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DIALOGUES

Strategic Lawsuits Against Public Participation and Petition Clause Immunity

by Lori Potter

> Anna Weiland was proud of herself. For the first time in her 43 years, she became involved with local government, speaking out for her rights, filing a complaint. . . . Red Canyon Quarry then filed a lawsuit against Weiland. . . . Weiland says she learned a hard lesson. . . .[1]

Anna Weiland was not thinking of Aristotle, the Magna Carta, or anything remotely close to either of them when she filled out her county's citizen complaint form with her observations about quarry trucks speeding on a private road through her property. She simply availed herself of the local government's procedure for addressing public issues, and it seemed like the right thing to do.

Public participation in government has been encouraged and esteemed by philosophers from Aristotle to Doonesbury, by fundamental political documents from the Magna Carta to the U.S. Constitution, and by procedures and forms at every level of every branch of our government.[2] In a representative democracy, public participation is nothing less than the cornerstone of the system—a bedrock principle that connects government to the governed. It legitimizes the system and helps to make government accountable. Public participation ranges from the sublime to the messy, and like Anna Weiland, on a day-to-day basis we rarely think about it in the exalted terms of its intellectual, legal, or policy underpinnings. We simply take for granted what is both obvious and invisible: public participation in government is a creed by which the nation lives.

Regardless of its estimable pedigree, public participation did not turn out so well for Ms. Weiland. Her filing of a complaint with her county planning and zoning department became one of the bases on which she was sued for defamation and abuse of process by the company operating the quarry.[3] Neighbors who voiced objections to other government agencies likewise were sued by the owner of the quarry.[4]

Weiland's experience was far from unique. The phenomenon of filing litigation against an individual who communicates with or tries to influence the government is common enough to have gained its own acronym: (SLAPPs) or Strategic Lawsuits Against Public Participation.[5] There is a large and growing body of case law addressing the defense of SLAPPs through First Amendment petition clause immunity. At least 17 states have responded by enacting statutes designed to discourage SLAPPs or to shift the risks or costs from the target to the filer.[6] Several of these states expressly call their laws "anti-SLAPP" legislation.[7] There is a smattering of resources available to those involved in, or seeking to prevent or cure, SLAPPs.[8] This Dialogue surveys the case law, the state statutes, and available resources on lawsuits against public participation.[9]

SLAPP Litigation and the Defense of Petition Clause Immunity

When SLAPPs are defended on the basis of the immunity afforded by the petition clause of the First Amendment, nearly

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1. Lydia Reynolds, *SLAPP Lawsuits Slam Complaining Citizens*, Canon City, Colo., Daily Record, Aug. 8, 2000, at 1 (on file with author). Anna Weiland is a client of the author's in a case in which defamation and abuse of process claims were dismissed on the ground of petition clause immunity. Rocky Mountain Materials & Asphalt, Inc. v. Weiland, No. 99-CV-104 (Fremont County Ct. dismissed July 13, 2000). Ms. Weiland authorized discussion of her case for this Dialogue.
2. *See* George W. Pring & Penelope Canan, SLAPPs: Getting Sued for Speaking Out (Temple Univ. Press 1996) [hereinafter SLAPPs]. Chapter 2 describes the history of the right to petition the government.
3. *See Rocky Mountain Materials & Asphalt, Inc.*, No. 99-CV-104.
4. Red Canyon Ltd. Liab. Co. v. Heck, No. 99-CV-93 (Fremont County Ct. dismissed July 21, 2000). As in Ms. Weiland's case, the court dismissed the claims against the Hecks on the basis of petition clause immunity.
5. SLAPPs, *supra* note 2, at ix-xi.
6. *See infra* note 63. Pring and Canan use the terms "target" and "filer" instead of "defendant" and "plaintiff" because SLAPPs often arise as counterclaims or cross-claims. SLAPPs, *supra* note 2, at 9-10.
7. *Id.*
8. *See infra* notes 70-76 and accompanying text.
9. Many states recognize certain common-law immunities as complete defenses to defamation claims, e.g., the immunity accorded to witnesses in trials or other proceedings. *See* Restatement (Second) of Torts §§585-592A (Supp. 2000). *See also* Lininger v. Knight, 226 P.2d 809, 813 (Colo. 1951). Volunteer service immunity statutes also may provide a defense to SLAPP claims against members of nonprofit organizations. *See, e.g.,* Colo. Rev. Stat. §13-21-115.5 (2000). These defenses are not discussed in this Dialogue.

all such litigation is dismissed, or summary judgment is entered for the defendant.[10] Consequently, nearly all of the reported case law is favorable to SLAPP defendants.

