

## Scholarly Commons @ UNLV Boyd Law

---

Nevada Supreme Court Summaries

Law Journals

---

1-1-2003

### Summary of John v. Douglas County Sch. Dist., 125 Nev. Adv. Op. 55

Derrick Harris  
*Nevada Law Journal*

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Constitutional Law Commons](#)

---

#### Recommended Citation

Harris, Derrick, "Summary of John v. Douglas County Sch. Dist., 125 Nev. Adv. Op. 55" (2003). *Nevada Supreme Court Summaries*. 735.

<https://scholars.law.unlv.edu/nvscs/735>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact [youngwoo.ban@unlv.edu](mailto:youngwoo.ban@unlv.edu).

**CONSTITUTIONAL LAW – ANTI-SLAPP STATUTES, FREE SPEECH, SUPREMACY  
CLAUSE**

**Summary**

Appeal from a Ninth Judicial District Court order granting a special motion to dismiss under Nevada’s anti-SLAPP statute, in an employment matter.

**Disposition/Outcome**

District Court’s order affirmed because Nevada’s anti-SLAPP statute – being neutral and procedural, and not undermining any federal interests – applies to federal causes of action, and the plaintiff failed to raise genuine issues of material fact regarding communications protected by the statute.

**Facts and Procedural History**

Greg John (“John”), a security officer with the Douglas County School District (“DCSD”), was first suspended, then terminated, because of his unprofessional behavior. John’s suspension came about in 2003 after a former co-worker told DCSD during his exit interview that John made racial and sexual remarks about students, and that John videotaped special-education students and recorded sexually explicit narrations to accompany the video. Additionally, a fellow employee accused John of sexual harassment. Sexual misconduct training, anger management, and a warning that further unprofessional conduct would result in John’s termination accompanied the two-week unpaid suspension. DCSD also banned John from using the school’s video surveillance equipment. Upset about the disciplinary actions, John filed a union grievance and a subsequent EEOC, both of which were decided in DCSD’s favor. When John failed to cooperate in a 2005 investigation regarding his inappropriate acquisition of confidential student disciplinary records, DCSD fired him.

In 2004, after the EEOC dismissed his claim, John sued DCSD and several employees (collectively, “DCSD”) alleging: (1) religious discrimination; (2) a violation of the Americans with Disabilities Act (“ADA”); (3) an unlawful free-speech restriction under 42 U.S.C. § 1983; and (4) false and defamatory statements. The district court dismissed the state-based defamation claim, but kept alive his three federal claims. Upon his termination, John amended his complaint to include a wrongful termination claim and to add as a defendant the DCSD officer who fired him.

DCSD moved to have the case dismissed under NRS 41.660 because the statute protects the actions of the officials and personnel relating to the investigations of John. Additionally, DCSD asserted all of the allegedly illegal communications actually were truthful and privileged. Finding that DCSD’s actions were protected under NRS 41.660 and that John failed to meet his

---

<sup>1</sup> By Derrick Harris

burden to survive a special motion to dismiss under the statute, the district court granted DCSD's motion. This appeal followed.

## **Discussion**

### *I. Nevada's Anti-SLAPP Statute*

Strategic Lawsuits Against Public Participation (“SLAPPs”) are meritless suits filed “primarily to chill the defendant’s exercise of First Amendment rights”<sup>2</sup> by increasing litigation costs until the defendant’s case is weakened or abandoned.<sup>3</sup> As explained by the Nevada Legislature when amending its anti-SLAPP statute in 1997, SLAPP lawsuits abuse the judicial process by chilling, intimidating, and punishing individuals for their involvement in public affairs.<sup>4</sup> The Court compared anti-SLAPP statutes to the *Noerr-Pennington* immunity doctrine, which grants general immunity to “those who petition all departments of the government for redress.”<sup>5</sup> In Nevada, NRS 41.650 grants civil immunity to persons who engage in “good faith communication in furtherance of the right to petition.”<sup>6</sup>

Nevada’s anti-SLAPP statute is codified at NRS 41.635 through NRS 41.670. Rather than acting as a bar to all substantive claims that might fall under its umbrella, Nevada’s anti-SLAPP statute allows meritorious claims against those whose governmental communications are not in good faith, while prohibiting only those claims intended to abuse other citizens’ rights to petition or communicate with their government.<sup>7</sup> Among the classes of protected communications are those “regarding a matter reasonably of concern to the respective governmental entity”<sup>8</sup> and truthful, or unknowingly false, statements before a governmental body.<sup>9</sup> If a plaintiff files a lawsuit based upon a protected communication, the defendant may file a special motion to dismiss within sixty (60) days.<sup>10</sup>

### *II. Standard of Review*

Specials motions to dismiss under NRS 41.660(2) are treated as motions for summary judgment, and the granting of the motion serves as an adjudication on the merits.<sup>11</sup> Pursuant to *Wood v. Safeway*,<sup>12</sup> the standard of review, like that of customary motions for summary judgment, is de novo.

