SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

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<td>SIMON BRONNER, MICHAEL ROCKLAND, CHARLES KUPFER, and MICHAEL BARTON,

Plaintiffs,
v.

LISA DUGGAN, CURTIS MAREZ, NEFERTI TADIAR, SUNAINA MAIRA, CHANDAN REDDY, J. KEHAULANI KAUANUI, JASBIR PUAR, JOHN F. STEPHENS, STEVEN SALAITA, and THE AMERICAN STUDIES ASSOCIATION,

Defendants.</td>
<td>Case No. 2019 CA 001712 B
Judge Robert R. Rigsby

Next Court Date: July 17, 2019

JURY TRIAL DEMANDED</td>
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<td colspan="2">PLAINTIFFS' OMNIBUS OPPOSITION TO DEFENDANTS' SPECIAL MOTIONS TO DISMISS UNDER THE D.C. ANTI-SLAPP ACT</td>
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Plaintiffs Simon Bronner, Michael Rockland, Michael L. Barton, and Charles D. Kupfer (collectively, "Plaintiffs"), hereby submit this opposition memorandum in response to the three Special Motions to Dismiss pursuant to the D.C. Code § 16-5501 *et seq*. ("the Anti-SLAPP Act" or "the Act"), filed by Defendants Lisa Duggan, Sunaina Maira, Curtis Marez, Chandan Reddy, John Stephens, Neferti Tadiar, and the American Studies Association ("ASA"); Defendants J. Kehaulani Kauanui and Jasbir Puar; and Defendant Steven Salaita.[1]

INTRODUCTION

As we show below, the D.C. Anti-SLAPP Act only protects activity covered by the First Amendment of the federal Constitution. Yet in this very case, assessing Defendants' effort to escape liability for exactly the same conduct and claims at issue here, Federal District Court Judge Contreras held that Defendants' conduct was not protected by the First Amendment. *Bronner v. Duggan*, 249 F. Supp. 3d 27, 41-42 (D.C. 2017) ("there would be no First Amendment issue with a judgment for Plaintiffs in this case").

Defendants' motions fail for the independently dispositive reason that the activity at issue in this case is exactly the kind of activity that the Anti-SLAPP Act does not reach, and is specifically defined ***not*** to cover. Here again, Defendants have completely ignored the relevant authorities, including the definitional section of the statute they purport to invoke. That section, § 16-5501(1), is

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[1] Although every defendant moved for dismissal under the Anti-SLAPP act, the three sets of counsel representing the various defendants filed three separate briefs. There is no defendant-specific argument in the briefs, and it is unclear why Defendants did not file a single brief. To eliminate redundancy and avoid unnecessary burden on both the court and on Defendants, who will next draft reply briefs, Plaintiffs file this single brief in response to the special motions to dismiss under the Anti-SLAPP Act filed by each of the three sets of defense counsel, and use the following notation to distinguish between the Defendants' briefs. Defendants Lisa Duggan, Sunaina Maira, Curtis Marez, Chandan Reddy, John Stephens, Neferti Tadiar, and ASA are referred to as "the Original Defendants" and their brief is abbreviated as "Original Defs' Br." The brief filed by Defendants Kauanui and Puar is abbreviated as "Kauanui/Puar Br." and the brief filed by Defendant Salaita is abbreviated as "Salaita Br."

left unmentioned in their brief. Yet standards that provision imposes are completely unsatisfied by the simple corporate breaches at issue in this case. None of Defendants' actions at issue in this case is expressive activity, and none of it is protected by DC law.

ARGUMENT

I. THE ANTI-SLAPP DOES NOT AND CANNOT APPLY BECAUSE IT IS LIMITED TO SPEECH PROTECTED BY THE FIRST AMENDMENT, AND, AS THE FEDERAL COURT THAT PRESIDED OVER THIS CASE FOR THREE YEARS EXPLICITLY HELD, THE FIRST AMENDMENT DOES *NOT* PROTECT THE DEFENDANTS AGAINST PLAINTIFFS' CLAIMS.

The Anti-SLAPP Act applies to conduct protected under the First Amendment, and only to conduct protected by the First Amendment. *See Competitive Enterprise Institute v. Mann* ("*CEI v. Mann*"), 150 A.3d 1213, 1239 (D.C. 2016) (the Anti-SLAPP Act is "a tool calibrated to take due account of the constitutional interests of the defendant who can make a prima facie claim to *First Amendment* protection"). Thus, it is striking that Defendants even ***attempt*** a special motion to dismiss under the Anti-SLAPP Act, because ***Defendants cannot purport that the First Amendment protects them from these claims, when the Federal District Court judge that presided over this case for three years explicitly rejected the very same First Amendment arguments***. *Bronner v. Duggan*, 249 F. Supp. 3d 27, 41-42 (D.C. 2017) ("there would be no First Amendment issue with a judgment for Plaintiffs in this case").

Defendants do not even attempt argue that the Anti-SLAPP Act's provision for special motions to dismiss (§ 16-5502) could possibly provide for dismissal of claims when the First Amendment does not, nor could they. As the Court of Appeal has explained, it is only ***because*** the Anti-SLAPP Act applies to speech protected by the First Amendment that it is constitutionally permissible to place "the heightened legal and proof requirements" that § 16-5502 allow. *CEI v.*

Mann at 1239. Defendants failure to even acknowledge Judge Contreras' finding that Defendants' conduct is not protected by the First Amendment – while at the same time relying on the same First Amendment arguments that Judge Contreras rejected, and even the same inapposite and irrelevant caselaw – is misleading to this Court.[2]

As Judge Contreras correctly found, Plaintiffs' claims arise from specific acts that violated Defendants' obligations to the ASA and its members, under principles of corporate, tort, and contract law – laws that have only an incidental effect on speech, if any. The First Amendment does not protect Defendants from liability for these acts. *Bronner v. Duggan*, 249 F. Supp. 3d at 42 ("Plaintiffs' claims all arise under generally-applicable laws. [Citations.] They also only seek to enforce rights created at the initiation of private parties; Individual Defendants voluntarily assumed roles where their right to expression would be limited by bylaws, the common law, and statute. Because Defendants voluntarily assented to these laws and the ASA's constitution and bylaws, . . . there would be no First Amendment issue with a judgment for Plaintiffs in this case.").

