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SLAPPed: A Tool for Activists

ACLU AMERICAN CIVIL LIBERTIES UNION of OHIO FOUNDATION

The right to speak your mind and fight for what you believe in without – or in spite of – reprisal, is one of our nation's oldest and dearest principles. But for just as long, there have been powerful forces that prefer it when people simply stay silent.

Whether the year is 2014 or 1814, these forces have always proved willing to use whatever tools they can muster to silence their critics. Often, they turn to the legal system, where their superior resources can help them make life very difficult for those who dare to challenge them.

As these legal tactics have evolved, they have been a given a name. Today we call them Strategic Lawsuits Against Public Participation, or SLAPP suits.

Their goal is not victory in the courtroom. It's much simpler than that. Their goal is to send this very clear message:

"Exercise your First Amendment rights at your own peril."

This message represents the polar opposite of everything the American Civil Liberties Union stands for. We have little concern for the ever-evolving partisan disagreements and economic realities that prompt these SLAPP suits. Our stake in this issue is much larger.

Our court system should be a place where we are all treated equally in the eyes of the law. It should not be a place where the powerful use their abundance of resources to enact revenge on those who see the world through different eyes.

What future is there for freedom of speech if we allow those who speak out to be bled dry and turned into an example of what happens when you stand up to speak your mind?

SLAPP suits pervert our legal system by turning it into a war of attrition, a place where who is right and who is wrong does not matter nearly as much as who has the most resources.

The good news is that you can fight back.

- Here you will find of compilation of resources on SLAPP suits, including what to do if you are hit with one.
- Here you will learn that these suits are often without legal merit and can be overcome with tenacity and knowledge.
- Here you will learn what other states are doing to reign in out those who try to abuse the court system with frivolous SLAPP litigation.
- Most importantly, here you will see that the ACLU remains committed to defending the First Amendment, no matter how powerful the opposition.

ACLU of Ohio Wins Dismissal of a Classic SLAPP Suit

Robert E. Murray, et al. v. The Huffington Post.com, Inc.

In September 2013, a journalist for the Huffington Post named Mr. Stark posted an article titled *"Meet the Extremist Coal Baron Bankrolling Ken Cuccinelli's Campaign."* The article was highly critical of Murray Energy Corporation, and its owner, Robert E. Murray. Mr. Stark stated that Murray laid off over one hundred employees, making good on a threat to fire employees if Obama won reelection. Mr. Stark also stated that Mr. Murray was an "extremist billionaire" who "fires his workforce wholesale in fits of spite when electoral results disappoint him."

In response to this article, Mr. Murray initiated a SLAPP suit alleging defamation, false light and invasion of privacy against the Huffington Post and Mr. Stark. We represented Mr. Stark because his comments are protected Free Speech under the First Amendment, as he was merely stating his own opinion. On November 27, 2013, we filed a motion to dismiss, and on May 12, 2014, Hon. Judge Gregory L. Frost upheld our motion and dismissed the lawsuit.

DISCLAIMER – This information is not, nor is it intended to be, legal advice. The information regarding SLAPP suits is meant to provide the public with general information as part of our on-going educational efforts. Every case depends on the specific facts and circumstances involved. ***Do not wait for a response from us. Your problem may have a deadline for legal action. Seek help from an attorney immediately. We may contact you for further information.***

SLAPPed: A Tool for Activists

Part 1: What is a SLAPP Suit?

SLAPP is an acronym for a Strategic Lawsuit Against Public Participation. The term was coined in the 1980's by two University of Denver professors, George Pring and Penelope Canan, who co-authored *SLAPPS: Getting Sued for Speaking Out.*

At its most basic definition, a SLAPP suit is a civil complaint or counterclaim filed against people or organizations who speak out on issues of public interest or concern.[1]

Who Files SLAPPs and Who Gets SLAPPed?

SLAPPs are often brought by businesses, government bodies, or elected officials against those who oppose them on issues of public concern. In the case of a business interest, the filers may be seeking to protect an economic interest.

SLAPPs are filed against a variety of individuals and organizations who attempt to make their voice heard on an issue by expressing their First Amendment rights, to freedom of speech and freedom to petition the government. A large, well-funded organization may be SLAPPed, but more often, individuals with fewer resources are the victims of SLAPP Suits.

Examples of Actions Which Have Resulted in SLAPPs: [2]

- Writing letters to the editor
- Circulating flyers or petitions
- Participating in a demonstration
- Filing complaints with a government agency
- Commenting at public hearings
- Filing legal claims or lawsuits

What Legal Claims are Made in SLAPPs?

SLAPPs are usually disguised as ordinary civil claims such as defamation, invasion of privacy, interference with contract and/ or economic advantage. Defamation is one of the most common legal claims used for SLAPP suits and is generally defined as a false statement of fact, either written (libel) or spoken (slander), which damages the plaintiff's reputation.[3]

Why are SLAPPs used?

One of the key characteristics of a SLAPP suit is that the lawsuit is not necessarily designed to achieve a favorable verdict. Instead, it is designed to intimidate the target in order to discourage them and others from speaking out on an issue of public importance.

In addition to engendering fear and intimidation, the party initiating the suit (SLAPPOR) often seeks to bleed the other party (SLAPPEE) of resources and produce a chilling effect, not only on the SLAPPEE's expression of First Amendment rights but also on those who consider speaking out on the issue in the future.

In essence, SLAPPs are designed to discourage public discussion by using our legal system to choke the exercise of free speech.

An Example SLAPP

One SLAPP suit which may help shed light on how these suits work is *Protect Our Mountain Environment, Inc. v. District Court of County of Jefferson*.[4]

Protect Our Mountain Environment ("POME") was a local environmental group located in Evergreen, Colorado that sued to stop the rezoning of a 507-acre piece of land to allow real estate development.

POME lost its suit, appealed, and lost again. As a result, the developer sued POME, several of its leaders and its attorneys for abuse of process and civil conspiracy. The developer blamed POME for an increase in its financing and development costs and demanded **over $40 million in damages**.

The case took over four years to resolve, and although the court ruled in favor of the defendants and the development was never built, the developer succeeded in suppressing the opposition movement. Many of POME's leaders withdrew from public life. Some even moved out of town.

As commentators have observed, "a decade later, environmental campaigns … can be withered by the phrase: 'Remember POME.'"[5]. Even though the developer lost in court and the First Amendment rights of those who were sued were vindicated, a strong environmental protection group was eviscerated and the developers had largely accomplished their mission to discourage public participation on the issue.

Activism that Resulted in SLAPPs by the Numbers

SLAPP suits are most often provoked by:[6]

- Participation at public hearings (47%);
- Filing public interest litigation (20%);
- Reporting violations of laws or regulations (18%);
- Lodging formal government complaints (8%); or
- Peaceful protests and legal boycotts (3%).

In 75% of SLAPP suits, the defendants seek to change the status quo.[7] For example, advocating in favor of the closure of a noxious enterprise or reporting violations of laws governing such enterprise. Alternatively, some targets of SLAPPs oppose change, such as seeking to prevent a new real estate development.

Most SLAPP suits involve real estate issues or zoning and land questions.[8] However, many other SLAPP suits involve criticism of public officials or public employees, or are cases concerning the protection of the environment, animal rights or consumer protection.