Petition clause immunity (sometimes known as *Noerr-Pennington* immunity, named for the cases United Mine Workers v. Pennington[11] and Eastern Railroad Presidents Conference v. Noerr Motor Freight[12]) has its roots in a line of antitrust cases that hold efforts to influence public officials through lobbying, publicity, and other contact are protected by the petition clause of the Constitution (and are not a violation of antitrust law) even when the petitioning activity is undertaken for a disfavored motive—such as eliminating competition. The petition clause,[13] dubbed "the unknown soldier of the Bill of Rights," served as a defense in a few cases over this nation's first two centuries but generally has been quite unheralded.[14]

Later decisions of the U.S. Supreme Court make clear that *Noerr-Pennington* immunity equates to First Amendment immunity and applies to petitioning and to claims outside of the antitrust context.[15] As succinctly summarized by one federal district court:

> [W]hile the doctrine arose in connection with antitrust cases, it is fundamentally based on First Amendment principles. More than one court has held that the doctrine "is a principal [*sic*] of constitutional law that bars litigation arising from injuries received as a consequence of First Amendment petitioning activity, *regardless of the underlying cause of action* asserted by the Plaintiffs."[16]

Two recent decisions of the Court in antitrust litigation, *Professional Real Estate Investors v. Columbia Pictures*[17] and *Columbia v. Omni Outdoor Advertising*,[18] applied petition clause analysis and clarified the burden faced by a plaintiff challenging petitioning activity. When it appears that a plaintiff's claims are lodged in response to a defendant's legitimate use of governmental processes, a court must apply heightened scrutiny to those claims and dismiss them unless they can clear a high barrier.

Under the test first articulated in *Omni*, a defendant is entitled to immunity unless plaintiff can demonstrate that defendant's petitioning was "a sham."[19] This requires the plaintiff to prove that a defendant used governmental processes as a "weapon."[20] This inquiry looks not at the defendant's intent or purpose, but at whether the defendant's efforts were "'not genuinely aimed at procuring favorable government action' at all."[21] So long as the defendant acts to obtain a governmental outcome—a decision, action, or refusal to act—the defendant's petitioning is not "a sham" and enjoys immunity under the petition clause. A winning petition, e.g., a successful lawsuit, or a request to an administrative agency that is acted upon favorably, is by definition not "a sham."[22] At the motion to dismiss or summary judgment stage, then, the standard is an objective one that looks to the outcome of the process defendant engaged in—not a subjective one that looks to defendant's intent. This result is consistent with the petition clause's goal of encouraging and protecting speech directed to the government.[23]

Many state courts have fashioned similar tests under the petition clauses of their state constitutions or applied First Amendment petition clause immunity to claims arising in those courts.[24] The "sham" burden of proof has been codified in some states' anti-SLAPP statutes.[25]

Disposition of Motions to Dismiss Based on Petition Clause Immunity

The policy underlying First Amendment immunity requires prompt dismissal of immunized claims, sparing the courts and litigants the costs and time otherwise expended on litigation targeted at petitioning activities. Experience shows that nearly all claims targeting petitioning are eventually dismissed.[26] Yet, by the mere filing of the action, a defendant is made to pay a high price in time, money, and peace of mind for exercising the constitutional right to petition the government. The Court has indicated that cases that attack constitutionally protected petitioning activities must be promptly dismissed in order to achieve the goal of minimizing intrusion on the First Amendment, except in those rare instances when a plaintiff can prove the defendant's petitioning comes within the sham exception to immunity.[27] First Amendment petitioning activity is chilled by allowing a plaintiff to conduct discovery, go to trial, and otherwise exhaust the time and resources of a defendant on claims that cannot cross the immunity threshold.[28]

