

California Anti-SLAPP Project

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October 24, 2022

Public Comment to the Fort Bragg City Council Regarding Item 9C on the Agenda for the City Council Meeting on October 24, 2022

TO: City Council of Fort Bragg, c/o City Clerk June Lemos, jlemos@fortbragg.com
cc: City Manager Peggy Ducey, pducey@fortbragg.com
City Attorney Keith Collins, kfc@jones-mayer.com

I write to you as the founder and Director of the California Anti-SLAPP Project (CASP). CASP led the fight for passage of the [California anti-SLAPP law](#) more than three decades ago, to protect the First Amendment rights of petition and speech. Since then, CASP has earned a reputation as one of the leading anti-SLAPP law firms in the state and has successfully represented many diverse clients against plaintiffs who have attempted to use the courts to intimidate and stifle citizens' rights to petition their government and speak freely on issues of public significance.

I represent Jacob Patterson, who is a resident, voter, and political activist in Fort Bragg.

Mr. Patterson believes that he is a primary target of one or more of the potential cases referenced in item 9C on the Council agenda for October 24, a conference with legal counsel regarding initiation of litigation in three (3) cases. Based on his communications with City Manager Peggy Ducey, Mr. Patterson believes that item 9C will include discussion of the possibility of the City initiating litigation against him, seeking workplace violence restraining orders, pursuant to Code of Civil Procedure section 527.8, the Workplace Violence Safety Act.

My message to you is - don't do it, don't sue Mr. Patterson.

A. The Workplace Violence Safety Act.

To get an injunction under the Workplace Violence Safety Act, a petitioner employer must (1) prove its employee has suffered unlawful violence or a credible threat of violence from an individual that can reasonably be construed to have occurred in the workplace; and (2) "demonstrate by clear and convincing evidence that it is reasonably

likely such unlawful violence may occur in the future absent a restraining order.” (*City of Los Angeles v. Animal Defense League* (2006) 135 Cal.App.4th 606, 615.)

This law “limits the acts that may be sought to be enjoined by an employer to unlawful violence or a credible threat of violence.” (*Id.* at p. 615; see also *Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 333-334.)

The City’s evidentiary burden to show that its case has merit by “clear and convincing evidence” is a very high one. To do this, the City must produce proof that is clear, explicit, and unequivocal; so clear as to leave no substantial doubt; or sufficiently strong to demand the unhesitating assent of every reasonable mind. (*Copp v. Paxton* (1996) 45 Cal.App.4th 829, 846.) As discussed below, the City cannot meet that evidentiary burden.

B. The First Amendment and the California Anti-SLAPP Law.

It is textbook First Amendment constitutional law that “Criticism of those responsible for government operations must be free, lest criticism of government itself be penalized.” (*Rosenblatt v. Baer* (1966) 383 U.S. 75, 85.)

“Public discussion about the qualifications of those who hold or who wish to hold positions of public trust present the strongest possible case for applications of the safeguards afforded by the First Amendment.” (*Aisenson v. American Broadcasting Co.* (1990) 220 Cal.App.3d 146, 154; see also *Kapellas v. Kofman* (1969) 1 Cal.3d 20, 36 [“government officials and candidates for such office have almost always been considered the paradigm case of ‘public figures’ who should be subjected to the most thorough scrutiny”]; *McCoy v. Hearst Corp.* (1986) 42 Cal.3d 835, 859 [“[t]he public possesses an ‘independent interest’ in the qualifications and performance of its public officials”].)

The purpose of the California anti-SLAPP law, Code of Civil Procedure section 425.16, is to create a procedure to protect the exercise of the constitutional rights of petition and speech. It was enacted to address “a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances” and it “shall be construed broadly” to protect petition and speech rights. (§425.16(a).) The “point of the anti-SLAPP statute is that you have a right not to be dragged through the courts because you exercised your constitutional rights.” (*People ex rel. Lockyer v. Brar* (2004) 115 Cal.App.4th 1315, 1317.)

In the *City of Los Angeles* case, the City of Los Angeles filed three workplace violence petitions, seeking restraining orders against an animal rights organization and an animal rights activist. These claims were held to be meritless SLAPPs (*City of Los Angeles*,

supra, 135 Cal.App.4th at pp. 617-628) and the City was ordered to pay the defendants' attorneys' fees and costs. (*Id.* at pp. 627-628.)

