



September 20, 2022

VIA TRUEFILING

Honorable Tani G. Cantil-Sakauye, Chief Justice,
and the Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: Letter in Support of Petition for Review
Golden Gate Land Holdings, LLC v. Direct Action Everywhere, No. S276032

Dear Chief Justice Cantil-Sakauye and Associate Justices,

Pursuant to Rule 8.500(g) of the California Rules of Court, the First Amendment Coalition (“FAC”) submits this letter urging the Court to grant review of the decision in *Golden Gate Land Holdings, LLC v. Direct Action Everywhere*, 81 Cal. App. 5th 82 (2022) (“*Golden Gate*”), which confuses the law protecting freedom of expression from meritless litigation and threatens to chill the robust exercise of First Amendment rights essential to a free society. Joining this letter are Amazon Watch, American Civil Liberties Union of Northern California, Center for Biological Diversity, Civil Liberties Defense Center, Climate Defense Project, EarthRights International, First Amendment Project, Greenpeace USA, International Corporate Accountability Roundtable, Mosquito Fleet, Oil & Gas Action Network, People for the Ethical Treatment of Animals, Portland Rising Tide, Rainforest Action Network, and Sierra Club.

I. Interests of Amici Curiae

FAC is a California non-profit corporation dedicated to freedom of speech and governmental transparency. FAC’s members are news organizations, law firms, libraries, civic organizations, academics, journalists, bloggers, activists, and ordinary persons. FAC has decades of experience litigating the scope and interpretation of the anti-SLAPP statute, on which journalists, advocates, and activists rely to deter and defeat meritless claims arising from protected speech that would otherwise impose daunting burdens and costs of litigation regardless of the outcome.

Amazon Watch is a nonprofit organization founded in 1996 to protect the rainforest and advance the rights of Indigenous peoples in the Amazon Basin. We partner with Indigenous and environmental organizations in campaigns for human rights, corporate accountability and the preservation of the Amazon’s ecological systems.

The American Civil Liberties Union ("ACLU") is a nationwide, non-partisan, non-profit organization dedicated to the principles of liberty and equality embodied in our nation's civil rights laws. The ACLU of Northern California is a regional affiliate of the national ACLU. The ACLU and its affiliates share a longstanding commitment to protecting free speech rights, including under California's anti-SLAPP statute. The ACLU and ACLU of Northern California have appeared before state courts in numerous free speech cases, including as amici.

The Center for Biological Diversity is a California non-profit corporation whose mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, and public health through science, policy, education, and environmental law. The Center has an interest in ensuring that its staff, members, allies, and the public at large can depend on the protections afforded by the First Amendment and California's anti-SLAPP statute when they engage in advocacy in support of the Center's mission.

Civil Liberties Defense Center is a civil rights legal organization defending political activists and organizations.

Climate Defense Project (CDP) is a 501(c)(3) nonprofit organization that provides criminal defense representation and other legal support to the climate justice movement. CDP supports front-line activists, advances overlooked legal arguments, and connects climate attorneys with communities, experts, and each other. CDP's work depends on robust legal protections for protest and dissent, in California and elsewhere.

EarthRights International is a nongovernmental, nonprofit organization that litigates cases on behalf of communities around the world affected by human rights and environmental abuses, and also defends the rights of human rights and environmental defenders, including those who are sued or face other forms of legal harassment for their work. EarthRights has been a member of the Protect the Protest task force since its founding and has an interest in ensuring that those exercising rights to political speech in various contexts are able to do so without fear of intimidation.

The First Amendment Project ("FAP") is a nonprofit public interest law firm recognized as exempt under Internal Revenue Code section 501(c)(3). FAP provides advice, assistance, and representation for groups and individuals who are or wish to be involved in civic affairs at the local, state and national levels. FAP advises and litigates under the California anti-SLAPP Law for its clients on a regular basis. Paul Clifford, FAP senior counsel, won one of the first, if not the first, anti-SLAPP motions in Marin County, worked with the California Anti-SLAPP Project for more than ten years, has successfully litigated scores of anti-SLAPP motions and appeals (many of which involved public protests) and assisted in drafting an amendment to the Code of Civil Procedure to

protect against foreign SLAPP-related discovery in California. James Wheaton, of counsel to FAP, helped to draft the anti-SLAPP law and successfully used it within months of it becoming effective. FAP uses the anti-SLAPP law to protect clients of all kinds in state and federal courts, essentially all of whom are involved in some form of protest or public effort. FAP is deeply concerned about the danger of allowing a plaintiff to avoid scrutiny under the anti-SLAPP law simply by alleging that a defendant participated in a conspiracy without any factual support for its allegations. Such an approach completely ignores the intent of the anti-SLAPP law to protect defendants from having to litigate meritless claims arising out of protected activity.