10. SLAPPs, *supra* note 2, at 148.
11. 381 U.S. 657 (1965).
12. 365 U.S. 127 (1961).
13. U.S. CONST. amend. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.").
14. SLAPPs, *supra* note 2, at 17-18.
15. Professional Real Estate Investors v. Columbia Pictures, 123 L. Ed. 2d 611, 623 (1993) ("whether applying *Noerr* as an antitrust doctrine *or invoking it in other contexts* . . .") (emphasis added); NAACP v. Claiborne Hardware, 458 U.S. 886 (1982) (according *Noerr-Pennington* immunity to state-law claims against defendant NAACP). The Tenth Circuit has held that *Noerr-Pennington* immunity and petition clause immunity should be used more precisely—the former solely in antitrust cases, and the latter solely in others. Cardtoons, L.C. v. Major League Baseball Players Ass'n, 208 F.3d 885, 889 (10th Cir. 2000). In a later decision, the Tenth Circuit indicated that the distinction made little (if any) difference. Scott v. Hern, 216 F.3d 897 (10th Cir. 2000).
16. Computer Assocs. Int'l, Inc. v. American Fundware, Inc., 831 F. Supp. 1516, 1522 (D. Colo. 1993) (emphasis added).
17. 508 U.S. 49, 60-61 (1993).
18. 499 U.S. 365, 380-81 (1991).
19. *Professional Real Estate Investors*, 508 U.S. at 60-61; *Omni*, 499 U.S. at 380-81.
20. *Omni*, 499 U.S. at 380.
21. *Id.*
22. *Professional Real Estate Investors*, 508 U.S. at 60 n.5. *Professional Real Estate Investors* presented the question of petition clause immunity as applied to counterclaims in litigation and set forth a two-part definition of "sham."
23. SLAPPs, *supra* note 2, at 26-27.
24. *See, e.g.,* Protect Our Mountain Env't v. District Court, 677 P.2d 1361, 1364-66 (Colo. 1984) (establishing a process for dismissal of abuse of process and civil conspiracy claims; noting with approval dismissals of civil rights, antitrust, and inducement to breach contract claims in other cases).
25. *See infra* note 65.
26. SLAPPs, *supra* note 2, at 148.
27. Columbia v. Omni Outdoor Advert., 499 U.S. 365, 380-81 (1991) (lower court erred in sending to the jury a case with claims which enjoyed First Amendment immunity).
28. *See* SLAPPs, *supra* note 2, at 26-29.

As has been recognized by numerous state legislatures, courts, and commentators, the best method for protecting petition clause activity is early, fair, and effective court review.[29] *Omni* reinforced this by sharply limiting the applicability of—and a jury's role in deciding—the sham exception to immunity.[30]

Courts also have achieved the goal of early review and dismissal by enforcing strict pleading standards upon the assertion of immunity as a ground for dismissal. Where a claim touches upon the right to petition, many courts will apply a heightened pleading standard.[31] "The danger that the mere pendency of the action will chill the exercise of First Amendment rights requires more specific allegations than would otherwise be required."[32] Specifically, a plaintiff cannot overcome First Amendment immunity if it fails to allege that defendant took the contested action for a reason other than to support its petitioning activity.[33] In other words, to survive a motion to dismiss, some courts have held that a plaintiff must allege that defendant engaged in tortious activity for some purpose other than to influence a governmental agency or process.[34] Federal Rules of Civil Procedure Rule 11 certification requirements would apply to such allegations.[35]

The "Illegal Activity" Exception to Petition Clause Immunity

Filers sometimes contend that a defendant's petitioning activity does not qualify for petition clause immunity because it constitutes "illegal activity" exempted from that immunity doctrine.[36] The courts have recognized only a very narrow illegal activity exception. An illegal activity that does not qualify for First Amendment immunity is one "which may corrupt the administrative or judicial process."[37] Only tortious conduct that corrupts the process itself—bribery, misuse, or corruption—falls into the illegal activity exception.[38] Conduct that is unethical is immune from suit when conducted in the context of petitioning activity.[39]