References:

1. The First Amendment Project, *Guarding Against the Chill: A Survival Guide for SLAPP Victims*, What are SLAPPs?, *available at* http://www.thefirstamendment.org/antislappresourcecenter.html.

2. Environmental Law Institute, *SLAPPS: A Guide for Community Residents and Environmental Justice Activists*, pg. 3 (1997) available at http://www.eli.org/research-report/strategic-lawsuits-against-public-participation-slapps-guide-community-residents-a-0.

3. *Becker v. Toulmin*, 138 N.E.2d 391, 395 (Ohio 1956).

4. *See Protect Our Mountain Environment, Inc. v. Bd. of County Comm'rs of Jefferson County*, No. 78CV1783 (Dist. Ct., Jefferson County, Colo., filed Sept. 12, 1978); *see also Lockport Corp. v. Protect Our Mountain Environment, Inc.,* No. 81CV973 (Dist. Ct., Jefferson County, Colo., filed Apr. 01, 1981).

5. George W. Pring and Penelope Canan, SLAPPs: Getting Sued for Speaking Out, pg. 6 (Temple University Press 1966).

6. Pring and Canan, *supra* note 5, at 213, ¶1 .

7. Pring and Canan, *supra* note 5, at 213, ¶2 .

8. Pring and Canan, *supra* note 5, at 213, ¶3 .

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Part 2: What is a cyberSLAPP?

A cyberSLAPP is a lawsuit that is filed based on an individual's online free speech, such as posting a blog or leaving a comment on a review website. CyberSLAPPs typically involve a person who posted anonymous criticisms of a corporation or public figure on the Internet. Much like a standard SLAPP suit, a cyberSLAPP usually has no legal merit, and the underlying goal is the same – to chill free speech by initiating an intimidating and costly lawsuit.

However, cyberSLAPPS may also have an additional goal – to reveal the identity of the anonymous critic. Once the cyberSLAPP is filed, the plaintiff will subpoena the Website or Internet Service Provider (ISP) to reveal the identity of the anonymous critic, hoping to intimidate others from voicing their opinions in the future.[1]

Some ISPs may have policies regarding the privacy of their registered users. This policy may state that they will send the user an email informing him or her that someone is seeking, through the courts, to discover their identity, and that the ISP will not act for a specific time period so the user may take legal action to attempt to preserve his or her anonymity.[2]

Though your protections are not limitless, the U.S. Supreme Court has also acknowledged that your ability to speak anonymously online is "an aspect of the freedom of speech protected by the First Amendment."[3]

Tips to Defend Against a cyberSLAPP

Large corporations and public figures are increasingly suing individuals who exercise their First Amendment rights by posting critical opinions on Internet forums such as message boards, review sites, blogs, or in chat rooms. Although the vast majority of these SLAPP suits has no legal merit and will be unsuccessful in court, it is important to be aware of potential ways to defend yourself. Below are some tips to help defend against cyberSLAPPs:

<u>Protecting Anonymous Internet Speech</u>

- Be proactive in maintaining your anonymity online. The Digital Media Law Project has compiled resources that address strategies for maintaining anonymity online. [link to: http://www.dmlp.org/legal-guide/how-maintain-your-anonymity-online]
- Additionally, if you become aware of a subpoena to reveal your identity, consult an attorney as soon as possible about protecting your anonymity.

<u>Immunity from Reposting Content or Hosting User Comments</u>

- Another way to defend against a cyberSLAPP is to rely on protections granted through the Communications Decency Act.[4] Section 230 may help shield liability from a variety

of cyberSLAPP claims, such as defamation, negligent misrepresentation, interference with business, breach of contract, and emotional distress.

- Section 230 of the Communications Decency Act provides that users and providers of interactive computer services, including the Internet, are immune from civil liability for publishing material written by someone else.[5] For example, if an online news publication published an editorial written by an anonymous blogger, the online news source could use this to shield itself from liability. Additionally, Section 230 can be used to shield bloggers who host comments on their blogs.[6] Section 230 may even shield you from liability if you make professional edits to the material you publish.[7]

References:

1. *See* http://www.cyberslapp.org/.

2. California Anti-SLAPP Project, *CyberSLAPPs: Being Sued for Speech Online, available at* http://www.casp.net/sued-for-freedom-of-speech-california/slapp-being-sued-for-first-amendment-online/; *see also* Digital Media Law Project, *Potential Legal Challenges to anonymity*, *available at* http://www.dmlp.org/legal-guide/potential-legal-challenges-anonymity.

3. *McIntyre v. Ohio Elections Comm'n.,* 514 U.S. 334, 342 (1995); *see also* Reno v. ACLU, 521 U.S. 844 (1997) (holding in part that online speech should receive the same First Amendment protection as offline speech).

4. 47 U.S. Code § 230.

5. Electronic Frontier Foundation, Legal Guide for Bloggers: Section 230 Protections, *available at* https://www.eff.org/issues/bloggers/legal/liability/230; *see also* 47 U.S. Code §230(c)(1) and (e)(3).

6. *See* Electronic Frontier Foundation, Section 230 of the Communications Decency Act, *available at* https://www.eff.org/issues/cda230.

7. Electronic Frontier Foundation, Legal Guide for Bloggers: Section 230 Protections, *available at* https://www.eff.org/issues/bloggers/legal/liability/230.

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Part 3: A Brief History of SLAPP Suits

Origins

SLAPP suits existed long before the term "SLAPP" was coined. The oldest cases that would now be considered SLAPP suits involved the right to petition the government. In fact, some commentators believe the origins of the right to petition the government to resolve grievances goes back as far as the 10th century.[1] There is a clear nexus between our First Amendment's right to petition clause, and the Bill of Rights previously exacted by William and Mary in the 17th century.[2] Years later, the Declaration of Rights and Grievances emerged as an outgrowth of the Stamp Act in 1765, and included the right to petition the King and Parliament.[3]

In the United States, SLAPP suits date back to the earliest years of our country when citizens were sued for speaking out against government corruption. Perhaps the earliest SLAPP suit in our country's history arose in 1802 in *Harris v. Huntington*.[4] This case involved five Shaftsbury, Vermont citizens who petitioned the state legislature against reappointing Harris as a county justice of the peace, claiming he was a "quarreling, fighting, and Sabbath-breaking member of society…[with] a wicked heart." Harris brought suit against the citizens for libel and sought $5,000 in damages. Although expressing some concerns about the truthfulness of the citizens, the court upheld their right to petition and dismissed the case. Numerous similar cases filed throughout the 1800s met a similar fate.

With the rise of political activism in the 1960s and 1970s, suits to suppress speech became a popular tool to stifle those perceived to be obstacles or a threat. It was not until the 1980s that University of Denver Professors George W. Pring and Penelope Canan officially coined the term "SLAPP" to describe these cases.[5] Over the years, SLAPP suits have grown from an unnamed nuisance into a serious threat to freedom of speech and participation in the political process.

Laying the Groundwork for Modern-Day SLAPP Suits

There are two important cases that established the *Noerr-Pennington Doctrine*, which lays the groundwork for modern-day SLAPP suits. In general, the *Noerr-Pennington Doctrine* exempts individuals from liability due to attempts to petition or otherwise influence the government, as long as the activities are not a sham to cover up a mere attempt to interfere with a competitor's business.

