



# SLAPP

## Strategic Lawsuit Against Public Participation



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## Strategic Lawsuit Against Public Participation

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# Center for Health, Environment & Justice

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Mentoring a Movement

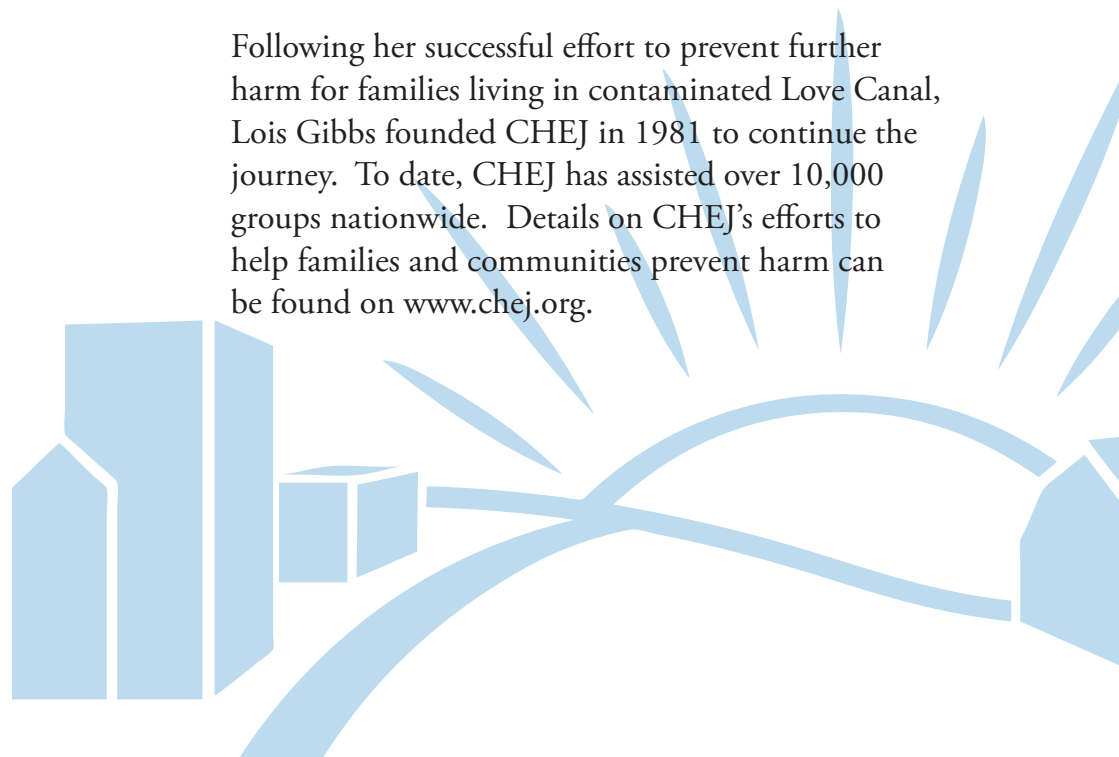
Empowering People

Preventing Harm

## **About the Center for Health, Environment & Justice**

CHEJ mentors the movement to build healthier communities by empowering people to prevent the harm caused by chemical and toxic threats. We accomplish our work by connecting local community groups to national initiatives and corporate campaigns. CHEJ works with communities to empower groups by providing the tools, strategic vision, and encouragement they need to advocate for human health and the prevention of harm.

Following her successful effort to prevent further harm for families living in contaminated Love Canal, Lois Gibbs founded CHEJ in 1981 to continue the journey. To date, CHEJ has assisted over 10,000 groups nationwide. Details on CHEJ's efforts to help families and communities prevent harm can be found on [www.chej.org](http://www.chej.org).



# Introduction

The Center for Health, Environment, and Justice (CHEJ) has developed this fact pack on Strategic Lawsuits Against Public Participation (SLAPP) in response to numerous request for information that we have had on this topic.

We have considered materials from nonprofit organizations, government agencies, consulting companies, newspapers, and journals in an effort to provide a thorough introduction to the issues. We have included articles and information that we believe will give you the best ideas and information to educate yourself and others.

In this fact pack you will learn about Strategic Lawsuits Against Public Participation (SLAPP); anti-SLAPP legislation; people who were successful in fighting a SLAPP; current SLAPP news; and organizations that also share your cause.

Our hope is that reading this fact pack will be the first step in the process of empowering your community to protect itself from environmental health threats. CHEJ can help with this process. Through experience, we've learned that there are four basic steps you'll need to take:

1. Form a democratic organization that is open to everyone in the community facing the problem.
2. Define your organizational goals and objectives.
3. Identify who can give you what you need to achieve your goals and objectives. Who has the power to shut down the landfill? Do we need to conduct a health study? Do we need to do more testing? It might be the head of the state regulating agency, city council members, or other elected officials.
4. Develop strategies that focus your activities on the decision makers, the people, or person who has the power to give you what you are asking for.

CHEJ can help with each of these steps. Our mission is to help communities join together to achieve their goals. We can provide guidance on forming a group, mobilizing a community, defining a strategic plan, and making your case through the media. We can refer you to other groups that are fighting the same problems and can provide technical assistance to help you understand scientific and engineering data and show you how you can use this information to help achieve your goals.

If you want to protect yourself, your family, and your community, you need information, but equally important is the need to organize your community's efforts.

Thank you for contacting us.

# DAVID and GOLIATH

The biblical battle between David and Goliath could be retold in courtrooms across the nation as small organizations and individuals were sued by large corporations for speaking their mind.

Like David, these organizations and individuals may appear to be unprepared to take on the giant. However, with the right tools and knowledge they were able to defeat the great intimidator.

We hope that the following pages will help you in your own battle against Goliath-like corporations that try to suppress your voice with Strategic Lawsuits Against Public Participation (SLAPP).



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# Chapter 1

## What is a SLAPP?

### What is a SLAPP?

SLAPP is an acronym for, Strategic Lawsuit Against Public Participation. It is a legal tactic that corporations, businesses, or developers use against non-governmental groups or individuals to intimidate them into silence.

Harm of SLAPPs: Even when losing in court, SLAPPs can be effective out of the court. SLAPPs can:

- Intimidate through fear and funds—the fear of a multi-million-dollar liability; the cost of litigation and attorneys; and the loss of employment, insurance, time, resources, and personal security
- Harm to overburdened courts—the average SLAPP takes three years to be dismissed
- Harm to government—SLAPPs effectively drive people to “drop out” of political life; they destroy representative democracy

Criteria that needs to be met for the court to classify a SLAPP:

- Actions communicated to influence government action or outcome
- Resulted in civil lawsuits
- Lawsuit filed against non-governmental individual or group
- Issue is of public interest or social significance

Legal standing for the law suit:

- o Libel
- o Slander
- o Restraint of business

People who are getting SLAPP-ed:

- Citizens—reporting violations of the law to government agencies; criticizing public officials
- Consumers—complaining about their child daycare centers or unsafe milk
- Employees—reporting unfair labor practices or unsafe work conditions
- Humane societies trying to save animals from the pound
- Individuals—standing up for other’s rights
- Parents—criticizing teachers, their children’s grades, even unsafe school bus brakes
- Peaceful picketers and demonstrators
- Residents and community groups—testifying against real estate developments and zoning changes in their neighborhoods

Actions that make you a target for a SLAPP:

- o Circulating a petition
- o Telephoning officials
- o Testifying at hearings
- o Speaking up at a public meeting
- o Criticizing government actions or officials
- o Peacefully picketing demonstrating
- o Serving as a volunteer
- o Simply attending a meeting open to the public
- o Reporting violations of law
- o Campaigning on issues
- o Filing administrative appeals
- o Writing a letter to the editor
- o Supporting public interest campaigns and lawsuits

[www.casp.net](http://www.casp.net)



Most SLAPP cases are dismissed because the actions of the defendant(s) do not constitute libel, slander, or restraint of business. Rather, defendants are exercising their constitutional rights of free speech and the “Right to Petition.”

**Chicago Tribune**  
Sunday, March 24, 1991

### Lawsuits aim to silence public

By James Coates

DENVER—While the thought of litigating over libel to let-tuce brings laughter, legal scholars say Colorado’s bill banning produce-bashing is just the latest effort by big business to silence ordinary citizens with lawsuits demanding prohibitively high damages.

In a study being conducted for the National Science Foundation, University of Denver law school professor Georg Pring found more than 1,000 legal actions in the past decade in which the people were sued for large amounts after confronting a big company or a government body in a public arena.

Pring and his colleague, sociologist Penelope Canan, dubbed the phenomenon SLAPP (Strategic Lawsuit Against Public Participation), and the acronym has stuck through the legal community.

Those who have felt the brunt of such corporate self-defense include Betty Black, a Mineola, NY, homeowner, and a League of Women Voters chapter in Beverly Hills, CA.

Blake was slapped with a \$6.5 million libel suit from a real estate development company for carrying a picket sign to protest plans to cut down a wood for a new subdivision near her house. The Beverly Hills League of Women Voters, whose officers signed a letter to a local newspaper protesting a condominium project, ended up facing a \$63 million defamation suit filed by the developer.

“SLAPPs slap the life out of public debate,” Pring said.

His study looks closely at 228 cases in which 1,464 ordinary citizens were sued for making statements about public policy issues. On average the demand for damages was \$9 million and the case lasted 36 months before disposition.

About 30% of the suits involved SLAPPs between suburban homeowners and developers. A further 20% were fights over

environmental issues or animal rights. The remainder ran the gamut from consumer complaints, to civil rights arguments, to disputes over school policies. Some examples:

- A West Virginian blueberry farmer was hit with a \$200,000 slander suit by the owners of a coal mine after he told federal investigators the mine had polluted a stream that ran through his land. The farmer said the pollution was killing fish in the stream.

- Louisville, CO community activists Betty Johnson circulated a petition urging her small town to reject a proposal for annexation by either Denver or Boulder. Property owners who stood to make money if the annexation was approved sued her for unlimited damages.

- The town council in the tiny town of Hartford, ME, which had \$25,000 in its treasury, was sued for \$1 million by the corporation that owned surrounding farmlands after the council voted to place a six-month moratorium on development.

- A Long Island homeowner whose house is next door to a landfill was sued by the landfill operator, Brookhave. Aggregates, after he put up a sign in his front yard that said, “Dumping is ruining the environment.” The landfill had been cited by the New York attorney general for environmental violations. ... Pring estimates that 80% of all SLAPP suits eventually are thrown out of court on grounds they violate defendants’ constitutional rights to speak freely and to petition their government. He cites this as proof that corporate lawyers file these suits more as a deterrent than out of any hope they can win.

“But just consider what happens to the ordinary Joe or Jill before the case is thrown out,” Pring said. “They spend 36 months worrying about financial ruin. They probably can’t get any kind of a loan with that liability hanging over their head, and many of them probably lose their insurance coverage because insurance companies don’t want to carry somebody who faces a multi-million dollar court judgment.

“Do you think that somebody who has gone through that kind of ordeal is going to be quite as ready to sign the next petition, to carry the next picket sign, to speak their mind at the next city council zoning board hearing?”

## Excerpts from, *SLAPP Happy: Corporations That Sue to Shut You UP*

Published in PR Watch, Second Quarter 1997, Vol. 4, No. 2  
<http://www.prwatch.org/prwissues/1997Q2/slapp.html>

SLAPP suits achieve their objectives by forcing defendants to spend huge amounts of time and money defending themselves in court.

“The longer the litigation can be stretched out . . . the closer the SLAPP filer moves to success,” observes New York Supreme Court Judge J. Nicholas Colabella. “Those who lack the financial resources and emotional stamina to play out the ‘game’ face the difficult choice of defaulting despite meritorious defenses or being brought to their knees to settle. . . . Short of a gun to the head, a greater threat to First Amendment expression can scarcely be imagined.”

“Initially we saw such suits as attacks on traditional ‘free speech’ and regarded them as just ‘intimidation lawsuits,’” Pring and Canan state. “As we studied them further, an even more significant linkage emerged: the defendants had been speaking out in government hearings, to government officials, or about government actions. . . . This was not just free speech under attack. It was that other and older and even more central part of our Constitution: the right to petition government for a redress of grievances, the ‘Petition Clause’ of the First Amendment.”

SLAPP suits threaten the very foundation of citizen involvement and public participation in democracy. “Americans by the thousands are being sued, simply for exercising one of our most cherished rights: the right to communicate our views to our government officials, to ‘speak out’ on public issue,” state Pring and Canan. “Today, you and your friends, neighbors, co-workers, community leaders, and clients can be sued for millions of dollars just for telling the government what you think, want, or believe in. Both individuals and groups are now being routinely sued in multimillion-dollar damage actions for such ‘all-American’ political activities as circulating a petition, writing a letter to the editor, testifying at a public hearing, reporting violations of law, lobbying for legislation, peaceful demonstrating, or otherwise attempting to influence government action.”

## Slapp-Happy Companies

By George W. Pring and Penelope Canan

The New York Times Friday, March 29, 1996

DENVER-- Corporate America complains that lawsuits are crippling productivity. Chrysler is seeking sanctions against lawyer who have filed unsuccessful class-action suits alleging that the company put faulty brakes in cars. A California referendum that would have capped fees for lawyers who represent injury victims was narrowly defeated on Tuesday. Under industry pressure, the Senate passed a tort reform bill limiting damages in lawsuits involving faulty products.

One might almost believe that corporations are constant victims of lawsuits. But they are actually doing much of the suing.

More and more often, the companies’ targets are neighborhood groups, environmentalists, consumer watchdogs, good-government groups, homeowners’ associations and individuals. Their sin? Exercising their First Amendment right “to petition the Government” by speaking out at public hearings or contacting their elected representatives about corporate or government misdeeds.

