STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0105

Jeffrey L. Nielsen,
Respondent,

vs.

Stephen Carl Bohnen,
Appellant,

Keith Francis Mueller, et al.,
Defendants.

Filed August 26, 2013
Affirmed
Connolly, Judge
Concurring specially, Johnson, Chief Judge

Washington County District Court
File No. 82-CV-10-6694

Dale M. Wagner, Mark R. Bradford, Bassford Remele, A Professional Association, Minneapolis, Minnesota; and

Thomas W. Pahl, Foley & Mansfield, PLLP, Minneapolis, Minnesota (for respondent)

Sharon L. Van Dyck, Van Dyck Law Firm, PLLC, St. Louis Park, Minnesota; and

Michael R. Quinlivan, Pearson Quinlivan, P.C., Maplewood, Minnesota; and

Robert A. Hill, Robert Hill Law, Ltd., Maplewood, Minnesota (for appellant)

Gary A. Van Cleve, Larkin Hoffman Daly & Lindgren Ltd., Minneapolis, Minnesota (for amicus curiae Minnesota Sheriffs' Association)

Considered and decided by Rodenberg, Presiding Judge; Johnson, Chief Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant moved unsuccessfully for summary-judgment dismissal of respondent's claims on grounds of immunity under Minn. Stat. § 554.03 (2012), under Minn. Stat. § 604A.34 (2012), the *Noerr-Pennington* doctrine, and the qualified-privilege doctrine. He challenges the denial of his motion. Because the district court correctly concluded that appellant is not entitled to immunity from respondent's claims, we affirm.

FACTS

On October 4, 2010, respondent Jeffrey Nielsen saw campaign signs posted by appellant Stephen Bohnen, a candidate for city council. Respondent thought the signs were posted in violation of city ordinances; he removed them to take them to the city hall. One of appellant's campaign volunteers observed the signs on top of respondent's car and followed respondent into a parking lot, where they had a confrontation. The volunteer called appellant, who reported the matter to the sheriff's office. A deputy went to respondent's home. Respondent admitted taking the signs and confronting the volunteer. The deputy told respondent not to remove any more signs and said no charges would be filed.

Appellant objected to the fact that no charges were filed and called the deputy several times to demand that respondent be charged. The deputy discussed the matter with his supervisor, and they agreed that there was no basis to charge respondent. After

the deputy informed appellant of this decision, appellant called the sheriff directly and again insisted that respondent be charged.

The sheriff met with the supervisor and the deputy. The deputy was told to review the case and determine whether there were any grounds to charge respondent, and, if so, to charge him. Respondent was ultimately charged with theft, disorderly conduct, and a right-of-way violation, and he pleaded not guilty to all charges.[1]

Respondent brought this action against appellant, the volunteer, and the county, seeking a declaratory judgment that appellant's signs violated the ordinances and making claims of creating a nuisance, fraud, malicious prosecution, and civil conspiracy.

Appellant moved for summary judgment under Minn. Stat. § 554.01-.04 (2010) (prohibiting strategic lawsuits against public participation and imposing a stay on discovery) (the anti-SLAPP statute); he also sought punitive damages and $100,000 in compensatory damages. Respondent filed an affidavit under Minn. R. Civ. P. 56.05 stating that discovery was not complete. Appellant's motion was denied without prejudice in an order that said he could again move for summary judgment when discovery was complete and respondent could amend his complaint.

Two weeks later, appellant again moved for summary judgment, making the same anti-SLAPP argument and relying on the same facts. A hearing on the motion was held,

[1] The right-of-way violation charge was eventually dropped by the prosecutor, and the theft charge was dismissed by the district court for lack of probable cause. The disorderly conduct charge was tried to a jury, which found respondent guilty. Respondent appealed; the conviction was affirmed. *Nielsen v. State*, No. A13-0260 (Minn. App. Aug. 5, 2013).

but no order resulted because, in response to appellant's motion, the judge recused himself.

Appellant refused to respond to the respondent's discovery requests and moved to quash the subpoenas. Appellant moved a third time for summary judgment, again invoking the anti-SLAPP statute and adding two alternative grounds for immunity: Minn. Stat. § 604A.34 (2010) (conferring immunity on those who, in good faith, seek the involvement of law enforcement) and common-law immunities. Appellant also sought vacatur of the order denying his first summary-judgment motion. While those motions were pending, appellant moved to dismiss the amended complaint and for sanctions against respondent and his attorney. Respondent again filed a rule 56.05 affidavit saying discovery was not complete.