In 1961 the U.S. Supreme Court was faced with an early incarnation of the modern-day SLAPP suit in *Eastern Railroad Presidents' Conference v. Noerr Motor Freight, Inc.*[6] The case involved a contentious fight for market share between the railroad and trucking industries. The railroads engaged in an intense marketing campaign against the trucking companies, which the latter viewed as an attempt to destroy the trucking companies as a competitor.

Specifically, the truckers accused the railroads of persuading the governor of Pennsylvania to veto the Fair Truck Bill. The truckers filed suit claiming the defendants violated the Sherman Act by conspiring to restrain trade and monopolize the long-distance freight business. The Supreme Court held that mere attempts to influence the passage or enforcement of a law did not constitute a violation of the Sherman Act, even if multiple parties were involved. The Supreme Court rightfully saw that that the Sherman Act could not be used to restrict the right to petition, so long as it was not a sham to conceal an actual attempt to interfere with a competitor's business relationship.

A few years later, the Supreme Court elaborated on their *Noerr* decision. In *United Mine Workers v. Pennington*, small coal mine operators brought suit against large coal mines and the union for conspiring to drive them out of business.[7] The small coal mines argued that the large coal mines and the union were lobbying federal agencies to increase the minimum wage and to restrict the government's purchase of coal to only those companies that were able to pay the higher wages.

Relying on *Noerr,* the Supreme Court held that, although the intention was to eliminate their competition, the "sham" exception did not apply, and thus, the large coal mines and the union did not violate the Sherman Act.

Almost a decade later, the "sham" exception created by the *Noerr-Pennington* doctrine was finally applied. In *California Motor Transport v. Trucking Unlimited*, a trucking company was repeatedly thwarted in its efforts to expand its business by established truckers who filed objections to the new trucking company's applications for necessary licenses.[8] The Supreme Court concluded that the repeated objections were baseless and constituted an obvious attempt to block another petitioner's "meaningful access to the adjudicatory tribunals," or its First Amendment right to petition the government, which ultimately deprived the government of its role in the decision-making process.[9]

<u>The *Noerr-Pennington* Doctrine Meets the Media</u>

In *Sierra Club v. Butz*, the Sierra Club filed a lawsuit to stop logging activities.[10] The defendant in the case then filed a counterclaim, alleging that the Sierra Club was seeking to force a breach of contract and interfere with their business relationship.

The Supreme Court had never ruled on this specific issue. However, it had ruled on the interaction of other First Amendment rights and common law tort actions – actions resulting from a wrongful act which caused injury – specifically as they apply to the media.

In *New York Times Co. v. Sullivan* and related cases, the Supreme Court held that the guarantees of free speech and freedom of the press amount to a constitutional defense in defamation actions.[11] In simple terms, this means that unless the speaker is knowingly making false statements or acting without regard to whether he is speaking the truth, he is not liable for defamation. Without evidence of this "sham," any claim of common law malice is irrelevant.[12]

By combining the *New York Times* defamation standard and the Noerr-Pennington doctrine, the court concluded that the right to petition the government for redress of grievances cannot be determined by the presence or absence of malice, because "the malice standard invites intimidation," and because "malice is easy to allege."[13]

As a result, the court held that there can only be liability in common law tort when the petitioning activity is a sham, i.e., when the "real purpose is not to obtain governmental action, but to otherwise injure the plaintiff."[14]

In a case known as *Protect Our Mountain Environment v. District Court*, the Colorado Supreme Court made a decision that has provided a useful standard for determining whether to grant summary judgment in a tort claim filed in response to petitioning activity.[15]

The Court held that in cases like this, the burden of proof shifts to the plaintiff to show "that the primary purpose of the activity was to harass the plaintiff or accomplish some other improper goal, *and* that the activity had the capacity to adversely affect a legal interest of the plaintiff."[16]

The *Noerr-Pennington* Doctrine and Civil Rights Claims

In 1982, in *Nat'l Ass'n for the Advancement of Colored People v. Claiborne Hardware Co.*, the Supreme Court applied the *Noerr-Pennington* doctrine to a civil rights case.[17] Here, the NAACP instituted an economic boycott in Claiborne, Mississippi to pressure the city council to adopt anti-discrimination laws. The local hardware store was one of several white-owned businesses that sued the NAACP and other activists for business interference and asked for $3,000,000 in damages. Not surprisingly, the jury rendered a verdict in favor of the hardware store and granted it $3,500,000 in damages. Even less surprisingly, the Mississippi Supreme Court affirmed this ruling. However, the U.S. Supreme Court struck down the lower courts' rulings by applying the *Noerr-Pennington* doctrine to determine that the indirect petitioning of private businesses through boycotts was constitutionally protected activity.

Limiting the Sham Exception

More recently, in *City of Columbia v. Omni Outdoor Advertising Inc.*, two competing billboard companies were involved in an anti-trust case.[18] Omni Outdoor Advertising was trying to establish itself in the Columbia, Georgia market. Columbia Outdoor advertising, an established local firm, tried to keep Omni out of the market by persuading a friendly city council to pass restrictive ordinances, by giving free billboard space to select city officials, and by spreading lies about Omni.

In an opinion that broadly restricted the "sham" exception, the Supreme Court adopted an "outcome versus process" test. This test limited the "sham" exception to those cases in which "persons use the governmental process—as opposed to the outcome of that process"—as a "weapon."[19] Under this test, if a SLAPP suit seeks a governmental result (such as legislation, ruling, etc.), then it must be dismissed.

References:

1. George W. Pring and Penelope Canan, SLAPPs: Getting Sued for Speaking Out, pg. 15 (Temple University Press 1966)(citing "Andover Code" of Edgar the Peaceful; *see* D. Smith, The Right to Petition for Redress of Grievances: Constitutional Development and Interpretations, pgs.12-13, 45 (1971) (unpublished dissertation, Texas Tech University)).

2. J. Nussbaum and Steven S. Weil, SLAPP: The First Amendment and Community Association Politics, *available at* www.berding-weil.net/pdf/SLAPP_article.pdf. (citing Bill of Rights, 1 William and Mary, Sess. 2, Ch. 2 (1689)).

3. J. Nussbaum and Steven S. Weil, SLAPP: The First Amendment and Community Association Politics, *available at* www.berding-weil.net/pdf/SLAPP_article.pdf. (citing *McDonald v. Smith,* 472 U.S. 479, 105 S. Ct. 2787, 86 L. Ed. 2d 384 (1985)).

4. 2 Tyler 129 (Vt. 1802).

5. George W. Pring and Penelope Canan, SLAPPs: Getting Sued for Speaking Out, pg. 3 (Temple University Press 1966).

6. 365 U.S. 127 (1961).

7. 381 U.S. 657 (1965).

8. 404 U.S. 508 (1972).

9. *Id.* at 512.

10. 349 F. Supp. 934 (U.S. Dist. Ct. 1972).

11. *See* 376 U.S 254 (1964).

12. *Sierra Club v. Butz*, 349 F. Supp. 934, 937 (U.S. Dist. Ct. 1972).

13. *Id.* at 938.

14. *Id.* at 939.

15. *Protect Our Mountain Environment, Inc. v. District Court of County of Jefferson*, 677 P.2d 1361 (1984).

16. J. Nussbaum and Steven S. Weil, SLAPP: The First Amendment and Community Association Politics, pg. 6, *available at* http://www.berding-weil.net/pdf/SLAPP_article.pdf. (citing *Protect Our Mountain Environment, Inc. v.District Court of County of Jefferson*, 677 P.2d 1361, 1369 (1984)).