A SLAPP filer's argument based on this exception often suffers from over breadth. If "illegal activity" meant what it usually is said to mean, *no* action would qualify for First Amendment immunity at the motion to dismiss stage because the filer has, by definition, alleged some form of illegality. For example, under a defamation plaintiff's theory, a citizen's communications would constitute "illegal speech." But the First Amendment makes hostile and malicious statements intended to influence a governmental or judicial process immune from liability for abuse of process and other tort claims.[40] As one court evaluating—and rejecting—this argument put it, "as distinguished from suits between private parties, interested persons who protest governmental action have a lawful right to do so, and the motive, even if malicious, is unimportant if legal grounds existed upon which to predicate their protest."[41]

Petition Clause Immunity Extends to Claims by "Non-Targets" as Well as "Targets"

It is occasionally argued that a party who petitions the government deserves petition clause immunity only from suits by "targets" of that activity. That argument fails because the target of a petition is always, by definition, the governmental body receiving the petition. SLAPP cases are usually not brought by governmental bodies; instead, they are brought by private companies and individuals whose interests are in some way affected by the governmental process. The abiding principle of the many cases upholding petition clause immunity is that the Constitution "bars litigation arising from injuries received as a consequence of First Amendment petitioning activity, regardless of the cause of action."[42] In other words, if the alleged injury stems from petitioning, petition clause immunity bars the cause of action. Or, as another case put it, "liability can never be imposed upon a party for damage caused by governmental action he induced."[43]

In *NAACP v. Claiborne Hardware*,[44] the Court rejected the proposition that a non-target has a viable cause of action in response to petitioning activity. In *NAACP*, the Court overturned judgments in favor of merchants whose businesses had been economically harmed by a boycott. The National Association for the Advancement of Colored People (NAACP) organized the boycott to support its petition to the local government for racial equality and integration.[45] The Court relied on the *Noerr-Pennington* line of cases to hold that all of the NAACP's conduct was immunized by the First Amendment, notwithstanding the incidental economic impact on merchants.[46]

29. *Id.* at 26.
30. *Id.* at 26-29 (citing Omni, 499 U.S. at 380-81).
31. Oregon Natural Resources Council v. Mohla, 944 F.2d 531, 533 (9th Cir. 1991); Hydro-Tech Corp. v. Sundstrand Corp., 673 F.2d 1171, 1177 n.8 (10th Cir. 1982); Jefferson County Sch. Dist. v. Moody's Investor's Servs., Inc., 988 F. Supp. 1341, 1346 n.1 (D. Colo. 1997); Anchorage Joint Venture v. Anchorage Condominium Ass'n, 670 P.2d 1249, 1251 (Colo. App. 1983).
32. Franchise Realty Interstate Corp. v. San Francisco Local Joint Exec. Bd. of Culinary Workers, 542 F.2d 1076, 1083 (9th Cir. 1976).
33. Boone v. Redevelopment Agency of the City of San Jose, 841 F.2d 886, 894 (9th Cir. 1988).
34. *Id.*
35. David Sive, *Countersuits, Delay, Intimidation Caused by Public Interest Suits*, NAT'L L.J., June 19, 1989, at 26. In the context of SLAPPs that are counterclaims in environmental litigation, Sive argues that Rule 11, not the tort system, should be used to prevent and to sanction SLAPPs. Pring and Canan disagree, see SLAPPs, *supra* note 2, at 162.
36. *See, e.g.*, Whelan v. Abell, 48 F.3d 1247 (D.C. Cir. 1995).
37. California Motor Transp. v. Trucking Unlimited, 404 U.S. 508, 513 (1972).
38. Instructional Sys. Dev. Corp. v. Aetna Cas. Co., 817 F.2d 639, 649-50 (10th Cir. 1987).
39. *See, e.g.*, Rural Elec. Co. v. Cheyenne Light, Fuel & Power Co., 602 F. Supp. 105, 109 (D. Wyo. 1983).
40. *See, e.g.*, Anchorage Joint Venture v. Anchorage Condominium Ass'n, 670 P.2d 1249 (Colo. App. 1983) (dismissing negligence, abuse of process, and tortious interference claims).
41. *Id.* at 1251.
42. Computer Assocs. Int'l, Inc. v. American Fundware, Inc., 831 F. Supp. 1516, 1522 (D. Colo. 1993).
43. Sierra Club v. Butz, 349 F. Supp. 934, 939, 2 ELR 20698 (N.D. Cal. 1972) (dismissing business tort claims brought by a logging company against an environmental group in response to the group's advocacy of reduced timber sales).
44. 458 U.S. 886, 914 (1982).
45. *Id.* at 889.
46. *Id.* at 913-14.

