

SLAPPs

Strategic Lawsuits Against Public Participation



A Guide for Community Residents
and Environmental Justice Activists

**SOUTHWEST NETWORK
FOR ENVIRONMENTAL
AND ECONOMIC JUSTICE**

**ENVIRONMENTAL
LAW INSTITUTE**



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1. Introduction

For many years, community activists and environmental justice groups have worked to protect the environment and health in their neighborhoods. This work has taken many forms -- from opposing the building of a new industrial plant or protesting dangerous working conditions, to protecting families from lead poisoning and unsafe drinking water. In its many forms, grassroots environmental activism has mobilized people to take action on the decisions that affect their communities.

Business and other interests being challenged sometimes have used lawsuits or the threat of a lawsuit to intimidate activists from exercising basic political and legal rights of public participation. Companies, individuals, and even government agencies have filed meritless lawsuits against community residents who have tried to affect local policy. These lawsuits are known as Strategic Lawsuits Against Public Participation or "SLAPPs." The term was created by two University of Denver professors -- George Pring and Penelope Canan -- who have researched and written about SLAPPs extensively.

SLAPPs usually lose in court because they do not have a sound legal basis. The purpose of a SLAPP, however, is not to win a legal battle, but to discourage public participation. A company may know it won't win in court, but also knows that its opponents probably will be intimidated by the legal system or may not be able to afford to defend themselves in court. By simply filing a lawsuit, a company, individual or agency takes advantage of the fact that being sued is a frightening experience for most people. In addition, a SLAPP can divert an individual's or community group's attention from the environmental and health problems they are trying to address.

If allowed to go unchecked, these legal tactics could mean that people will be afraid to take action to protect the environment, health and well being of their communities. But people have been fighting back. These materials are designed to help you understand what SLAPPs are. They also aim to encourage you to think proactively about how to deal with this problem when you are considering any grassroots environmental justice strategies.

Please remember: This guide does not intend to provide legal advice. If you think you may be facing a SLAPP, you should consult a lawyer for advice about your particular situation. (See Section 5 for information about finding a lawyer.)

2. *What Does a SLAPP Look Like?*

SLAPPs come in different shapes and sizes, but they share a very basic feature: without a legitimate legal basis, they aim to use the legal process to punish and/or prevent some form of community participation in the political process. Consider the following examples of SLAPPs -- all were filed against people who spoke out about health and environmental issues in their communities, and all ultimately lost in court:

- An activist living near Houston organized a neighborhood association to clean up the community. The association wanted to protect a number of aquifer-fed wells from the activities of a local hazardous waste landfill. After the association began its organizing efforts, the landfill company filed a \$5 million lawsuit against the activist for calling its landfill a "dump." In addition, the company filed a lawsuit against the activist's husband, who was not a member of the association, charging that he "had failed to control his wife."
- A Rhode Island resident was concerned about whether a landfill was contaminating the local drinking water supply. When the state issued draft groundwater rules, she sent written comments to the state environmental agency and other officials, expressing her concerns over the possible contamination. The landfill company sued her, after threatening a lawsuit if she did not retract or substantiate her comments about the landfill.
- A national environmental organization filed a lawsuit to try to stop logging in a California wilderness area. A logging company then filed a lawsuit against the group for interfering with its economic activities.
- A West Virginia environmental activist notified the federal government about potential violations of federal law at a local coal mine. The U.S. Environmental Protection Agency eventually took enforcement action against the mining company. The mining company then sued the activist for defamation based on the activist's communications with the government.

Environmental justice activists have been among the targets of similar types of lawsuits in recent years. In one ongoing case, two environmental justice activists were sued for writing a piece about the struggle of community residents in New Mexico to address pollution from a nearby incinerator. The incinerator company sued the authors, as well as the editor and the publisher of the book containing the piece. In another case, a government agency in California sued a San Diego-based environmental justice

organization for participating in community protests against a state-operated facility. The agency asked the court to prohibit the group from participating in any activities that interfere with the operations of the facility, claiming that the group agreed in a settlement agreement not to challenge the facility's permit.

The resource materials listed in Section 5 can help you learn more about the types of SLAPPs that have been filed against community activists -- for example, the types of companies that have filed SLAPPs, and the types of community activities that have been targeted. The following questions highlight some of the common characteristics of these lawsuits.

Who files SLAPPs? Many SLAPPs are filed by business interests, such as corporations. These companies may be large or small, national or local. In some recent cases, the SLAPP has been filed by a company's employee or contractor, thereby shielding the company from publicity and possible counter-lawsuits. Cases also have been brought by government agencies.