17. 458 U.S. 886 (1982).

18. 499 U.S. 365 (1991).

19. George W. Pring and Penelope Canan, SLAPPs: Getting Sued for Speaking Out, pg. 27 (Temple University Press 1966)(citing *City of Columbia v. Omni Outdoor Advertising Inc.*499 U.S. 365, 380 (1991)).

SLAPPed: A Tool for Activists

Part 4: Modern-Day SLAPP Suits

The following are examples of various modern SLAPP suit trends. These examples are not intended to be an exhaustive presentation of all SLAPP suits, but rather to highlight the multitude of forms that SLAPP suits may take.

Food Disparagement SLAPP Suits

Forty years after *New York Times v. Sullivan* -- a case where the court recognized that debate on public issues should be uninhibited, robust, and wide-open -- states began adopting food disparagement laws at the urging of major meat, dairy, and agricultural lobbyists. These laws are designed to make it easier for food producers to hold individuals liable for criticizing their products.[1]

Since 1991, thirteen states, including Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Louisiana, Mississippi, North Dakota, Ohio, Oklahoma, South Dakota, and Texas, have adopted some form of food disparagement laws.[2] In general, these laws lower the actual malice or reckless disregard standard required to successfully litigate a defamation claim for statements related to matters of public concern set out in *New York Times Co. v. Sullivan*.[3] Additionally, these laws often allow the plaintiff to collect punitive damages and attorney's fees against the defendant, on top of any compensatory damages from the defendant's statements. The breadth of potential damages and fee awards may entice a company to engage in this type of litigation. Unfortunately, these laws are rarely challenged, and many of the cases are dismissed before being fully litigated.

"Ag-Gag"

Seven states have adopted 'ag-gag' laws which criminalize whistle-blowing investigations at factory farms and specifically target animal rights advocates who expose illegal and cruel practices. In March 2014, the ACLU of Idaho filed a lawsuit challenging their recently adopted ag-gag law which imposes jail time on activists who take photos or videos at a factory farm or slaughterhouse without the owner's express consent.

- One early example of a food disparagement SLAPP suit occurred in 1989 after CBS aired a 60 Minutes episode on the dangers of a chemical sprayed on apples.[4] The chemical, Daminozide, commonly known as Alar, was the subject of a National Resources Defense Council study which found that Alar was a carcinogen that potentially exposed millions of children to a risk of cancer later in life. This report had a dramatic impact. Grocery stores pulled apples off their shelves, schools stopped serving apples in their cafeterias, and apple growers lost millions of dollars. Additionally, the maker of Alar was forced to

stop production, and the EPA banned its use. As a result, Washington state apple growers sued CBS claiming the 60 Minutes segment falsely disparaged their product.[5] The lower court determined that, since the growers were not able to prove that the statements about Alar's dangerous effects were false, there was no basis for the suit. On appeal, the growers argued that, although they could not prove that the statements were false, it was possible that a jury could conclude it contained a false message. The appellate court rejected this argument and affirmed the lower court's decision.

- This case proved to be a wake-up call for agri-business. Soon after, in what is now an alarmingly common practice by powerful special interest groups, the American Feed Industry Association ("AFIA") retained a law firm to draft model legislation to protect its members' interests. The model legislation was then disseminated through political channels to state legislatures, where they were dutifully passed and signed into law in a dozen states. [6]

The Agricultural Disparagement SLAPP Suit that Made Headlines

One of the most infamous agricultural disparagement cases involved Oprah Winfrey.[7] In 1996, in connection with the mad cow disease crisis in Great Britain, a link between Bovine Spongiform Encephalopathy (a.k.a. mad cow disease) and a fatal disease that affects the human brain was established. After this news broke, the subject of dangerous foods was addressed in a panel discussion on an episode of the Oprah Winfrey show. Among the questions addressed by the panel was whether there could be an outbreak of mad cow disease in the United States. One panelist stated that he believed it could happen, and Oprah Winfrey responded that she was stopped cold from eating another burger.

Hoping to chill Winfrey and other's speech on this topic, a group of Texas cattle ranchers sued Winfrey, her production company, and a guest on the show under the Texas agricultural disparagement statute, claiming that false and disparaging comments were made about their beef products. Ultimately, this case was thrown out on a motion for directed verdict because the court ruled that beef did not fall within the definition of "perishable" under the Texas agricultural disparagement law. Additionally, the court held the plaintiffs utterly failed to show the defendants had actual knowledge that the information presented on the show was false.

> *"It would be difficult to conceive of any topic of discussion that could be of greater concern and interest to all Americans than the safety of the food that they eat."*
> - Judge Mary Lou Robinson

Ohio's Food Disparagement or "Veggie Libel" Law

In 1996, Ohio passed a food disparagement, or veggie libel, statute. Under this law, a food producer may sue anyone who makes a false statement, or a statement not supported by "reasonable and reliable scientific data," about a perishable food product, if the statement causes damage to a producer of those products. If the false statement is held to have been made intentionally, a food producer can seek compensatory and punitive damages.[8]

Perhaps the most well-known Ohio agricultural disparagement case is *AgriGeneral Co. v. Ohio Public Interest Research Group.*[9] The plaintiffs, now known as Buckeye Egg Farms, were the largest egg producer in Ohio. At a press conference, a representative of the Ohio Public Interest Group alleged that Buckeye Egg Farms placed expired eggs in cartons with newer eggs without alerting the consumer to this practice and exclaimed that it was unknown whether any consumers became ill from consuming these eggs. Buckeye Egg Farms responded by suing the Ohio Public Interest Research Group based on Ohio's veggie libel law claiming that the statements made at the press conference were defamatory. As the ACLU of Ohio prepared to join in the Ohio Public Interest Group's defense, Buckeye Egg Farm dismissed the lawsuit. Therefore, the constitutionality of Ohio's food disparagement law has not been addressed.

SLAPP Suits Brought by Public Servants Against Citizens

One common type of SLAPP suit occurs when public sector entities or employees sue citizens for speaking out on an issue of concern. For example, sometimes police departments will sue citizens who file misconduct reports, teachers will sue parents who lodge complaints with school administrators, and public officials will sue their own constituents who speak out at public hearings.[10] Below are examples of each of the above-mentioned SLAPP suit examples.

SLAPPs Involving Police Officer Conduct

In *Welter v. Fellin,* a social worker observed a young African-American man being chased and then beaten by a group of men.[11] Ms. Fellin observed the victim break free and a police cruiser come on to the scene. As she approached the police officers, Ms. Fellin saw the victim being held on the ground and placed in handcuffs while being kicked by the two officers. Ms. Fellin complained to the officers, who responded by threatening to arrest her. As a result, Ms. Fellin wrote a letter to the District Captain about how the officers treated the victim and sent copies of this letter to other safety force officials. Both officers were cleared of any wrongdoing, but one of them, with the support of his union, filed a $50,000 libel suit against Ms. Fellin. The original judge denied Ms. Fellin's motion to dismiss, because he believed there was a question as to whether she acted with malice. However, the case was reassigned to a different judge and was eventually dismissed because Ms. Fellin never mentioned the officer's name—a requirement in a libel case—in her letter of complaint. Therefore, this case did not set any constitutional precedent.