The petition clause would be meaningless if given a narrow, "targets-only" interpretation. Every citizen who sets out to influence a governmental agency, court, or the legislature has reason to believe he or she might affect or offend someone in so doing. A viable threat of lawsuits from unknown "non-targets" would impermissibly chill the exercise of First Amendment rights. For example, every environmental group advocating reductions in governmental timber sales or other development would be susceptible to lawsuits by businesses (known and unknown) alleging harm from losing the right to bid on the sales.[47] The courts have acknowledged that a healthy petition clause, with all of the impacts from its vigorous use by our citizens, is one of the bearable—indeed, necessary—costs of living in a free and functioning democracy.

Publicity and Other Activities Ancillary to Petitioning

Direct communications with government are often supported by letters to the editor, public education campaigns, or recruitment of new supporters. A continuing issue is whether such broader campaigns, where part of an attempt to influence the government, also enjoy petition clause immunity. A body of Court decisions suggests such communications will enjoy immunity where they were part of a campaign to influence or educate the government on an issue. In *Noerr*, the Court recognized that "circulars, speeches, newspaper articles, editorials, magazine articles, memoranda[,] and all other documents" espousing petitioners' viewpoint deserved petition clause immunity when they were part of an overall effort to influence governmental action.[48] *Noerr* immunized "a publicity campaign directed at the general public, seeking legislation or executive action . . . even when the campaign employs unethical and deceptive methods."[49]

Later decisions of the Court reinforced that publicity as part of a petitioning effort may be immunized. In *NAACP*,[50] the Court immunized an economic boycott and picketing of private merchants carried out for months to sway public opinion and thereby affect governmental enforcement of the law. The relationship between publicity and petitioning has been recognized as a necessary one: "In *Noerr*, the publicity campaign was dispersed widely among the public in a broad but necessary diluted attempt to move public opinion in hopes that government officials would take note and respond accordingly."[51]

The lower courts have followed suit. For example, in *Hallco Environmental v. Comanche County*,[52] the Tenth Circuit immunized a media campaign against a landfill that allegedly misrepresented the scope of plaintiff's groundwater pollution. That publicity, along with participation at public meetings, was part of an effort to persuade the government of Hallco's position regarding landfills in the area; all of it came within petition clause immunity.

A publicity campaign of "Herculean dimensions," including contacts with the TV show "60 Minutes," received petition clause immunity in a case in which petitioners notified the press and the government of violations of nursing home regulations.[53] "Thus, we hold that as a matter of law, defendants' actions in calling Brownsville's violations to the attention of state and federal authorities and eliciting public interest cannot serve as the basis of tort liability."[54] The court affirmed the dismissal of numerous tort claims, even though plaintiffs alleged malice, because a plaintiff facing a motion to dismiss on the ground of petition clause immunity must meet its burden of proving a sham.[55]

Petitioning That Is "Malicious" or Partially False

A recurrent issue in petition clause litigation is the applicability of a less protective, "malice" standard under the Court's decision in *McDonald v. Smith*.[56] Later Court decisions undercut the relevance of a malice standard.[57]

