

Editorials and OP/ED Pieces on SLAPPS

Includes editorials supporting anti-SLAPP legislation from The Oregonian, Statesman Journal, Register-Guard, Democrat-Herald and Gazette-Times

Prepared in May 1999

Albany Democrat-Herald

OPINION

 Monday, May 17, 1999

SLAPP in the Senate

Last week the Oregon House overwhelmingly approved HB 2805, which protects participants in land-use hearings against frivolous lawsuits intended to shut them up.

The legislation would protect citizens from so-called "Strategic Lawsuits Against Public Participation" or SLAPPs. A few such lawsuits have been filed in Oregon against people who spoke up in the public land-use process against certain development proposals. Even though such lawsuits usually are eventually dismissed, the idea is to cause opponents to incur legal fees and other aggravation so that others will not try the same thing.

The vote was 49-9 in favor of the bill, and we're pleased to report that all of the mid-valley's members of the House were among those who voted yes.

But that is only half the battle. The supporters say they fear that an attempt will be made in the Senate Judiciary Committee to bury the bill.

This should not be allowed to hap-

pen. The bill does no damage and costs no one a dime. Before it cleared the House it was fixed so that it does not protect willful lies that people might utter in the land-use process. It protects only those people who sincerely take part and voice their opinions.

Oregon's process of public hearings on major questions of land use and zoning would be destroyed if citizens had to fear that someone could haul them into court if they opened their mouths.

Sen. Neil Bryant of Bend is the chairman of the Senate Judiciary Committee. He is a fair legislator, and we're confident that he will give the SLAPP bill a fair hearing and won't allow it to be killed. (hh)

■ You can reach D-H Editor Hasso Hering or leave a voice message at 812-6097. You may also listen to Hering's commentary at 6:45 a.m. and 5:45 p.m. weekdays on KGAL radio (AM 1580).

4/27/99

Statesman Journal

Opinion

PAGE
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EDITORIAL PAGE EDITOR: DICK HUGHES / 399-6727

OUR VIEWS

Lawmakers should pass anti-SLAPP bill handily

Developers' tactics to stifle public comment are un-American.

Free speech and democracy go hand-in-hand. Without one, Americans cannot have the other.

So when powerful interests start using lawsuits to stifle Oregonians' public comments, citizens should be worried.

Fortunately, the 1999 Legislature has the opportunity to reassert citizens' rights to publicly comment about land-use matters and other government issues without fear of legalized intimidation.

Lawmakers should approve House Bill 2805, which would dissuade people from filing so-called SLAPP suits — strategic lawsuits against public participation.

Such lawsuits are a growing phenomenon across the United States as people sue — or stifle public comment simply by threatening to sue — for comments made about them in regard to land-use, school curriculum, consumer protection or other issues.

Certainly, people should have the right to seek legal redress for actual slander. But SLAPP suits are silencing tactics filed under the guise of "defamation of character."

The danger with SLAPP suits is that citizens, afraid of being sued by a powerful group or individual, won't speak out before city councils, planning commissions or school boards on zoning issues, the effects of growth on school enrollment and other contentious issues.

Jeffrey Lamb of Philomath, chairman of Oregon Communities for a Voice in Annexations and a leading advocate of HB 2805, says that defending against such a lawsuit can take 18 months and cost \$10,000 to \$30,000.

Under current law, people filing those lawsuits achieve their aims no matter what the final court decision is. Even the threat of a lawsuit may be enough to silence their critics long enough for them to get their way with the governing body.

HB 2805 would change that while not eroding Oregonians' right to sue over legitimate issues.

The measure says that people could not be sued for factual, relevant statements made about an issue during a public hearing or other proceeding conducted by a government body. Someone filing such a lawsuit could be liable for punitive damages as well as for the defendant's legal fees.

Under a proposed amendment to the measure, a person still could be sued for making a knowingly false statement.

It's also important that judges be able to quickly dismiss such frivolous suits.