A local SLAPP suit which arose out of an incident involving the police occurred in Cleveland in September 2005.[12] In connection with a robbery investigation, Cleveland Police Officers Habeeb and Kraynik entered the suspect's home with a search warrant. The officers shot and killed the suspect, who was fifteen years old, in an upstairs bedroom after he allegedly came at them with a shank. The incident was investigated by several governmental entities, all of whom cleared the two officers of any wrongdoing. During the investigation, State Representative Shirley Smith sent a letter to Cleveland's Director of Public Safety, and sent copies to several other city officials. In this letter, Ms. Smith referred to the police officers as "two malicious sharpshooters" and "hit men" on an "execution assignment."

The officers initially brought suit against Representative Smith in the Court of Claims seeking a ruling as to whether she was immune from suit since she was a public official. The Court determined she was not acting in her official capacity when she sent the letter and, therefore, was not immune from suit. As a result, the officers sued Rep. Smith for defamation, hoping to stifle public criticism of their actions. The ACLU of Ohio stepped in to defend Rep. Smith in the related defamation case. In April 2012, after numerous pre-trials, discovery disputes, and efforts to seek summary judgment, the plaintiffs dismissed the case.

SLAPPs Involving School Officials

The typical SLAPP suit in this sub-category begins with parents calling attention to alleged unfair discipline of their child, a teacher denying their child the grade the parents think the child should have received, or a parent accusing a teacher of being incompetent. At some point, the teacher responds to the accusations by suing the parents in an effort to silence their criticism. In addition to teachers, school principals and other school employees are often the target of related complaints from the public. This SLAPP suit sub-category is difficult to analyze, because rather than suing solely to silence their critic, the public servant may actually be attempting to use the court system to remedy a wrong suffered.

Swenson-Davis v. Martel is one example of a SLAPP suit filed regarding a parent's concern over their child's grade.[13] An honors student received a B+ rather than an A- in honors English. His father filed a complaint under the school's fair treatment procedure and went through the various grievance steps. During the grievance process, the parent accused the teacher of trying to use intimidation, as well as being unfair, insensitive, and unprofessional towards his son. The grievance process culminated in a hearing where the hearing officer determined that the teacher was insensitive and miscalculated the grade but not that she was unprofessional. Ultimately, the hearing officer recommended that the teacher change the grade.

The teacher did not appeal the ruling but believed that the complaint process had marked her as damaged goods, and as a result, she began seeing a psychiatrist. She also filed suit against the parent for libel and intentional infliction of emotional distress. The trial court dismissed the suit, the court of appeals affirmed, and the Michigan Supreme Court refused to reconsider the issue, but this case took four years to complete.[14] Unfortunately, the court of appeals based its dismissal on a state law regarding privileged communications between parties with a common

interest and ducked the constitutional question. However, one judge wrote a separate opinion stating that the case should have been dismissed on First Amendment grounds.

Other examples of various school-related SLAPP suits:

- *Central Transportation, Inc. v. Stephens*: A Pennsylvania school bus company sued 68 parents because they filed safety complaints with the school board.[15]
- *Board of Educ. of the Miami Trace School Dist. v. Marting*: An Ohio school district sued the leader of the PTA and his lawyers for taking legal action to challenge the legality of a bond issue.[16]

SLAPPs Involving Public Officials

A local SLAPP involving a public official who sued citizens for their speech occurred in December 2012. In this case, three individuals were sued by the South Euclid Law Director Michael Lograsso over public comments made at South Euclid City Council meetings, which were subsequently published online.[17] In fall 2012, Robert Frey spoke in support of recently passed legislation requiring that city council approve the mayor's appointment of the city law director. Mr. Frey stated that he believed the law was necessary due to Mr. Lograsso's financial history and listed numerous cases regarding debts and judgment liens. Emilie Difranco and David Furry videotaped Mr. Frey's comments at the city council meeting and posted them on YouTube and their blog, *South Euclid Oversight*. Mr. Lograsso filed a SLAPP suit against Frey, Difranco, and Furry for defamation and false light in an attempt to chill their and other citizen's public criticism on his capacity as South Euclid Law Director. In July 2013, the Cuyahoga County Court of Common Pleas ruled in favor of Frey, Difranco, and Furry, and Lograsso appealed. On May 15, 2014, the 8th Appellate District Court of Appeals upheld the decision in favor of the defendants.

In March 2014, MoveOn.org ("MoveOn") sought to bring attention to Governor Bobby Jindal's refusal to extend Medicaid to those without health insurance.[18] MoveOn posted a billboard that parodied the state's slogan, "Pick Your Passion." The billboard read, "LOUISIANA Pick your passion! But hope you don't love your health. Gov. Jindal's denying Medicaid to 242,000 people." MoveOn also ran television ads with essentially the same message. These ads prompted the state to sue MoveOn claiming trademark infringement for unauthorized use of the state's tourism motto, hoping to silence MoveOn and other organizations that may be inclined to voice their opinion on the refusal to extend Medicaid coverage. As of April 2014, this lawsuit is still pending.

Real Estate SLAPP Suits

SLAPP suits involving real estate are becoming increasingly common and comprise a large portion of all SLAPP suits filed. The typical real estate SLAPP suit is filed by a developer who has encountered resistance to a plan to develop a tract of land by local residents.[19]

More than 30 years ago, New York became a hotbed of SLAPP suits. One of the more widely known real estate SLAPP suit examples is *SRW Associates v. Bellport Beach Property Owners*.[20]

In this case, the plaintiff developer wanted to develop a forty-acre tract of beach-front property into 44 multifamily condos. For years, the tract of land had essentially been used as a public beach. The residents opposed the planned development, and it was rejected by the township planning board. For two years, the developer tried presenting alternatives to appease the residents and township officials. Eventually the planning board approved a cluster configuration of 36 single-family homes, and the residents were up in arms. The residents organized a campaign against final approval and urged individuals to come to the hearing where the decision would be made. While publicizing their campaign, the residents described the proposal as "multiple-family housing" when it actually comprised detached single-family homes. During the hearing, the developer's attorney attacked this mischaracterization, and a petition supporting the project was presented. Ultimately, the residents were successful in persuading the board to reject the proposal.

As a result, and hoping to suppress the residents' further outspokenness on the development, the developer sued the defendants for libel, conspiracy to libel, and tort claims. The defendants fought against this SLAPP suit by filing a motion for summary judgment for violating their First Amendment rights, as well as a counterclaim for abuse of process alleging that the lawsuit was frivolous and intended to harass and intimidate the residents into refraining from further opposition to the development. These two actions are now regarded as crucial elements to a successful SLAPP defense. The developer then took what has become a boilerplate approach in its response by seeking leave to file an amended complaint and filing its own motion to dismiss. This caused the case to be further delayed, and the defendants incurred more expenses. Three years after the case was filed, the court denied both motions, and the defendants appealed. Two years later, the appellate court dismissed both suits. Thus, neither side came away as victors; however, the developers were eventually able to complete the project and succeeded in chilling the residents' speech against future development.

Eco-SLAPP Suits

Large corporations have often sought to suppress the opinions of those who oppose them. Over the past four decades, the environmental movement has consistently been the target of SLAPP suits aimed at suppressing environmental activists' speech on a variety of issues such as logging, mountain top removal, pollution, and hydraulic fracturing.