In *Omni*, the Court ruled that a petitioning party's motives are "irrelevant" because the petition clause "shields . . . a concerted effort to influence public officials regardless of intent or purpose."[58] In *Omni*, the defendant was alleged to have spread "untrue and malicious rumors about" the plaintiff,[59] but that conduct was immunized. *Omni* built on *Noerr*, which immunized the defendants' publicity campaign even though the publicity "deliberately deceived the public and public officials."[60] In *Professional Real Estate Investors*, the Court confirmed that a publicity campaign by which a defendant intentionally caused "direct injury" to plaintiffs deserved petition clause immunity where the injury was "an incidental effect of the . . . campaign to influence governmental action."[61]

Where a SLAPP filer contends that some statements within a petition are false, a court must examine whether the petition was otherwise meritorious. If the alleged misrepresented facts do not infect the core of the petition, then the petition has an objective basis and receives petition clause immunity.[62]

State Statutes

At least 17 states have enacted legislation specifically discouraging SLAPPs.[63] They vary widely in the scope of pro-

47. *Cf. Butz*, 349 F. Supp. at 934 and Oregon Natural Resources Council v. Mohla, 944 F.2d 531, 533 (9th Cir. 1991) (immunizing advocacy in opposition to timber sales from challenge by disappointed bidders).

48. Eastern R.R. Presidents Conference v. Noerr Motor Freight, 365 U.S. 127, 142-43 (1961).

49. *Id.* at 140-41.

50. 458 U.S. at 886.

51. Allied Tube v. Indian Head, 486 U.S. 496, 512 (1988) (White, J., dissenting).

52. 149 F.3d 1190 (10th Cir. 1998).

53. Brownsville Golden Age Nursing Home, Inc. v. Wells, 839 F.2d 155 (3d Cir. 1988).

54. *Id.* at 158.

55. *Id.* at 160 n.1.

56. 472 U.S. 479 (1985).

57. *See* SLAPPs, *supra* note 2, at 22-28, for a discussion of the impact of *Professional Real Estate Investors* and *Omni* on *McDonald*.

58. 499 U.S. at 380.

59. *Id.* at 368.

60. Eastern R.R. Presidents Conference v. Noerr Motor Freight, 365 U.S. 127, 145 (1961).

61. 508 U.S. at 57.

62. Cheminor Drugs, Ltd. v. Ethyl Corp., 168 F.3d 119, 123 (3d Cir. 1999).

63. Cal. Civ. Proc. Code §425.16 (West Supp. 1997); Del. Code Ann. tit. 10, §§8136-8138 (Supp. 1996); Fla. Stat. Ann. §768.295 (West 2000); Ga. Code Ann. §9-11-11.1 (Supp. 1997);

tection given to public participation. The core provisions that are common to most of these state laws are: establishment of a process for motions to dismiss or strike claims targeting public participation; expediting the hearing of such motions and suspending or sharply limiting discovery until a ruling is made on the motion; and shifting the attorneys fees and costs of the target to the filer when the target prevails on a motion to dismiss.[64] Some, e.g., Rhode Island,[65] codify the Court's "sham" standard of review. Minnesota has created a cause of action to recover attorneys fees, costs, and damages in state court for a SLAPP that is filed in federal court.[66] Florida only prohibits SLAPPs by governmental entities, notwithstanding its finding that SLAPPs "are mostly filed by private industry and individuals."[67] Delaware and Nebraska limit their protections to targets of claims filed by permittees or applicants for public permits.[68]

Resources

In the 20 years since litigation against petitioning activities was recognized as a trend (not an isolated phenomenon) a small but growing body of resources has sprung up to assist with, analyze, and prevent SLAPPs. As George W. Pring and Penelope Canan point out, the first—and sometimes highest—hurdle for an attorney defending SLAPP litigation for the first time is recognizing that what may appear to be garden-variety tort claims are not, and that such claims may be effectively immunized from suit if they target speech to any branch of government.[69]

The bible for anyone seeking to identify, defend, prevent, or cure a SLAPP is Pring and Canan's *SLAPPs: Getting Sued for Speaking Out*.[70] According to its authors, the book has also served to dissuade would-be filers.[71]