As the Court of Appeal explained in *Competitive Enterprise Institute v. Mann*, 150 A.3d 1213, 1239 (D.C. 2016), the Anti-SLAPP Act's "heightened legal and proof requirements apply when ***First Amendment rights*** of the defendant are implicated" – not to any act that is purported to be related to one's advocacy. *Id*. The Court of Appeals thus held:

> It bears remembering that the fact that a defendant can make a threshold showing that the claim arises from activities "in furtherance of the right of advocacy on issues of public interest," D.C. Code § 16-5502 (a), does not mean that the defendant is immunized from liability for common law claims. *See Duracraft Corp. v. Holmes Prods. Corp*., [691 N.E.2d 935, 943 & n.19] (Mass. 1998) . . .

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[2] *See, e.g.,* Salaita Br. at 7, citing *NAACP v. Claiborne Hardware Co*., 458 U.S. 886 (1986) to support claim argument that Defendants' conduct is protected under the First Amendment, and Original Defs' Br. at 9 (same). Defendants made the same arguments in their motion to dismiss the First Amended Complaint.

> Thus, the special motion to dismiss in the Anti-SLAPP Act must be interpreted as a tool calibrated to take due account of the constitutional interests of the defendant **who can make a prima facie claim to First Amendment protection** and of the constitutional interests of the plaintiff who proffers sufficient evidence that **the First Amendment protections** can be satisfied at trial; it is not a sledgehammer meant to get rid of any claim against a defendant able to make a prima facie case that the claim arises from activity covered by the Act. *See, e.g., Sandholm v. Kuecker*, 962 [N.E.2d 418, 429-30] (Ill. 2012) (noting that Illinois statute is aimed solely at "meritless, retaliatory SLAPPs" and "was not intended to protect those who commit tortious acts and then seek refuge in the immunity conferred by the statute").

Id.

The Court of Appeals' reliance on *Duracraft Corp. v. Holmes Prods. Corp*. and *Sandholm v. Kuecker* on this issue is instructive, as both cases deny motions to dismiss under Anti-SLAPP statutes because the claims, though tangentially related to a matter of advocacy, did not arise from speech or expressive conduct covered by the respective statutes.

Duracraft involved claims for breach of contract (specifically, breach of a nondisclosure agreement) and breach of fiduciary duty brought by Duracraft Corporation against a former employee ("Marino") and his new employer, Holmes Products. Holmes Products was engaged in a trademark dispute with Duracraft Corporation. Marino's testimony in a deposition in the trademark dispute was alleged to violate the nondisclosure and Marino's fiduciary duties to his former employer.

The Massachusetts anti-SLAPP statute is far more broad than the D.C. statute, and most other anti-SLAPP statutes; it applies "In any case in which a party asserts that the civil claims, counterclaims, or cross claims against said party are based on said party's exercise of its right of petition under the constitution of the United States or of the commonwealth" (Mass. G.L. c. 231, § 59H), and is not restricted to claims that arise from "the right of advocacy on issues of public interest," as the D.C. Act is (D.C. Code §§ 16-5501 & 16-5502). Thus, testimony in a deposition

appears to be protected under the breadth of the Massachusetts statute, even if the testimony is not related to a matter of public interest.

Yet the Massachusetts Supreme Court denied the special motion to dismiss the breach of contract and breach of fiduciary claims, for exactly the same reasons that Judge Contreras denied these Defendants' previous motion to dismiss this case under the First Amendment – there are numerous, viable claims that only incidentally affect protected speech. The *Duracraft* court held:

> focusing on the defendants' petitioning activity and ignoring Duracraft's claims -- that a contractual obligation precludes Marino's exercise of otherwise protected petitioning activity -- fails to test fully whether Duracraft's claim lacks merit. **Many preexisting legal relationships may properly limit a party's right to petition, including enforceable contracts in which parties waive rights to otherwise legitimate petitioning.** A quintessential example of such a waiver is a settlement agreement, in which a party releases legal claims against an adversary that otherwise properly could be prosecuted by petitioning the court. But **neither this example nor contractual or fiduciary relationships in general exhaust the conceivable occasions in which a party assumes obligations that in turn limit the party's subsequent free exercise of speech and petitioning rights**. Furthermore, **we are aware of no case that has immunized alleged breaches of such preexisting legal obligations based on constitutional protection** . . . nor have we found cases dismissing such claims under anti-SLAPP statutes of other jurisdictions.

Duracraft, 427 Mass. at 165-66.

The federal district court rejected defendants' First Amendment arguments for exactly the same reasons; indeed, the language is quite similar. The federal court in this case held:

> there is a "well-established line of decisions holding that generally applicable laws do not offend the First Amendment simply because their enforcement . . . has incidental effects on" expression, *see Cohen v. Cowles Media Co*., 501 U.S. 663, 669 (1991). . . . To hold otherwise would mean that courts could never enforce non-disclosure agreements. *See United Egg Producers v. Standard Brands, Inc*., 44 F.3d 940, 943 (11th Cir. 1995) (holding that court enforcement of a settlement agreement is not state action for constitutional purposes). . . .
>
> . . . Plaintiffs ask the Court to enforce the contract that the Plaintiffs and Defendants freely entered into when they voluntarily subjected themselves

> to the constitution and bylaws of the ASA. *See Meshel*, 869 A.2d at 361. Defendants, Plaintiffs argue, voluntarily assumed certain obligations toward the ASA when they took on leadership positions within the organization, and that they violated those obligations through their roles in passage of the boycott resolution. *See* Compl. ¶¶ 79–80, 83– 84, 88–89, 92–93.
>
> Plaintiffs' claims all arise under generally-applicable laws. [Citations.] They also only seek to enforce rights created at the initiation of private parties; Individual Defendants voluntarily assumed roles where their right to expression would be limited by bylaws, the common law, and statute. Because Defendants voluntarily assented to these laws and the ASA's constitution and bylaws, . . . there would be no First Amendment issue with a judgment for Plaintiffs in this case.