A new district court judge denied appellant's motions on the grounds that the anti-SLAPP statute does not apply to reports to law enforcement; that a fact question as to whether appellant's efforts to have respondent charged were in good faith precluded summary judgment on the Minn. Stat. § 604A.34 claim; and that appellant was not entitled to common-law immunity.

Appellant challenges the denials of his summary-judgment motions, arguing that he is entitled to dismissal of respondent's claims under (1) the anti-SLAPP statute, (2) Minn. Stat. § 604A.34, (3) the *Noerr-Pennington* doctrine, and (4) the qualified privilege doctrine.

D E C I S I O N

A summary judgment decision is reviewed de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). "[S]tatutory construction is a question of law, which we review de novo." *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009).

1. Minn. Stat. § 554.01-.04 (SLAPP) Immunity

The anti-SLAPP statute provides that "[l]awful conduct or speech that is genuinely aimed in whole or in part at procuring favorable government action is immune from liability, unless the conduct or speech constitutes a tort or a violation of a person's constitutional rights." Minn. Stat. § 554.03. It applies "to any motion in a judicial proceeding to dispose of a judicial claim on the grounds that the claim materially relates to an act of the moving party that involves public participation." Minn. Stat. § 554.02, subd. 1. "Public participation" is defined as "speech or lawful conduct that is genuinely aimed in whole or in part at procuring favorable government action." Minn. Stat. § 554.01, subd. 6.

Appellant initially relied on the anti-SLAPP statute to claim immunity, arguing that his conduct was an act involving "public participation" because it was conduct aimed at having charges brought against respondent, which was a "favorable government action." Relying on the anti-SLAPP statute to provide immunity for efforts to have law enforcement charge a third party is decidedly atypical. *See Middle-Snake-Tamarac Rivers Watershed Dist. v. Stengrim*, 784 N.W.2d 834, 838 (Minn. 2010) ("In a typical SLAPP suit, those who oppose proposed real estate development plans find themselves

facing a lawsuit—typically a tort claim such as slander or libel—brought against them with the goal of silencing dissent."); *see also Marchant Inv. & Mgmt. Co. v. St. Anthony W. Neighborhood Org., Inc.*, 694 N.W.2d 92, 94 (Minn. App. 2005) (identifying the purpose of SLAPP as "[t]o protect citizens and organizations from lawsuits that would chill their right to publicly participate in government"). However, we need not address whether SLAPP provides immunity because, for the reasons outlined below, we conclude that Minn. Stat. § 604A.34, not the anti-SLAPP statute, applies here.[2]

2. Minn. Stat. § 604A.34 Immunity

Nine years after enacting SLAPP, the legislature enacted Minn. Stat. § 604A.34 (2012) ("An individual who in good faith seeks assistance from, or reports apparent unlawful conduct to, law enforcement is not liable for civil damages as a result of that action"). Appellant did not mention Minn. Stat. § 604A.34 in his first summary-judgment motion, but in his subsequent motion he relied on it as an alternative basis for immunity.

Because Minn. Stat. § 604A.34 is both more specific and later enacted, it, rather than SLAPP, applies to appellant's situation. *See* Minn. Stat. § 645.26, subd. 1 (2012)

[2] To argue that a SLAPP statute does apply to reports made to law enforcement, appellant relied on cases from five other states: California (*Dickens v. Provident Life & Accident Insurance Co.*, 117 Cal. App. 4th 705, 11 Cal. Rptr. 3d 877 (2004)); Georgia (*Hindu Temple and Community Center of High Desert v. Raghunathan*, 714 S.E.2d 628 (Ga. App. 2011)); Illinois (*Hytel Group Inc. v. Butler*, 938 N.E.2d 542 (Ill. App. 2010)); Massachusetts *(Benoit v. Frederickson*, 908 N.E.2d 714 (Mass. 2009) and *Keegan v. Pellerin*, 920 N.E.2d 888 (Mass. App. 2010)); and Washington (*Lowe v. Rowe*, 294 P.3d 6 (Wash. App. 2012), and *Bailey v. State*, 191 P.3d 1285 (Wash. App. 2008)). But none of these cases mentions a state statute comparable to Minn. Stat. § 604A.34 (applying specifically to good-faith reports to law enforcement).

