

What is a SLAPP suit?

Strategic Lawsuit Against Public Participation. The term was coined by two University of Denver law professors, George Pring and Penelope Canan, who wrote *SLAPPS: Getting Sued for Speaking Out*, published in 1996.

SLAPP suits typically involve the environment – for example, local residents who petition government to prevent a real estate development might be sued in a SLAPP suit for interference with the developer's business interests.

However, SLAPP suits aren't limited to environmental or development activities. SLAPP suits have been filed in attempts to silence a critic of breast implant technologies, a critic of a major pharmaceuticals company, internet service providers who host public interest blogs.

There is a whole new body of law developing in the CyberSLAPP context, in which developers seek to silence anonymous posters to internet blogs or chat rooms.

A SLAPP suit is generally a (1) civil complaint or counterclaim; (2) filed against individuals or organizations; (3) arising from their communications to government or speech on an issue of public interest or concern.

SLAPPs are often brought by corporations, real estate developers, government officials and others against individuals and community groups who oppose them on issues of public concern. They are usually disguised as ordinary civil lawsuits based on traditional theories of law, including defamation, interference with contract or economic advantage, or conspiracy.

Although most SLAPPs are unsuccessful in court, they "succeed" in the public arena. This is because defending a SLAPP, even when the legal defense is strong, requires a substantial investment of money, time, and resources. The resulting effect "chills" public participation in, and open debate on, important public issues.

This chilling effect is not limited to the SLAPP defendants -- other people refrain from speaking out on issues of public concern because they fear being sued for what they say.

The filing of a SLAPP also impedes resolution of the public matter at issue, by removing the parties from the public decision-making forum, where both the cause and resolution of the dispute can be determined, and placing them before a court, where only the alleged "effects" of the public controversy may be determined.

For example, when local residents are sued after objecting to a zoning variance to place an incinerator in a residential area, the judge hearing the suit cannot decide the real issues – the location of the incinerator -- but has to decide the issues of the alleged "damages" or other consequences of the public debate on the real issues.

Who gets SLAPPed?

Every year, thousands of people are sued for participating in government or for speaking out on public issues, exercising their constitutional rights to freedom of speech and to petition the government for redress of grievances.

SLAPP targets have been sued for engaging in a wide variety of protected expression activities, including:

- ! Writing a letter to the editor
- ! Circulating petitions
- ! Calling a public official
- ! Reporting police misconduct
- ! Erecting a sign or displaying a banner on their property
- ! Complaining to school officials about teacher misconduct or unsafe conditions in schools
- ! Speaking at a public meeting
- ! Speaking as an officer of an active public interest group

If the activity which triggers the lawsuit is constitutionally protected speech or petition activity, then the suit is a SLAPP.

Why should we care?

Our rights of free speech and political protest are the hallmark of democratic society and important in ensuring the accountability of those in power. Our fundamental rights to participate in public debate and political protest are threatened as much by civil litigation as by the actions of government.

Twenty years ago, Australian Justice Lionel Murphy had this to say in deciding whether Aboriginal activist Percy Neal should receive punishment because he was a known activist:

"If he is an agitator, he is in good company. Many of the great religious and political figures of history have been agitators, and human progress owes much to the efforts of these and the many who are unknown." Quoting Oscar Wilde, Justice Murphy concluded: "Agitators are a set of interfering, meddling people, who come down to some perfectly contented class of the community and sow the seeds of discontent among them. That is the reason why agitators are so absolutely necessary. Without them . . . there would be no advance towards civilisation."

The verdict: "Mr. Neil is entitled to be an agitator."

What can we do about SLAPPs?

More than 20 states have "anti-SLAPP suit" statutes that protect citizens' rights to free speech and to petition the government. Anti-SLAPP statutes are on the books in

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

An anti-SLAPP bill was passed by the Illinois legislature and is awaiting signature by the governor. An anti-SLAPP bill has been favorably reported out of committee in the Texas House.

Colorado and West Virginia have judicial anti-SLAPP doctrines.