Bronner v. Duggan, 249 F. Supp. 3d 27, 42 (D.C. 2017) ("there would be no First Amendment issue with a judgment for Plaintiffs in this case").[3]

Plaintiffs' claims are not subject to dismissal under the Anti-SLAPP Act for the very same reasons that the federal court district court found that "there would be no First Amendment issue with a judgment for Plaintiffs" in this very case. *Id*. The claims arise from violations of generally applicable laws and breach of duties that Defendants voluntarily and intentionally assumed. Holding Defendants accountable for these breaches does not infringe on their First Amendment rights or their "right of advocacy on issues of public interest." § 15-5502. Nor does enforcement of applicable laws, "simply because their enforcement . . . has incidental effects on" expression. *Cohen v. Cowles Media Co*., 501 U.S. 663, 669 (1991).

Defendants state repeatedly that Plaintiffs' claims "arise" out of the passage of the academic boycott and their individual advocacy for the boycott, and they do their best to suggest that these

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[3] The string cite following the statement, "Plaintiffs' claims all arise under generally-applicable laws," reads as follows: "*See Armenian Genocide Museum & Mem'l, Inc. v. Cafesjian Family Found., Inc*., 607 F. Supp. 2d 185, 190–91 (D.D.C. 2009) (setting forth the elements of breach of fiduciary duty); *Adamski v. McHugh*, No. 14-cv- 0094 (KBJ), 2015 WL 4624007, at *6 (D.D.C. July 31, 2015) (describing the law governing ultra vires claims); *Daley*, 26 A.3d at 730 (describing the doctrine of waste); *Compton v. Alpha Kappa Alpha Sorority, Inc*., 64 F. Supp. 3d 1, 16 (D.D.C. 2014) (setting forth the elements of breach of contract), *aff'd*, 639 F. App'x 3 (D.C. Cir. 2016); D.C. Code § 29-405.24 (outlining the procedures all nonprofit organizations must follow)." *Bronner v. Duggan*, 249 F. Supp. 3d 27, 41-42 (D.C. 2017).

actions are protected by the First Amendment, but are careful not to specifically claim that the underlying acts are protected by the First Amendment. Instead, Defendants carefully avoid any reference to the fact that the First Amendment issue was litigated at all, much less that the federal court found that the First Amendment offered no protection against Plaintiffs' claims. We are not aware of a single case where, despite a finding that the act claimed to be "in furtherance of the right of advocacy on issues of public interest" did not enjoy First Amendment protection, the Anti-SLAPP Act was applied, and Defendants certainly do not cite one. Indeed, such a finding would likely violate the plaintiffs' own constitutional rights to petition, as it would place a high bar on the plaintiffs' right to pursue a claim, even though the underlying conduct was not protected under the First Amendment.

II. THE ANTI-SLAPP ACT DOES NOT APPLY BECAUSE THE CLAIMS AT ISSUE DO NOT ARISE FROM STATEMENTS, EXPRESSION OR EXPRESSIVE CONDUCT AS THE STATUTE EXPLICITLY REQUIRES.

A. Plaintiffs' Claims Do Not Arise From a "Written or Oral Statement" or "Expression or Expressive Conduct" as § 16-5502(1) Explicitly Requires.

The Anti-SLAPP Act provides for parties to file a special motion to dismiss "any "claim arising from an act in furtherance of the right of advocacy on issues of public interest[.]" D.C. Code § 16-5502. The term, "act in furtherance of the right of advocacy on issues of public interest" is defined explicitly in § 16-5501(1), as follows:

> (A) Any **written or oral statement** made:
>
> > (i) In connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; or
> >
> > (ii) In a place open to the public or a public forum in connection with an issue of public interest; or

> (B) Any **other expression or expressive conduct** that involves petitioning the government or communicating views to members of the public in connection with an issue of public interest.

D.C. Code § 16-5501(1), emphasis added. The Act does not apply to any other types of conduct or acts, whether or not they are conducted "in furtherance of the right of advocacy on issues of public interest[.]" D.C. Code § 16-5502.

Every one of the Defendants ignored this critical requirement of the Anti-SLAPP Act: it only applies to claims that actually arise from ***written or oral statements, or expressions or expressive conduct***. *See, e.g., Park v. Brahmbhatt*, 2016 D.C. Super. LEXIS 16, *9 (Civ. No. 2015 CA 005686 B, Jan. 19, 2016) ("Plaintiff has not demonstrated any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; or in a place open to the public or a public forum in connection with an issue of public interest; or any other expression or expressive conduct that involves petitioning the government or communicating views to members of the public in connection with an issue of public interest"). Not one of the claims in the Complaint arises from a statement, expression, or expressive conduct.

Defendants do not actually argue that any of Plaintiffs' claims arise from a "written or oral statement" or "other expression or expressive conduct." Instead, Defendants simply fail to acknowledge that § 16-5501's very specific definition of an "act in furtherance of the right of advocacy on issues of public interest" even exists, ignoring the clear language of the statute. Defendants' attempts to convince this court to apply the anti-SLAPP statute to claims that are not encompassed by the statute's clear language must fail.

The approach to statutory construction in this jurisdiction is clear, and "[t]he burden on a litigant who seeks to disregard the plain meaning of the statute is a heavy one." *Nat'l Geographic*

Soc'y v. D.C. Dep't of Emp't Servs., 721 A.2d 618, 620 (D.C. 1998). "In interpreting a statute, we first look to its language; 'if the words are clear and unambiguous, we must give effect to its plain meaning.' *James Parreco & Son v. District of Columbia Rental Hous. Comm'n*, 567 A.2d 43, 45 (D.C. 1989) [further citation omitted]. The intent of the legislature is to be found in the language used." *Id*.

Of course, the "Definitions" section of a statute is the first place to turn when applying a term used in a statute. Thus, in *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1233 (D.C. 2016), when interpreting the language "unless the responding party demonstrates that the claim is likely to succeed on the merits" in § 16-5502, only after finding that "neither the phrase nor any of its components is defined in the statute," did the Court of Appeal "look to 'the language of the statute by itself to see if the language is plain and admits of no more than one meaning.'" *Id.*, quoting *Rodriguez v. District of Columbia*, 124 A.3d 134, 146 (D.C. 2015). Then, only after finding ambiguity in the plain language of the statute with respect to the words "likely to succeed on the merits" did the Court of Appeal turn "to legislative history and other aids to construction." 150 A.3d at 1235 ("Lacking a statutory definition, clear dictionary definition, or application as a term of art that reasonably can be borrowed from another context, the Anti-SLAPP Act's 'likely to succeed on the merits' leaves us with 'textual uncertainty.' *Cass v. District of Columbia*, 829 A.2d 480, 486 (D.C. 2003)").