One of the oldest documented eco-SLAPP suits is *Sierra Club v. Butz,* a California case regarding land being opened up for logging.[21] In 1965, the U.S. Forest Service awarded a contract to Humboldt Fir to conduct logging near an area in northern California that came to be known as the Salmon-Trinity Alps Wilderness. The Sierra Club challenged this decision and asked that the area be kept as a wilderness zone free from logging. The Sierra Club's request was denied, so they filed a lawsuit to overturn the ruling. Within days, Humboldt Fir filed a counterclaim alleging interference with contract because the Sierra Club engaged in a campaign to compel the U.S. Forest Service to break its contract with Humboldt Fir. The Sierra Club responded by filing a motion to dismiss, asserting their First Amendment right to petition, and the U.S. District Court ultimately granted Sierra Club's motion to dismiss on First Amendment grounds.

Company vs. Critic SLAPP Suits

Consumers are often the target of SLAPP suits for a variety of reasons. For example, many dissatisfied tenants, or purchasers of homes or cars, are later sued by their landlord or merchant as a result of their complaint.

A good example of this sub-category of SLAPP suit is *Westlawn Cemetery Corp. v. Forston*.[22] In this case, the Westlawn Cemetery located in McLewis, Texas, had been the subject of numerous complaints to the state attorney general regarding poor maintenance, selling the same plot to more than one person, and failing to build crypts that had already been paid for. Terry Forston, who owned a plot in the cemetery, contacted the attorney general, organized other plot owners, and spoke to the local media about his complaint. The Westlawn Cemetary attempted to silence Mr. Forston and the other plot owners by filing a $200,000 lawsuit against Mr. Forston for slander, alleging that all the negative publicity caused them to lose business. Two months later, the attorney general intervened on behalf of the consumers, the cemetery ultimately filed for bankruptcy, and the case was not pursued.

One local consumer rights SLAPP suit evolved from a dispute between a landlord and tenant. In September 2013, the Connor Group of Dayton sued a former tenant for online comments made about his experience renting a unit in one of their apartment complexes.[23] Mr. Raney discussed his experiences renting one of the Connor Group's "luxury" apartments online, including on his own blog, www.rentn.org. As a result, the Connor Group filed a defamation and tortious interference SLAPP suit in an attempt to silence Mr. Raney's public criticism of the company and the apartment complex. The Connor Group is seeking damages in excess of $25,000 as to each alleged defamatory statement made by Mr. Raney, totaling more than $1.5 million. As of May 01, 2014, this case is ongoing.

CyberSLAPPs

CyberSLAPPs are filed as a result of an individual's online free speech and typically involve a person who posted anonymous criticism of a corporation or public figure on the Internet. Perhaps the most notorious Ohio case involving a SLAPP being filed as a result of online communications was *Saltzman v. Goddard*.[24] The case was an outgrowth of a disturbing incident involving two Steubenville Big Red High School football players accused of raping a female juvenile from another community. Alexandra Goddard claimed to be concerned that numerous others involved in the assault were not charged and decided to blog about the incident and allow others to post anonymous comments on her blog posts. Cody Saltzman, one of the accused, was the subject of many of these blogs, although other football players who were not charged were mentioned along with the view that they should be brought to justice.

As in many cyberSLAPPS involving anonymous online speech, Saltzman's parents filed suit against Goddard and sought to subpoena records that would reveal the identity of anonymous commenters. The ACLU of Ohio stepped in to represent the anonymous commenters to defend

their First Amendment Right to anonymous online speech. This case was eventually settled without money exchanging hands or restrictions being imposed on Goddard's future online speech. Ms. Goddard agreed to publish a statement from one of the plaintiffs on her blog.

Another good example of an attempt to suppress online speech that made headlines involved posting criticisms of a construction contractor on Yelp and Angie's List.[25] Jane Perez contracted with Dietz Development for re-modeling work in her home. Disagreements arose over the nature of the work, which lead to unpaid invoices, and eventually a lawsuit filed by the contractor. The lawsuit was dismissed on procedural grounds, and Ms. Perez posted comments critical of Dietz on Yelp and Angie's List, including claims of incomplete performance, damage to her home, and the theft of jewelry.

Dietz Development responded to the comments by filing suit against Perez for defamation and sought $750,000 in damages and a preliminary injunction removing the negative comments from the websites and barring Ms. Perez from making similar statements. The Court granted the contractor's motion and ordered that Ms. Perez remove any post referring to "lost jewelry." The contractor later commented about the case, stating that he lost five to ten proposals worth a half million dollars because of Ms. Perez's negative posts. Ultimately, this case went to trial by jury, and after five days, the jury determined that each party defamed the other and awarded no damages.

References:

1. Civil Liberties Defense Center, *Veggie Libel Laws: Attempts at Silencing Animal Rights Advocates* (Jan. 09, 2012) *available at* http://cldc.org/2012/01/09/aeta-veggie-libel/ (citing 376 U.S. 254, 270 (1964)).

2. Coalition for Free Speech, Food Speak, *Food-Disparagement Laws: State Civil & Criminal Statutes* (Mar. 19, 1998) *available at* http://cspinet.org/foodspeak/laws/existlaw.htm.

3. Civil Liberties Defense Center, *supra* note 1, at ¶ 2.

4. Civil Liberties Defense Center, *supra* note 1, at ¶ 5.

5. *AUVIL v. CBS "60 Minutes,"* 67 F.3d 816 (1995), *cert. denied* 116 S. Ct. 1567 (1996).

6. Civil Liberties Defense Center, *supra* note 1, at ¶ 8.

7. *See Texas Beef Group v. Winfrey*, 11 F. Supp 2d 858 (N.D. Tex. 1998), *aff'd*, 201 F.3d 680 (5th Cir. 2000).

8. *See* Ohio Rev. Code § 2307.81.

9. *See AgriGeneral Co. v. Ohio Public Interest Group*, No. 397CV7262 (N.D. Ohio, Mar. 25, 1997).

10. George W. Pring and Penelope Canan, SLAPPs: Getting Sued for Speaking Out, pg. 46 (Temple University Press 1966).

11. George W. Pring and Penelope Canan, SLAPPs: Getting Sued for Speaking Out, pgs. 47 - 50 (Temple University Press 1966)(citing No. 539-519 (Cir. Ct. Milwaukee Cty., WI, Dec., 1980)).

12. *See* ACLU of Ohio, Legal Docket, *Habeeb v. Smith, available at* http://www.acluohio.org/cases/habeeb-v-smith.

13. George W. Pring and Penelope Canan, SLAPPs: Getting Sued for Speaking Out, pgs. 57 - 59 (Temple University Press 1966) (citing No. 81-22048 N.Z. (Cir. Ct., Washtenaw Cty., MI., summary judgment for defendant 1982), *aff'd*, 135 Mich. App. 632m 354 N.W 2d 288 (1984) (leave to appeal denied)).

14. *Id.* at 59.

15. Nos. 1978-2083 (Com. Pleas t., Cambria County, Pa., filed May 26, 1978; dismissed 1979).

16. 7 Ohio Misc. 64, 217 N.E. 2d 712 (Com. Pleas Ct., Madison County, dismissed 1966).

17. *See South Euclid Law Director Michael Lograsso Should Drop his Discourse-Chilling Lawsuit Against Citizens*, Cleveland Plain Dealer (Mar. 20, 2014) *available at* http://www.cleveland.com/opinion/index.ssf/2014/03/aint_no_sunshine_in_south_eucl.html#incart_river.