Lawyers and judges call such suits Slapps, for “strategic lawsuits against public participation.” A nationwide study we recently completed for the national Science Foundation found that there were virtually no such suits before 1970, but since then tens of thousands of Americans have been sued and untold thousands have been silenced by threats.

A company filing a suit will usually allege defamation, business interference or conspiracy. But these accusations are just the window dressing necessary to get court attention.

The most frequent Slapps are filed by real estate developers against neighborhood groups and residents who oppose giving them building permits. For instance, SRW Associates of Woodbury, L.I. filed an \$11 million suit against 9 community groups and 16 individuals who testified against a proposed development at a public hearing. (The suit was dismissed.)

Corporations sue customers for filing complaints with government consumer protection offices. Businesses sue women’s rights groups, civil rights organizations and unions for pointing out discrimination, and work place violations. “Eco-Slapps” are a risk for environmental groups that take on polluting companies’ toxic dumps, loggers and even zoos. The Sierra Club has faced 10 such suits.

Perhaps most troubling, government agencies and employees are suing critics. In West Contra Costa, Calif., the sewer district filed a \$42 million suit against a resident, Alan LaPointe, and 490 unidentified John Does for opposing its plans to build an incinerator.

The good news is that Slapps are losers; most are dismissed. But a judge's decision is often not the issue. Legal costs can devastate individuals and volunteer groups. As one executive who filed a suit told us, "There should be a price for speaking out against us."

Recognizing that public participation is essential to democracy, 10 states, including New York, have passed laws against Slapps. New York requires a plaintiff to prove that the defendant acted with malice and "reckless disregard for the truth." If a judge rules that a case was brought for purposes of intimidation, the plaintiff can be forced to pay damages and the defendant's legal costs. But only Congress can protect everyone's rights; it should take up a similar Federal bill quickly.

For now, some companies and their lawyers are getting a taste of their own medicine. The legal profession's newest growth industry is "Slapp-backs"—countersuits filed by Slapp victims for abuse of the courts and violation of First Amendment rights.

WORC Waste Watch

## Have You Been "SLAPP"ed Lately?

Powder River Basin Resource Council

The Rissler and McMurry Company recently filed suit against residents in Capsser, Wyoming working to save a scenic and historical mountain. The company charged them with libel and slander because they wrote letters to the editor, commented on permit applications, and spoke before Wyoming's Department of Environmental Quality. The practice of filing Strategic Lawsuits Against Public Participation (SLAPP) is becoming a common corporate tactic aimed at stopping citizens from fully participating in decisions that affect lives and property. These lawsuits are generally frivolous, but they can effectively stifle the public.

PRBRC members believe SLAPPs are an indication that citizens have been effective in challenging a traditional base of power in the community. SLAPPs are also generally an act of desperation to regain some of that traditional power. But responding to a SLAPP takes courage. PRBRC member Cathy Killean and the other filed for a dismissal of this case and it was granted. They haven't "shut-up." They're still working hard, filing comments and speaking out. Several are also considering SLAPPING back with a \$13 million suit against the original SLAPP filer.

## Excerpts from, “Question Corner: Can I be sued?”

NYCAP News, Fall 1991

Toxics in Your Community Newsletter (Citizens Environmental Coalition), Summer 91; Coalition Against Malicious Lawsuits, PO Box 751, Valley Stream, NY 11582; New York Law Journal, p. 22, 6/26/91; Sierra Atlantic, Summer 91; Newsweek, 3/590.

“SLAPP suits are fundamentally different from other types of lawsuits because they seek to stifle legitimate political expression,” said NYS Attorney General Robert Abrams in a 1989 speech. “The potential ramifications of these SLAPP suits demand special attention because they represent an attack on the First Amendment rights which are at the heart of our democracy... They range attacks on constitutionally protected free speech and the right to petition other government for redress of grievances, to much more subtle attacks involving allegations of malicious prosecution or interference with business.”

Despite the increasingly ominous phenomenon of these suits, citizens generally win them or get them dismissed as groundless as few recent cases illustrate.

In an April 1991 decision, State Supreme Court Justice Nicholas Colabella dismissed a lawsuit by a developer against The Nature Conservancy in North Castle (Westchester County) because the developer was attempting to “harass or maliciously injure” the defendant.

In a recent Manhattan case (Entertainment Partners Group, Inc. v. Davis), block association leaders opposed a special zoning permit to operate a restaurant and night club because of traffic and noise issues. The community leaders and their pro bono attorney were sued for interfering with the ability of the night club owners to exercise a business opportunity.

Justice Lebedeff ruled that this lawsuit “... would set a dangerous precedent not only in the area of constitutional rights but also in the area of environmental protection. A developer or business owner cannot be permitted to use the courts to stifle legitimate activity by community groups, which generally have limited economic resources to sue in their defense.”

The judge dismissed the SLAPP suit and awarded sanctions and legal fees to be paid by the night club partners who brought the suit.

Do not be afraid of suits by pesticide users or other polluters. Don't let them intimidate you. SLAPP suits rarely stand up.

## I've been SLAPP-ed, now what?

If you are served with a complaint that you believe to be a SLAPP, you should seek legal assistance immediately. Successfully filing and arguing a motion to strike can be complicated, and you and your lawyer need to move quickly to avoid missing important deadlines. You should file your motion to strike under the anti-SLAPP statute within sixty days of being served with the complaint.

(<http://www.dmlp.org/legal-guide/anti-slapp-law-california>)

### DEFENDING AGAINST A SLAPP

There are several stages to SLAPP litigation. The California Anti-SLAPP Project (CASP) represents clients whose free speech rights have been threatened, from the first responsive pleading through the appellate process. You can expect some, or all, of the following key events in defending against a SLAPP:

- **Filing a Response** You have a limited amount of time (typically, 30 days) to file and deliver “an initial responsive pleading.”
  - **Filing a Special Motion to Strike.** This motion (also called an “anti-SLAPP motion”) generally must be filed 60 days from the date the complaint is served (received), and is the best way to put an end to a SLAPP early in the proceedings. Filing an anti-SLAPP motion is also considered a first responsive pleading (as discussed above).
  - **Dealing with Discovery.** Discovery is the process by which parties formally gather information from each other in a lawsuit, but it is stayed (suspended) by the filing of a special motion to strike.
  - **Opposition.** Nine court days before the hearing on your motion, the plaintiff must file and serve its legal arguments and evidence in opposition to your motion.
  - **Reply.** Five court days before the hearing on your motion, you can file and serve your reply to the plaintiff’s opposition. This may include legal arguments, additional evidence, and your objections to the plaintiff’s evidence.
  - **Hearing.** At the hearing on your motion, the lawyers for each side (or the parties, if they are not represented by counsel) can make their oral arguments before the judge and respond to the judge’s questions and concerns (if any). Possible outcomes:
    - **Order by the Court.** After a hearing on the special motion to strike, the judge will issue an order either granting or denying the motion. An order granting the special motion to strike will dismiss the applicable claims. If the court grants the motion, the defendant is entitled to an award of attorney’s fees. If there are multiple “causes of action” (claims), the motion may be granted as to some and denied as to others.
    - **Appeal.** After the ruling on a special motion to strike, either party can immediately appeal the Court’s ruling. An appeal should be considered when the motion is denied. If an appeal is not pursued, the lawsuit may move into the trial phase.
- Other considerations when defending against a SLAPP:
- **Insurance.** Frequently, a SLAPP victim’s homeowner’s, renter’s or other insurance policy will cover, or potentially cover, the costs of defending against a SLAPP. Depending upon the facts and circumstances of your case and the provisions of your insurance policy, it may be advantageous to report the SLAPP to your insurer. CASP attorneys have many years of experience dealing with insurance companies in the SLAPP context, and we often work together with adjusters and insurer-appointed co-counsel to fight a SLAPP.
  - **Dealing with Co-defendants.** You may not be the only person being sued by a SLAPP filer. A common strategy is for the filer to sue all vocal opposition and name multiple defendants in the suit. In addition, the SLAPP filer can sue numerous as yet unnamed “DOE” defendants. This means that the SLAPP filer can, later in the case, replace a “DOE” defendant with a named individual. If you are one of a number of people being sued, you should consider joining together with the other defendants to file the anti-SLAPP motion. If other defendants have their own lawyer, CASP can work with counsel for co-defendants as part of your representation.
  - **Dealing with the Press.** Certain cases will be of interest to the media. Getting favorable media coverage may help your case. CASP can help clients develop and implement a media relations strategy.
  - **SLAPPING Back.** A SLAPPback is a lawsuit filed after a SLAPP has been dismissed that seeks monetary damages,

including pain and suffering, from the SLAPP filer on the theory that the original SLAPP constituted malicious prosecution. CASP can help you determine if your case merits a SLAPPback.

<http://www.casp.net/sued-for-freedom-of-speech-california/defending-against-slapp/#back>

## SLAPP BACK, PEOPLE

The Miami Herald

Friday, May 29, 1992

The first Amendment, that majestic genius of a paragraph, speaks to “the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” The average person might assume that to be a right to be heard without intimidation.

Not so. Business, especially developers, is coming to use a forceful weapon—the lawsuits—against those who speak their minds in public. As detailed by staff writer Pamela Ferdinand this week, at least 18 individuals or civic groups in Florida have been struck by SLAPP suits—strategic lawsuits against public participation.

Speak up and you could be accused of slander, tortious interference with a business, conspiracy, and more. Defendants include a Plantation woman who opposed a semi-rural development and a Keys activist who fought a rock mining operation. It's quite true that things said at public hearings might rely more on emotion than fact. And sometimes protesters seek other ways of objecting, such as picketing.

Opposition is not pleasant for business, but disagreement is a cost—and benefit—of democracy. While some objectors may cross a line of acceptable behavior, the chilling of public participation is the graver concern. Attorney General Bob Butterworth has intervened in the Florida Supreme Court appeal of a Gainesville SLAPP suit, arguing that such suits interfere with First Amendment rights.

Some defendants SLAPP back, filing suits for such wrongs as malicious prosecution. In Florida, though, the only immediate sanction against frivolous suits is a law requiring lawyers and their clients to reimburse a defendant's costs. Those measures don't go as far as permitting punitive damages, as some states do. However, Mr. Butterworth's deputy, Peter Antonacci, says that his office is waiting for the Supreme Court ruling in hopes of guidance on the constitutional issues before proposing legislation.

Mr. Butterworth's involvement is commendable. Too few Americans take the time to vote, let alone take the time to voice opinions about government decisions. The law of course must accommodate businesses that have been truly wronged. But it cannot permit lawsuits, or the threat of lawsuits, to muzzle vigorous debate.

# Chapter 2

## Anti-SLAPP Statutes

### Anti-SLAPP Statutes

Fortunately, some states have adopted legislation that inhibits SLAPPs. Although known in some circles as SLAPP-laws, for clarification we will refer to them as anti-SLAPP laws.

An “anti-SLAPP” law is meant to provide a remedy from SLAPP suits. Under most such statutes, the person sued makes a motion to strike the case because it involves speech on a matter of public concern. The plaintiff then has the burden of showing a probability that they will prevail in the suit. -Reporters Committee for Freedom of the Press  
Commonly Protected by anti-SLAPP Statutes

Although people often use terms like “free speech” and “petition the government” loosely in popular speech, the anti-SLAPP law gives this phrase a particular legal meaning, which includes four categories of activities:

1. Any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law;
2. Any written or oral statement or writing 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;
3. Any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; or
4. Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(<http://www.dmlp.org/legal-guide/anti-slapp-law-california>)

### Common benefits of anti-SLAPP statutes:

- Protection for speech on issues of public significance and/or activities aimed at petitioning the government for action on economic, social, and political issues;
- Procedural mechanisms for obtaining early dismissal of a SLAPP;
- Recovery of attorneys’ fees and court costs incurred in defending against a SLAPP;
- Expedited review of motions to dismiss in order to reduce the time and costs of litigation; and
- Limits or stays on discovery while the court considers a motion to dismiss under the anti-SLAPP law.

### States with Anti-SLAPP Statutes \*As of 2012

Arizona	Missouri
Arkansas	Nebraska
California	Nevada
Delaware	New Mexico
Florida	New York
Georgia	Oklahoma
Hawaii	Oregon
Illinois	Pennsylvania
Indiana	Rhode Island
Louisiana	Tennessee
Maine	Texas
Maryland	Utah
Massachusetts	Vermont
Minnesota	Washington

## The San Diego Union-Tribune Getting SLAPPED

An answer to malicious lawsuits against activists

An insidious means of intimidation of critics and stifling freedom of speech is gaining popularity in California. It entails the filing of multi-million-dollar lawsuits against citizens or public interest groups that take stands on public interest groups. The lawsuit filers often are developers, government agencies or businesses that aim to silence opposition against construction projects or other actions they are taking.

The lawsuits generally allege defamation, conspiracy or interference with contracts. Most eventually are dismissed in court as frivolous—but only after they have cost the defendants exorbitant court and attorney fees.

These suits are known as SLAPPs—Strategic Lawsuits Against Public Participation. And they effectively put a chill on dissent and public opposition. Among recent examples:

- A Palmdale treatment center for addicts and alcoholics filed a \$100 million lawsuit against a neighboring homeowners' association and Los Angeles County because the county, after complaints from the association cited the center for being in violation of health, fire and zoning codes.
- Developers of a posh resort in Lake Tahoe's Squaw Valley sued a resident for \$75 million after he publicly spoke out against the project.
- The developer of a proposed beach-front condominium project sued the Beverly Hills chapter of the League of Women Voters for \$63 million after the league wrote letters critical of the project to local newspapers.

The suit went all the way to the U.S. Supreme Court, which found in the league's favor and awarded it \$20,000 for attorney's fees.

Two University of Denver professors, who have studied more than 300 suits filed since 1983, found that defendants are SLAPPED for an average of \$9 million. The suits take about three years to resolve, costing defendants time, money and emotional stress.