There is no textual uncertainty here. The Anti-SLAPP Act provides a "statutory definition," of an "act in furtherance of the right of advocacy on issues of public interest," and that definition encompasses, only, "written or oral statement[s]" and "other expression[s] or expressive conduct." D.C. Code § 16-5501(1). Defendants' extensive (and, as discussed below, inaccurate) assertions

about legislative intent notwithstanding, the Act clearly does not apply to these claims.[4]

B. The D.C. Legislature Considered and Specifically Rejected Including Non-Speech Under the Anti-SLAPP Act and Intentionally Limited Coverage of the Anti-SLAPP Act to Statements, Expressions, and Expressive Conduct.

If the Council of the District of Columbia ("the Council") sought to cover not just speech, but any "act in furtherance of the right of advocacy on issues of public interest," it easily could have done so. Instead, the Council rejected proposed language that could have been read to include non-speech conduct, even if the conduct were taken "in furtherance of the right of advocacy on issues of public interest." In the period between the original proposed legislation and the adoption of the Anti-SLAPP Act of 2010, the Council ensured that final legislation restricted the protection of the Anti-SLAPP Act to protected speech.

The original proposal of the Anti-SLAPP Act of 2010 was written to cover any "act in furtherance of the right of free speech," rather than limiting coverage to "act[s]in furtherance of the right of advocacy on issues of public interest," as the Act as adopted does. ("Referral of Proposed Legislation, Anti-SLAPP Act of 2010," dated July 7, 2010, Attachment to the Report on Bill 18-893, "Anti-SLAPP Act of 2010" (Nov. 18, 2010).) Under the originally proposed legislation, the definition of an act "in furtherance of the right of free speech" included the following: "(B) Any other conduct in furtherance of the exercise of the constitutional right to petition the government or the constitutional right of free expression in connection with an issue of public interest." Thus, this original formulation could have been read to include conduct that was not, itself, protected speech, if that conduct was taken in "furtherance" of the right to petition or the right of free speech.

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[4] Defendants' extensive arguments on legislative intent are substantively incorrect. The record shows that the legislature intended for the Anti-SLAPP Act to protect speech that is entitled to First Amendment protection. The claims at issue in this case do not implicate the First Amendment. *Bronner v. Duggan*, 249 F. Supp. 3d 27, 41-42 (D.D.C. 2017).

That language was rejected by the Council, who instead limited the breadth of the Act to "act[s] in furtherance of the right of advocacy on issues of public interest," and replaced the language, "any other conduct in furtherance of" with "any other expression or expressive conduct" in the definition that today is codified in § 16-505(1). Thus, today, the Act does not cover ***any*** (non-expressive) conduct that "involves petitioning the government or communicating views to members of the public in connection with an issue of public interest," but instead only covers "expressions or expressive conduct" that does so.

Although Defendants loosely claim otherwise, not a single claim alleged in the complaint involves speech or expressive conduct that ""involves petitioning the government or communicating views to members of the public in connection with an issue of public interest." Not a single claim arises from a statement made to the public.[5]

C. Defendants' Simplistic Assertions that the Plaintiffs' Claims All Arise From the Academic Boycott – "In One Way or Another" – Is Simply Wrong.

As discussed above, Defendants do not even attempt to specifically argue that any of Plaintiffs' claims arise from statements, expressions, or expressive conduct that satisfy § 16-5501(1)'s definition of an "[a]ct in furtherance of the right of advocacy on issues of public interest[.]" Completely ignoring § 16-5501(1), Defendants instead make sweeping statements that they "have being sued for their political activities" (Kauanui/Puar Br. 3), that Plaintiffs' claims "arise, in one way or another," from the Academic Boycott (Original Defs' Br. at 8, *see also* Salaita Br. at 7).

Defendants are wrong. Plaintiffs' claims do not arise from the Academic Boycott, but from numerous acts that were taken with full knowledge that they would "damage the ASA," that breached Defendants' fiduciary obligations to the organization and its members, violated the ASA's

[5] Moreover, the issues do not satisfy the Anti-SLAPP Act's definition of "issue of public interest" for this purpose, as set forth in § 16-5501.

Constitution and bylaws, drained the ASA's Trust Fund of hundreds of thousands of dollars, and mislead the ASA's membership, *inter alia*.[6] The acts that caused this damage are not the Academic Boycott in itself, nor "communicative actions related to" the Academic Boycott.[7] (Original Defs' Br. at 8.)

Critically, Defendants do not identify any particular statement, expression, or expressive conduct that they purport to form the basis of the claims for breach of fiduciary duty, breach of contract, *ultra vires* acts, corporate waste, or any of Plaintiffs' claims. Instead, they attempt to tie the conduct that violated their duties to the Plaintiffs and to the members of the ASA to "their political activities" (Kauanui/Puar Br. at 3) and to the Academic Boycott, as though any circumstantial connection to the BDS movement is sufficient to show that a claim "arises from" advocacy.

Defendants' tortured interpretation of "arising from" is flatly contradictory to case law that interprets and applies the term in Anti-SLAPP cases. Earlier this year, the California Court of Appeal issued a very strong opinion rejecting defendants' appeal of the denial of an Anti-SLAPP motion seeking to strike antitrust claims, including conspiracy to restrain trade. *Richmond Compassionate Care Collective v. 7 Stars Holistic Foundation, Inc.*, 52 Cal. App. 5th 458, 468-470 (2019). The defendants had argued that the claims were covered by the California's Anti-SLAPP statute, because they were (circumstantially) related to petitioning. The Court of Appeal rejected that argument, holding that the "gravamen, the thrust, of the cause of action" was the private, anticompetitive actions

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[6] This list does not include the claims relating specifically to Plaintiff Bronner and the Encyclopedia of American Studies, which no defendant even attempts to argue "arise" from the Academic Boycott.