The Court explained that the party filing the special motion to dismiss under NRS 41.660(2) bears the initial burden of showing that the lawsuit is based upon a “good faith

---

<sup>2</sup> *Dickens v. Provident Life and Acc. Ins. Co.*, 11 Cal Rptr. 3d 877, 882 (Ct. App. 2004) (internal citations omitted).

<sup>3</sup> U.S. Ex Rel. *Newsham v. Lockheed Missiles*, 190 F.3d 963, 970 (9th Cir. 1999).

<sup>4</sup> 1997 Nev. Stat., ch. 387, Preamble, at 1364.

<sup>5</sup> *Empress LLC v. City and County*, 419 F. 3d 1052, 1056 (9th Cir. 2005).

<sup>6</sup> NEV. REV. STAT. § 41.650 (2007).

<sup>7</sup> *Id.* § 41.637.

<sup>8</sup> *Id.* § 41.637(2).

<sup>9</sup> *Id.* § 41.637(3).

<sup>10</sup> *Id.* § 41.660(2).

<sup>11</sup> *Id.* § 41.660(3)-(4).

<sup>12</sup> 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

communication in furtherance of the right to petition.”<sup>13</sup> Once this threshold is established, the burden shifts to the nonmoving party, who must demonstrate a genuine issue of material fact sufficient to survive summary judgment on this issue.<sup>14</sup> If the nonmoving party meets its burden, the case moves on; if not, it is dismissed.

### *III. Nevada’s Anti-SLAPP Statute Applies to Federal Claims*

John argued that Nevada’s anti-SLAPP statute does not apply to his federal claims because federal law preempts the application of state sovereign-immunity statutes to shield against federal civil rights claims. The Court disagreed, holding that Nevada’s anti-SLAPP statute neither undermines federal interests nor serves as a sovereign-immunity statute.

#### *1. The Sovereign Immunity Issue*

The Court easily did away with John’s argument that because state sovereign-immunity laws cannot insulate the state from 42 U.S.C. § 1983 claims,<sup>15</sup> Nevada’s anti-SLAPP statute cannot immunize DCSD from his claims. The Court explained that Nevada’s anti-SLAPP statute is not a sovereign-immunity statute because rather than barring *all* claims, the statute in questions only bars *unmeritorious* claims designed to impede on others’ rights to free speech. Therefore, the anti-SLAPP statute actually aligns with the reasoning of holdings excluding civil rights claims from sovereign-immunity preclusion, so federal law does not preempt its applications to John’s claims against DCSD.

#### *2. The Federal Interest Analysis*

First, the Court held that Nevada’s anti-SLAPP statute is both neutral and procedural, thus giving Nevada courts the right to apply it in cases involving federal substantive claims. The Court turned to California case law in determining that Nevada’s anti-SLAPP statute is procedural. California’s anti-SLAPP statute is similar in purpose and language to Nevada’s statute, and the California Court of Appeals has applied it to federal civil rights claims after finding the statute procedural in nature.<sup>16</sup> In drawing analogies between the California and Nevada laws, the Court highlighted their myriad similarities, including the sixty-day window for filing a special motion to dismiss,<sup>17</sup> the burden-shifting process,<sup>18</sup> and the treatment of the special motions to dismiss as motions for summary judgment.<sup>19</sup> Like rules of civil procedure, the Court reasoned, Nevada’s anti-SLAPP statute simply provides a pretrial mechanism for filtering frivolous claims and does not create any substantive rights or defenses.

---

<sup>13</sup> NEV. REV. STAT. § 41.650; *see Globetrotter Software v. Elan Computer Group*, 63 F. Supp. 2d 1127, 1129 (N.D. Cal. 1999) (noting that “[a] defendant filing an anti-SLAPP motion must make an initial prima facie showing that the plaintiff’s suit arises from an act in furtherance of the defendant’s rights of petition or free speech”).