A key feature of anti-SLAPP statutes is immunity from civil liability for citizens or organizations participating in the processes of government, including

! Any written or oral statement made before a legislative, executive, or judicial body or in any other official proceeding authorized by law;

! Any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body or in any other official proceeding authorized by law;

! Any written or oral statement made in a place open to the public or in a public forum in connection with an issue of public interest; and

! 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.

When a citizen or organization is sued for protected activities, anti-SLAPP statutes provide for expedited hearing of a special motion to dismiss the SLAPP suit. The burden is placed on the plaintiff to prove that the defendants had no reasonable factual or legal grounds for exercising their constitutional rights and that there was actual injury suffered by the plaintiff as a result of the defendants' actions. No action can be taken in furtherance of a SLAPP suit unless the plaintiff first demonstrates to the court that there is a "probability" of success. Attorneys' fees and court costs are awarded to SLAPP defendants who win dismissal.

SLAPPs in Florida

In 1993, Florida Attorney General Robert A. Butterworth released a Survey and Report on SLAPPs in Florida. Five years later, in urging the Florida Legislature to enact a strong anti-SLAPP statute, the Attorney General wrote:

" The right to participate in the democratic process is a cherished part of our traditions and heritage. Unfortunately, the ability of many Floridians to speak out on issues that affect them is threatened by the growing use of a legal tactic called a Strategic Lawsuit Against Public Participation or SLAPP. A SLAPP lawsuit is filed against citizens in order to silence them. The theory is that a citizen who speaks out against a proposal and is sued for thousands of dollars for alleged interference, conspiracy, slander or libel will cease speaking out. And, as demonstrated in a report prepared by this office on SLAPPs in 1993, the tactic is successful. Even though the SLAPP filers rarely prevailed in court in their lawsuits, they achieved the desired aim – they shut down the opposition."

At that time, Florida's anti-SLAPP statute prohibited the filing of SLAPPs only by governmental entities. The strong anti-SLAPP statute which was supported by the Attorney General ultimately was amended to afford protection only to citizens who are sued as a result of activities related to homeowner association issues.

Citizens exercising their constitutional rights to petition government for redress of grievances, to peaceably assemble, and to speak freely remain vulnerable to frivolous lawsuits filed by individuals or organizations intent on silencing opposition and chilling public participation in government.

SLAPP suits in Florida are more prevalent than ever, especially with respect to environmental and land use issues. As development pressures grow, Florida citizens more than ever need protection to ensure continued, viable public participation in government.

The Jensen Beach Group, a community organization formed to educate the public about various development projects and proposals and to speak at hearings, meetings with local government officials, and other public forums, was named as a defendant in a SLAPP suit along with more than a dozen individual residents in 2006. They are still in court, facing astronomical legal fees and costs for defending their right to speak and to participate in government.

These and other SLAPP victims are asking Florida legislators to support a strong statute like those in California, Massachusetts, and other states where elected representatives have recognized the vital need to encourage and safeguard public participation in government from the chilling effects of SLAPPs. This package contains information and resources regarding SLAPP suits and anti-SLAPP legislation, including:

Proposed amendment to Florida's "Citizen Participation in Government Act"

"Strategic Lawsuits Against Public Participation (SLAPPs) in Florida: Survey and Report" - Office of Attorney General Robert A. Butterworth, July 1993

HB339, Florida Legislature 1999, and Committee Analysis
Letter of Support from Attorney General Robert A. Butterworth, April 6, 1998

Florida anti-SLAPP statutes (s. 720.304 and s. 768.295)

Anti-SLAPP statutes in other jurisdictions, judicial doctrine, pending bills

For more information on SLAPP suits and anti-SLAPP legislation, visit

www.casp.net (California Anti-Slapp Project)

www.oregon.gov/LCD/slappsuitsguide.shtml (Oregon Dept. of Conservation and Development)

www.thefirstamendment.org/antislappresourcecenter.html (The First Amendment Project)

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