Greenpeace USA is a 501(c)(4) non-profit advocacy organization dedicated to combating the most serious threats to the planet's biodiversity and environment. Since 1971, Greenpeace USA has been at the forefront of environmental activism through non-violent protest, research, lobbying, and public education. In recent years, Greenpeace USA has been the target of multiple SLAPP suits seeking to silence the organization's advocacy work.

International Corporate Accountability Roundtable (ICAR) is a coalition of 40+ member and partner organizations committed to ending corporate abuse of people and the planet. ICAR is a Protect the Protest member that engages in advocacy for real protections and strong enforcement of the law to protect the public by enacting reasonable safeguards against corporate abuse, protecting those who speak out against corporate wrongdoing, and combatting the rise of the corporate state.

Mosquito Fleet is an organization that fights for climate justice and strongly condemns baseless lawsuits that infringe on constitutional rights.

Oil & Gas Action Network helps build a grassroots climate justice movement that takes action to challenge the fossil fuel industry, which is directly responsible for climate change, environmental racism, harms to human health, erosion of democracy, and ecological collapse. We will create a world beyond fossil fuels, where diverse ecosystems and cultures are valued, and a cooperative economic system provides for the full needs and livelihoods of all.

People for the Ethical Treatment of Animals, Inc. (PETA) is a world-renowned animal rights organization dedicated to ending the suffering of animals, particularly such suffering caused by laboratories, the food industry, the clothing trade, and the entertainment industry. PETA works through public education, cruelty investigations, research, animal rescue, legislation, special events, celebrity involvement, and protest campaigns. All of PETA's efforts are directed at educating and peacefully persuading people and governments to voluntarily discontinue, discourage, and abstain from practices that involve exploitation, abuse, neglect, or cruelty to animals. PETA's protests

and whistleblowing frequently makes it a target for meritless lawsuits by persons seeking to retaliate against or silence PETA's activism. Anti-SLAPP statutes provide an efficient and fair means for PETA to dispose of such baseless claims without incurring excessive litigation costs.

Portland Rising Tide is a grassroots community organization that seeks to address the root causes of climate change and to ensure a transition away from fossil fuels is centered in justice for affected communities and workers. Since government and private sector action on climate change has thus far proven to be grossly inadequate to address the scale of the climate crisis, it is essential that Americans be free to advocate strongly for governments and corporations to act. This means the freedom to exercise their constitutional rights to free speech and free association.

Rainforest Action Network preserves forests, protects the climate and upholds human rights by challenging corporate power and systemic injustice through frontline partnerships and strategic campaigns.

The Sierra Club is a national nonprofit organization with 63 chapters and over 800,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth, and to using all lawful means—including protest—to carry out its mission. The Sierra Club and its members have participated in countless environmental protests, and the Sierra Club expects to consider participation in protests from time to time in the future as part of its overall advocacy efforts. The Sierra Club is also concerned about the growing use of meritless litigation to chill lawful environmental protest. The Sierra Club has relied on California's anti-SLAPP statute in the past and expects to rely on it again in the future, and thus has a strong interest in how it is interpreted.

II. Why Review Should Be Granted

As explained in the Petition for Review, this Court should grant review to resolve an important and irreconcilable conflict between the Courts of Appeal on whether a plaintiff may circumvent the anti-SLAPP statute simply by making a conclusory allegation that a speaker is vicariously liable for the actions of a third party, absent any reason to believe the speaker authorized, directed, or ratified those actions, as the First Amendment requires to justify liability in such circumstances. This letter further explains why review is necessary to protect fundamental free speech rights.

The anti-SLAPP statute is “designed to protect citizens in the exercise of their First Amendment constitutional rights of free speech and petition. It is California’s response to the problems created by meritless lawsuits brought to harass those who have exercised these rights.” *Church of Scientology v. Wollersheim*, 42 Cal. App. 4th 628, 644 (1996). Such lawsuits “are brought, not to vindicate a legal right, but rather to

interfere with the defendant’s ability to pursue his or her interests.” *Id.* at 645. “Characteristically, the SLAPP suit lacks merit; it will achieve its objective if it depletes defendant’s resources or energy.” *Id.*

This case raises precisely the concerns that motivated the Legislature to adopt the anti-SLAPP law. The owners and operators of a horse racing track sued Direct Action Everywhere (“DAE”)—an organization that speaks about animal rights and protests against cruelty to horses—after DAE authored and gathered signatures for a petition to shut down the track, and streamed footage of civil disobedience committed by individuals who trespassed at the track. None of DAE’s acts are unlawful. To the contrary, they represent protected speech at the core of the First Amendment.