While SLAPPs occurs everywhere, they are particularly plentiful in California and New York. Last month, New York SLAPPED back when Gov. Mario Cuomo signed a bill restricting this form of legal harassment. Gov. Peter Wilson now has an opportunity to do the same. He has on his desk a bill that was passed by the Assembly 68-1 and by the Senate 31-0.

The measures would not outlaw SLAPPs but would make it easier for a judge to dismiss them as frivolous early on, before devastating legal costs have been incurred. It also would let the prevailing party recover attorney fees.

Last year Wilson vetoed a similar bill, expressing concern that legitimate lawsuits might be blocked. The measure sponsored by Sen. Bill Lockyer, D-Hayward, has been amended to address the governor's objections.

The initial bill instructed a judge to dismiss a SLAPP suit unless there was a "substantial probability" that the plaintiff would prevail. The word "substantial" has been dropped, meaning fewer suits will be dismissed.

The United States has always safeguarded its First Amendment right to freedom of speech. This SLAPP-back measure is essential to preserve that right. Gov. Wilson should sign the bill.

From the file of CHEJ



## With and Without an Anti-SLAPP Statute

From, “Why, Yes, I AM Into SLAPPing,”

by Ken White, 07 June 2012

<http://www.popehat.com/2012/06/07/why-yes-i-am-into-slapping/>

Editor’s Note: Ken White is a private attorney and blogger for Popehat.com.

### WITHOUT AN ANTI-SLAPP STATUTE

By necessity, this is going to be a bit generalized and omit some exceptions.

Say you sue me for defamation and intentional infliction of emotional distress (IIED). In a state without an anti-SLAPP statute, my options are quite limited. I could file a motion to dismiss — called a demurrer in California and some other jurisdictions. You might call that a “so what if I did?” motion — a motion to dismiss asks the court to determine whether, if all specific facts alleged in the complaint is true, the allegations are enough to entitle the plaintiff to relief under the law. Sometimes this suffices to get rid of a defamation case. For instance, if you sue me and say “Ken said on his mean blog that my writing suggests a recent head injury for which I have not sought medical attention, and that defamed me,” then I might be able to get the case dismissed, because that’s clearly a statement of constitutionally protected opinion. But on the other hand, if you write “Ken said on his blog that I was convicted of abusing an eight-year-old with a live (though world-weary) squirrel, and it’s not true,” then the court has to accept that as true for purposes of the motion to dismiss. I can’t, in my motion, introduce evidence outside the four corners of the complaint to contradict it (with exceptions I won’t get into here). Similarly, many courts will let defamation plaintiffs get away with allegations that are too vague to get rid of on constitutional grounds — like “Ken said untrue and defamatory things about my criminal background on his blog,” when what they secretly mean is “Ken said that I am a bad person just because I am a convicted drug-dealer, perjurer, bomber, and federal-agent-impersonator, when in fact that’s all in the past and I am a swell person and you should donate to my foundation.”

So, the bottom line is that motions to dismiss are often an inadequate tool to stop a frivolous or malicious case easily. If a Plaintiff has a little skill with pleading, or a little luck, or is willing to flat-out lie about what you said and whether it is true, they’ll defeat the motion, and the case will continue. Moreover, while you are litigating the motion to dismiss, they are free to start discovery — demands for documents, depositions, interrogatories, subpoenas to third parties for records about you, etc. That can be hideously expensive and harassing.

The motion to dismiss isn’t the last opportunity to get rid of the case short of trial. That, generally, is the motion for summary judgment. A motion for summary judgment could be called a “they have no proof” motion. Such motions are usually filed after discovery, and assert “the facts are in, and there are no disputes of

relevant fact — the facts show that the plaintiff can’t win under the law.” So, for instance, if the plaintiff’s defamation claim was vague, and all the discovery showed that my blog post just said “plaintiff is a twerp,” I should win at summary judgment, because (1) there are no disputes of fact about what I said, and (2) what I said, because it’s clearly opinion, isn’t defamation. But on the other hand, if the plaintiff can create any dispute of relevant fact, the court can’t grant the motion. So, for instance, if I say “I never had up a post saying that the defendant strangles puppies at the dog park,” and my IT manager says he can find no record of such a post, and ten people say they read this blog every day and never saw it, BUT the plaintiff swears he read it on the blog, I don’t get summary judgment. It’s not a motion about weighing evidence; it’s about asking whether there is any evidence.

Once again, it’s not an adequate remedy. A plaintiff willing to lie or fabricate evidence, however unbelievable, can defeat it. And getting to summary judgment can be ruinously expensive — the motion is notoriously complex and time-consuming to draft, and the discovery leading up to it can be all-encompassing.

If I lose either a motion to dismiss or a motion for summary judgment, I can’t appeal immediately; I have to wait until after trial (with all its risk and expense.) I could file a special request with the Court of Appeal called a writ, but writs (even relatively meritorious ones) are discretionary and very rarely granted.

Moreover, even if I eventually win, I am only entitled to hard costs — reporters at depositions, filing fees, etc. I am not entitled to the tens or hundreds of thousands of dollars in attorney fees I’ve spent.

The bottom line — without an anti-SLAPP statute, a malicious litigant can often inflict substantial expense and hardship upon someone in retaliation for their speech, even if their claim lacks merit, and do so with relative impunity.

[I’m deliberately omitting discussion of various motions for sanctions one might employ to test the adequacy of a defamation claim; why they are inadequate is too lengthy a subject for this post. Similarly, I’ve ignored some nuances about federal court.]

### WITH AN ANTI-SLAPP STATUTE

Now, let’s contrast that with how a defendant can use an anti-SLAPP statute like California’s to fight.

Imagine, again, that you've sued me for defamation. I file an anti-SLAPP motion. First, that stays discovery in the case — no more bleeding me dry or harassing me with depositions and document demands and third-party subpoenas.

Second, once I file the motion, your die is cast as a plaintiff — even if you drop your suit at this point, I can insist on pressing forward, getting a ruling, and seeking the fees I'll describe below.

First things first: I have the initial burden of showing that you are suing me based on rights protected under the anti-SLAPP statute. Speech protected by the statute may be narrower than all speech protected by the constitution and state law — but it's still extraordinarily broad. Here's what California's statute protects:

(e) As used in this section, “act in furtherance of a person’s right of petition or free speech under the United States or California Constitution in connection with a public issue” includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing 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, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

The only thing that excludes, really, is a statement on a purely private issue not of public interest. But California courts construe “public interest” very broadly.

So: I have the initial burden of proving that your lawsuit attacks speech protected under that definition. I do that by (1) quoting your lawsuit, and (2) offering any evidence necessary to put it in context. That's key — unlike in a motion to dismiss, I can offer extrinsic evidence. So if you sue me saying “in his blog post of June 7, Ken defamed me,” I can introduce a copy of my blog post of June 7 and show that I was writing about a subject of public interest and am thus protected by the statute. California courts have developed one crucial doctrine: it doesn't matter how you style or caption your claims if they are aimed at my protected speech. You can't evade the statute by suing me for BIFD or interference with contract or harassment or bullying or cybermobbing — if the point of the claim is my protected speech, it's protected. Take it away, *Martinez v. Metabolife Intern., Inc.* (2003) 113 Cal.App.4th 181, 187: “Our Supreme Court has recognized that the anti-SLAPP statute should be broadly construed and a plaintiff cannot avoid operation of the anti-SLAPP statute by attempting, through artifices of pleading, to characterize an action as a ‘garden variety breach of contract [or] fraud claim’ when in fact the liability claim is based on protected speech or conduct.”

[Note: this is an area where statutes like California's -- and that of Texas -- are superior. In some states, the anti-SLAPP statute is much narrower, and only protects speech before a legislative or judicial body, or aimed at influencing a legislative or judicial body, or has a “without malice” exception that renders it useless. The Public Participation Project has the ugly details.

So, assume that I have carried my initial burden under the anti-SLAPP statute. The burden now shifts to you, the person suing me. You are now obligated to present admissible evidence showing a probability of prevailing. The evidence must not only show what I did, but be sufficient to defeat any First Amendment or statutory privileges I have. This doesn't require the court to weigh evidence — the plaintiff need only offer admissible evidence which, if accepted, would be sufficient to prevail. But so early in the case, this is often hard to do; it means the plaintiff must sue based on evidence, not based on speculation. A plaintiff must present evidence that what I said was false and defamatory and outside the scope of my First Amendment rights. Perhaps because of the stage of the case, this often proves more difficult for plaintiffs in the anti-SLAPP context than it does in the summary judgment context.

[Once again, I am leaving out some nuance about federal practice.]

Say that I prevail. Huzzah. Now comes the good part — I am entitled by law to reasonable attorney fees from my accuser. It's not discretionary — the judge can't split the baby and grant the motion but deny fees, as judges are wont to do. Judges may give me a haircut on my fees (it's not atypical to get cut down from, say, \$35,000 to, say, \$25,000), but then again they may not, especially if the complaint was particularly malicious and/or frivolous.

Say that I lose. Under California's anti-SLAPP statute, and some others, I have a right to an immediate appeal, and the case is stayed in the meantime. The Court of Appeal can sanction me if my appeal is frivolous, but until it rules on the appeal (a process that routinely takes more than a year), plaintiff's ability to harass me through a meritless defamation claim is halted. (Note that right could have pernicious consequences in meritorious defamation claims where the defendant is willing to file a meritless appeal — the California Court of Appeal has criticized the statute on those grounds). Moreover, if I prevail on appeal — either because I lost and then won on appeal, or because I won below and then won on appeal as well — I am entitled to my attorney fees on appeal.

It's not perfect. Clever and dishonest litigants can lie their way around anti-SLAPP statutes. But an anti-SLAPP statute is a tremendously effective tool in resisting litigation calculated to retaliate against, or chill, protected speech.

So: that's why I talk about anti-SLAPP statutes all the time. Does your state have one? Find out. If not, or if it has a bad one, write your state representative and urge passage of an anti-SLAPP law, and follow developments in your state legislature. Moreover, follow the process of proposed federal anti-SLAPP laws.

THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

William Bianchi  
Assemblyman 3rd District

August 13, 1992

Susan M. Kennedy  
c/o Clean Ocean Action  
PO Box 505  
Highlands, NJ 07732

Dear Ms. Kennedy:

Thank you for your recent inquiry regarding my anti-SLAPP Suit (Strategic Lawsuits Against Public Participation) legislation. The legislation amends the Civil Rights Law and the Civil Practice Law and Rule with regard to legal actions “involving public petition and participation” and thus serves to protect basic First Amendment rights, and to provide for the unfettered ability for this and future generations to participate in the public process. The purpose of this legislation, which was signed into law earlier this month by Governor Cuomo, is to prevent lawsuits and the threat of lawsuits from being “used as a means of harassing, intimidating or punishing” those “who have involved themselves in public affairs.” These lawsuits, brought about by entities with superior financial resources against citizens trying to influence public policy, have had the effect of stifling important and legitimate public discussion on issues affecting whole communities, and intimidating the general public into submission and inaction. While such suits are rarely successful in terms of their legal claims they are frequently successful in their real intention of stifling public debate on the issue in question. As the prime sponsor of the Assembly bill I fought (first introduced legislation in 1985) to curtail this abuse of the legal process to limit free speech by making it more difficult to bring such an action about. With this legislation enacted in law, plaintiffs are now required to prove “substantial” cause for action, as opposed to merely “reasonable” cause. If an action is taken without a “substantial basis in fact and law”, the defendants may then “SLAPP back” and recover costs and attorneys’ fees. In addition, if a court determines that a suit was brought about for the purpose of “harassing, intimidating or punishing or otherwise maliciously inhibiting the free exercise of speech, petition, or association rights”, other compensatory damages beyond costs and fees may be awarded.

## A substantial body of published appellate decisions under the anti-SLAPP statute now guides trial courts

\* Circulating a fundraiser flier supporting a lawsuit by court reporters against an alliance of court reporters for unfair business practices was protected. *Wilcox*, 27 Cal.App.4th.809.

\* Pursuing a lawsuit for infliction of emotional distress that resulted in a multi-million-dollar verdict was protected against a new lawsuit seeking to vacate that judgment. *Wollersheim*, 96 Daily Journal D.A.R. 1162.

A SLAPP is challenged by a special motion to strike, which must be filed within 60 days after service of the complaint, although the court may allow it to be filed later. Section 425.16(f). The party filing the motion (usually the defendant) must make a prima facie showing that the statute applies. *Wilcox*, 27 Cap.App.4th at 820.

If the defendant makes a prima facie showing that the statute applies, then to defeat the special motion to strike, the plaintiff must establish a probability that it will prevail on this claim. Section 425.16(b). The plain language, context, purpose and legislative history of the “probability” standard all indicate that it means “more likely than not,” and that standard is constitutional. However, the appellate courts have consistently interpreted the probability standards to require only that the plaintiff present a prima facie case. See, e.g., *Wilcox*, 27 Cal.App.4th at 823-25; *Robertson*, 36 Cal.App.4th at 355-56. That interpretation has now become fossilized.

The plaintiff must meet the burden with competent admissible evidence. *Evans* 38 Cap.App.4th at 1497-98; *Wilcox* 27 Cap.App.4th at 830; *Ludwig*, 37 Cap.App.4th at 25. Thus, for example, sworn statements made on information and belief were held inadmissible in *Evans*.

In determining whether the plaintiff has established a probability of prevailing, the trial court must consider the defendant’s constitutional and non-constitutional defenses. Section 425.16(b); *Wilcox*, 27 Cap.App.4th at 824; *Wollersheim*, 96 Daily Journal D.A.R. at 1171.