(providing that specific provisions in the same or another law prevail over general provisions); *AFSCME Council No. 14, Local Union No. 517 v. Washington Cnty. Bd. of Comm'rs*, 527 N.W.2d 127, 132-33 (Minn. App. 1995) (holding that "[i]f two statutes are in conflict, the more specific provision controls the more general" and "[t]he provision enacted most recently controls"). The distinction is important because the statutes conflict in three significant ways: (1) SLAPP provides compensatory and punitive damages as well as attorney fees and costs, while Minn. Stat. § 604A.34 provides only attorney fees and costs; (2) SLAPP suspends discovery and shifts the burden of proof to the party opposing immunity, while Minn. Stat. § 604A.34 does neither; and (3) Minn. Stat. § 604A.34 imposes a good-faith requirement on an individual seeking assistance or reporting conduct, while such a requirement is notably absent from SLAPP.

The district court, relying on *El-Ghazzawy v. Berthiaume*, 708 F. Supp. 2d 874 (D. Minn. 2010), concluded that summary judgment was precluded by genuine issues of material fact as to whether appellant acted in good faith when he urged law enforcement to charge respondent. *See* Minn. Stat. § 604A.34 (providing immunity to "[a]n individual who in good faith seeks assistance from, or reports apparent unlawful conduct to, law enforcement . . . ." *El-Ghazzawy* noted that, while no Minnesota appellate court has yet addressed the specific "good faith" requirement of Minn. Stat. § 604A.34, the supreme court has held that a person who acts in reckless disregard of the truth cannot act in good faith. *El-Ghazzawy*, 708 F. Supp. 2d at 887 (citing *State v. Doyle*, 336 N.W.2d 247, 252 (Minn. 1983)). *El-Ghazzawy* also observed that whether good faith exists is a question of fact. *Id.* (citing *Cokley v. City of Otsego*, 623 N.W.2d 625, 630 (Minn. App. 2001)).

El-Ghazzawy concerned a pawn shop employee who made defamatory statements about an individual, alleging that he sold counterfeit goods to the pawn shop; the individual sued the shop and the employee, who sought immunity under Minn. Stat. § 604A.34. *El-Ghazzawy*, 708 F. Supp. 2d at 879, 887. Evidence showed that: (1) the employee, who had inspected only one item, asserted to the police that all the items sold by the individual were counterfeit; (2) the employee knew that the item had been inspected by another employee, who believed it to be authentic; (3) the employee told police that the individual was in the shop attempting to sell five additional counterfeit items, none of which the employee had inspected; (4) the employee did not use available resources, including the employee who had authenticated the item, to determine the authenticity of the items offered for sale; and (5) the employee's inspection of the item he alleged to be counterfeit lasted less than 90 seconds. *Id.* at 887-88. "[V]iewing the evidence in the light most favorable to [the individual], there is a genuine issue of material fact regarding [the employee's] good faith. Therefore, [he has] not established [his] entitlement to immunity pursuant to [Minn. Stat. §] 604A.34." *Id.* at 888.

The district court reached the same conclusion concerning appellant.

> [A] jury could reasonably conclude [appellant] influenced [the sheriff] to bring charges against [respondent] that might not otherwise have been brought for the improper purpose of retaliation . . . . [T]here are disputed facts regarding [appellant's] role in establishing probable cause and whether his statements to . . . [c]ounty officials were for a proper purpose and occasion.
> . . . The question of whether [appellant] acted in good faith in seeking assistance from law enforcement, thereby entitling him to immunity under [the statute], is a question of fact for the jury and as such, summary judgment is not appropriate.

Appellant argues that "The record . . . conclusively establishes [his] good faith." But both the deputy's report of the investigation and his testimony refute that argument. The report states:

> [Appellant] informed me he wanted [respondent] charged with something because of his conduct not only with [the volunteer] but because he took the signs out of the ground. I informed [appellant] that because of the situation and the totality of the circumstances, I would not be charging [respondent.] [Appellant] was not happy with this and stated the signs were on private property and posted legally and [respondent] had no right to remove them. I informed [appellant] that [respondent] believed they were on public property and he was acting on what he believed was the right thing to do from what he claims he was told by Public Works and his attorney. I also stated [respondent's] response to [the volunteer] was also questionable [as a basis for a charge] due to the fact [that] he stated he was being tailgated and felt threatened because this person also pulled over when he did.

The deputy testified:

> [W]e got [appellant] calling in to the sheriff's office saying . . . .there's a crime that's been committed here. I [appellant] want him [respondent] charged because I've had problems with this over the past . . . .*[Appellant] says that he put all this money into these trail cams to try and catch people doing things to his signs so he's invested a lot and now he finally catches somebody doing something to his signs so he wanted charges. He was adamant because he put a lot of resources into this.*

(Emphasis added.)

