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MONTEBELLO V. VASQUEZ: MONTEBELLO'S CORRUPTION SUIT AGAINST FORMER CITY OFFICIALS GETS SLAPPED

Last week, in *Montebello v. Vasquez*, the California Supreme Court held that former city council members' votes to approve a waste-hauling contract were protected activity within the meaning of the anti-SLAPP statute. It also rejected the City's argument that its lawsuit against the former council members is a "public enforcement" action within the meaning of the anti-SLAPP statute.¹

California's "anti-SLAPP" statute, codified at Code of Civil Procedure section 126.16, is named for its broad goal: to end Strategic Lawsuits Against Public Participation. The statute allows early dismissal of meritless lawsuits arising from any act in furtherance of the person's right of petition or free speech.

The *Montebello* case narrowly interprets one exemption from this procedure, and holds that city council members' votes are "protected activity" within the scope of the statute.

BACKGROUND

Montebello filed this lawsuit against three former council members, claiming that the former council members violated state conflict of interest laws in voting for the contract.

The defendants moved to strike the City's complaint under the anti-SLAPP statute. They argued that their votes to approve the contract were protected by their First Amendment free speech right, and that the lawsuit unlawfully targeted that right.

THE SUPREME COURT'S HOLDING

The City opposed the anti-SLAPP motion by arguing that its lawsuit was exempt from that

procedure under the public enforcement exemption. Alternatively, the City argued that voting by public officials is not protected by the First Amendment.

The California Supreme Court ultimately addressed two questions: (1) does the public enforcement exemption apply where a city sues in its own name and with outside, private counsel; and (2) is the act of voting protected activity under the anti-SLAPP statute?

First, Court concluded that the public enforcement exemption did not apply because exemptions to the anti-SLAPP statute should be narrowly construed in order to effectuate the Legislature's intent that the law's "core provisions" be broadly construed. The Court noted that the exemption specifically applies to enforcement actions brought *both* "in the name of the people of the State of California" *and* "by the Attorney General, district attorney, or city attorney, acting as a public prosecutor." Because the City acted on its own behalf using outside, private counsel, the exemption did not apply.

Second, the Court concluded that the former council members' acts of voting on the contract are protected under the anti-SLAPP statute. The Court noted that the statute is not limited to activity protected by the constitutional rights of free speech and petition. Rather, it goes on to protect "any act... in furtherance of" those rights. Reasoning that it must give meaning to that phrase, the Court held that the council members' votes occurred "in furtherance of" the council members' protected written and oral statements before a legislative proceeding. Because they arose from protected

activity, the votes on the contract were protected by the anti-SLAPP statute.

IMPLICATIONS FOR PUBLIC AGENCIES

The *Montebello* decision is an important reminder that exemptions from the anti-SLAPP statute will be construed narrowly by the courts. In order to successfully claim an exemption, a party must still demonstrate strict compliance with the exact terms of the exemption. In this case, the Court reminds public agencies that exempt "enforcement actions" must be brought *both* "in the name of the people of the State of California" *and* "by the Attorney General, district attorney, or city attorney, acting as a public prosecutor."

Additionally, the *Montebello* decision clarifies that a municipal legislator's act of voting arises from protected activity and is protected by the anti-SLAPP statute. On one hand, municipal officials may still

defend themselves with anti-SLAPP motions on grounds that their votes arise from protected activity. On the other hand, cities have somewhat narrower means of recovering against former council members who are accused of official corruption.

For more information on anti-SLAPP motions, please contact Dolores Bastian Dalton, Daniel Maroon, James T. Diamond, Celia Lee, or any other attorney at Goldfarb & Lipman LLP at 510-836-6336.

ⁱ Another recent case, *Cruz v. Culver City*, narrowly interpreted the "public interest" exemption from the anti-SLAPP law. There, the Court of Appeal held that a lawsuit brought in order to "uniquely benefit" the plaintiffs, as opposed to the general public, may not qualify for the public interest exemption and may be subject to an anti-SLAPP motion.

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