Filing a special motion to strike automatically stays all discovery until notice of entry of ruling of the motion Section 425.16(g). This stay can only be modified or lifted by court order, after a noticed motion upon a showing of good cause for specified discovery. The premise of the discovery stay is that plaintiffs should have sufficient facts to show the viability of the lawsuit before filing it. *Ludwig*, 37 Cap.App.4th at 16. If a party seeking discovery does not follow the required procedure and make the necessary showing, that party will not be allowed the discovery. *Robertson*, 37 Cap.App.4th at 357; *Evans*, 38 Cap.App.4th at 1499.

Defendants who win a special motion to strike are entitled to recover their attorney’s fees and costs (Section 425.16(c)), including those for defending their victory on appeal. *Evans*, 38 Cap.App.4th at 1499-1500. A fee-motion can be made even if the granting of a special motion to strike is on appeal. *Robertson*, 36 Cap.App.4th at 360. Plaintiffs who defeat a special motion to strike found to be frivolous or solely intended to delay are also entitled to recover their fees and costs. Section 425.16(c).

Parties can recover fees and costs only for work related to the special motion to strike. *LafayetteMorehouse v. Chronicle Publishing Inc. (More II)*, 39 Cap.App.4th 1379, 1383-84 (1st Dist. 1995). The amount of fees must be reasonable. *Robertson*, 36 Cap.App.4th at 361-62. Fees in excess of \$130,000 have been approved for a successful special motion to strike. *Wollersheim*, 96 Daily Journal D.A.R. at 1171.

The appellate courts have rejected every constitutional attack on the validity of the anti-SLAPP statute, including claims that it violates the rights to due process and to jury trial. *Dixon*, 30 Cap.App.4th at 746; *More I*, 37 Cap.App.4th at 865-68.

Some trial court judges have exhibited hostility to the anti-SLAPP law and have a tendency to interpret it narrowly. This may be related to the California Judges Association’s opposition to the anti-SLAPP bill when it was in the Legislature and may be based on a concern about the right to a jury trial. However, the appellate courts have generally indicated in their published opinions a strong understanding of the purpose and importance of this law. The Judicial Council is required to report to the Legislature on the operation of the law by January 1998. Section 425.16(h).

From the file of CHEJ.

## The Practitioner First Amendment Law Speak Easy: Appellate Decisions Implement Anti-SLAPP Law

By Mark Goldowitz

Code of civil Procedure Section 425.16, California's pioneering anti-SLAPP law and the strongest in the country, has now been on the books for a little more than three years. SLAPPs, or Strategic Lawsuits Against Public Participation, are suits filed against people for exercising their First Amendment rights. Section 425.16 provides a mechanism for speedy dismissal of meritless SLAPPs and protects people who are sued because they petition the government or speak out in connection with a public issue.

There is now a substantial body of published appellate decisions under the anti-SLAPP statute to guide trial courts, attorneys and litigants regarding the scope of the statute and how it is to be implemented. Thus far, every decision on the merits has ruled for the defendant who has been SLAPPed. Section 425.16 applies to any cause of action (including cross-complaints) arising from acts in furtherance of the right to petition the government for redress of grievances or the right to free speech on a public issue. Section 425.16(b). It is not limited to tort actions. *Church of Scientology v. Wollersheim*, 96 Daily Journal D.A.R. 1162, 1167-69 (2nd District Feb. 1, 1996).

Activities protected by the statute include any written or oral statement made before or in connection with an issue under consideration by, a legislative, executive, judicial or other official governmental proceeding, as well as any such statement made in a place open to the public or in a public forum in connection an issue of public interest. Section 425.16(e). The statute protects all petition activity, regardless of the subject matter or whether it involves an issue of public interest. *Wollersheim*, 96 Daily Journal D.A.R. at 1167-68.

To be protected, the statements need not be made directly to an official government body. *Ludwig v. Superior Court (City of Barstow)*, 37 Cal.App.4th 8,16 to a lawsuit arising out of a defendant's constitutionally protected conduct, such as a peaceful economic boycott. *Wilcox v. Superior Court (Peters)*, 27 Cal.App.4th 809,821 (2nd Dist. 1994).

Because SLAPPs "masquerade as ordinary lawsuits," the trial court, in determining whether the statute applies, must look beyond the face of the pleadings to consider other relevant evidence. *Id.* At 816, 821. This includes the litigation history between the parties. *Wollersheim*, 96 Daily Journal D.A.R. at

1167. Typical SLAPP claims include defamation, libel, slander, invasion of privacy, conspiracy, interference with businesses, contractual or economic relations or advantage, infliction of emotional distress and unfair competition.

The published appellate decisions have found the following First Amendment expression covered by the anti-SLAPP law:

- Publication of articles by the San Francisco Chronicle about a university offering a doctorate in "sensuality" and courses in subjects as mutual pleasurable simulation of the human nervous system was protected, where the university was the subject of a series of board of supervisor hearings investigating possible violations of local health, land use and other government regulations and a suit by the county to enjoin those alleged violations. *Lafayette Morehouse v. Chronicle Publishing Inc. (More I)*, 37 Cal.App.4th 855 (1st Dist. 1995).
  - The court protected statements made by an archeologist and professor that were critical of a survey regarding a proposed university development. *Dixon v. Superior Court (Scientific Resource Surveys)*, 30 Cal.App.4th 733 (4th Dist. 1994).
  - Statements made in a petition to recall local sanitary district board member were protected. *Evans v. Unkow*, 38 Cal.App.4th 1490 (1st Dist. 1995).
  - Encouragement of citizens to speak out at public meetings and file lawsuits against a proposed mall was protected. *Ludwig*, 37 Cal.App.4th 8.
  - A court protected monetary contributions to a campaign that published a flier accusing a candidate for local legislative offices of having "hundreds of dollars of unpaid fine and citations." *Matson v. Dvorak*, 40 Cal.App.4th 539 93d Dist. 1995).
  - Publishing a mailer asserting that a city councilman subject to a recall campaign had been fined by the city for operating an illegal business out of his home was protected. *Robertson v. Rodriguez*, 36 Cal.App.4th 347 (2nd Dist. 1995).
- [Mark Goldowitz, a sole practitioner in Oakland specializing in defense under Section 425.16, is the director of the California Anti-SLAPP Project, which monitors the anti-SLAPP law's implementation in California. He represents Lawrence Wollersheim in *Scientology v. Wollersheim*]

Is there a federal anti-SLAPP law?

Currently, no federal anti-SLAPP legislation has been passed and enacted. However, the following information can equip those who live in states with anti-SLAPP statutes to fight back, as well as those who want to reform and advocate for anti-SLAPP laws in their own state and on the national level

From, *A Uniform Act Limiting Strategic Litigation Against Public Participation: Getting it Passed*  
Society of Professional Journalists Baker and Hostetler LLP,  
<http://www.spj.org/antislapp.asp>

Fifteen years have passed since the first anti-SLAPP statute was passed in Washington State, and as of spring 2004, 21 states have some type of anti-SLAPP legislation in place. These facts will both benefit and hinder us as we bring our Model Act out into the world. On one hand, we are able to learn from the experiences of others in drafting and passing these statutes, and we have years of anti-SLAPP success stories to draw upon when making our cases. On the other hand, opponents of the legislation will be well equipped to highlight so-called “abuse” of these statutes – which may include, in their views, large media entities using anti-SLAPP motions to fight defamation lawsuits.

As we keep our goals and roles in mind, we can also benefit from these tips, which several anti-SLAPP experts – including California Anti-SLAPP Project director Mark Goldowitz and Tom Newton, counsel for the California Newspaper Publishers Association – have offered.

**Enlist An Influential Government Supporter.** Particularly in governments that are very pro-business or otherwise disinclined to support anti-SLAPP legislation, such legislation is likely to stall without the push of at least one powerful government leader who is strongly invested in its success.

...W can try to jump-start the efforts in other states by honing in on effective champions for our cause. In the state legislatures, members of the judiciary committees are likely candidates, especially those who have an intellectual bent or have shown themselves to be strong supporters of First Amendment interests. Senator Lockyer was one such man, a former schoolteacher who strongly believed in freedom of thought. Another approach might be to pinpoint some powerful examples of citizens being victimized by SLAPPs (see “Tell A Good Story” below) and target those citizens’ representatives, or other legislators who might be particularly affected by their stories.

**Enunciate The Problem.** Both in enlisting government support and building a coalition (see “Build A Coalition” below), it is important that we effectively explain what SLAPPs are and why something must be done.

**Build A Coalition.** The single most important lobbying strategy,

cited by all the experts, was building the broadest possible coalition to push for passage of the legislation. Media, environmental and civil rights groups are the most frequent supporters of anti-SLAPP legislation, but groups defending the rights of women and the elderly are also potentially strong advocates, as are municipalities and neighborhood and civic associations. Appendix B, which lists the supporters of the California statute, shows the great variety of groups that are sympathetic to anti-SLAPP legislation.

Several states found it useful to develop more formal coalitions, providing organizational structure to harness the power of the myriad supporters. The California Anti-SLAPP Project began as such a coalition and has continued as the lead proponent of improvements to the California statute. New Mexico also had a formal coalition, the NoSLAPP Alliance, which coordinated the statewide media and lobbying campaign.

Finally, in addition to recognizing potential allies, it is important for anti-SLAPP proponents to recognize their likely opponents. Developers and building industry associations are the No. 1 opponents of anti-SLAPP legislation, not surprising given that the quintessential SLAPP involves a developer suing a citizen for his criticism of a development project. Representatives of business, including chambers of commerce, also tend to oppose anti-SLAPP legislation, as did the Trial Lawyers Association in California, though there are certainly arguments as to why anti-SLAPP legislation would benefit its constituency.

**Tell A Meaningful Story.** Politicians are politicians, and they will be most likely to get behind legislation that makes them look compassionate. Therefore, it is crucial to set off on the lobbying trail with some good stories about SLAPP victims, stories that will outrage lawmakers in their injustice and present them with possible “poster children” for the new legislation. Even more effective is to enlist the victims themselves to tell their own stories.

In California, Senator Lockyer was swayed by the story of Alan LaPointe, a Contra Costa County man who led community opposition to a proposed waste-burning plant. LaPointe spoke against the plant at district meetings and before a grand jury, and was the lead plaintiff in a taxpayer’s action filed in 1987 based on an allegedly improper use of public funds for feasibility studies for the proposed plant. The sanitation district cross-complained against LaPointe personally for interference with prospective economic advantage.

In Washington State, the anti-SLAPP legislation was named “The Brenda Hill Bill” after a woman who reported her subdivision developer to the state for failure to pay its tax bill. The developer filed foreclosure proceedings on Hill’s home and sued her for defamation, seeking \$100,000. Her story swayed both the governor and the legislator who brought the bill, Holly Myers.

In a related matter, point out specific examples of how the current system is insufficient. In New York, legislators passed the anti-

## Strategic Lawsuits Against Public Participation

SLAPP statute out of frustration over how the legal system was addressing SLAPPs, which were common especially in the real estate context. For example, a developer sued nine Suffolk County homeowner groups and sixteen individuals after they had testified against town approval of a proposed housing development. The developer alleged various tort claims and sought more than \$11 million in damages. More than three years later, the case was finally dismissed on appeal.

**Channel Your Power Effectively.** Media and journalism groups are essential participants in the anti-SLAPP movement, says Goldowitz, because they are a commonly SLAPPED group with a relatively large bank of resources and a significant amount of influence. However, it is crucial that these groups know when and how to use their power. Because of their resources and contacts, media groups should probably play a key role in coalition-building, but the media would probably do best to step back and let their allies tell their own SLAPP stories. The tale of a poor woman fighting a big developer will almost always have more resonance than the travails of a large newspaper facing a baseless libel suit – even by the same developer.

**Play The Politics.** Even in situations fairly conducive to the passage of anti-SLAPP legislation, the political stars have to align. In California, two situations having nothing to do with SLAPPs boosted the anti-SLAPP effort immeasurably. First, on the second attempt to pass the legislation, it was merged with another bill that made permanent liability protections for volunteer officers and directors of non-profit organizations. Support for the bill more than doubled, with organizations such as the Red Cross, the United Way, and dozens of local chambers of commerce joining. Increased pressure from all sides contributed to Governor Pete Wilson's decision to sign the bill in 1992 on its third attempt.

Certainly we as political outsiders are limited in the amount of maneuvering we can achieve – and politicians are limited ethically in the steps they can take. But it is always worth using our imaginations and keeping an eye out for situations that may improve the climate for passage of anti-SLAPP legislation.

**Be Patient.** It can take time to pass anti-SLAPP legislation. In California and Pennsylvania, it took three tries to generate enough momentum and support to achieve success. A first attempt can be effective, even if it doesn't lead to a law, if it gets the issue on the radar screens of lawmakers and citizens. Sometimes, we might have to wait until one political party makes an exit, or the right sponsor comes along.

**Be Willing to Compromise.** A little bit of give-and-take is essential in the legislative process. In California, in exchange for Governor Wilson's signature on the anti-SLAPP bill, Senator Lockyer agreed to introduce remedial legislation to make mandatory a permissive provision

for awarding attorney's fees and costs to a plaintiff who prevailed on a motion to strike. (The remedial legislation has not passed.) In New Mexico, the bill was on the verge of dying in the Senate when a last-minute compromise was brokered which, among other things, changed the definition of what speech would be immunized.

As in New Mexico or Pennsylvania – where the statute was greatly watered down before passage – the results of compromise may be harsh. But keep in mind that where passage of the desired language does not seem possible, it might be better to get some kind of statute on the books. Once that happens, some of the opposing pressure may lift and it may be easier to pass amendments that will bring the statute in line with our goals.

