

So What Is Protected Free Speech ... Court of Appeal Rules That Lawsuit Based Upon a Church Homily and Conversations That Took Place Thereafter Were Not Protected Free Speech in a Charitable Fraud Case

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California's anti-SLAPP (Strategic Lawsuits Against Public Participation) statute protects free speech and provides a civil defendant a mechanism to force a dismissal of a case that is based on free speech. A question has arisen, and was responded to by the Court of Appeal in Gazal v. Echeverry (2024) Westlaw 1340844 ("Gazal case"), deals with the reach of the statute in the context of religious free speech. The Gazal case involved an action by Plaintiff Joseph Gazal, a church member, who was inspired by a homily delivered during church services by Deacon Carlos Echeverry. Mr. Gazal eventually donated more than \$1 million to purchase a car and a home for a destitute family based on the homily. Plaintiff brought a lawsuit against the Deacon about five months after making the donations, claiming he was deceived into believing his money would be used to purchase a car and the house for the destitute family, and later learned that the donation funds had been paid to SOFESA, Inc., a nonprofit public benefit corporation founded and led by the Deacon's wife.

Defendant Echeverry filed a Special Motion to Strike Complaint (anti-SLAPP motion) asserting that the homily was protected free speech, and conversations between the Deacon and the plaintiff that occurred after the homily, were private conversations. The Trial Court denied the anti-SLAPP motion finding that the "core injury-producing conduct upon which the plaintiff's claim is premised" upon which the Plaintiff's claims were premised did not rest on protected free speech, but rather on "conduct and speech that was private ... and not directed at a wide public audience." The Deacon appealed and the Court of Appeal affirmed. The Court of Appeal acknowledged that certain protected free speech (i.e., the homily) could be protected, but ruled, as did the Trial Court, that the core of the claim had to do with actions by the Deacon, and the Deacon's wife, that were outside of the homily.

The Gazal case is important in that it does recognize that there may be protected free speech in a church homily that could come within California's anti-SLAPP statute, but it is also clear that conduct, outside of the church, can result in an avoidance of the anti-SLAPP statute.

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