As the Court of Appeal acknowledged, “the allegations of Direct Action’s liability” for the trespassers’ acts were wholly “conclusory” and lacked “any specific factual basis.” *Golden Gate*, 81 Cal. App. 5th at 92. Without proof that DAE specifically authorized, directed, or ratified the trespassing, the First Amendment clearly prohibits imposing civil liability on DAE. See *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 927 (1982); *Lam v. Ngo*, 91 Cal. App. 4th 832, 845–46 (2001).

Under established law, it is beyond doubt that the horse racing track’s claims arise from acts “in furtherance of [DAE’s] right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue.” Code Civ. Proc. § 425.16(b)(1). Thus, the track’s claims must survive anti-SLAPP review to prevent meritless litigation from “chill[ing] the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.” Code Civ. Proc. § 425.16(a). The track must therefore show that their claims have at least “minimal merit” before subjecting DAE to the burden and expense of discovery. *Baral v. Schnitt*, 1 Cal. 5th 376, 385 (2016).

Here, however, the Court of Appeal held that plaintiffs may circumvent the anti-SLAPP statute simply by alleging without factual basis that a speaker is liable for the unlawful actions of third parties. That ruling exposes anyone who organizes, attends, or reports on a protest to the threat and burden of defending meritless litigation. Left unreviewed, the Court of Appeal’s decision would make a mockery of “the central purpose” of the anti-SLAPP statute: “screening out meritless claims that arise from protected activity, before the defendant is required to undergo the expense and intrusion of discovery.” *Id.* at 392.

A. The Court of Appeal's Ruling Trenches on Core Free Speech Rights.

DAE engaged in political speech on issues of public concern. "Political speech, of course, is at the core of what the First Amendment is designed to protect." *Morse v. Frederick*, 551 U.S. 393, 403 (2007) (internal quotation marks omitted); *San Leandro Teachers Ass'n v. Governing Bd. of San Leandro Unified Sch. Dist.*, 46 Cal. 4th 822, 845 (2009) (same). The "importance of First Amendment protections is at its zenith" when advocates "seek by petition to achieve political change." *Meyer v. Grant*, 486 U.S. 414, 421, 425 (1988) (internal quotation marks omitted).

Speech addresses "matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (citations and quotation marks omitted). Without doubt, mistreatment of animals qualifies as a matter of public concern. *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.*, 129 Cal. App. 4th 1228, 1246 (2005). Speech is no less of public concern because it takes the form of "public criticism" of "business practices" impacting the public interest. *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971).

"Speech by citizens on matters of public concern lies at the heart of the First Amendment, which was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Lane v. Franks*, 573 U.S. 228, 235–36 (2014). Therefore, protest about "public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Snyder*, 562 U.S. at 452; *Jenni Rivera Enters., LLC v. Latin World Ent. Holdings, Inc.*, 36 Cal. App. 5th 766, 796 (2019) (same). The same is true for "[c]ommenting on a matter of public concern," which "lies at the heart of the First Amendment." *Annette F. v. Sharon S.*, 119 Cal. App. 4th 1146, 1162 (2004).

B. Without Robust Anti-SLAPP Protections, Meritless Allegations of Vicarious Liability Can Easily Chill Protected Speech.

While the First Amendment protects the right to protest, it cannot be guaranteed that some individuals will not cross the line into unlawful conduct. "Organizers of protests ordinarily cannot warrant in good faith that all the participants in a demonstration will comply with the law. Demonstrations are often robust. No one can guarantee how demonstrators will behave throughout the course of the entire protest." *United States v. Baugh*, 187 F.3d 1037, 1043 (9th Cir. 1999). Likewise, "[s]trong and effective extemporaneous rhetoric cannot be nicely channeled in purely dulcet phrases," and it often includes "spontaneous and emotional appeals for unity and action in a common cause." *Claiborne Hardware*, 458 U.S. at 928.

To uphold the national commitment to “uninhibited, robust, and wide-open” debate yet allow proper recovery for unprotected conduct, the First Amendment protects a speaker from liability “for the unlawful conduct of others” unless the speaker “authorized, directed, or ratified specific tortious activity,” imminently “incite[d] lawless action,” or “gave other specific instructions to carry out” unlawful acts. *Id.* at 927–28.

As California law has confirmed, “there must be some evidence of authorization, direction, or ratification of ‘specific’ constitutionally unprotected tortious activity by the organizer of a protest before the organizer can be held responsible for the consequences of the activity.” *Lam*, 91 Cal. App. 4th at 845. “[T]ort liability cannot be predicated merely on [one’s] role as an ‘organizer’ of protests in which some protesters committed wrongful acts.” *Id.* at 846.