## Writing the Statute

The following is an excerpt from an example of an anti-SLAPP act, with commentary, written by the Society of Professional Journalists. For the complete document visit: <http://www.spj.org/antislapp.asp>

### A Uniform Act Limiting Strategic Litigation Against Public Participation

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#### PREFATORY NOTE

The past 30 years have witnessed the proliferation of Strategic Lawsuits against Public Participation (“SLAPPs”) as a powerful mechanism for stifling free expression. SLAPPs defy simple definition. They are initiated by corporations, companies, government officials, and individuals, and they target both radical activists and typical citizens. They occur in every state, at every level in and outside of government, and address public issues from zoning to the environment to politics to education. They are cloaked as claims for defamation, nuisance, invasion of privacy, and interference with contract, to name a few. For all the diversity of SLAPPs, however, their unifying features make them a dangerous force: They are brought not in pursuit of justice, but rather to ensnare their targets in costly litigation that distracts them from the controversy at hand, and to deter them and others from engaging in their rights of speech and petition on issues of public concern.

To limit the detrimental effects of SLAPPs, 21 states have enacted laws that authorize special and/or expedited procedures for addressing such suits, and ten others are considering or have previously considered similar legislation. Though grouped under the “anti-SLAPP” moniker, these statutes and bills differ widely in scope, form, and the weight they accord First Amendment rights vis a vis the constitutional right to a trial by jury. Some “anti-SLAPP” statutes are triggered by any claim that implicates free speech on a public issue, while others apply only to speech in specific settings or concerning specific subjects. Some statutes provide for special motions to dismiss, while others employ traditional summary procedures. The burden of proof placed on the responding party, whether discovery is stayed pending consideration, and the availability of attorney’s fees and damages all vary from state to state. Perhaps as a result of the confusion these variations engender, anti-SLAPP measures in many states are grossly under-utilized.

The Uniform Act Limiting Strategic Litigation Against Public Participation seeks to remedy these flaws by enunciating a clear process through which SLAPPs can be challenged and their merits evaluated in an expedited manner. The Act sets out the situations in which a special motion to strike may be brought, a uniform timeframe and other procedures for evaluating the special motion, and a uniform process for setting and distributing attorney’s fees and other damages. In so doing, the Act ensures that parties operating in more than one state will face consistent and thoughtful adjudication of disputes implicating the rights of speech and petition.

Because often conflicting constitutional considerations bear on anti-SLAPP statutes, the Act is in many respect an exercise in balance. The triggering “action involving public participation and petition” is defined so that the special motion to strike may be employed against all true SLAPPs without becoming a blunt instrument for every person who is sued in connection with the exercise of his or her rights of free speech or petition. To avoid due process concerns, the responding party’s burden of proof is not overly onerous, yet steep enough to weed out truly baseless suits. Finally, to reduce the possibility that the specter of an anti-SLAPP motion will deter the filing of valid lawsuits, the fee-shifting structure is intended to ensure proper compensation without imposing purely punitive measures. In these ways and more, the Act serves both the citizens’ interests in free speech and petition and their rights to due process.

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#### SECTION 1. FINDINGS AND PURPOSES

(a) FINDINGS. The Legislature finds and declares that

(1) there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances;

(2) such lawsuits, called “Strategic Lawsuits Against Public Participation” or “SLAPPs,” are typically dismissed as groundless or unconstitutional, but often not before the defendants are put to great expense, harassment, and interruption of their productive activities.

(3) the costs associated with defending such suits can deter individuals and entities from fully exercising their constitutional rights to petition the government and to speak out on public issues;

(4) it is in the public interest for citizens to participate in matters of public concern and provide information to public entities and



## Strategic Lawsuits Against Public Participation

other citizens on public issues that affect them without fear of reprisal through abuse of the judicial process;

(5) an expedited judicial review would avoid the potential for abuse in these cases.

(b) PURPOSES. The purposes of this Act are

(1) to strike a balance between the rights of persons to file lawsuits and to trial by jury and the rights of persons to participate in matters of public concern;

(2) to establish an efficient, uniform, and comprehensive method for speedy adjudication of SLAPPs;

(3) to provide for attorney's fees, costs, and additional relief where appropriate.

### Comment

The findings bring to light the costs of baseless SLAPPs – their harassing and disruptive effect and financial burdens on those forced to defend against them, and the danger that such lawsuits will deter individuals and entities from speaking out on public issues and exercising their constitutional right to petition the government. The stated purposes make clear that drafters also recognize important interests opposing the speedy disposal of lawsuits, particularly the right of an individual to due process and evaluation of his or her claim by a jury of peers. Thus, the primary intent of the Act is not to do away with SLAPPs, but to limit their detrimental effects on the First Amendment without infringing on citizens' due process and jury trial rights.

Though a statement of findings and purposes is not required in many states (only about half of the anti-SLAPP laws in effect have them), several states have put such statements to good use. They can be invaluable in helping courts interpret the reach of the statute. This has been particularly evident in California, the epicenter of anti-SLAPP litigation. For example, in 1999, the United States Court of Appeals for the Ninth Circuit found the legislative findings crucial to its holding that the statute may properly be applied in federal court. See *United States ex rel. Newsham v. Lockheed Missiles and Space Co.*, 190 F.3d 963, 972-73 (9th Cir. 1999). If the statute were strictly procedural, the court noted, choice-of-law considerations would likely deem it inapplicable in federal court. However, because of California's "important, substantive state interests furthered by anti-SLAPP statute," which are enunciated in Cal. Civ. Proc. Code 425.16(a), the court held that the anti-SLAPP statute should be applied in conjunction with the Federal Rules of Civil Procedure. *Id.*

The Supreme Court of California also has deemed the legislative findings useful in determining many of the most important questions that have arisen from application of the anti-SLAPP statute. In *Briggs v. Eden Council for Hope and Opportunity*, the Court examined whether a party moving to strike a cause of action arising from a statement made before, or in connection with an issue under consideration by, a legally authorized official proceeding was required to demonstrate separately that the statement concerned an issue of public significance. 969 P.2d 564, 565 (Cal. 1999). The court found that the 425.16(a) findings evinced an intent broadly to protect petition-related activity; to require separate proof of the public significance of the issue in such cases would result in the exclusion of much direct petition activity from the statute's protections, contrary to the clear legislative intent. *Id.* at 573-74. In *Equilon Enterprises, LLC v. Consumer Cause, Inc.*, the same court found that requiring a moving party to demonstrate that the action was brought with an "intent to chill" speech would contravene the legislative intent by lessening the statute's effectiveness in encouraging public participation in matters of public significance. 52 P.2d 685, 689 (Cal. 2002).

The benefits of statements of findings and purposes have been seen outside California as well. In *Hawks v. Hinely*, an appellate court in Georgia cited the General Assembly's stated findings in holding that statements made in a petition itself – not just statements concerning the petition – trigger the safeguards of the anti-SLAPP statute. 556 S.E.2d 547, 550 (Ga. App. 2001). In *Globe Waste Recycling, Inc. v. Mallette*, the Supreme Court of Rhode Island found that legislative intent, as recorded in the statute, indicated that statements for which immunity is claimed need not necessarily be made before a legislative, judicial, or administrative body under the terms of the statute. 762 A.2d 1208, 1213 (R.I. 2000). Finally, in *Kauzlarich v. Yarbrough*, an appellate court in Washington held that the legislative findings indicated that the Superior Court Administration is an "agency," and thus communications to that entity trigger the immunity protection and other benefits of the anti-SLAPP statute. 20 P.3d 946 (Wash. App. 2001).

## Current Legislation

In 2009, Representative Steve Cohen-R from Tennessee introduced the Citizens Participation Act to the U.S. House of Representatives. It is currently being reviewed by the Subcommittee on Courts and Competition Policy. The following are the most relevant aspects of the bill. For the complete document visit: <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.4364.IH>:

H.R.4364 -- Citizen Participation Act of 2009 (Introduced in House - IH)  
 HR 4364 IH  
 11th CONGRESS  
 1st Session  
 H. R. 4364

To protect first amendment rights of petition and free speech by preventing States and the United States from allowing meritless lawsuits arising from acts in furtherance of those rights, commonly called `SLAPPs`, and for other purposes.

### IN THE HOUSE OF REPRESENTATIVES

December 16, 2009

Mr. COHEN introduced the following bill; which was referred to the Committee on the Judiciary

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#### A BILL

To protect first amendment rights of petition and free speech by preventing States and the United States from allowing meritless lawsuits arising from acts in furtherance of those rights, commonly called `SLAPPs`, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

#### SECTION 1. SHORT TITLE.

This Act may be cited as the `Citizen Participation Act of 2009`.

#### SEC. 3. IMMUNITY FOR PETITION ACTIVITY.

(a) Immunity- Any act of petitioning the government made without knowledge of falsity or reckless disregard of falsity shall be immune from civil liability.

(b) Burden and Standard of Proof- A plaintiff must prove knowledge of falsity or reckless disregard of falsity by clear and convincing evidence.

#### SEC. 4. PROTECTION FOR PETITION AND SPEECH ACTIVITY.

Any act in furtherance of the constitutional right of petition or free speech shall be entitled to the procedural protections provided in this Act.

#### SEC. 5. SPECIAL MOTION TO DISMISS.

(a) In General- A party may file a special motion to dismiss any claim arising from an act or alleged act in furtherance of the constitutional right of petition or free speech within 45 days after service of the claim if the claim was filed in Federal court or, if the claim was removed to Federal court pursuant to section 6 of this Act, within 15 days after removal.

(b) Burdens of the Parties- A party filing a special motion to dismiss under this Act has the initial burden of making a prima facie showing that the claim at issue arises from an act in furtherance of the constitutional right of petition or free speech. If the moving party meets this burden, the burden shifts to the responding party to demonstrate that the claim is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment.

(c) Stay of Discovery- Upon the filing of a special motion to dismiss, discovery proceedings in the action shall be stayed until notice of entry of an order disposing of the motion, except that the court, on noticed motion and for good cause shown, may order that specified discovery be conducted.

## Strategic Lawsuits Against Public Participation

(d) Expedited Hearing- The court shall hold an expedited hearing on the special motion to dismiss, and issue a ruling as soon as practicable after the hearing. The parties may submit the pleadings and affidavits stating the facts upon which the liability or defense is based. The court shall explain the reasons for its grant or denial of the motion in a statement for the record. If the special motion to dismiss is granted, dismissal shall be with prejudice.

(e) Immediate Appeal- The defendant shall have a right of immediate appeal from a district court order denying a special motion to dismiss in whole or in part.

### SEC. 6. FEDERAL REMOVAL JURISDICTION.

(a) In General- A civil action commenced in a State court against any person who asserts as a defense the immunity provided for in section 3 of this Act, or asserts that the action arises from an act in furtherance of the constitutional right of petition or free speech, may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending.

(b) Remand of Remaining Claims- A court exercising jurisdiction under this section shall remand any claims against which the special motion to dismiss has been denied, as well as any remaining claims against which a special motion to dismiss was not brought, to the State court from which it was removed.

(c) Timing- A court exercising jurisdiction under this section shall remand an action if a special motion to dismiss is not filed within 15 days after removal.

### SEC. 7. SPECIAL MOTION TO QUASH.

(a) In General- A person whose personally identifying information is sought in connection with an action pending in Federal court arising from an act in furtherance of the constitutional right of petition or free speech may make a special motion to quash the discovery order, request or subpoena.

(b) Burdens of the Parties- The person bringing a special motion to quash under this section must make a prima facie showing that the underlying claim arises from an act in furtherance of the constitutional right of petition or free speech. If this burden is met, the burden shifts to the plaintiff in the underlying action to demonstrate that the underlying claim is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment. This standard shall apply only to a special motion to quash brought under this section.

### SEC. 8. FEES AND COSTS.

(a) Attorney's Fees- The court shall award a moving party who prevails on a special motion to dismiss or quash the costs of litigation, including a reasonable attorney's fee.

(b) Frivolous Motions and Removal- If the court finds that a special motion to dismiss, special motion to quash, or the removal of a claim under this Act is frivolous or is solely intended to cause unnecessary delay, the court may award a reasonable attorney's fees and costs to the responding party.

(c) Government Entities- A government entity may not recover fees pursuant to this section.

## Pa. Lawmaker to Float Broad Anti-SLAPP Legislation

By Dan Packel

Law360, Philadelphia (May 16, 2013, 6:16 PM ET) -- Pennsylvania Sen. Larry Farnese, D-Philadelphia, announced Thursday that he is introducing a bill to prevent strategic lawsuits against public participation, which is known in the 27 other states that have similar laws on the books as anti-SLAPP legislation.

Farnese said that these suits are filed against individuals or groups for positions that they take in questions of public interest. The suits aim to deter individuals from raising their voices by burdening them with the costs of defending themselves.

The legislation would allow those who are hit with a SLAPP to dismiss a case with greater ease and to recover attorneys' fees if they win the case.

"The legal system should protect free speech and not act as a hammer to silence people who speak their mind on important issues and neighborhood development," Farnese said in a statement. "The work that is done by our civic groups is essential to every neighborhood and the possibility that we might start losing these important forums is bad for everyone."

According to Farnese, the current impulse to introduce the legislation stems from Philadelphia's Old City Civic Association's recent announcement that it would disband its development and liquor committees. The association said in April that it could no longer provide input on zoning and liquor licensing issues because of rising insurance costs.

Philadelphia Court of Common Pleas records show that the association had been sued twice in the last 15 months by local businesses involved in liquor license transfers. Both suits have since been discontinued.

The Old City neighborhood, a hotbed of restaurants and nightlife, has long been marked by tensions between residents on one side and club owners and developers on the other.

But Farnese said that he was particularly troubled by the assault on the association, noting that it had a thorough process for vetting issues before it publicly weighed in on them.

Pennsylvania has had a limited anti-SLAPP law, which applies to those petitioning the government over environmental issues, on the books since 2001.


But a 2011 Pennsylvania Supreme Court ruling in *Pennsbury Village Associates LLC v. McIntyre* took a narrow view of the protections offered to those who seek shelter in the law.