A few nongovernmental organizations have programs dedicated to the issue of SLAPPs. The California Anti-SLAPP Project (CASP) has a website and legal resources on the subject. Its site is oriented toward California law and litigation but contains citations to other states' SLAPP statutes and tracks the progress of SLAPP legislation elsewhere.[72] The First Amendment Project likewise provides legal counsel and has co-written, with CASP, a guidebook for SLAPP defendants.[73] The author of this Dialogue has co-founded the SLAPP Resource Center as a clearinghouse of resources and referrals on the subject.[74]

Much has been written on the subject of SLAPPs since Pring's and Canan's pioneering articles of the 1980s.[75] The subject crops up regularly in the popular press, the electronic media, and in scholarly works.[76]

Conclusion

The First Amendment guarantees the right of all interested parties to attempt to enlist the government on their side of an issue or dispute.[77] The vast majority of the case law and commentary—both popular and scholarly—supports that right and suggests that the remedy for dissatisfaction with the statements of another party is more speech, not more litigation.

IND. CODE ANN. §§34-7-7-1 to -10 (West Supp. 1998); LA. CODE CIV. PROC. ANN. art. 971 (West 1999); ME. REV. STAT. ANN. tit. 14, §556 (West Supp. 1997); MASS. GEN. LAWS ANN. ch. 231, §59H (West 1997); MINN. STAT. ANN. §§554.01 to -.05 (West Supp. 1997); NEB. REV. STAT. §§25-21-241 to 246 (1995); NEV. REV. STAT. 41.640 to -.670 (Supp. 1993); N.Y. C.P.L.R. 3211(g) (McKinney 1997-1998); OKLA. STAT. ANN. tit. 12, §1443.1 (1999); 42 PA. CONS. STAT. §§27-77-7707 and 27-83-8301-8305 (2000); R.I. GEN. LAWS §§9-33-1 to -4 (Supp. 1996); TENN. CODE ANN. §§4-21-1001 to -1003 (1997); WASH. REV. CODE ANN. §§4.24.500 to -.520 (West Supp. 1997).

64. A model state statute is contained in SLAPPs, *supra* note 2, ch. 10.
65. R.I. GEN. LAWS §9-33-2(a).
66. MINN. STAT. ANN. §554.045.
67. FLA. STAT. ANN. §768.295(2).
68. DEL. CODE ANN. §8136(1); NEB. REV. STAT. §25-21-242(1).
69. SLAPPs, *supra* note 2, at 150-52.
70. *See* SLAPPs, *supra* note 2.
71. Personal communication with Rock Pring and Penelope Canan (Feb. 7, 1999).
72. CASP, *at* http://www.casp.net (last visited Mar. 5, 2001).
73. First Amendment Project, *at* http://www.thefirstamendment.org (last visited Mar. 5, 2001). The guide it prepared with CASP, *Guarding Against the Chill: A Survival Guide for SLAPP Victims*, can be downloaded at this site as well as the site at *supra* note 72.
74. SLAPP Resource Center, *at* http://www.slapps.org (last visited May 21, 2001) (under construction).
75. A good summary of the research and writing on SLAPPs is found in SLAPPs, *supra* note 2, ch. 1 nn.2 & 21.
76. *See, e.g.*, Stephen Greene, *Legal Tactic Chills Debate, Activists Say*, CHRON. OF PHILANTHROPY, Feb. 10, 2000, at 1; Molly Ivins, *Speak Freely and Get SLAPPed*, ROCKY MOUNTAIN NEWS, Jan. 19, 2000, at 37A; National Public Radio Online, All Things Considered, *SLAPP Lawsuits*, (Apr. 10, 2000), *at* http://www.npr.org/programs/atc (last visited Mar. 5, 2001); Barbara Arco, *When Rights Collide: Reconciling the First Amendment Rights of Opposing Parties in Civil Litigation*, 52 U. MIAMI L. REV. 587 (1998); Aaron Gary, *First Amendment Petition Clause Immunity From Tort Suits: In Search of a Consistent Doctrinal Framework*, 33 IDAHO L. REV. 67 (1996).
77. Havoco of Am., Ltd. v. Hollobow, 702 F.2d 643, 650 (7th Cir. 1983).