Who gets SLAPPED? SLAPPs have been filed against a wide range of individuals and groups exercising their basic rights of public participation. Although some large, well-funded organizations have been SLAPPED, these legal tactics are often directed at people with more limited access to financial resources and other types of support.

What types of civic activism can produce a SLAPP? People have been SLAPPED for activities ranging from writing letters to the editor and circulating flyers, to filing complaints with a government agency and speaking out at public hearings. People have also been SLAPPED for filing legal claims or lawsuits. SLAPPs are not limited to any particular type of local issue. Many SLAPPs have targeted community activism around real estate development or consumer protection issues, as well as around environmental justice issues.

What legal claims do SLAPPs make? SLAPPs do not have a sound legal basis. In the past, SLAPPs have tried to use a variety of legal claims to change a political dispute into a legal contest. Two of the most common are "defamation" and "business tort." Defamation is defined in *Black's Law Dictionary* as "injuring a person's character, fame or reputation by false and malicious statements." Defamation can be either written (libel) or spoken (slander). A business tort is an injury to a business -- for example, by intentionally and unfairly causing the loss of a contract or by damaging the business' reputation.

Not all SLAPPs use defamation or business tort claims. Some make other legal claims. Most, but not all SLAPPs ask for large amounts of money as compensation. Regardless of the specific legal claim used, a common feature of SLAPPs is their intention to chill speech and discourage civic participation.

3. *Thinking About SLAPPs Before They Happen*

Most people involved in environmental or other community issues will never face a SLAPP. Nevertheless, these legal tactics are continuing in communities around the country. Some environmental justice activists who have been sued believe that community activists and groups should think about the possibility of a SLAPP *before* starting any public advocacy or organizing activities. The possibility of being sued could be one of many factors to consider automatically when planning the advocacy strategy. Part of this planning may involve taking a careful look at the issues, the parties and the activities that would be involved in your community organizing efforts.

There are steps you can take to deal with SLAPPs proactively -- without giving up community activism. The rest of this Section describes some of the things you can think about when you are planning your community work. Remember: If you are being sued or think you might be sued, contact a lawyer as soon as possible to discuss your case.

- *Understand your right to speak out and to petition the government* •
 - *Identify potential resources for fighting SLAPPs* •
 - *Raise public awareness about your work and about SLAPPs* •
 - *Work to get anti-SLAPP laws passed* •

Understand your right to speak out and to petition the government. The key defenses to a SLAPP are your rights under the First Amendment of the U.S. Constitution -- the right to *petition the government* and to *free speech*. Rather than stopping your civic activities, you can learn more about the boundaries of these constitutional rights. This may help you or your group to plan and carry out your activities with greater confidence.

Some organizations, such as the American Civil Liberties Union, may be able to provide you with general materials about constitutional protections (see Section 5). However, to get legal advice about the particular activities you are involved in or are considering, you should talk to a lawyer.

Identify potential resources. SLAPPs often target individuals and small organizations that lack the resources to defend a lawsuit. By thinking in advance about how to raise funds for such a lawsuit, environmental justice groups and community activists may be in a stronger position to respond to a

SLAPP if one is filed. In general, the largest expense is the fee charged by your attorney. (You may be able to find a lawyer to represent you for free; see Section 5.) There are other expenses in any lawsuit, whether or not your lawyer is charging you a fee. When planning your community activities, you may want to think about how you or your organization would cover those costs if you were sued.

Some **insurance** policies provide coverage for litigation costs associated with SLAPPs. For example, homeowner policies have been used by SLAPP victims to pay the cost of defending the lawsuit. For organizations that are incorporated, general liability insurance may also cover the costs of defending a SLAPP. If you are interested in obtaining this type of insurance protection, it is important to consider the limitations and conditions of any policy you are considering. It is also important to consider whether using an insurance policy will mean giving up some control over your legal case.

Raise public awareness and support. Educating the general public and government officials about your activities can help build support for your organization's right to engage in community activities. Greater public awareness of the policies and issues you are challenging may help prevent the filing of a SLAPP, and it may also be important later if you are SLAPPED. In addition, raising awareness in the community or among public officials (such as the state Attorney General) may build support for a new anti-SLAPP law in your state.

Work to pass anti-SLAPP laws. Several states have anti-SLAPP laws, including California, Delaware, Massachusetts, Minnesota, Nebraska, Nevada, New York, Rhode Island and Washington. These laws do not prevent a lawsuit from being filed or threatened. However, they can discourage SLAPPs by making it more difficult for such suits to succeed in court. In particular, they provide for speedy review of cases that might be SLAPPs so that the court can determine whether the case should be thrown out. These state laws also provide that SLAPP targets who are successful can get their attorney's fees and costs paid by the other side.