The state's existing statute stands in sharp contrast to California's anti-SLAPP law, which — according to the Reporters Committee for the Freedom of the Press — is the strongest in the country.

The California law protects "any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest."

--Editing by Andrew Park.

<http://www.law360.com/articles/442371/pa-lawmaker-to-float-broad-anti-slapp-legislation>



## Chapter 3

# Modern Davids

**The following are stories of people who have successfully fought back against SLAPPs, paved the way for future reform, and protected our right to freedom of speech.**

### **3 Farmers Win \$10.5 Million in Countersuit Over Libel Charge**

July 16, 1988 Associated Press

BAKERSFIELD—An unusual trial involving a libel countersuit has ended with a jury ordering the giant J.G. Boswell farming company to pay three farmers \$10.5 million in punitive damages.

The same Kern County Superior Court panel that earlier ordered Boswell to pay \$3 million in general damages also awarded the massive punitive damages on a 10-2 vote. The winning plaintiffs—Arvin-area farmers Jack and Jeff Thompson and Ken Wegis—claimed that Thursday's punitive award could have national significance.

"It's a real winner for the American system," said Jack Thomson, also a member of the California Water Commission. "Let's hope this is the beginning of the end of a nasty political trend," said their attorney, Ralph Wegis.

The jury first ruled on July 8 that a libel suit Boswell filed against the three farmers was an attempt to silence their support of a 1982 statewide proposition to create the Peripheral Canal around the Sacramento-San Joaquin Delta. Boswell, the state's biggest grower, spent more than \$1 million in the successful campaign to defeat the canal initiative.

Boswell's suit, which later was thrown out of court, charged that an advertisement the pro-Peripheral Canal farmers published was libelous.

Ralph Wegis, who is a distant relative of farmer Wegis, claimed in a countersuit that Boswell misused the legal system by filing a libel suit. "The sad fact of the matter is Boswell is an entity that has a conscious disregard for the rights of free Americans," Ralph Wegis told the jury. "It's conduct which, if allowed to continue, goes to the very heart of ability to continue as a free country."

The jury found that Boswell had been malicious and oppressive, and had interfered with the constitutional rights of the family farmers. The \$3 million was awarded to compensate the farmers for losses stemming from the libel suit, and an additional \$10.5 million was awarded to punish and make an example of Boswell.

Boswell attorney Harvey Means told the jury that the company was punished enough by the \$3 million verdict and asked jurors to return only a nominal punitive award.

Means said he will ask for a new trial.

Los Angeles Times

Everyone's Backyard vol. 8 no. 1 January-February, 1990

## The Million Dollar “SLAPP” And How I Got Even

By Irene Mansfield

Editor's Note: Irene was inducted into the Grassroots Movement's Honor Roll at Grassroots Convention '89. At 61, Irene is in her 16th year of fighting for environmental justice in Pearland, TX, south of Houston. Though racked with pain from environmental illness, Irene's fighting to clean up the many toxic sites in her town, including one next door to her. Irene's fight reached a climax when the dumper next door tried to expand his site. This led to the following:

Texans and citizens of other states are being caught up by a strategy of big garbage operators. The way some operators try to stifle opposition and break up organized protest is to file a “SLAPP” (Strategic Lawsuit Against Public Participation). These SLAPPs are megabuck lawsuits to harass and scare them.

This I can attest to from personal experience. My husband Tom and I were both sued for \$5 million for a slander and libel suit in July 1986.

[Ed.: Irene's offense was calling the “landfill” a “dump,” her husband was sued separately for “failing to control his wife”—this is true!]

Also sued was our Pearland Area Action Association (PAAA) organization and another RADICAL which I'll just call Ms. Bunny. Well, it was Ms. Bunny's misfortune to have an umbrella home insurance policy which covered her from such foolishness. She was represented by their law firms. Although she was covered and had legal representation, she had no “say so” whatsoever in any decisions made by her insurers. When it was finally time to go to trial and we felt we would have our day in court, much to our shock, the \$5 million damage claim suddenly shrunk over the weekend. There was a scheduled hearing that Monday, where the operator was to produce documentation, including tax returns, to prove his loss. On the weekend, his attorney contacted Ms. Bunny's insurance lawyers about a deal. They would settle for \$5000 from each insurer and drop the case against her. Ms. Bunny protested and wanted to release her insurance companies from further liability, but she was not allowed to do this. The insurance companies decided it would be much cheaper to settle than to go to court. They paid off.

The operators then wanted PAAA, Tom and I to pay a like \$5000 and he'd drop the suit against us. This added insult to injury. We bowed our head and said, “That would be a cold day in Hell! We want to go to court!” When he realized we weren't going to buckle under, he dropped the suit in May, 1989. We were advised that under the Texas Tort Laws, since the case was dropped, we couldn't cross file against the applicant for having filed a frivolous lawsuit. We would have had to win in court and then we could have filed only for reimbursement of legal costs.

[Ed.: In other states there are stronger measures you can take against frivolous lawsuits. Actions can be taken against polluters who file SLAPPs under such labels as Rule 11, RICO and even under civil rights laws.]

During hearings for the operator's 5th try for a permit, Tom and I won individual party status. This meant we could represent ourselves. I got to sit up with the attorney's, cross-examine witnesses, file briefs, reply to briefs, and act like a lawyer. It was evident from the first day that the operator's attorney resented me. At one time during the lengthy hearing, he got so disturbed with me that he actually threw a document on the table in front of me.

[Ed.: The city of Pearland also passed two ordinances that'd effectively stop the operator, if only the city would enforce them. But they were sacred lawsuits and called a meeting to decide whether they were going to do it.]

This council meeting was the Monday after the close of Grassroots Convention '89. When the council meeting opened, I was asked to stand and be introduced as having just returned from the CCHW [now known as CHEJ] Convention in Washington, DC, and presented with an award. The Pearland City Hall was a big council chamber. Each chair was filled and few folks were standing. I received a big round of applause. The operator and his bunch just sat and looked shocked. I really had to restrain myself when it was my turn to speak. All I said was I wouldn't dignify the operator's attorney's comments with any rebuttal since the record spoke for itself. I told the mayor and council I'd changed my mind about what I wanted to say. Instead, I went on and told some of the highlights of the trip. I told about my son Gary and how he was so worried his mamma was going to get lost. I told them I was proud to be a rabble-raising radical and member of PAAA.

I thought, what an opportune time for me to get even with the operator for the \$5 million SLAPP, with his attorney and entire family present. I'd been ridiculed long enough! I told the City Fathers and audience how I was an instant celebrity at the Convention. When word spread I was the lady from Texas whose husband got sued for \$5 million because he failed to control his wife, many of the ladies wanted their pictures taken with me. They wanted to let their husbands know what good wives they were, since they hadn't gotten their husbands sued for the same reasons mine was. With this disclosure, the audience roared with laughter and again I received another big round of applause. The faces of the operator and his assembly looked as if all the blood had been drained and then the color turned scarlet red. One by one, they rose and followed each other out of the chambers. I felt I had finally gotten my revenge. It was well worth the 3 years of torment I had been put through. Although these SLAPPs are ridiculous and are usually dropped, there is still that gnawing fear of "what if?"

Two weeks later, the City Council unanimously voted to file suit against the operator in the County Court for violation of their ordinances. We will have to wait and see how this story eventually ends.

[Ed.: A month later, the operator dropped dead of a heart attack. According to a report Irene filed with the county sheriff, his family blames his death on stress Irene caused him and threatened her life.]

Modern Science and technology are great. But why can't the earth stay good and clean like God created it, and as it was meant to be?> Do we really need all these chemicals and nuclear products?

With these thoughts turning over in my mind, I realized why I went to the "People United for Environmental Justice Convention." It was for my 90 friends and neighbors shown on my area map as red, yellow, and white thumb tacks. The red tacks are dead from cancer; yellow are in remission; the blue and white are for Lupus. I went for Debbie S. who died when she was only 24, leaving a young son and husband. It was Aurello C., Jerry S. and Lynn E., young husbands and fathers whose lives were cut so short. I went for the other young people who all died from brain tumors, and for Lisa S., the young 23-year old with the will and courage to battle for her life. I thought of Angie V., the young 17-year old who fought so bravely only to have her life eaten away. I went for the 10 folks and myself who have Lupus, and for the two that have died with it all within a couple of miles of my home.

As I stared out the airplane window coming back from the Convention, my mood quickly changed and my eyes were soon bathed with tears. These were tears of determination, for I was going home with renewed strength to continue my struggle for a cleaner environment, not only for my small towns of Pearland and Friendswood, but against polluters wherever they may be.

My daddy taught me long ago, that if you feel strongly about an issue, you must give it all you've got. Stand up for your rights and fight against what you believe is wrong. The lesson both mamma and daddy taught was simply that you may not win all your battles in life, but give it your best shot. Wear your badge of victory and courage well, and be a good loser. This is a country where the bells of freedom ring. You can speak out, and your efforts are rewarded in many ways. Determination and perseverance are a necessity to "ride with the whirlwind and direct the storms."

THE WALL STREET JOURNAL: LAW

## Nader Suits Up to Strike Back Against Slapps

By Stephanie Simon, Staff reporter of *The Wall Street Journal*  
July 9, 1991

Consumers who bad-mouth a company product could face a pair of surprises: being sued for defamation by the company and then being offered a free defense lawyer, courtesy of Ralph Nader.

In his latest venture, the consumer activist is establishing a coalition dedicated to finding free counsel for people who are hit with “Slapps”—strategic lawsuits against public participation.

Corporations and developers have filed hundreds of civil suits against individuals or community groups in the past decade, Mr. Nader said. Usually the plaintiffs allege libel, defamation, or interference with business in an effort to stop protestors from voicing criticism.

Targets of Slapp suits are varied: individuals who complain about development projects in letters to the editor, activists who lobby against industrial polluters, neighborhood groups that fight to uphold zoning restrictions.

For example, Betty Blake of Wantagh Woods, NY, was sued for \$6.5 million when she protested a developer’s plan to cut down oak trees on a proposed project. Ms. Blake organized candlelight vigils and circulated petitions. The developer sued her for harassment and character defamation, but eventually dropped the case.

Consumer advocates call Slapp suits pure intimidation—“blatant attempts by corporations to bully citizens into silence,” Mr. Nader said. But corporations’ counsels call such suits self-defense. “Your freedom of speech stops at the point where you libel or defame our product,” said Kevin M. Reynolds, a partner in the Des Moines, Iowa, firm of Whitefield, Musgrave and Eddy.

“With the economy in a recession, companies are finding themselves in a very competitive atmosphere and they are more sensitive about product libel than they are used to be,” said Mr. Reynolds, who represents corporations in product liability cases. “With the expansion of product-liability laws, companies have taken hard hits in verdicts and settlements against them, and now they’re saying they want to fight back.”

But lawyers say that consumers probably don’t need extensive legal help in defending against corporations’ defamation suits. Most such suits are dismissed, often on First Amendment grounds, and few plaintiffs actually recover damages.

Libel of a corporation or product “is a very, very difficult tort to prove,” said Washington insurance-defense lawyer Victor Schwartz. “At some point, you have to let the individual pop-off—often, you give more credence to [protestors’] statements by suing them than you would by ignoring them.”

Pointing to the low success rate, critics charge that companies’ real motivation in filing Slapp suits is to silence critics, not to recover actual damages. A few well publicized Slapp suits can scare others from speaking out, they say.

“The suits have a chilling effect on any process that requires public participation,” said Lawrence D. Bernfeld, an attorney who was sued for trying to galvanize public opinion against a nightclub in Manhattan. He represented a community group and organized studies of the club’s possible impact on the neighborhood. “where do you draw the line? Should a community resident have to get a First Amendment lawyer to prescreen any comments he or she may wish to make in the process of public review?”

A New York Supreme Court judge recently dismissed the suit against Mr. Bernfeld—and even fined the nightclub for initiating the legal action. “A developer or business owner cannot be permitted to use the courts to stifle legitimate activity by community groups,” wrote Acting Justice Diane A. Lebedeff.

“There is a serious threat to First Amendment rights from lawsuits that harass individuals who have spoken out at town meetings or in letters to the editor” said Floyd Abrams, an attorney at Cahill Gordon & Reindel in New York.

While recognizing the right of companies to sue individuals who might have damaged their business, Mr. Abrams said that Slapp suit targets should “respond in a militant fashion to unjust claims.”

Following this approach, Mr. Nader is encouraging Slapp defendants to “slap-back” by filing countersuits against companies that they believe to seek to intimidate them. IN one case, a man is suing a developer and its attorneys after being sued over his protests, including letters to local newspapers, against a Lake Tahoe, Calif., development. The Slapp suit has been dropped, but he is seeking compensation for the \$600,000 he says he spent on his attorney fees.



## Missouri Woman Awarded \$86 Million in Libel Suit

Kirksville, Mo., Express and News, Wednesday, May 22, 1991 – Page 13

By ED SCHAFER

Associated Press Writer

ST. LOUIS (AP) – A Missouri woman who won a libel suit against the operators of an infectious waste incinerator near her home says the battle's probably not over. "It's hard for me to be an objective observer," Linda Tanner said Tuesday, "but judging from what they've already done to me. I don't know if it's over yet."

A jury in St. Louis Circuit Court awarded Tanner, 47, of Black, MO., an \$86.5 million judgment Friday in a court battle against Decom Medical Waste Systems of Canada and its Missouri-based subsidiary, Bunker Resource Recycling Reclamation Inc.

The conglomerate operated an incinerator in Reynolds County about 100 miles southwest of St. Louis for about a month before Missouri officials shut it down.

Tanner had accused Decom, Toronto businessman Raymond Adams, and others of trying to smear her reputation because of her opposition to the incinerator. She also said the smear campaign cost her her job as a lab technician at Reynolds County Memorial Hospital in Ellington.