<sup>14</sup> *See Globetrotter*, 63 F. Supp. at 1129 (recognizing that under California’s anti-SLAPP statute, the nonmoving party must demonstrate a likelihood of prevailing on the merits).

<sup>15</sup> *Ortega v. Reyna*, 114 Nev. 55, 62 n.5, 953 P.2d 18, 23 n.5 (1998).

<sup>16</sup> *Bradbury v. Superior Court (Spencer)*, 57 Cal. Rptr. 2d 207, 213 (Ct. App. 1996); *see generally Vergos v. McNeal*, 53 Cal. Rptr. 3d 647 (Ct. App. 2007).

<sup>17</sup> NEV. REV. STAT. § 41.660(2); CAL. CIV. PROC. CODE § 425.16(b)(1), (f) (West 2004 & Supp. 2009).

<sup>18</sup> *Globetrotter*, 63 F. Supp. at 1129.

<sup>19</sup> NEV. REV. STAT. § 41.660(3); CAL. CIV. PROC. CODE § 425.16(b)(1)-(3).

Regarding neutrality, the Court found the statute to be neutral because it applies to both state and federal claims, and to plaintiffs' claims and defendants' counterclaims alike. Additionally, it applies only to cases invoking the classes of communications enumerated in NRS 41.637. Because the statute is neutral and limited in its application, the Court held, it meets the neutrality standard applying state procedural law to federal claims.<sup>20</sup>

Next, the Court addressed whether application of Nevada's anti-SLAPP statute would defeat or frustrate any substantive federal rights or interests, thus precluding its application altogether.<sup>21</sup> Because anti-SLAPP statutes serve similar purposes as the Federal Rules of Civil Procedure in the "weeding out of meritless claims before trial"<sup>22</sup> and actually protect the right to petition the government with repercussions,<sup>23</sup> the Court held that Nevada's anti-SLAPP statute did not violate any substantive government interests in this case. John's religious discrimination and ADA claims would have survived had he raised genuine issues of material fact regarding DCSD's actions. John's First Amendment claim, stemming from his objection over the removal of his surveillance duties, would have survived had he rebutted DCSD's argument that, as a matter of law, certain speech in the employment setting does not receive constitutional protection.<sup>24</sup>

#### *IV. Nevada's Anti-SLAPP Statute Protects Both Individuals and Government Entities*

John argued in the alternative that the communications between DCSD and its employees were not protected because they were retaliatory and discriminatory, and they were not made to a government agency. The Court held the employee communications were protected because NRS 41.637(2) applies to political subdivisions of the state, as defined by NRS 41.0305,<sup>25</sup> which includes school districts. Additionally, the Court, following California's lead in *Raining Data Corp. v. Barrenechea*,<sup>26</sup> held that employers, like DCSD, also receive protection under Nevada's anti-SLAPP statute provided they can show the lawsuit arose from protected communications, and that the plaintiff fails to raise a genuine issue of material fact.

The defendants presented prima facie cases that their communications were truthful or made without knowledge of falsehood, and that they were of reasonable concern to the school district. The burden then shifted to John to raise genuine issues of material fact regarding these elements, which he failed to do. Thus, the Court held the district court was correct in granting DCSD's special motion to dismiss.

### **Conclusion**

---

<sup>20</sup> See 17A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 124.61 (3d ed. 2009).

<sup>21</sup> *Id.* at ¶ 124.62.

<sup>22</sup> *Lockheed*, 190 F.3d at 972.

<sup>23</sup> *Id.* at 973.

<sup>24</sup> See *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

<sup>25</sup> NEV. REV. STAT. § 41.640 (2007) ("Political subdivision" has the meaning ascribed to it in NEV. REV. STAT. § 41.0305 (2007)).

<sup>26</sup> 97 Cal. Rptr. 3d 196 (Ct. App. 2009).

The Court concluded that, because Nevada's anti-SLAPP statute is neutral and procedural, and because it does not undermine any important federal interests, it applies to federal causes of action as well as state causes of action. Additionally, the Court concluded that the statute protects communications to *all* political subdivisions, including school districts, and employers may seek its protection just as individuals may seek its protection. Thus, the Court concluded that the district court was correct to grant the special motion to dismiss under NRS 41.660(2) because DCSD established a prima face case for protection and John failed to meet his burden of raising a genuine issue of material fact regarding the nature of the communications. Accordingly, the Court affirmed the district court's dismissal of John's complaint.