond* concerned a provision analogous to subdivision (b)(3), the

rationale of the decision applies with still greater force to the broad standard enunciated in the introductory language of subdivision (b) and the provisions of subdivision (b)(1) of section 425.17. We also think that both CMHE and van de Hoek have a certain personal stake in the request for an order barring elected directors from running in the 2005 election and requiring distribution to the membership of materials written by the plaintiffs. It can be argued that these measures are required to neutralize the effect of improprieties in the 2004 election and that two of the alternative orders call for appointment of a court administrator to oversee the election, thereby monitoring any unfairness. Nevertheless, these proposed orders pose the prospect of an injunction providing judicial assistance to the candidacy of van de Hoek and other persons sponsored by CMHE.

As an exemption from the anti-SLAPP statute, section 425.17 calls for consideration of the entirety of each cause of action since the anti-SLAPP statute itself creates a procedure for striking a cause of action rather than a portion thereof. When a pleading contains allegations referring to both protected and nonprotected activity, "it is the *principal thrust* or *gravamen* of the plaintiff's cause of action that determines whether the anti-SLAPP statute applies." (*Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 188 [6 Cal.Rptr.3d 494].) The same approach should govern application of the exemption of section 425.17.

The issue thus becomes whether the broad relief requested in the prayer transforms an action otherwise qualifying for the exemption of section 425.17, subdivision (b), into an action for personal advantage of a particular faction in the Club. Based on the record before us, we hold that it does not have this effect. The prayer for an order to seat van de Hoek appears in only one of four alternative forms of injunctive relief; the orders barring elected directors from running for re-election and requiring distribution of specified materials to members are more indirect and uncertain in their effect. More importantly, these provisions represent no more than elements in a range of discretionary relief requested in the prayer. The actual allegations in the second amended complaint and other elements in the prayer ask for relief consistent with a public interest action. The

fact that portions of the prayer go beyond the scope of the relief consistent with a public interest action does not change the principal thrust or gravamen of these causes of action, which in other respects fall within the exemption of section 425.17, subdivision (b).[6]

B. Section 425.16

We turn now to the third cause of action of the second amended complaint, which alleges that two named directors, Aumen and O'Connell, "breached their duty of loyalty, good faith, competence, and care" in voting on election measures and seeks relief pertaining specifically to them (and a third director who was appointed to replace Aumen following his resignation). Although the alleged breach of fiduciary duty relates to election measures, it does not directly present the issue of fair election procedures but rather forms the basis for disqualifying and punishing the offending directors. We consider that the gravamen of a cause of action seeking relief of such a personal kind does not satisfy the public interest criterion of the exemption of section 425.17. Accordingly, the third cause of action presents an issue of application of the anti-SLAPP statute.

The anti-SLAPP statute, Code of Civil Procedure section 425.16, subdivision (b)(1), provides that "[a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech . . . in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff

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[6] In view of our conclusion that section 425.17, subdivision (b) exempts the first, second and fourth causes of action from an anti-SLAPP motion, we need not reach appellant's claim that the trial court erred in striking paragraph No. 148 of the second amended complaint. We note, however, that the anti-SLAPP statute authorizes the court to strike "a cause of action" (§425.16, subd. (b)) arising from protected activity and does not authorize the court to strike particular language that implicates protected activity. "[I]f the allegations of protected activity are only incidental to a cause of action based essentially on nonprotected activity, the mere mention of the protected activity does not subject the cause of action to an anti-SLAPP motion." (*Scott v. Metabolife Internat., Inc.* (2004) 115 Cal.App.4th 404, 414 [9 Cal.Rptr.3d 242]; *Mann v. Quality Old Time Service, Inc.* (2004) 120 Cal.App.4th 90, 103 [15 Cal.Rptr.3d 215].) The deletion of this paragraph had no practical consequences. The scope and effect of the cause of action was not changed, and the Sierra Club's motion to strike the entire cause of action was effectively denied. We consider any error in striking this single paragraph as not material to the award of attorney fees predicated on the partial grant of the anti-SLAPP motion.

will prevail on the claim." Subdivision (e)(3) and (4) defines the phrase "act in furtherance of a person's right of petition or free speech . . . in connection with a public issue" to include: "(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."

The statute "requires the court to engage in a two-step process. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. . . . If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim." (*Equilon Enterprises v. Consumer Cause, Inc., supra,* 29 Cal.4th 53, 67.)

We have no difficulty concluding that the third cause of action arises from statutorily protected activity because it is predicated on the voting of directors Aumen and O'Connell at the board meeting on January 30, 2004, for measures relating to the conduct of the election. It is clear that voting in the deliberations of a municipal body (*Schroeder v. Irvine City Council* (2002) 97 Cal.App.4th 174, 183, fn. 3 [118 Cal.Rptr.2d 330]; *Stella v. Kelley* (1st Cir. 1995) 63 F.3d 71, 75; *Brewer v. D.C. Financial Responsibility and Manag.* (D.D.C. 1997) 953 F.Supp. 406, 408) and statements about the qualifications of a candidate in an election campaign (*Beilenson v. Superior Court* (1996) 44 Cal.App.4th 944, 949-950 [52 Cal.Rptr.2d 357]) qualify for protection under the First Amendment. The element of public interest required by the anti-SLAPP statute may be found in the proceedings of a large and influential private organization as well as a governmental entity. (*Church of Scientology v. Wollersheim, supra,* 42 Cal.App.4th 628, 650.)

Macias v. Hartwell, supra, 55 Cal.App.4th 669 is again directly in point. As noted earlier, the decision concerned a flyer distributed in a union election. The plaintiff lost the election and sued the defendant for defamation. The trial court granted the

defendant's anti-SLAPP motion, finding that the flyer was speech protected by the First Amendment in connection with a public issue. Affirming this finding, the court found substantial evidence "that [defendant's] distribution of the flyer was in furtherance of his right to free speech . . . and involved speech concerning a public issue." (*Id.* at p. 674.) It concluded "that anti-SLAPP law applies to defamation actions arising out of statements made in a union election." (*Id.* at p. 675.)

Following *Macias* we find that the third cause of action alleging the defendants' breach of fiduciary duty in voting on election measures as members of the board of directors of the Sierra Club arises from acts protected by the First Amendment in connection with a public issue.

The remaining issue concerns the plaintiffs' probability of prevailing on the third cause of action. The trial court's order granting summary judgment in favor of the Sierra Club actually adjudicated this issue by ordering dismissal of the second amended complaint. Since CMHE has not appealed from this order, it cannot challenge the propriety of the order in this appeal and therefore the order conclusively establishes that plaintiffs had no probability of success in pursuing the claim.

DISPOSITION

The order subject to appeal is affirmed.

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Swager, J.

We concur:

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Stein, Acting P. J.

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Margulies, J.

CLUB MEMBERS FOR AN HONEST ELECTION v. SIERRA CLUB, A110069

Trial Court	San Francisco County Superior Court
Trial Judge	Honorable James L. Warren
For Plaintiff and Appellant	Law Office of Jeff D. Hoffman Jeff D. Hoffman
For Defendants and Appellants	Davis Wright Tremaine LLP Thomas R. Burke Susan E. Seager

CLUB MEMBERS FOR AN HONEST ELECTION v. SIERRA CLUB, A110069