The groups listed in Section 5, as well as other local organizations, may be able to provide more information about specific state anti-SLAPP laws. Professors Pring and Canan have developed a model anti-SLAPP bill, which they describe in their recent book, also listed in Section 5.

4. What Can You Do If You Are SLAPPed?

Being sued is an experience most people would like to avoid. Unfortunately, this is one of the main reasons SLAPPs are filed. Those who file SLAPPs hope that their opponents will cease their civic activities in order to have the lawsuit dropped. This Section discusses some of the things you can do to deal with a SLAPP that has been filed against you:

- *Talk to a lawyer* •
- *Seek community support* •
- *Consider SLAPPING back* •

Talk to a lawyer. If you are faced with a lawsuit, it is important to get legal advice *as quickly as possible*. In general, the law gives you a limited period of time to respond to a lawsuit filed against you. Most SLAPPs are eventually thrown out once they get to court, and judges have ordered the party that filed the lawsuit to pay the attorney's fees of the other side.

Most lawsuits -- including SLAPPs -- involve technical legal procedures and arguments. Lawyers are trained to know how to follow these rules. Nevertheless, not all lawyers have experience handling this particular type of lawsuit. When talking to potential lawyers, you should discuss their experience with SLAPPs and their ability to handle your case. Your lawyer should also be aware of resources that are available to help prepare your case.

Remember, too, that hiring a lawyer does not mean turning over the SLAPP completely to your lawyer. Your active participation in the case is important. When you hire a lawyer, make sure your lawyer is comfortable working with you and your group.

Section 5 lists some resources that might help you find a lawyer and work with that lawyer. It also provides information about where lawyers can turn for assistance in fighting SLAPPs.

Seek community support. You may be able to gather considerable support if you raise public awareness about the type of legal attack being used against you. Community residents who have been the victims of SLAPPs in the past have informed the media about their cases as one way of educating the public generally. Your case may interest other local groups, who want to protect their right to

participate in civic affairs. Government officials might be interested in supporting the public's right to participate and may even wish to "intervene" (join) in your lawsuit to help defeat the SLAPP. Keep in mind that the president's 1994 Executive Order on Environmental Justice (Executive Order 12898) specifically called on federal agencies to identify ways to increase public participation in their activities and decisions.

Consider SLAPPING back. If you have been SLAPPED, you may want to talk with your lawyer about filing your own lawsuit against the party that sued you. This type of lawsuit is known as the "SLAPPback."

SLAPPback lawsuits can potentially provide you with a legal remedy for having been SLAPPED. Through a successful SLAPPback suit, you may be able to win money damages for your losses, including the attorney's fees and court costs you have paid. Because SLAPPback suits can also win "punitive" damages (to punish the wrongdoer), some SLAPPbacks have resulted in large money awards to victims of SLAPPs.

- A SLAPP was filed by a county government agency against an activist from Richmond, California who opposed a proposed solid waste incinerator. The SLAPP was eventually thrown out of court, and the activist then filed a lawsuit against the agency for violating his constitutional rights. The activist won a jury verdict for over \$200,000.
- A SLAPP was filed by a company against three California farmers after the farmers took out a newspaper ad criticizing the company's practices and positions. The SLAPP lost in court, and the farmers then sued the company for violating their right to civic participation. The farmers won their case and were awarded more than \$10 million.

Although SLAPPbacks provide SLAPP victims with a possible legal remedy and may be a deterrent to SLAPPs generally, SLAPPbacks also have drawbacks. Most significantly, they require you to go through additional litigation, which usually means more of your time and financial resources once the initial SLAPP has lost. In addition, the legal theories used in SLAPPbacks may be difficult to prove. These theories often require showing that a SLAPP was filed with no legal basis and with a malicious purpose.

You can talk to your lawyer about whether you may have a good case for a SLAPPback and what would be required to pursue that strategy.

5. *Resources For Fighting SLAPPs*

If you are concerned about SLAPPs, you may want to get more detailed information. If you are being sued (or think you may be sued), it is important to find a lawyer.

ORGANIZATIONS

There are many local, state and regional grassroots groups that may be able to help you find out more about SLAPPs, put you in contact with others who have been SLAPPED, or provide support to you if you are sued. Following are some organizations that have done work in this area and may be able to assist you by providing you with more information or helping you locate a lawyer.