[7] Although even if Plaintiffs did bring claims that "arose from" the Academic Boycott or "communicative actions related to" the Academic Boycott, that in itself also would not be sufficient to show that the Anti-SLAPP Act should apply. As discussed above, the Anti-SLAPP Act's "heightened legal and proof requirements apply when ***First Amendment rights*** of the defendant are implicated" – not to any act that is purported to be related to one's advocacy. The requirements of § 16-5501(1) must also be satisfied.

to prevent the plaintiff from obtaining space to operate a medical marijuana dispensary, not petitioning. "Whatever the protected activity, it was at the most incidental." *Id.* at 470. The court held:

> Our Supreme Court has recently put it this way: "A claim arises from protected activity when that activity underlies or forms the basis for the claim. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78 [124 Cal. Rptr. 2d 519, 52 P.3d 695]; *Equilon Enterprises v. Consumer Cause, Inc*. [(2002)] 29 Cal.4th [53,] 66 [124 Cal. Rptr. 2d 507, 52 P.3d 685]; *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1114 [81 Cal. Rptr. 2d 471, 969 P.2d 564].)" (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1062–1063 [217 Cal. Rptr. 3d 130, 393 P.3d 905] (*Park*).)
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> "Critically, 'the defendant's act underlying the plaintiff's cause of action must itself have been an act in furtherance of the right of petition or free speech.' [Citations.] … [T]he focus is on determining what 'the defendant's activity [is] that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning.' [Citation.] 'The only means specified in section 425.16 by which a moving defendant can satisfy the ["arising from"] requirement is to demonstrate that the defendant's conduct by which plaintiff claims to have been injured falls within one of the four categories described in subdivision (e) … .' [Citation.] In short, in ruling on an anti-SLAPP motion, courts should consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability." (*Park*, *supra*, 2 Cal.5th at p. 1063.)

Richmond Compassionate Care Collective v. 7 Stars Holistic Found., Inc., 32 Cal. App. 5th 458, 467-68, 243 Cal. Rptr. 3d 816, 823-24 (2019).

Defendants here have carefully avoid even mentioning the types of claims at issue, much less the underlying conduct. They certainly do not identify the acts "that give[] rise to [the] asserted liability," and they could not possibly argue that those acts are protected speech.

Other courts have rejected attempts to expand the interpretation of "arising from" to include claims that are not based on protected speech.

> "A cause of action does not "arise from" protected activity simply because it is filed after protected activity took place. *Cashman*, 29 Cal. 4th at 76-

> 77. Nor does the fact "[t]hat a cause of action arguably may have been triggered by protected activity" necessarily mean that it arises from such activity. *Cashman*, 29 Cal. 4th at 78. The trial court must instead focus on the substance of the plaintiff's lawsuit in analyzing the first prong of a special motion to strike. *Scott v. Metabolife Intern., Inc.*, 115 Cal. App. 4th 404, 413-414, 9 Cal. Rptr. 3d 242 (2004); see also *Cashman,* 29 Cal. 4th at 78. In performing this analysis, the California Supreme Court has stressed, "the critical point is whether the plaintiff's cause of action itself was *based on* an act in furtherance of the defendant's right of petition or free speech." *Cashman*, 29 Cal. 4th at 78 (emphasis in original). In other words, "the defendant's act underlying the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech." *Id.*

Flores v. Emerich & Fike, 416 F. Supp. 2d 885, 897 (E.D. Cal. 2006). Courts outside of California agree. The Massachusetts Supreme Court adopted a construction of the term "'based on' that would exclude motions brought against meritorious claims with a substantial basis other than or in addition to the petitioning activities implicated." *Duracraft Corp*., 691 N.E.2d at 943. "The special movant who 'asserts' protection for its petitioning activities would have to make a threshold showing through the pleadings and affidavits ***that the claims against it are 'based on' the petitioning activities alone and have no substantial basis other than or in addition to the petitioning activities.***" *Id*. Imposing this requirement on special movants under the statute would, according to the court, "serve to distinguish meritless from meritorious claims, as was intended by the Legislature." *Id*.

The Illinois Supreme Court adopted the same construction.

> In light of the clear legislative intent expressed in the statute to subject only meritless, retaliatory SLAPP suits to dismissal, we construe the phrase "based on, relates to, or is in response to" in section 15 to mean *solely* based on, relating to, or in response to "any act or acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government." 735 ILCS 110/15 (West 2008). . . . Our construction of the phrase "based on, relates to, or is in response to," in section 15 similarly allows a court to identify meritless SLAPP suits subject to the Act. This interpretation also serves to ameliorate the "particular danger inherent in anti-SLAPP statutes *** that when constructed or construed too broadly in protecting the rights of defendants, they may impose a counteractive chilling effect on prospective plaintiffs'

> own rights to seek redress from the courts for injuries suffered." Mark J. Sobczak, Comment, *SLAPPed in Illinois: The Scope and Applicability of the Illinois Citizen Participation Act*, 28 N. Ill. U. L. Rev. 559, 575 (2008).

Sandholm v. Kuecker, 2012 IL 111443, ¶¶ 47-48, 356 Ill. Dec. 733, 746, 962 N.E.2d 418, 431.

There is no District of Columbia case interpreting the term "arising from" as used in § 16-5502(a) ("A party may file a special motion to dismiss any claim *arising from* an act in furtherance of the right of advocacy on issues of public interest within 45 days of service of the claim"). This is likely because § 16-5501(1) winnows the types of claims where the Anti-SLAPP Act may apply to claims that arise from a "written or oral statement" or "expression or expressive conduct" made in connection with an issue of public interest. D.C. Code § 16-5501(1); *see* discussion in section I.A., *supra*. This requirement eliminates the possibility that the Anti-SLAPP Act would apply to a claim for injury caused by anything but speech. Moreover, as the Court of Appeal clarified in *Competitive Enterprise Institute v. Mann*, the Anti-SLAPP Act applies only "when First Amendment rights of the defendant are implicated[.]" 150 A.3d at 1239, *see* discussion in section I.C, *supra*. Thus, in the analysis described in (and required by) the *Mann* court, the first step for a trial court presented with a motion under § 16-5502 is to consider "'the statements at issue and the circumstances under which they were made to see . . . whether they are of a character which the principles of the *First Amendment* protect.' *N.Y. Times v. Sullivan*, [376 U.S. 254, 285 (1964)]." *Mann*, 150 A.3d at 1240.