Decom, which operates medical waste incinerators in the United States and Canada, is owned by Adams. Adams' St. Louis attorney, Henry Menghini, did not return telephone calls from The Associate Press on Tuesday, but he had said earlier that the verdict would be appealed.

Decom initiated the legal dispute in February 1988 when it filed unsuccessful \$1 million libel suits against Tanner and Jacqueline Sommer Alexander, 32, in federal court. The suits cited letters that the women had written to two newspapers criticizing the incinerator. The letter written by Tanner was never published.

The libel suit angered members of the Missouri Legislature, who enacted a law that, in effect, prohibited Decom from running the incinerator. The Missouri Supreme Court overturned the law, but the incinerator has remained closed since 1987 when the state's Department of Natural Resources ordered that it be shut down until adjustments could be made.

Tanner said she was fired after the board of Reynolds County Memorial Hospital was told that she was bringing live AIDS viruses into the hospital for examination.

"There was no hearing or anything," said Tanner, who has a master's degree in science and biology. "I was gone in three days and that was that."

Tanner's attorney, Richard Witzel of St. Louis, said that Tanner never worked with the AIDS virus and that hospital administrators told the board at the time that the claims were absurd. Still, Tanner, who worked for an independent contractor, was barred from working in the hospital, Witzel said.

Witzel said that Adams did not testify before the jury, but had admitted in a sworn deposition that he had written letters to state legislators in which it was alleged that Tanner and Alexander were "unbalanced fanatics." The letters went out over the signature of Gail Gandy, the president of Decom's U.S. subsidiaries, Witzel said.

In a Feb. 22, 1988, story in the St. Louis Post-Dispatch, Adams was quoted as saying the women deliberately used "vicious, outrageous and totally unfounded allegations" against his company. That quote formed the basis of Tanner's successful suit.

Witzel said that the jury awarded Tanner \$80 million in punitive damages and \$6.5 million in actual damages. The award includes a personal judgment of \$10 million against Adams for the role he played in having Tanner fired, Witzel said.

Witzel also represents Alexander in her pending suit against Decom. He said he hoped that suit would go to trial this summer, also in St. Louis Circuit Court.

Tanner, who says she is still afraid of her adversaries, said she hopes she and her laborer husband, Michael, can soon settle down to the relaxed life they moved to central Missouri to enjoy.

"They're not anyone I'd want to do business with," she said Tuesday, "I'm afraid to say any more but I'm glad it happened. I'm grateful for what the jury did and I'm grateful that we got a bright bunch of jurors who could sort it all out. We still owe three or four thousand dollars for my defense in the original suit against us, but I've told everyone that I will pay them back. I'm hoping that my life will get back to normal. I'm learning to make quilts and I have a new job as a cynthologist."

St. Louis Post-Dispatch

Tuesday, February 2, 1988

## Senators Berate Disposal Firm Over Libel Suit

JEFFERSON CITY—Two senators berated a Canadian company that sued a woman from Salem, Mo., because she had written a letter to her local newspaper to criticize the company's operator of an infectious waste incinerator.

Shortly after the week's Senate session began Monday afternoon, Sen. Wayne Goode, D-Normandy, circulated copies of a story in Monday's Post-Dispatch about a \$1 million libel suit against the woman, Jacqueline A. Sommer.

"We need to speak up for the citizens of Missouri so they cannot be harassed in this manner," Goode said.

The company that sued Sommer, DECOM Medical Waste Systems Inc., also has sued Linda Tanner of Black, Mo., for writing to a journalist in North Carolina about the company.

The company builds an incinerator at Bunker, Mo., about 19 miles from Salem. The state's Department of Natural Resources shut down the incinerator in July, and a permit to operate is pending.

In October, Sommer sent her letter to the Quad County Star in Viburnum, Mo., in that letter she said the company has disregarded the environment and the public's health in small cities across the country.

Sen. Richard M. Webster, R-Carthage, also called the suit "a situation of blackmail by an arrogant outsider."

## SLAPP VICTIMS SPEAK OUT

by Linda Perkins

Louisiana Pacific (L-P) continues to pursue its SLAPP (Strategic Lawsuit Against Public Participation) against approximately 78 people, of the hundreds, who protested L-P's timber harvest plans in the area of the Albion River known to the protesters as Enchanted Meadow. This suit, over a year later, is making its tedious way through the legal system.

Recently, I talked to some of the defendants in this suit to ask them two questions, specifically: A) What effect the lawsuit had had on their personal lives, and B) If, given the SLAPP, they would participate in direct action again. Here are their responses:

Person #1

A) "It's been ridiculous, a bore and an annoyance. The only thing I really own is this piece of property; it's my life savings. I've been amazed that L-P would threaten to take my home. For a symbolic statement they'd take my home?! No - though I don't believe we can get justice through the legal system - I still think there's enough reality in the world that I wouldn't lose my property." B) "I'd do less symbolic stuff. I'd change my approach and wouldn't be public. I'd be more undercover."

Person #2

A) "I had no idea my protest would end up taking this much of my time. It's caused me to spend many hours re-evaluating how our society works. There are so few people working at a realistic management of our society's property; the dynamic needed to avoid losing the entire planet is fuzzier than I thought." B) "Yes. Watching my watershed destroyed was painful. It set me up for a change of consciousness. Once you get in, you can't get out."

Person #3

A) "It's given me a legal education. I've become a jail house lawyer

who's gotten my degree at the L-P law school. I've gotten to hang out with people I like. All in all, it's been positive; it's made our direct action campaign more effective and sophisticated. We've handled what's been thrown at us."

B) "Without hesitation."

Person #4

A) "The in-fighting in the group has made me sad. The added level of stress, the diversion of our energy, the sapping of our financial resources have been hard. I think it's had a big effect on the community at large in making them fearful, but not so much of an effect on the activists themselves."

B) "Once you've done direct action, something powerful happens to you and your sense of commitment. It's hard not to do direct action again."

Person #5

A) "It's definitely been a damper on my life. My children could have lost their future security because of this."

B) "I believe in direct action, wouldn't stop doing or supporting it, but I'd be more clandestine."

## Strategic Lawsuits Against Public Participation

Person #6

A) "It's shown me how corporations keep people at bay, keeps them from making challenges to the corporation's effects on a community. When people protest, the corporations run to the courts and use the letter of the law to stop them. I think their tactic is effective in tying up money and resources."

B) "Yes, but I wouldn't get caught next time. I'd try to stop the corporations, but I'd try not to impose on the workers. I really respect workers for working so hard for their money while the bullshit artists (owners, executives) make all the money."

Person #7

A) "Since direct action is what I do, the SLAPP has kept me from that."

B) "I'd do again what I did."

Person #8

A) "It's had a tremendous impact emotionally; it's been about 50% responsible for an acute depression I've suffered for over a year. I've felt a lot of anger, frustration and helplessness. Anyone involved in political action against the status quo knows the system, including the legal system, is there to protect the status quo. I really felt the pressure of it hanging over me. On the financial level, it doesn't really bother me."

B) "I think I would, but I don't know how much I could take, how long I would last. I've reached the point where I'm asking myself if the only change can come from a real fight, a revolution. I have to face that at some point there has to be an end to waiting for change. Does nonviolence work?"

Person #9

A) "It's affected me positively and deeply; the camaraderie of my brothers and sisters, knowing what we are doing is for the future, the wonder that people have put their homes and their lives on the line, the thankfulness that I was able to make a contribution to the effort have all pulled me more deeply into my deep California feelings; that I'm in for the long haul. I've felt no fear, but a quiet joy."

B) "Yes. Again and again and again - times a dozen - plus, plus!"

Person #10

A) "It's made me very popular with my L.A. friends. They are impressed with my efforts to save the forests."

B) "Yes, I'd do it again."

Person #11

A) "The down-side has been that it's been a boring complication. Well, overall maybe it's been rather stimulating because of the way the group has handled it. The upside is that it has forged greater unity. I'm proud of us regardless. It's had a fairly minimal effect on me personally."

B) "Certainly I'd participate again."

Person #12

A) "It's completely derailed my business; the energy and time I've put into the suit - and money - have all affected my business."

B) "Yes, but I'd be much more careful. In fact, I wouldn't do things that would make me liable to being SLAPPed. I'm more aware of the liabilities now. Of course, I never did anything in the first place to be sued for."

Person #13

A) "It's had a positive effect on my life; it's strengthened my commitment to environmental work. If you put the SLAPP in the context of who L-P is and what they do; I mean, here they've overcut their timber, closed mills, laid off workers, moved facilities to other countries, lied to the EPA about their plant emissions and been fined - what, \$11 million? - filed something like 70,000 acres of exemption plans in Mendocino where they're literally scraping up the forest floor with no public notice or monitoring. And all the while making record profits. I hardly have a pot to pee in and with this SLAPP they want that too! Now that's greed! Anyway, it's forced us to stay together, become better organized. Even with the in-fighting, I think we've learned a lot and come to a better level of understanding of one another, how to work together better. It's been an education on a lot of levels. Every legal meeting, every fundraiser, I've seen, not as a diversion of our resources, but as an opportunity to strengthen our alliance."

B) "Oh, yeah, I'd do it again."

Person #14

A) "It's been very disruptive of my family life, but it's only reaffirmed my feelings that what we did was right." B) "Regardless, I don't intend to stop the work. This makes me dig in deeper. I'm not going to stop, especially when someone tries to intimidate me."

Person #15

A) "It's diverted attention from my family and business, taken every minute of my time. I faced the threat of losing all because of the actions of an unknown number of people. I think any decision taken in this suit is an important one, that we have a responsibility in this suit to activists all over the state."

B) "I would do again everything that I did. I did some of my best work then."

Person #16

A) "I certainly haven't lost any sleep. It's forced me to get to know people in my community I didn't know before and created a whole new circle of friends and acquaintances for me. And it's been an education in civil law."

B) "Oh, yeah! I wouldn't miss the opportunity; that was the opportunity of a lifetime. I'll never regret my participation."

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<http://www.mecgrassroots.org/NEWSL/ISS14/14.10Victims.html>

## Massey Energy Files SLAPP Lawsuit Against Environmental Activists

### Company Responsible for Upper Big Branch Mine Disaster Actively Seeking to Silence Local Critics

Rock Creek, W. Va. - Massey Energy has filed a politically motivated civil suit, also known as a Strategic Lawsuit against Public Participation (SLAPP) suit, against fourteen activists arrested last year in relation to a protest on a mountaintop removal mining site. The suit seems to be part of a larger strategy on the part of the mining company to intimidate and silence critics of the company's safety record and controversial mining practices, particularly mountaintop removal coal mining.

Since the spring of 2008, Massey has filed at least four SLAPP suits against activists in West Virginia working to end mountaintop removal, none of which have yet been resolved. Commonly used to exhaust critics by burdening them with the cost of a massive legal defense, SLAPP suits have been banned by at least 26 states and one territory has protections against SLAPP suits. West Virginia does not have a ban, but its courts have adopted some protections against them (1.).

"We think that Massey should have higher priorities than suing environmental activists who object to an extremely disastrous mining policy," said Larry Hildes, an attorney representing the 14 activists. "With a record like theirs, they need to be focusing on measures to help local communities impacted by their mining and working to prevent future disasters in their mines."

Massey Energy is already publicly notorious due to their history of safety violations and damage to local communities. In April 2010, Massey's Upper Big Branch mine in Montcoal, W.Va., suffered a preventable disaster that took the lives of 29 miners and was widely covered by the press. Thousands more safety violations have been reported in Massey mines throughout West Virginia and Kentucky since the Upper Big Branch disaster. Massey also continues to be one of the leading proponents of controversial mountaintop removal mining practices. Above ground, over 500 mountains, 2,000 miles of rivers and streams and over a million acres of forest have been decimated by mountaintop mining operations. Finally, Appalachian communities near Massey mountaintop removal operations are harmed through coal dust, regular blasting, dirty water and coal waste.

"Not only is Massey destroying Appalachia's mountains and water, and criminally neglecting the safety of their own workers, but they are also using their vast legal and financial resources to sue environmentalists instead of cleaning up their mess," said Charles Suggs, a resident of Rock Creek, W.Va., and one of the climbers on the dragline. "This SLAPP suit is intended to intimidate and silence their critics so that Massey won't have to actually make right the damage they've done."

On June 18, 2009, in Twilight, W.Va., the 14 activists named in the lawsuit risked their safety to stop massive, 20-story earth-destroying piece of mining equipment known as a 'dragline.' Their action was intended to protect the families whose lives are harmed every day by this destructive mining practice. Massey now seeks \$350,000 in damages for loss of coal production on that day. All fourteen activists had their criminal charges resolved in a W. Va. court in September, 2009.

1. Harris v. Adkins, 432 S.E.2d 549 (1993)

## Strategic Lawsuits Against Public Participation

SustainableBusiness.com Newswire

07/29/2010, 3:50 PM ET; Larry Hildes  
<http://www.sustainablebusiness.com/index.cfm/go/news.viewpressrelease/id/192>

# Chapter 4

## Current SLAPP News

June 11, 2013

### **BIG WIND SLAPPS CRITIC**

**The feisty Esther Wrightman wants to keep disruptive wind turbines out of her neighborhood.**

By Robert Bryce

The Goliath of the wind-energy business is suing David. The defendant is Esther Wrightman, an activist and mother of two from the tiny town of Kerwood, Ontario, which sits roughly halfway between Detroit and Toronto.

Wrightman, 32, has angered the Florida-based NextEra Energy (market capitalization: \$32 billion) by starting a couple of bare-bones websites, [ontariowindresistance.org](http://ontariowindresistance.org) and [mlwindaction.org](http://mlwindaction.org), as well as a YouTube channel, which she uses to lampoon the company. In its lawsuit, filed on May 1, NextEra claims that Wrightman has misused its logo and libeled the company by calling it “NexTerror” and “NextError.” And while the company doesn’t specify the amount of damages it seeks from Wrightman, it says that it will donate any proceeds from the litigation to United Way.