But appellant answered "Yes" when asked, "Is it fair to say that you had an honest belief that based on what the [volunteer] was telling you, that you should, as a citizen,

report it to the law enforcement authorities?". Thus, there are fact issues as to why appellant reported the matter to law enforcement and whether he acted in good faith.

There are also fact issues as to whether appellant lied when he told the deputy about respondent's effort to take the volunteer's property and where appellant got that information. When appellant was asked, "Did you tell any law enforcement official, [the d]eputy . . . or someone else, that [respondent] had attempted to reach into [the volunteer's] vehicle?" Appellant answered, "No, but I did ask [the deputy] if he had heard that. I heard it from a third party and I, for the life of me, I've been trying to recall who told me. I could probably give you three, four names of who may have mentioned it to me. But I didn't hear that from [the volunteer], and I didn't represent that as a fact." But the deputy, in his report, said that appellant "informed me of some information that [the volunteer] told him . . . [respondent] tried to possibly take [the volunteer's] phone or camera."

The district court did not err in concluding that fact issues on the issue of appellant's good faith precluded summary judgment on his Minn. Stat. § 604A.34 immunity claim.

3. *Noerr-Pennington* Immunity

Appellant also claims immunity under the First Amendment of the U.S. Constitution, which protects the right "to petition the Government for redress of grievances." U.S. Const. amend. I. "The *Noerr-Pennington* doctrine immunizes acts related to the constitutional right to petition the courts for grievance, unless the act is a

mere sham." *Select Comfort Corp. v. Sleep Better Store, LLC*, 838 F. Supp. 2d 889, 896 (D. Minn. 2012).

> Generally, the *Noerr-Pennington* doctrine protects a citizen's First Amendment right to petition the Government for redress of grievances by immunizing individuals from liability for injuries allegedly caused by their petitioning of the government or participating in public processes in order to influence governmental decisions. The doctrine provides that private individuals' efforts to induce government action in their own self-interest cannot be the basis of liability even if their conduct is motivated by an anticompetitive purpose or injures a competitor. Under the doctrine, parties are generally immune from liability for filing suits to advocate their causes and points of view respecting resolution of their business and economic interests vis-à-vis their competitors.

Kellar v. VonHoltum, 568 N.W.2d 186, 192-93 (Minn. App. 1997) (quotation and citations omitted), *review denied* (Minn. Oct. 31, 1997).

The district court concluded that *Noerr-Pennington* protection applies to those seeking to influence the legislative branch of government, not the executive branch, as appellant did when he influenced law enforcement to charge respondent.[3] Appellant asserts that *Noerr-Pennington* "applies to <u>any</u> governmental petitioning . . . ." For this assertion, he relies in part on language in *Kellar:* "'[w]hether applying *Noerr* as an antitrust doctrine **or invoking it in other contexts** . . . .'" *Id.* at 193 (quoting *Professional Real Estate Investors, Inc. v. Columbia Pictures*, 508 U.S. 49, 59, 113 S. Ct. 1920, 1927 (1993)). But *Kellar* relied on the emphasized phrase to reject the "argument that the *Noerr-Pennington* doctrine applies only in the context of antitrust litigation";

[3] If *Noerr-Pennington* did apply to those who seek assistance from or report unlawful conduct to law enforcement, there would have been no need to enact Minn. Stat. § 604A.34.

neither *Kellar* nor *Professional Real Estate Investors* supports appellant's view that *Noerr-Pennington* "applies to any governmental petitioning . . . ." The fact that *Noerr-Pennington* does not apply exclusively in the antitrust context does not equate to its application to every request made to any governmental entity. Moreover, both cases are readily distinguishable on their facts. *See Professional Real Estate Investors*, 508 U.S. at 66, 113 S. Ct. at 1931 (affirming decision that copyright-infringement action brought by movie producer against hotel that distributed movies for guests to watch was not sham because of "the objective legal reasonableness of the litigation"); *Kellar*, 568 N.W.2d at 193 (noting that, while the *Noerr-Pennington* doctrine could have been applied to bar abuse-of-process and malicious-prosecution claims in action brought by applicant for bank charter against officers of established bank who had unsuccessfully opposed the charter, the claims were properly barred on other grounds). Thus, neither *Professional Real Estate Investors* nor *Kellar* had anything to do with a report made to law enforcement or an action based on such a report, and neither supports appellant's position.