Between the clear language of both § 16-5501(1) and *Mann*, it could not be more clear that the Anti-SLAPP Act only applies to protected speech. Thus, there has not been a need for the D.C. courts to consider whether claims for injury that are directly caused by acts that are not protected by the First Amendment may be deemed to "aris[e] from an act in furtherance of the right of advocacy on issues of public interest[.]" § 16-5502(a). It simply doesn't matter if the "act [is] in furtherance of the right of advocacy," because, unless the "act" is also speech that fits the definition in § 16-5501(1),

(and is protected by the First Amendment) – the Anti-SLAPP Act does not and cannot apply.[8] Thus, the D.C. courts have not needed to also address that claims like these - for breach of fiduciary duty, violation of corporate bylaws, and mismanagement of a nonprofit, *inter alia* - might be "arising from" an act protected by Anti-SLAPP Act.

III. THE SPECIAL MOTION TO DISMISS MUST BE DENIED BECAUSE PLAINTIFFS EASILY SHOW THAT THE CLAIMS ARE LIKELY TO SUCCEED ON THE MERITS UNDER *COMPETITIE ENTERPRISES INSTITUTE V. MANN*.

Pursuant to § 16-5502, even if Defendants were able to make a prima facie showing that the "claim[s] at issue arise[] from an act in furtherance of the right of advocacy on issues of public interest" – and they are clearly unable to make that showing – the special motion to dismiss must be denied if "the responding party demonstrates that the claim is likely to succeed on the merits[.]" D.C. Code § 16-5502(b). In *Competitive Enterprise Institute v. Mann*, the landmark decision interpreting § 16-5502, the Court of Appeal held that to satisfy § 16-5502(b)'s standard of "likely to succeed on the merits," the respondent in the motion must only "present an evidentiary basis that would permit a reasonable, properly instructed jury to find in the plaintiff's favor." *Competitive Enterprise Institute v. Mann*, 150 A.3d 1213, 1262-63 (D.C. 2014). In a lengthy and detailed analysis, the Court of Appeals held that any higher standard would violate the constitutional rights of the plaintiff(s). 150 A.3d at 1232-40. This standard allows for dismissal of meritless claims arising from protected speech, but not dismissal of claims that 1) are not meritless, and/or 2) do not arise from protected speech. The claims brought by plaintiffs here fit neither category.

Defendants make a number of arguments intended to show that, despite Judge Contreras' clear

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[8] As the *Mann* court made clear, the Anti-SLAPP Act cannot apply to an act that is not protected speech without violating the Constitutional rights of the *Plaintiff*, who also has a right to petition the courts, as well as a right to a jury trial.

statements otherwise, no "reasonable, properly instructed jury" could find for Plaintiffs on any of their claims. Plaintiffs address these arguments below.

A. Defendants Misstate the Standard for Dismissal Under § 16-5502.

The standard for "likely to succeed on the merits" allows for claims to proceed ***if any reasonable jury could find for the plaintiff***. This is clearly a lower standard than one that asks the court to estimate the probability of success, or to determine, on the facts, whether the claims have merit. The Court of Appeals held that this formulation of the standard is required; a higher standard would render the statute unconstitutional, as it would allow the judge to substitute his or her view of the facts for that of a jury in violation of the Seventh Amendment. "We, therefore, conclude that to remove doubt that the Anti-SLAPP statute respects the right to a jury trial, ***the standard to be employed by the court in evaluating whether a claim is likely to succeed may result in dismissal only if the court can conclude that the claimant could not prevail as a matter of law***, that is, after allowing for the weighing of evidence and permissible inferences by the jury." *Competitive Enter. Inst. v. Mann*, 150 A.3d at 1236.

Defendants do their best to avoid stating this standard, as they surely must do if they hope to argue that these claims should be dismissed. Even when dismissing the case for lack of federal jurisdiction (only), Judge Contreras concluded the opinion with the final sentence, "Plaintiffs have raised allegations and presented evidence indicating that they may have meritorious claims, but they must assert those claims before the proper tribunal." *Bronner v. Duggan*, 364 F. Supp. 3d 9, 23 (D.D.C. 2019).

Defendants do not and cannot reconcile Judge Contreras' statement that "Plaintiffs have raised allegations and presented evidence indicating that they may have meritorious claims" with a finding that "no reasonable jury properly instructed" could find that the same claims are meritorious. Thus,

they wholly avoid discussing the standard at all. The Original Defendants cite *Competitive Enterprise Institute v. Mann* without stating the major holding in the case. Original Defs' Br. at 10, including a partial quote of just the words "any heightened fault and proof requirements" (*Mann*, 150 A.3d at 1236) to argue that plaintiffs subject to an Anti-SLAPP motion must "meet the standard for resisting a summary judgment motion." Original Defs' Br. at 10.

The standard is not the quite the same as the standard for a summary judgment motion, however. Indeed, the *Mann* Court explained that the anti-SLAPP special motion to dismiss and a Rule 56 summary judgment ***are not redundant***.

> Our interpretation of the requirements and standard applicable to special motions to dismiss ensures that the Anti-SLAPP Act provision is not redundant relative to the rules of civil procedure. A defendant may still file a motion to dismiss a complaint at the onset of litigation under Rule 12, based solely on deficiencies in the pleadings. *See* Super. Ct. Civ. R. 12 (a) (requiring that motion for failure to state a claim must be filed within 20 days of service of complaint). The Anti-SLAPP Act gives the defendant the option to up the ante early in the litigation, by filing a special motion to dismiss that will require the plaintiff to put his evidentiary cards on the table and makes the plaintiff liable for the defendant's costs and fees if the motion succeeds. D.C. Code § 16-5502 (a) (requiring that special motion to dismiss be filed within forty-five days of service of the complaint); *id.* § 16-5504 (a) (providing for costs and fees). Even if the Anti-SLAPP special motion to dismiss is unsuccessful, the defendant preserves the ability [**46] to move for summary judgment under Rule 56 later in the litigation, after discovery has been completed, or for a directed verdict under Rule 50 after the presentation of evidence at trial.

Mann, 150 A.3d at 1238.

The standard is also clearly not the same as that for a motion to dismiss, although Defendants make no attempt to show that their arguments under 12(b)(6) also satisfy the different and higher standard set forth in *Mann*. See Original Defs' Br. at 10-11 ("As argued more fully in the Motion to Dismiss . . . None of counts in the Complaint present a viable cause of action"). Of the four paragraphs in section III of the Original Defs' Brief (pp. 9-11), the longest argues only that ***if***

Plaintiffs seek discovery under § 16-5502(c)(2) while the Special Motion to Dismiss is pending – something that Plaintiffs have not sought to do – ***then*** that imaginary motion should be denied.