NextEra owns some 10,000 megawatts of wind-generation capacity, or about one-sixth of all U.S. capacity. And the company is aggressively developing six new wind projects in Canada, one of which, the Adelaide Wind Energy Centre, aims to put 38 turbines just north of Wrightman’s home. (You can see her property and the surrounding land by going here.)

NextEra’s filing against Wrightman is a textbook case of a SLAPP suit, a strategic lawsuit against public participation. And it’s a particularly loathsome one as NextEra filed it in Ontario, the epicenter of the backlash against the encroaching sprawl of the 150-meter-high, noise-producing, bird-and-bat-killing, subsidy-dependent wind-energy sector.

Making it yet more loathsome: The suit was filed just before the Ontario legislature began considering a bill that would limit SLAPP suits. SLAPP suits have been common — and largely successful — in recent years in several Canadian provinces, including Ontario and British Columbia. Limits are needed, says Ontario’s attorney general, John Gerretsen, because SLAPPs have a “chilling effect” on public debate. Nearly 30 U.S. states have enacted laws to prevent SLAPPs.

Ontario is home to more than 50 active anti-wind-energy groups. Numerous towns in the province have passed regulations to prevent the construction of turbines in their areas. Last year, Health Canada said it would conduct a study into the health effects of the infrasound and low-frequency noise generated by wind turbines.

Ontario currently has about 1,500 megawatts of installed capacity. By early 2014, that number is expected to nearly triple, to some 4,300 megawatts. NextEra alone has plans to develop 600 megawatts of wind in Ontario, according to its spokesman Steve Stengel.

Peter D. Kennedy, an attorney based in Austin, Texas, whose practice focuses on technology and libel law, says NextEra’s suit is an attempt to silence Wrightman. “Besides being almost impossible to win,” he told me, “these kinds of lawsuits are almost never a good idea. They turn critics into martyrs and make the company look like a bully.” Like Americans, Canadians have the right to, as Kennedy puts it, “express their opinions in unpleasant ways, and they can use parody in their criticism.”

Perhaps the most stunning aspect of NextEra's lawsuit is its claim that Wrightman — by merely opposing its wind projects — is a “competitor insofar as she is seeking donations in order to divert business from NextEra to other energy-producing businesses in Ontario.”

Just for a moment, let's consider the outrage that might be heard from the Sierra Club or Greenpeace if an oil and gas company were to file a similarly specious lawsuit against one of the many activists who oppose drilling and/or hydraulic fracturing. What's to prevent Shell or Chevron from suing Yoko Ono? She's a leading critic of hydraulic fracturing. On the logic of NextEra's lawsuit, therefore, she has become a “competitor” to Shell and Chevron thanks to her promotion of renewable energy. Or what if Devon Energy sued Josh Fox, the poseur/auteur behind the film *Gasland*, which contains numerous false statements about oil and gas production? have an anti-SLAPP law. A real anti-SLAPP law makes your First Amendment liberties actually meaningful.”

What's at stake here? For Wrightman and other anti-wind activists, the issue is freedom of speech and their right to fight to protect themselves and the value of their homes from the noise and other issues that come with having 500-foot-tall turbines in their neighborhoods. Regardless of your feelings about wind energy, NextEra's SLAPP suit against Wrightman should be condemned. She is simply exercising her rights. She should not be harassed just because she has hurt the feelings of someone at NextEra, a company that was named to the 2012 Dow Jones Sustainability Index.

Sustainable or not, NextEra clearly sees big profits in Canada. The company's 60-megawatt Adelaide project, the one it plans to build near Wrightman's home, has been awarded a contract for a lucrative feed-in tariff from the Ontario Power Authority. That contract guarantees the company 11.5 cents (Canadian) for each kilowatt-hour of electricity it generates from the Adelaide project for the next 20 years. That's an enormous subsidy. In the U.S., wind-energy producers usually get a subsidy of 2.2 cents per kilowatt-hour. The Ontario subsidy for wind energy exceeds the average cost of electricity in the U.S., which, according to the Energy Information Administration, is now 9.7 cents per kilowatt-hour

A back-of-the-envelope calculation shows that with the feed-in tariff, NextEra's Adelaide project (assuming it operates at full capacity one-third of the time) will produce about \$20 million per year in revenue. That will result in a huge return on investment. Installing each megawatt of onshore wind-energy capacity costs about \$2.2 million. Therefore, NextEra will likely make back its entire investment in the Adelaide project (about \$132 million) in less than seven years. After that, all the revenue will be profit.

NextEra calls itself “a leader in clean energy.” But the company also has the distinction of being the only company to ever be publicly pressured by a governmental entity over the birds that are killed by its turbines. In 2010, then-attorney general Jerry Brown brokered a \$2.5 million settlement with NextEra Energy Resources for the bird kills that were occurring at the company's Altamont wind project, located about 40 miles east of San Francisco. In 2011, the Los Angeles Times reported that about 70 golden eagles per year are being killed by wind turbines located at Altamont. That finding follows a 2008 study funded by the Alameda County Community Development Agency, which estimated that about 2,400 raptors, including burrowing owls, American kestrels, and red-tailed hawks — as well as about 7,500 other birds — are being killed every year by the wind turbines at Altamont. (Despite numerous violations of both the Migratory Bird Treaty Act and the Eagle Protection Act, not a single wind-energy company has ever been prosecuted by the U.S. government under those laws.)

Wrightman has put a spotlight on NextEra's bird policies in Canada. In January, she filmed the company's workers as they cut down a bald-eagle nest in Haldimand County in southern Ontario and posted the video on YouTube. (NextEra did have permission from the Ontario Ministry of Natural Resources to remove the nest, which was located close to one of the company's wind-turbine projects.)

In picking a fight with Wrightman, NextEra has acquired a feisty foe. When I spoke to her by phone last week, Wrightman made it clear she won't alter her website or quit speaking out. Of the 100 wind turbines planned for her county, more than a dozen are slated to be built within a couple of miles of her home, and one could be built just 1,600 meters away. “I was born and raised here,” she told me. “You know every tree. Every animal. You know the sky. And for that sky to be industrialized and to have absolutely no say in the process infuriates me.”

In an e-mailed statement, NextEra — which is represented in the litigation by McCarthy Tétrault, the fourth-largest law firm in Canada, with 590 lawyers — told me its lawsuit against Wrightman is “not a SLAPP suit” and that its litigation is “a measured response to protect the goodwill associated with NextEra's name.” The company said it sued because Wrightman is “distorting, mutilating or otherwise modifying NextEra's corporate names and logos.”

What if NextEra wins in court? Wrightman, who can't afford to hire a lawyer and wrote her own defense (and has asked the court in Toronto to waive the \$144 filing fee), says she's not overly worried. "We have nothing," Wrightman told me. She works part time for her parents in their small mail-order nursery business, Wrightman Alpines. Her husband is on disability. They rent the house they live in, for \$825 per month. They transport their two children, Thomas, ten, and Clara, seven, in their one car, a silver 2001 Toyota Echo, which has over 200,000 miles on it.

If NextEra wins the lawsuit against her and "they want that car, go for it," Wrightman told me with a gentle laugh. "What else can they take?"

— Robert Bryce, a senior fellow at the Manhattan Institute, is the author, most recently, of *Power Hungry: The Myths of "Green" Energy and the Real Fuels of the Future*

Article available at: <http://www.nationalreview.com/article/350816/big-wind-slapps-critic-robert-bryce/page/0/1?splash=>



Star-Telegram

April 23, 2013

## **Range Resources can seek defamation case against Parker County landowner, court says**

By Tom Korosec  
Bloomberg News

Range Resources Corp. won a Texas appeals court's permission to pursue defamation and business disparagement claims against a Parker County landowner who accused the company of fouling his water well.

In a ruling Tuesday, the 2nd Court of Appeals in Fort Worth let stand two of Range's claims against Steven Lipsky, who sued the company in June 2011 and was countersued a month later.

The appeals panel also ordered the Weatherford trial court to dismiss all of Range's claims against Lipsky's wife, Shyla, and Alisa Rich, an environmental consultant for the Lipskys.

It also set aside Range's claims against Steven Lipsky of aiding and abetting and civil conspiracy. Lipsky's suit came after the Environmental Protection Agency issued an administrative order in December 2010 saying the gas producer was responsible for contaminating Lipsky's water with dangerous levels of methane and benzene, which can cause cancer.

The EPA withdrew its order in 2012 after Range challenged its findings and the Texas Railroad Commission found that the gas in Lipsky's well was most likely from a different source.

Range had alleged that the Lipskys and Rich conspired to persuade the EPA to intervene. Brent Rosenthal, a lawyer for the Lipskys, declined to comment on the ruling.

Matt Pitzarella, a Range spokesman, said in an email that the company is pleased with the ruling that it has a "valid claim against Mr. Lipsky and we look forward to the opportunity to present our case in court."

The company is seeking \$3 million in damages.

Rich and the Lipskys had asked state District Judge Trey Loftin to throw out Range's countersuit because it violated a Texas law prohibiting so-called Strategic Lawsuits Against Public Participation, or SLAPPs. The law bans litigation meant to stifle public protest.

Loftin rejected that argument in February 2012. The case was appealed, and the appeals court ruled in August that it lacked jurisdiction to overturn the judge's ruling. The panel instead said it would hear a petition for an order blocking the lower court from enforcing the ruling.

"We conclude that the trial court did not clearly abuse its discretion by determining that Range had presented clear and specific evidence to establish a prima facie case for each essential element of its defamation and business disparagement claims against Steven Lipsky," the appeals court wrote.

Read more here: <http://www.star-telegram.com/2013/04/23/4798228/range-resources-can-seek-defamation.html#storylink=cpy>

The Washington Post

March 15, 2013

## D.C. anti-SLAPP law goes before federal appeals judges

By Mike DeBonis

A major legal test for the District's young anti-SLAPP act is underway: A U.S. Court of Appeals panel heard arguments Friday morning on whether the law aimed at combating "strategic lawsuits against public participation" applies in the federal courts.

The case at issue is the defamation suit filed in 2011 by former federal agriculture official Shirley Sherrod against now-deceased conservative newsman Andrew Breitbart. Lawyers for Breitbart filed a motion last year to have the case dismissed pursuant to the anti-SLAPP act, which allows defendants to kill a case before the costly discovery phase of litigation and potentially recover costs and attorney fees.

The Sherrod case, along with a number of other cases under litigation, have raised the issue of whether the local law can apply in the federal courts here — a crucial test for the D.C. law, which has been invoked in numerous cases involving, among others, Redskins owner Dan Snyder, D.C. Chief Financial Officer Natwar M. Gandhi and Esquire Magazine. Federal applicability was among the issues raised by Sherrod's lawyers in their response to the Breitbart motion to dismiss. (The Washington Post has joined friend-of-the-court briefs in related cases seeking to preserve the law in federal court.)


But the judges made it clear Friday that more superficial matters complicate Breitbart's appeal, making it possible that the court could deny the appeal without ruling on whether the anti-SLAPP act is viable in federal court. Among those issues: Sherrod filed her lawsuit before the anti-SLAPP law even went into effect, raising the question of whether it can apply to cases already in litigation. There is also a dispute over whether Breitbart filed the motion within the 45-day window set out in the D.C. law.

Bruce D. Brown, who argued the appeal for Breitbart, said that the trial judge granted extensions to that deadline. But Judge A. Raymond Randolph, in particular, wasn't buying that line of argument, telling Brown that judges may not extend statutory deadlines, only procedural ones. "You didn't file within the 45 days, and you don't have an extension," Randolph said flatly.

Another judge on the panel of three, Thomas B. Griffith, offered Brown a lifeline, suggesting that the deadline should be counted from the date when the case was re-filed in federal court rather than the date of the original filing in Superior Court — putting the filing within the 45-day window: "You want to try that one again?" he asked. Brown declined.

A lively discussion ensued over whether the anti-SLAPP law conflicts with the federal rules of civil procedure — an argument pressed vigorously by Sherrod lawyer Thomas Yannucci — though that discussion was more analytic in tone than Randolph's skeptical treatment of Brown's timeliness arguments. The judges also heard arguments in defense of the anti-SLAPP act's applicability in federal court from Ariel Levinson-Waldman, senior counsel in the D.C. Office of the Attorney General, and, by and large, did not challenge them during questioning.

<http://www.washingtonpost.com/blogs/mike-debonis/wp/2013/03/15/d-c-anti-slapp-law-goes-before-federal-appeals-judges/>



## Chapter 5 Advocates

The following are more organizations that can help you access more information and help you in your battle against SLAPPs.

### **Environmental Advocates who Support Federal Anti-SLAPP Legislation**

- The Natural Resources Defense Council: <http://www.nrdc.org/>
- Humane Society of the United States: <http://www.humanesociety.org/>
- Center for Biological Diversity: <http://www.biologicaldiversity.org/>
- Center for Science in the Public Interest: <http://www.cspinet.org/>

Public Participation Project <http://www.anti-slapp.org/slapps-filed-to-silent-individuals-fighting-to-protect-our-americas-environment/>

### **Other Advocates for anti-SLAPP Legislation**

- Public Participation Project: [www.anti-slapp.org](http://www.anti-slapp.org)
- California Anti-SLAPP Project: [www.casp.net](http://www.casp.net)
- First Amendment Project: [www.thefirstamendment.org](http://www.thefirstamendment.org)
- Civil Liberties Defense Center: [www.cldc.org](http://www.cldc.org)
- Electronic Frontier Founders: [www.action.eff.org](http://www.action.eff.org)
- Society of Professional Journalists: [www.spj.org](http://www.spj.org)



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*New York, New York*

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*Claremont, New Hampshire*



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