Respondent's claims against appellant are not barred by *Noerr-Pennington.*

4. Qualified-Privilege Immunity

> A qualified privilege for good-faith reports of suspected criminal activity made to the police would serve the public interest, despite the risk that some reports might be defamatory. . . . A qualified privilege may exist when an individual makes a good faith report of suspected criminal activity to law enforcement officials. Such a privilege applies, however, when communication is made with probable cause and for a proper purpose and occasion.

Smits v. Wal-Mart Stores, Inc., 525 N.W.2d 554, 557 (Minn. App. 1994) (citations omitted), *review denied* (Minn. Feb. 14, 1995).[4] The qualified privilege doctrine pertains to defamation claims. *See, e.g.*, *id.* at 555. Respondent did not bring a defamation claim against appellant. Thus, qualified privilege has no application here.

The district court correctly concluded that appellant has not shown any basis for immunity against respondent's claims and denied summary judgment on that basis.

Affirmed.

[4] Respondent asserts that appellant did not argue to the district court that he was protected by the qualified privilege doctrine; he argued only that he was protected by the absolute privilege granted to participants in judicial proceedings. Appellant does not refute this assertion in his reply brief. Thus, this issue is arguably not properly before us. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that the appellate court generally addresses only matters presented to and considered by district court). However, we address it in the interest of completeness.

JOHNSON, Chief Judge (concurring specially)

I concur in the opinion of the court. I write separately because I believe that the district court's ruling with respect to the anti-SLAPP statute should be affirmed for a different reason. In my view, Bohnen may seek immunity under both the anti-SLAPP statute, Minn. Stat. § 554.01-.05 (2012), and the statute that immunizes good-faith reports to law enforcement, Minn. Stat. § 604A.34 (2012). But Bohnen's argument under the anti-SLAPP statute ultimately fails because that statute is not broad enough to encompass the facts of this case.

A.

In his answer, Bohnen pleaded multiple affirmative defenses, including the defenses of immunity under sections 554.01-.05 and immunity under section 604A.34. Bohnen is permitted to plead in the alternative. *See* Minn. R. Civ. P. 8.05(b). Likewise, he is not prohibited from seeking summary judgment under both statutes. There is no authority for the proposition that Bohnen, having pleaded both affirmative defenses, must elect one immunity statute or the other when moving for summary judgment. *Cf. Christensen v. Eggen*, 577 N.W.2d 221, 224 (Minn. 1998) (holding that doctrine of election of remedies applies if party "has pursued the chosen course to a determinative conclusion or has procured advantage therefrom").

The caselaw concerning conflicts between statutes, by which one statute may preempt or supersede another statute, is inapplicable in this situation. That body of caselaw applies only if there is a conflict between two statutes and the conflict is

"irreconcilable." *Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 649 (Minn. 2012). But "[a] statute is to be construed, whenever reasonably possible, in such a way as to avoid irreconcilable differences and conflict with another statute." *Miller v. Colortyme, Inc.*, 518 N.W.2d 544, 551 (Minn. 1994); *see also Schatz*, 811 N.W.2d at 649-50; *Hyatt v. Anoka Police Dep't*, 691 N.W.2d 824, 830 (Minn. 2005). Two statutes are in irreconcilable conflict only if they are mutually exclusive in the sense that one statute necessarily would lead to one result while the other statute necessarily would lead to the opposite result. *See, e.g.*, *Hyatt*, 691 N.W.2d at 827-31 (holding that statute imposing liability on dog owner conflicts in part with statute allowing law-enforcement officers to use reasonable force in arrest); *Janklow v. Minnesota Bd. of Exam'rs for Nursing Home Adm'rs*, 552 N.W.2d 711, 715-18 (Minn. 1996) (holding that statute prohibiting termination of whistleblower conflicts with statute providing for governmental immunity).

Sections 554.01-.05 and section 604A.34 are not in irreconcilable conflict. To be sure, the two statutes apply in different situations and give rise to different consequences. *See supra* at 6. But those differences do not cause the statutes to be in irreconcilable conflict. Each statute operates independently of the other. It is conceivable that both statutes might provide immunity in a particular case, that only one statute might do so, or that neither might do so. The statutes are not mutually exclusive. Even though section 604A.34 is a closer fit to the facts of this case, both statutes may be analyzed without affecting the analysis of the other statute.

Thus, I believe that it is necessary to consider Bohnen's argument by determining whether the anti-SLAPP statute provides him with immunity against Nielsen's claims.

B.