18. *See* Lauren McGaughty, *Louisiana Sues MoveOn.org Over Bobby Jindal Billboard*, The Times-Picayune (Mar. 14, 2014) *available at* http://www.nola.com/politics/index.ssf/2014/03/moveon_louisiana_jindal_darden.html.

19. *See Protect Our Mountain Environment, Inc. v. District Court of County of Jefferson, 677 P.2d 1361 (1984).*

20. George W. Pring and Penelope Canan, SLAPPs: Getting Sued for Speaking Out, pgs. 31 - 34 (Temple University Press 1966) (citing No. 24211/84 (Sup.Ct., Suffolk County, N.Y., filed Oct. 26, 1984); 129 A.D.2d 328, 517 N.Y.S.2d 741 (dismissed July 13, 1987).

21. George W. Pring and Penelope Canan, SLAPPs: Getting Sued for Speaking Out, pgs. 85 - 86 (Temple University Press 1966) (citing 349 F. Supp. 934 (N.D. Cal. 1972).

22. George W. Pring and Penelope Canan, SLAPPs: Getting Sued for Speaking Out, pgs. 134 - 135 (Temple University Press 1966)(citing No. B850394 (Dist. Ct., Orange County, Tex., case filed July 30, 1985).

23. Dan Gearino, *Apartment-complex Owner Sues Former Tenant Over Online Jabs*, The Columbus Dispatch (Mar. 14, 2014) *available at* http://www.dispatch.com/content/stories/business/2014/03/14/company-sues-former-tenant-over-online-jabs.html.

24. Jefferson County Case No. 2012-CV-00544 (2012).

25. *See* Digital Media Law Project, *Dietz Development LLC v. Perez* (Dec. 14, 2012) *available at* http://www.dmlp.org/threats/dietz-development-llc-v-perez.

SLAPPed: A Tool for Activists

Part 5: How to Guard Against SLAPP Suits

There is no foolproof way to avoid being SLAPPed. However, the vast majority of individuals involved in community engagement will never be the target of a SLAPP suit. The goal of this information is **NOT** to discourage anyone from exercising their First Amendment rights.

Nonetheless, it pays to be proactive prior to engaging in community activism and to consider the possibility of being SLAPPed before it happens. Being prepared will decrease the likelihood of being SLAPPed and encourage confident public participation.

Proactive Steps to Take to Guard Against Being SLAPPed

1. **Know your rights.** You have the First Amendment right to the freedom of speech and to petition your government. However, threatening or harassing speech is usually not protected.

2. **Tell the truth, and base your speech on facts.** Truth is an absolute defense to a defamation claim. Avoid using broad generalizations or speculation. Instead use fact-based statements. Generally, public comments, statements or expressions of opinion should have some basis in fact. If you are unsure whether your statements could potentially subject you to a lawsuit, first seek advice from an attorney or organization knowledgeable about First Amendment rights.

3. **Do research and keep records**. Fact-check your information, and cite to legitimate sources. It is probably best if your planned action is not based solely upon something you read on the internet, especially if that something is simply the expression of an opinion.

4. **Review your homeowners or renters insurance**. Some liability policies provide coverage for damages and legal fees that result from a variety of legal claims such as defamation.

5. **Research the subject of your free speech activity.** For example, look for information which would indicate if the individual or entity has a reputation of being 'SLAPP-happy,' i.e., whether it has sued others for criticizing its activities.

6. **If you are planning to stage a protest demonstration involving other individuals:**
   - Follow the above guidelines.
   - Be aware of all signs, slogans, or chants to be used in the protest.

- Limit the use of email communications between participants or the media regarding the demonstration, as those communications could be subject to discovery if a lawsuit were filed.
- Verify whether the area where the demonstration is to occur is permissible under city ordinances and if a permit must first be obtained.
- Inform local law enforcement of the time and date of the demonstration.
- Avoid blocking sidewalk or highway traffic, and do not walk or stand on private property.
- Designate at least one person to take pictures or video of the demonstration and provide copies of the footage to the organizers.
- Consider asking all participants to direct media inquiries to a predetermined member of the demonstration so the messaging remains clear.

What to Do if You Have Been SLAPPed

If you are or think you may be the target of a SLAPP suit, seek legal assistance as soon as possible as there are strict deadlines to respond to a complaint against you.

SLAPPed: A Tool for Activists

Part 6: The Importance of Anti-SLAPP

Freedom of speech and the right to petition the government are enshrined in the First Amendment to the United States Constitution. Free speech and healthy debate are the cornerstones of a thriving democracy. SLAPP suits threaten public discourse and chill free speech by targeting those who speak out on matters of public importance.

To guard against the chilling effects of SLAPP suits, 28 states, the District of Columbia, and one U.S. territory have enacted anti-SLAPP statues that provide special protection for targets of these lawsuits.[1]

Anti-SLAPP statutes provide a way to quickly terminate frivolous claims that threaten First Amendment rights. Anti-SLAPP statutes commonly include some sort of clear statements of protection for speech in certain areas of public importance, along with a legal procedure for early dismissal of a SLAPP and recovery of the attorney's fees and court costs incurred while defending against a SLAPP. By providing a way to quickly dismiss SLAPP suits and forcing those who bring them to pay the legal fees, anti-SLAPP statutes discourage the filing of these kinds of frivolous claims.

Here are some examples comparing the general SLAPP suit legal procedure with the procedures in a state that has anti-SLAPP statutes.

<u>SLAPP Suit Procedure in States WITHOUT Anti-SLAPP Statutes</u>[2]

In a state without anti-SLAPP laws, substantial expense and hardship can be inflicted upon the targets of SLAPP suits with little opportunity for redress.

If you are SLAPPed for defamation in a state *without* an anti-SLAPP statute, your options are limited. You can file a motion to dismiss – asking the court to determine whether, if *all specific facts alleged in the complaint are true*, the allegations are enough to entitle the plaintiff to relief under the law. Unfortunately, motions to dismiss often fail to stop a frivolous SLAPP suit, and while you are litigating the motion to dismiss, the plaintiff can begin the discovery process – demanding documents, depositions, etc. This process can be expensive and harassing.

If the motion to dismiss fails, you can file a motion for summary judgment – a judgment without a full trial. This motion is usually filed after discovery and asserts that there are no disputes of relevant facts. As opposed to a motion to dismiss, a motion for summary judgment alleges that the facts show that the plaintiff cannot win under the law. However, if the plaintiff can create *any* dispute of relevant fact, the court cannot grant the motion for summary judgment.

In states without an anti-SLAPP statute, if you lose either a motion to dismiss or a motion for summary judgment, you cannot appeal immediately. You must wait until a potentially costly trial is over or file a special request with the Court of Appeals that is discretionary and rarely granted.

Even if you win a frivolous SLAPP suit, you are only entitled to the actual costs incurred during litigation, such as filing fees, court reporter fees, etc. You are not entitled to recover attorney's fees.

SLAPP Suit Procedure in States WITH Anti-SLAPP Statutes[3]

Now imagine you are SLAPPed for defamation, but this time you live in California – a state with a strong anti-SLAPP statute. You have access to a number of tools to fight back against the SLAPP suit.