The Original Defendants then spend one paragraph recounting (without disputing the accuracy) statements in the introduction to the Complaint:

> Plaintiffs make much of the statement by Judge Contreras of the U.S. District Court that they "may have meritorious claims," Complaint at 1, and repeated statements that plaintiffs "have *alleged*" facts *would* support claims that some defendants acted with harmful intent, Complaint at 6-7. (Emphasis [in Original Defs' Br.].) Mere allegations, however, will not suffice.

Original Defs' Br. at 11. This is a striking comment. Under *CEI v. Mann*, the standard to survive a special motion to dismiss is whether ***any "reasonable, properly instructed jury" could find for plaintiffs***. *CEI v. Mann*, 150 A.3d at 1262-63. We are unsure where the gap is between claims that "a reasonable, properly instructed jury" ***could*** find to be meritorious, and claims brought by plaintiffs who, three years into the litigation, the judge asserted "raised allegations and presented evidence indicating that they may have meritorious claims." *Bronner v. Duggan*, 364 F. Supp. 3d at 23. Defendants certainly make no attempt to identify the level of proof that might meet Judge Contreras' description of the claims in this case, but fail to satisfy the *Mann* standard. We are unable to imagine what it might be.

In the same paragraph, the Original Defendants also argue that when claims are "based" on "conduct that has First Amendment protection, special common law rules heighten the authority of the court to more closely scrutinize the weight of whatever evidentiary proffers are made by plaintiffs. *Aequitron Med. Inc. v. CBS Inc.*, 964 F. Supp. 704, 709-10 (S.D.N.Y 1997)[.]" (Original Defs' Br. at 11.) Defendants do not explain how this principle should apply to an Anti-SLAPP special motion to dismiss, nor could they. *Aequitron* holds only that, "under Minnesota law, where

[a] tortious interference claim is based on conduct that sounds in defamation, the special rules of defamation apply." *Aequitron Med. v. CBS, Inc*., 964 F. Supp. 704, 709 (S.D.N.Y. 1997) Those special rules require a showing of malice if the plaintiff alleging defamation is a person in the public eye and knowledge that the alleged defamatory sta. *Id*. ("Aequitron's tortious interference . . . claim raises two issues: First, whether, as CBS contends, the 'special rules of defamation' apply . . . and, second, if so, whether Aequitron has presented sufficient evidence to raise a genuine issue of fact as to whether CBS acted with actual malice and whether CBS knew that the statements in question were false"). This was the only issue in *Aequitron*, which was not an Anti-SLAPP case, and did not otherwise discuss any "special common law rules" that "heighten the authority of the court to more closely scrutinize the weight of whatever evidentiary proffers" are made by plaintiffs in any other type of case, and which did not bear, at all, on the standard for determining whether claims challenged under § 16-5502 are "likely to succeed on the merits."

B. The District Court Explicitly Held That Plaintiffs Are Not Barred from Bringing *Ultra Vires* Claims or Direct Claims for Mismanagement of the ASA.

Defendants Kauanui and Puar argue that Plaintiffs are barred by collateral estoppel from bringing derivative claims and *ultra vires* claims, after Judge Contreras dismissed, without prejudice, one *ultra vires* claim and (actual) derivative claims that were brought in the First Amended Complaint ("FAC"). (Kauanui/Puar Br. at 7.) The Original Defendants also argue, in just a few words, that Plaintiffs' "derivative claims are barred by collateral estoppel" – although Plaintiffs bring no derivative claims. The Original Defendants made this same argument in a previous brief, and Judge Contreras flatly rejected it in a published opinion, for obvious reasons.

First, the dismissal of one *ultra vires* claim, without prejudice, in no way prevents or bars the presentation of one or more different *ultra vires* claim in an amended complaint. Indeed, a plaintiff

may even bring the same claim that was previously dismissed in a new, amended complaint, if the amended complaint alleges facts to support the claim that were not included in the initial complaint.

Second, as Judge Contreras made clear, the derivative claims were not dismissed on their merits, but on procedural grounds, and cannot serve as a bar to direct claims arising from the same facts, because, *inter alia*, the court made no decision on the merits of those claims. Judge Contreras held:

> The Court dismissed the derivative claims because Plaintiffs had failed to make a demand on the National Council, not because the claims themselves, if ASA had asserted them on its own, lacked merit. The claims that Plaintiffs seek to assert sound in breaches of fiduciary duty, breaches of contract, and ultra vires action, which the D.C. Court of Appeals has suggested may be asserted directly by shareholders and members of non-profit organizations under certain circumstances. *See Jackson v. George*, 146 A.3d 405, 415 (D.C. 2016); *Daley v. Alpha Kappa Alpha Sorority, Inc.*, 26 A.3d 723, 729-30 (D.C. 2011).

Bronner v. Duggan, 324 F.R.D. at 293 & n.2 (D.D.C. 2018) ("the new claims that Plaintiffs assert do not appear to be the same as those that this Court has already rejected").

The claims brought in the SAC, and now in this complaint, are not brought as derivative claims, and thus cannot be dismissed for failure to conform to procedural rules that only apply to derivative claims. Moreover, even if the previously dismissed derivative claims did serve as a bar to the same claim brought directly – and they clearly do not – the current complaint brings __ claims that were not brought in the first amended complaint as either direct or derivative claims, and thus are clearly cannot barred under the doctrine of collateral estoppel.

C. Defendants' New Statute of Limitations Arguments Address Few Claims, Fail with Respect to Those Claims, and Cannot Support Dismissal Under § 16-5502, Because Statute of Limitations Arguments Do Not Bear on Whether a Claim Is "Likely to Succeed on the *Merits*."