American Civil Liberties Union. This organization works on civil rights and civil liberties issues. The ACLU represents people in court for free, and does other forms of advocacy. The ACLU is a national organization with affiliate offices in most states. A number of the ACLU's state offices have represented people in SLAPPs in the past. If you need help finding the ACLU office nearest you, contact the national office in Washington, D.C. (202-544-1681).

California Anti-SLAPP Project. The California Anti-SLAPP Project helps protect and further the rights of people in California to participate in civic affairs and speak freely about public issues. CASP maintains a resource and information center about California SLAPPs and provides legal assistance to individuals and groups to defend against SLAPPs. It also provides information on its internet website: "<http://www.sirius.com/~casp/welcome.html>". The organization is based in Oakland, California (510-465-1985).

Environmental Background Information Center. This Pennsylvania-based organization provides corporate research and strategic assistance to grassroots community activists working on environmental issues. They have created a web site on the internet containing information about SLAPPs. Contact them at (814) 867-7341 or at "<http://www.envirolink.org/orgs/ebic>" on the internet.

The First Amendment Project. The First Amendment Project is a non-profit public interest law firm that provides legal representation to individuals and organizations to defend against SLAPPs. FAP maintains a resource library, manuals, and a SLAPP defense handbook and database. It also provides information about SLAPPs through its internet home page: "<http://www.well.com/user/fap/>". The organization is based in Oakland, California (510-208-7744).

First Amendment Cyber - Tribune (FACT). FACT is an online newspaper -- an internet web site for anyone who wants to learn about the First Amendment to the U.S. Constitution. The site provides information on all of the liberties guaranteed by the First Amendment. Information includes recent cases, news updates, articles, and other First Amendment resources. The internet address is “<http://w3.trib.com/FACT/index.html>”.

Trial Lawyers for Public Justice. Trial Lawyers for Public Justice is a national organization that helps match individuals with private lawyers. TLPJ focuses on cases that raise public interest issues. If they accept your case, they will locate a lawyer to represent you. On limited occasions, TLPJ has represented people who have been SLAPPED. The office is located in Washington, D.C. (202-797-8600).

University of Denver SLAPP/Political Litigation Project. Penelope Canan and George Pring continue their academic socio-legal research on SLAPPs. You can contact Penelope Canan at pcanan@du.edu or (303) 871-2049, or George Pring at gwpring@admin.du.edu or (303) 871-6266.

WRITTEN MATERIALS

If you are interested in finding out more about SLAPPs and about the legal strategies for responding to SLAPPs, you or your lawyer may want to read a comprehensive book on SLAPPs written by George Pring and Penelope Canan, *SLAPPs - Getting Sued for Speaking Out* (Temple Univ. Press 1996). To order a copy, call the University of Denver College of Law Bookstore (303-871-6134).

There have been many articles published about SLAPPs. Professors Canan and Pring have compiled a list of academic articles and journalistic coverage on the subject. To request a copy of the list, call the Department of Sociology at the University of Denver (303-871-2948).

The American Law Institute and American Bar Association (ALI-ABA) developed a set of written materials in connection with their 1994 course, "SLAPPs: Strategic Lawsuits Against Public Participation in Government." If you are interested in ordering the course materials, contact the American Bar Association (1-800-285-2221).

Environmental justice activists and groups may be able to find a lawyer to represent them in a SLAPP for free, through the *Directory of Pro Bono Legal Services Providers for Environmental Justice*.

This Directory was published by the American Bar Association (ABA), in cooperation with the California Rural Legal Assistance Foundation's Center on Race, Poverty and the Environment, and the National Conference of Black Lawyers. The Directory contains a list of lawyers, law firms, legal services offices, law school clinics and non-profit organizations that have indicated they are willing and able to provide free legal representation in environmental justice cases. The Directory costs \$15 plus shipping. Call the ABA for more details (1-800-285-2221).

If you have hired a lawyer to represent you in a SLAPP, or are considering hiring a lawyer, you might be interested in reading about how to work effectively with lawyers. The Southwest Network for Environmental and Economic Justice and the Environmental Law Institute recently developed *Working With Lawyers: A Guide for Community Residents and Environmental Justice Activists*. The Guide costs \$10 plus \$3 shipping/handling and is available through the Southwest Network (P.O. Box 7399, Albuquerque, NM 87194).



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The SOUTHWEST NETWORK FOR ENVIRONMENTAL AND ECONOMIC JUSTICE brings together activists and youth, student, labor, and community based grassroots organizations of people of color from across the southwestern U.S. and Mexico. The Southwest Network promotes regional strategies and perspectives on environmental degradation and other social, racial and economic injustices.

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