That rule restricts the imposition of liability, but standing alone, it does not prevent the “chilling effect” of “protracted litigation” on “the exercise of First Amendment rights.” *Winter v. DC Comics*, 30 Cal. 4th 881, 891 (2003) (citing *Good Gov’t Group, Inc. v. Superior Court*, 22 Cal. 3d 672, 685 (1978)). The anti-SLAPP statute was designed to prevent “infringement upon defendants’ constitutional rights of free speech which would be implicated if the action were permitted to proceed” without early proof of minimal merit. *Env’t Planning & Info. Council v. Superior Court*, 36 Cal. 3d 188, 190 (1984).

The prolonged procedural history of *NAACP v. Claiborne Hardware* illustrates why anti-SLAPP protection is essential. In October 1969, “17 white merchants” sued the NAACP, another organization, and 146 individuals for an alleged “conspiracy” consisting primarily of a boycott and other protected speech advocating “racial equality and integration.” *Claiborne Hardware*, 458 U.S. at 889–90. The trial began in June 1973 and lasted eight months; the trial court did not issue a decision against plaintiffs until August 1976. *Id.* at 890. In December 1980, the Mississippi Supreme Court held the entire boycott was illegal because of the unlawful actions of a few individuals. *Id.* at 894–95. That decision was not reversed until July 1982. *Id.* at 896.

The litigation culminating in the Supreme Court’s landmark First Amendment decision lasted almost 13 years and included 4 years of pretrial proceedings, an 8-month trial, and 6 years of appeals. While the NAACP apparently possessed the resources and support necessary to incur the immense burden and expense of such protracted litigation, the same cannot be said for every activist, advocate, journalist, or protester, especially those from low-income or other marginalized communities.

Although every lawsuit might not last a dozen years, any lawsuit like this one threatens potentially ruinous expense to anyone without deep pockets. That risk is why the anti-SLAPP statute protects the strong “public interest” in the people’s “continued participation in matters of public significance,” which “should not be chilled through

abuse of the judicial process.” Code Civ. Proc. § 425.16(a). Plaintiffs such as Golden Gate Land Holdings cannot be allowed to undermine the public policy of protecting speech of public concern merely by “artful pleading to evade the reach of the anti-SLAPP statute.” *Baral*, 1 Cal. 5th at 392.

A moment’s reflection demonstrates the potentially pernicious consequences of the Court of Appeal’s ruling. Imagine a protest march organized by an advocacy group, attended by numerous people, reported on by multiple journalists, and commented on by social media observers. During the protest, one or more individuals burn a car or vandalize a building. Of course, those individuals may be held liable for their unlawful conduct. But the owner might also wish to sue others if the owner is ideologically opposed to the protest, displeased by press coverage, annoyed by social media commentary, or seeking deeper pockets.

Under the Court of Appeal’s ruling, the owner could avoid anti-SLAPP scrutiny of meritless claims against (1) the protest organizer, (2) other participants, (3) journalists who reported on the protest, or (4) anyone who talked about it on social media, merely by alleging they “conspired” with those who committed the complained-of torts.

Without proof that the speakers specifically authorized, directed, or ratified the torts, the claims against them would be doomed under the First Amendment. Yet the Court of Appeal’s ruling would force the speakers to suffer the burden and expense of defending meritless claims. That result would eviscerate the anti-SLAPP statute and exert a profound chilling effect on protected speech.

III. CONCLUSION

For the foregoing reasons and those stated in the Petition for Review, this Court should grant review.

Very truly yours,

FIRST AMENDMENT COALITION



John David Loy
Legal Director

PROOF OF SERVICE

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Marin, State of California. My business address is 534 Fourth Street, Ste. B, San Rafael, CA 94901.

On September 20, 2022, I served true copies of the following document(s) described as **Letter in Support of Petition for Review** on the interested parties in this action as follows:

Matthew Strugar
Law Office of Matthew Strugar
3435 Wilshire Blvd., Suite 2910
Los Angeles, CA 90010
matthew@matthewstrugar.com

Attorneys for Petitioner

Michael J. Betz
Allen Matkins Leck Gamble Mallory & Natsis
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074
mbetz@allenmatkins.com

Attorneys for Respondents

BY ELECTRONIC SERVICE: I provided the document(s) listed above electronically on the TRUE FILING Website to the parties on the Service List maintained on the TRUE FILING Website for this case, or on the attached Service List. TRUE FILING is the on-line e-service provider designated in this case. Participants in the case who are not registered TRUE FILING users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 20, 2022, at East Palo Alto, California.



Robin P. Regnier