Defendants' statute of limitations arguments simply do not bear on their special motions to

dismiss under § 16-5502. The statute of limitations defense is an affirmative defense, and Defendants bear the burden of showing that the . *Logan v. Lasalle Bank Nat'l Ass'n*, 80 A.3d 1014, 1019-20 (D.C. 2013); *Brin v. S.E.W. Investors*, 902 A.2d 784, 800-01 (D.C. 2006), *Hillbroom v. PricewaterhouseCoopers LLP*, 17 A.3d 566, 579 (D.C. 2011) "As the 'part[ies] pleading the statute [of limitations] defense,' [Defendants] had 'the burden of proof unless the claim [was] barred on its face' (which, we have determined, it was not)," quoting *Oparaugo v. Watts*, 884 A.2d 63, 73 (D.C. 2005).) It is rarely appropriate to grant a Rule 12(b)(5) motion to dismiss on statute of limitations grounds, before the defendants have answered the complaint and before discovery. *Brin v. S.E.W. Inv'rs*, 902 A.2d 784, 795 (D.C. 2006) ("At the Rule 12 (b)(6) stage, a court should not dismiss on statute of limitations grounds unless the claim is time-barred on the face of the complaint"); *Logan v. Lasalle Bank Nat'l Ass'n*, 80 A.3d 1014, 1019-20 (D.C. 2013); *Oparaugo v. Watts*, 884 A.2d 63, 73 (D.C. 2005).

Moreover, where statute of limitations issues involve questions of fact, they must be resolved by a jury, not the judge. **"**Although '[w]hat constitutes the accrual of a cause of action is a question of law . . .[,] when accrual actually occurred in a particular case is a question of fact' to be resolved by the fact-finder." *Brin v. S.E.W. Inv'rs*, 902 A.2d 784, 795 (D.C. 2006), quoting *Diamond v. Davis*, 680 A.2d 364, 370 (D.C. 1996). "In all cases to which the discovery rule applies, the inquiry is highly fact-bound and requires an evaluation of all of the plaintiff's circumstances." *Diamond,* 680 A.2d at 372. "Unless the evidence regarding the commencement of the running of the statute of limitations is so clear that the court can rule on the issue as a matter of law, the jury should decide the issue on appropriate instructions." *Lively v. Flexible Packaging Ass'n*, 830 A.2d 874, 892 n.29 (D.C. 2003); *Brin v. S.E.W. Inv'rs*, 902 A.2d 784, 795 (D.C. 2006), quoting *Lively*. The plaintiff also must be able to present arguments with the benefit of discovery and presentation of evidence. *Hillbroom v.*

PricewaterhouseCoopers LLP, 17 A.3d 566, 579 (D.C. 2011) (remanded for, "at the very least, discovery regarding facts material to the issue of when appellants' cause of action accrued").

Setting aside for purposes of argument that there are claims that ***clearly*** arise within the statute of limitations – Defendants do not actually argue that Counts 10 and 11 did not occur within statute of limitations, nor do they present any sensible argument that the withdrawals from the ASA's Trust Fund, or the changes in the bylaws that were made to allow these vast withdrawals (and to remove the status of *ex officio* officer and member of the National Council from the editor of the Encyclopedia) did not occur within the statute of limitations, *inter alia*.

Moreover, all of the remainder of claims – every one – is subject to the discovery rule. As discussed in Plaintiffs' Opposition to Rule 12(b) Motions, Plaintiffs did not and could not know of the facts that underlying the claims presented for the first time in the SAC. Defendants concealed their wrongful acts avoid liability. Not until discovery did Plaintiffs learn, for example, that Defendants manipulated the membership rolls to prevent those long-time members that they thought would oppose the Academic Boycott from voting on the Academic Boycott. Or that Defendants discussed over email how they would pack the National Council with advocates for the academic boycott, and their decision not to disclose their primary intention in their election statements. There was never any indication to plaintiffs that Defendants would intentionally – and admittedly – damage the ASA to promote a boycott that they hoped (and planned) would spread to other associations if only one decent-sized academic association would be the first to pass it. Nor did, or could, any plaintiff or other member know the extent that defendants would dedicate ASA resources on the Academic Boycott and closely related issues. Plaintiffs did not and could not know any of this until the information was uncovered in discovery just before the SAC was filed, and these are just a few examples of claims that plaintiffs did not and could not know of before October of 2017.

The discovery rule is clearly at issue, and the date that the statute of limitations begins to run on each one of these claims is a fact-intensive determination that cannot be made by the judge on a motion to dismiss, and much less a special motion to dismiss under the Anti-SLAPP Act. *Brin v. S.E.W. Inv'rs*, 902 A.2d 784, 795 (D.C. 2006); *Diamond v. Davis*, 680 A.2d 364, 370 (D.C. 1996); *Lively v. Flexible Packaging Ass'n*, 830 A.2d 874, 892 n.29 (D.C. 2003). The Court of Appeal has made clear that a judge cannot dismiss under the Anti-SLAPP Act where there are questions of fact; the judge cannot usurp the role of a jury and decide questions of fact for purposes of determining whether a claim or claims are "likely to succeed" under § 16-5502. Among other things, a dismissal that requires a factual determination at the pleading stage and pursuant to the Anti-SLAPP Act would violate the Seventh Amendment. It would also be in contravention to the legislative intent behind the Anti-SLAPP Act.

As discussed above, the D.C Council sought to prevent *meritless* claims arising from *protected* speech. We were not able to identify any case that upheld, or even addressed, dismissal of any claim under § 16-5502 solely on statute of limitations grounds. Such an outcome would not be on the merits of the claim, and would impose an unfair burden on a plaintiff that presented a potentially meritorious claim. Under any other circumstances, a plaintiff would be afforded at least one opportunity to amend their complaint to plead facts that show that the claim or claims fell within the statute of limitations. Moreover, under any other circumstances, no such determination would even be made at the pleading stage, and particularly not if the discovery rule or another fact-intensive issue, were at issue. To treat these claims differently – to dismiss under the Anti-SLAPP Act, eliminating the opportunity to amend – would violate the Seventh Amendment rights of the plaintiffs, the decision in *CEI v. Mann*, and the intent of Council, who only allowed for dismissal under the Anti-SLAPP Act on the *merits* of a claim.

For all of the reasons detailed above, Plaintiffs respectfully request that this Court deny the Defendants' Special Motions to Dismiss Under the Anti-SLAPP Act.

Respectfully submitted,

Dated: June 14, 2019 Signed: /s/*Jennifer Gross*

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CERTIFICATE OF SERVICE

I certify that on June 14, 2019, I caused to be filed PLAINTIFFS' OMNIBUS OPPOSITION TO DEFENDANTS' SPECIAL MOTIONS TO DISMISS UNDER THE D.C. ANTI-SLAPP ACT with the Clerk of Court for the Superior Court for the District of Columbia through the CaseFileXpress system.

Dated: June 14, 2019 Signed: /s/*Jennifer Gross*