Minnesota's anti-SLAPP statute was enacted to protect individuals and organizations from strategic lawsuits against public participation, also known as SLAPP lawsuits. "In a typical SLAPP suit, those who oppose proposed real estate development plans find themselves facing a lawsuit—typically a tort claim such as slander or libel—brought against them with the goal of silencing dissent." *Middle-Snake-Tamarac Rivers Watershed Dist. v. Stengrim*, 784 N.W.2d 834, 838 (Minn. 2010); *see also Nexus v. Swift*, 785 N.W.2d 771, 776 (Minn. App. 2010) (applying anti-SLAPP statute to defendant's opposition to proposed location of residential treatment facility for juvenile sex offenders); *Marchant Inv. & Mgmt. Co. v. St. Anthony W. Neighborhood Org., Inc.*, 694 N.W.2d 92, 93 (Minn. App. 2005) (applying anti-SLAPP statute to neighborhood organization's opposition to design of proposed real estate development). The goal of a SLAPP lawsuit generally is to prevent "'citizens from exercising their political rights or to punish them for having done so.'" *Stengrim*, 784 N.W.2d at 838 (quoting George W. Pring, *SLAPPs: Strategic Lawsuits Against Public Participation*, 7 Pace Envtl. L. Rev. 3, 4-6 (1989)). As a consequence, SLAPP lawsuits tend to "chill" political involvement and deter citizens from participating "'freely and confidently in the public issues and governance of their town, state, or country.'" *Id.* at 839 (quoting George W. Pring & Penelope Canan, *"Strategic Lawsuits Against Public Participation" ("SLAPPS"): An*

Introduction for Bench, Bar and Bystanders, 12 Bridgeport L. Rev. 937, 943 (1992)). A more expansive definition of a SLAPP lawsuit is a lawsuit that

> "(1) involve[s] communications made to influence a government action or outcome, (2) which result[s] in civil lawsuits (complaints, counterclaims, or cross-claims) (3) filed against non-governmental individuals or groups (4) on a substantive issue of some public interest or social significance" to intimidate individuals and organizations that speak out against corporate decisions, development projects, government actions or operations, or other activities that affect their financial interests.

Carson Hilary Barylak, Note, *Reducing Uncertainty in Anti-SLAPP Protection*, 71 Ohio St. L.J. 845, 846 (2010) (quoting George W. Pring & Penelope Canan, *SLAPPs: Getting Sued for Speaking Out* 209 (1996)).

As the supreme court has recognized, the scope of Minnesota's anti-SLAPP statute is limited by the requirement that the claim or claims alleged in a SLAPP lawsuit must "'materially relate[] to an act of the moving party that involves public participation.'" *Stengrim*, 784 N.W.2d at 841 (quoting Minn. Stat. § 554.02, subd. 1). This limiting principle ensures that the anti-SLAPP statute is not applied in any overly broad manner. *See id.* Nonetheless, "[d]iscerning between a SLAPP action and a legitimate lawsuit may present challenges." *Id.*

When determining whether the anti-SLAPP statute applies, a court must identify the pending claims so that the court can determine whether they "materially relate[] to an act of the moving party that involves public participation." Minn. Stat. § 554.02, subd. 1. In his second amended complaint, Nielsen alleged two claims against Bohnen: abuse of process, based on Bohnen's initiation of a prosecution of Nielsen, and nuisance, based on

Bohnen's installation of campaign signs in Nielsen's neighborhood. Neither of these claims materially relates to an act of public participation by Bohnen. The first act was not public in nature because Bohnen was not "exercising [his] political rights" or "participat[ing] . . . in the public issues and governance of [his] town, state, or country." *Stengrim*, 784 N.W.2d at 838-39 (quotations omitted). Rather, Bohnen was conveying information about a specific incident that he believed to be unlawful. The second act was public in the sense that it concerned politics, but it did not consist of "conduct or speech that is genuinely aimed in whole or in part at procuring favorable government action," which is both the definition of "public participation" and the operative language of the section that confers immunity on defendants in SLAPP lawsuits. *See* Minn. Stat. §§ 554.01, subd. 6, .03. Rather, Bohnen was seeking to persuade individual citizens to vote for certain candidates in an election, which would be a favorable action by voters, not by the government. Furthermore, neither of Nielsen's claims materially relates to the typical type of public participation protected by the anti-SLAPP statute, opposition to a proposed real estate development. *See Stengrim*, 784 N.W.2d at 838. Thus, the anti-SLAPP statute does not apply to the claims presently pending in this case.

For these reasons, I conclude that the district court did not err by rejecting Bohnen's argument for immunity under the anti-SLAPP statute.