

BAY AREA

## Golden Gate Fields lawsuit: Court rejects free speech argument by animal rights group



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Camino Del Paraiso (2) and jockey Catalino Martinez win the Joseph P. Grace Stakes at Golden Gate Fields in November 2021.

Vassar Photography 2021

After animal rights demonstrators lay down on the racetrack at Golden Gate Fields in March 2021 and chained themselves together, briefly bringing horse racing to a halt, the track owners sued not only the protesters but also an activist group that allegedly had recruited them. The group sought to dismiss the suit, citing freedom of speech, but a state appeals court says the case can proceed, at least for now.

The organization, Direct Action Everywhere, denied any involvement in the protest and contended the real motivation of the suit was its signature-gathering and ongoing campaign to shut down the north Berkeley track. But the First District Court of Appeal said Wednesday that the language of the owners' lawsuit — the only issue at this stage of the case — referred to "the organization's alleged involvement in the illegal trespass, not its speech or petitioning activity."

The track owners have not offered any evidence to support their accusations, and their suit could be dismissed without a trial if they fail to do so, Presiding Justice James Humes said in the 3-0 ruling. But he said Direct Action Everywhere was not entitled to dismissal under a California law that seeks to discourage meritless suits by penalizing the plaintiffs.

The 1992 law known as anti-SLAPP, or Strategic Lawsuits Against Public Participation, applies to suits that are aimed at suppressing free speech and have no substantial likelihood of success. If a judge makes those findings, the suit will be quickly dismissed and the plaintiff must pay the defendant's attorneys' fees and legal costs.

More than half the states have enacted anti-SLAPP laws. Media organizations and free-speech advocates filed arguments supporting Direct Action Everywhere's request for dismissal, and a lawyer for those groups said the ruling weakens California's law.

“It allows plaintiffs to avoid the anti-SLAPP statute by slapping a label (on the suit) and saying somebody conspired with somebody else,” said attorney David Loy of the First Amendment Coalition, whose clients in the case also included the California News Publishers Association and the American Civil Liberties Union.

Even if the animal rights group eventually gets the suit dismissed, Loy said, it will still undergo the time and costs of defending the case, a potential “chilling effect” on free expression. He said the ruling “could come back to bite a newspaper” — for example, in a suit alleging that a paper helped to instigate a destructive protest by sending a photographer to the scene.

But Michael Betz, a lawyer for the racetrack owners, Golden Gate Land Holdings, said the ruling struck a proper balance between free expression and responsibility for wrongdoing.

“We sued individuals and Direct Action Everywhere for trespass” and wrongful interference with property, Betz said. “We did not sue them for free speech, for holding picket signs. ...They can’t get immunity, a get-out-of-jail card” by simply claiming free speech.

The four demonstrators climbed a fence to enter Golden Gate Fields and, according to the track owners, set off smoke flares and then lay down with pipes connecting their arms, and were not removed for several hours. One race was canceled and others were delayed.

The protesters were arrested, but Betz said they have not yet been criminally charged. They were also sued by the track owners but were not part of the appeal that the court considered.

Like the demonstrators, Direct Action Everywhere contends thoroughbred racing is cruel and destructive to horses. The organization has continued to protest at Golden Gate Fields, where, according to the California Horse Racing Board, 19 horses have died so far in the 2021-22 season.