Attorneys fees in anti-SLAPP cases can be quite high. For instance, it was recently revealed that Planet Aid, which had sued Reveal and the Center for Investigative Reporting for their investigative reporting, and had litigated ferociously, has agreed to settle its SLAPP by paying the defendants \$1.9 million for their attorney fees. See:

<https://www.techdirt.com/2022/10/20/some-good-news-planet-aid-agrees-to-pay-1-9-million-to-settle-its-slapp-suit-against-reveal-news/>

C. The City Will Not Be Able to Meet Its Burden to Justify a Workplace Violence Restraining Order Against Mr. Patterson.

Mr. Patterson tells me that City Manager Ducey has communicated to him that she believes that his civic engagement, including his requests for public records and his frequent critical comments regarding the work product of City staff, are “bullying,” a form of workplace “violence,” even though there have been no credible threats of physical violence from Mr. Patterson.

At Mr. Patterson’s very first meeting with City Manager Ducey, on August 11, 2022, she had the Chief of Police attend and insisted on recording the meeting, in what appears to be an attempt to intimidate Mr. Patterson into silence. In that meeting, the City Manager and Chief of Police both mentioned potential restraining orders against him, referencing hypothetical mass shooting incidents from disgruntled staff or unstable members of the public (not Mr. Patterson) who may react to Mr. Patterson’s critical comments. During this conversation, the City Manager and Chief of Police acknowledged that they were not accusing Mr. Patterson of being violent or likely to commit violence himself. The City Manager subsequently reassured Mr. Patterson that she does not believe that he personally poses a risk of physical violence.

On or about August 30, 2022, the City Manager informed Mr. Patterson that she had issued directives to City staff that they need to refer all communications from Mr. Peterson to her, rather than handling the matters themselves. She has technologically blocked his ability to email anyone in the City other than the City Manager and City Council members. This restriction - censorship - has also been applied to Mr. Patterson’s formal public comments on noticed agenda items, despite the City Manager’s assurances to the contrary. Her proposal that the City spend money to sue Mr. Patterson to silence him appears to be just part of that pattern.

When Mr. Patterson met with the City Manager last Thursday, October 20, 2022, she told him, shortly before the meeting agenda with item 9C was published, that the City had

litigation options they could pursue to deal with him, and that he is not the only one who can sue in the courts to address city concerns. She did acknowledge, however, that Mr. Patterson did not have any malice behind his critical comments.

Mr. Patterson's communications are protected activities, and thus not subject to restraining orders, including submitting public comments and other communications about matters pending before the City Council, Planning Commission, and various committees, as well as investigating relevant facts concerning those pending matters through public records requests and in-person inquiries. Such inquiries are made in response to public notices inviting interested members of the public to seek out information about pending development applications. (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1123 [the anti-SLAPP law protects all statements made before, or in connection with an issue under consideration by, an official proceeding, whether or not they involve a public issue].)

Mr. Patterson's requests have been legitimate and non-frivolous. Most importantly, none of his activities amount to a credible threat of physical violence from Mr. Patterson directed at City staff or officials. The City cannot point to a single instance where Mr. Patterson engaged in any physical violence, endorsed violence, threatened violence, or even approved violence. The government cannot use the courts to impose prior restraints on his political speech about City operations or his public records requests.

Further, even if communications involving criticism of work product and advocacy for staffing changes could be considered a credible threat of violence, which they cannot, there is no possibility of recurrence of the allegedly offensive contacts because the City Manager has implemented staff procedures to limit Mr. Patterson's communications and contacts to be directed only to her or the City Council.

D. Conclusion.

On this record, if the City does file one or more petitions for workplace violence restraining orders against Mr. Patterson and/or others, they will be meritless SLAPPs, just as were the SLAPPs (also disguised as petitions for workplace violence restraining orders) filed by the City of Los Angeles against those annoying animal rights activists.

As a result, the City and any other petitioners will be liable for Mr. Patterson's attorneys' fees, pursuant to the anti-SLAPP law, Code of Civil Procedure section 425.16, subdivision (c). (See also *Ketchum v. Moses* (2001) 24 Cal.4th 1122; *City of Los Angeles, supra*, 135 Cal.App.4th at pp. 627-628.) In addition, the filers of the SLAPP and their attorneys may be liable for malicious prosecution. (See CCP §425.18; see also *Wilson v. Parker Covert & Chidester* (2002) 28 Cal.4th 811.)

I urge you to protect the First Amendment and the City's purse - do not file any petitions against Mr. Patterson.

Sincerely,
Mark Goldowitz
founder and Director
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