Your first step is to file an anti-SLAPP motion which places a hold on all discovery for the case. This will save both time and money as all depositions and requests for documents are halted. Additionally, once an anti-SLAPP motion is filed, you can move forward to obtain a ruling and seek fees even if the plaintiff withdraws the case.

The main difference between an anti-SLAPP motion and a more traditional motion to dismiss is that you can offer extrinsic evidence. For example, if you are sued for defamation related to online content, you can introduce a copy of that online content to prove that it dealt with an area of public concern and that it is protected by the statute.

Once you prove that the anti-SLAPP statute applies, the burden shifts back to the person suing you to establish a probability of prevailing. The evidence must not only show what you did, but be sufficient to defeat your First Amendment claims.

If the plaintiff fails to do this and you prevail, you are then entitled to reasonable attorney's fees, as well as the costs of litigation from the plaintiff. Even if you lose this round you still have the right to an immediate appeal under many anti-SLAPP statutes.

References:

1. *See Responding to Strategic Lawsuits Against Public Participation (SLAPPS)*, Digital Media Law Project, ¶ 4 (updated Feb. 04, 2013) *available at* http://www.dmlp.org/legal-guide/responding-strategic-lawsuits-against-public-participation-slapps.

2. Ken White, *Why, Yes, I AM Into SLAPPing,* Popehat (June 07, 2012) *available at* http://www.popehat.com/2012/06/07/why-yes-i-am-into-slapping/.

3. *Id.*

SLAPPed: A Tool for Activists

Part 7: Resources

General SLAPP Suit Resources

- ACLU of Ohio is a non-profit organization which strives to preserve and defend the principles embodied in the Bill of Rights through litigation, education, and advocacy. Our website provides information on SLAPP suits in addition to various resources on First Amendment claims.
    - http://www.acluohio.org/slapped

- The First Amendment Project (FAP) is a non-profit public interest law firm active in two main areas of First Amendment law: anti-SLAPP and open government. FAP provides legal representation to individuals and organizations to defend against SLAPP suits.
    - http://www.thefirstamendment.org/resources.html#SLAPP

- The Anti-SLAPP Resource Center is a subset of the First Amendment Project, which includes comprehensive information on SLAPP suits.
    - http://www.thefirstamendment.org/antislappresourcecenter.html

- The Center for Competitive Politics promotes and defends citizens' First Amendment political rights of speech, assembly, and petition.
    - http://www.campaignfreedom.org

- The Center for Media and Democracy includes an article titled, *SLAPP Happy: Corporations that Sue to Shut You Up*, which provides a good introduction to SLAPP suits.
    - http://archive.is/N1M8u

CyberSLAPP Resources

- cyberslapp.org is dedicated to fighting SLAPP suits that occur as a result of speech conducted on the internet.
    - http://cyberslapp.org/]

- The Digital Media Law Project provides excellent resources on a variety of legal topics including SLAPP suits and Cyber SLAPPs.
    - http://www.dmlp.org/legal-guide/responding-strategic-lawsuits-against-public-participation-slapps

- The Electronic Frontier Foundation focuses on the intersection of technology and civil liberties, defending free speech, privacy innovation, and consumer rights. The website discusses a variety of Cyber SLAPPs.
    - http://www.eff.org

- The Stanford Center for Internet and Society provides information on the intersection of law and technology, with a focus on First Amendment issues. The Center also provides legal representation to clients in matters that raise important issues of free expression, civil rights and technology.
    - http://cyberlaw.stanford.edu/

- The Berkman Center for Internet and Society at Harvard University focuses on the development, dynamics, norms and standards of cyberspace.
    - http://cyber.law.harvard.edu/

- The Center for Democracy and Technology is dedicated to keeping the internet open, innovative and free. The Center provides information related to the intersection of the First Amendment and the Internet.
    - http://www.cdt.org

- Chilling Effects Clearinghouse is a collaboration of various organizations that focus on the First Amendment and strives to inform readers of their First Amendment rights in the context of intellectual property law.
    - http://www.chillingeffects.org

SLAPP Suits and the Media

- The Reporters Committee for Freedom of the Press provides news on the First Amendment, including court decisions related to freedom of the press. The Committee also provides free legal assistance to reporters.
    - http://www.rcfp.org

- News Room Law Blog contains posts related to SLAPP suits, anti-SLAPP legislation, as well as information about various legal issues affecting the media.
    - http://www.newsroomlawblog.com

Anti-SLAPP Resources

- The Public Participation Project's Anti-SLAPP Resource Center works to protect citizens from SLAPP suits through the enactment of legislation in Congress and throughout the states. The Center includes a list of helpful organizations, provides various SLAPP suit stories, and discusses ways to get involved in affecting federal anti-SLAPP legislation.
    - http://www.anti-slapp.org

- The California Anti-SLAPP Project (CASP) is a public interest organization that provides legal representation to individuals and organizations to defend against SLAPP suits. CASP also led successful campaigns to enact California's anti-SLAPP law in 1992 and to amend it in 1997 and 1999.
    - http://www.casp.net/

Food & Agriculture SLAPP Suits

- FoodSpeak is a project of the Center for Science in the Public Interest, and a coalition of three dozen public interest organizations, which highlights the problem of SLAPP suits against those who speak out on issues of food safety.
    - http://www.cspinet.org/foodspeak/

- Veggie Libel Suits are meant to SLAPP Free Speech is a short article, written by Professor Donella Meadows, which succinctly explains SLAPP suits and the chilling effect such suits have on free speech related to food and agriculture.
    - http://www.donellameadows.org/archives/veggie-libel-suits-are-meant-to-slapp-free-speech/

SLAPP Suit Informational Guides

- A Citizen's Guide to Fighting Strategic Lawsuits Against Public Participation was released by the Ohio Environmental Council and gives a general overview of SLAPP suits and offers resources through the Ohio Environmental Law Center.
    - http://www.theoec.org/publications/citizens-guide-fighting-strategic-lawsuits-against-public-participation

- SLAPP Strategic Lawsuit Against Public Participation is a comprehensive report that was released in August 2013 by the Center for Health, Environment and Justice. This guide compiles materials from nonprofit organizations, government agencies, consulting companies, newspapers, and journals in an effort to provide a thorough introduction to SLAPP suits. The guide defines what a SLAPP is, discusses anti-SLAPP legislation, highlights individuals who were successful defending against a SLAPP, and includes references to organizations that focus on SLAPP suits.
    - http://chej.org/assistance/publications/102-slapp-strategic-lawsuit-against-public-participation/]

Other Resources

- Local Bar Associations. Local bar associations often have a lawyer referral service and may be able to tell you which firms handle pro bono and/or low-cost legal services.

- Friends and Family. Friends and family are always a good place to seek help. If you are in need of legal help, don't be afraid to ask everyone you know for their recommendations on a good lawyer

  For additional resources please refer to The First Amendment Project's Anti-SLAPP Resource Center available at www.thefirstamendment.org/antislappresourcecenter.html] or the Public Participation Project available at www.anti-slapp.org/resources.

DISCLAIMER – This information is not, nor is it intended to be, legal advice. The information regarding SLAPP suits is meant to provide the public with general information as part of our on-going educational efforts. Every case depends on the specific facts and circumstances involved. ***Do not wait for a response from us. Your problem may have a deadline for legal action. Seek help from an attorney immediately. We may contact you for further information.***