The House Judiciary-Civil Law Committee should fine-tune and endorse the measure this week, sending it to the full House for a vote.

Oregon has a strong tradition of public involvement in government affairs. It's time for Oregon to follow the lead of several other states and end the threat of being sued merely for voicing legitimate opinions on public policy issues.

Mid-Valley
Sunday
 Albany Democrat-Herald
 Corvallis Gazette-Times

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Opinion Editor, Gazette-Times

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Managing Editor, Gazette-Times

MID-VALLEY SUNDAY, APRIL 25, 1999

EDITORIALS

SLAPP protection should become law

At every turn Oregon formally invites citizens to take part in land-use decisions. What Oregon doesn't tell them is that citizens who make use of the invitation may open themselves to lawsuits by people whose interest they adversely affect.

"Strategic lawsuits against public participation" or SLAPPs have been used in other states against people who testified or petitioned against certain developments they did not like. According to the Oregon League of Women Voters and the Division of Land Conservation and Development, similar suits have been brought or threatened in Oregon as well.

House Bill 2805 would safeguard Oregon citizens' right to take part in such proceedings without fear of getting sued. The bill is pending in the civil Judiciary Committee headed by Lane Shetterly, R-Dallas. The bill's supporters say that if it does not get action or another hearing before the end of the month, the bill is dead.

There is good news: Shetterly said Friday his committee would hold a work session on the bill this week. He says it has the votes to clear the committee.

The bill has been amended to make it clear that people would still be liable if they knowingly make false defamatory statements in their public opposition to whatever development they oppose. This re-

moves the objection by opponents that the bill as written was a "license to lie."

In the end, most such lawsuits are dismissed. But they achieve their purpose nevertheless. Their purpose is to cause objectors aggravation - depositions, time lost, worry - and cost them money in attorney fees. So even if they lose in court, the people bringing those suits have won. They have discouraged others from speaking up.

When this happens the people of Oregon lose. They are pressured into forfeiting their right to speak out on matters affecting their communities. And the public as a whole is deprived of an open process when land-use matters are to be decided.

If somebody plans a factory in your neighborhood and you go to the hearing and object to the permit on the grounds that the traffic would hurt the neighborhood, you should not have to do so in fear of being slapped down by being sued.

It is getting late in the legislative session. The bill-handling traffic is about to get so heavy that people have a hard time keeping up. This bill should not be lost in the shuffle. It should be among those that pass.

If Oregon wants citizens to take part in land-use matters in a forthright and open way, the Legislature has an obligation to protect them from unwarranted threats. (hh)

The Register-Guard

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SLAPP suits

Oregon should slap back

Sometimes the way to get what you want is to file a lawsuit you know you're going to lose. That sounds backward, but the technique has been used with success across the country, especially by developers and others who wish to silence critics of their land use proposals.

The plaintiff files a suit against an individual or organization, usually charging defamation based on testimony the defendant has given at a public hearing. Ultimately, most of these suits are decided in favor of the defendants. But that can take several years and can run up a substantial legal bill for the defendant. The effect is to intimidate the target and by example to discourage others from taking up the cause.

A cover story on this phenomenon in the September 1996 ABA (American Bar Association) Journal said, "... increasingly, Americans who speak out in opposition to private development plans before local zoning boards, testify at school board meetings or circulate petitions to their elected officials are finding themselves in court, defending themselves against lawsuits by developers, landowners and even government officials claiming to have been defamed or otherwise injured by public comment."

These are known as SLAPP suits, an acronym for "strategic lawsuits against public participation," coined by University of Denver law professors Penelope Canan and George Pring, who have done extensive research and written a book on the subject.

This is not a large problem in Oregon — yet. But some SLAPP suits have been filed and others have been threatened, typically in land use disputes. The Citizen Involvement

Advisory Committee of the Land Conservation and Development Commission undertook a study of the subject last year and concluded that there is a need to inhibit this type of legal action.

A Justice Department research paper done for the committee said: "The essence of a SLAPP suit is the transformation of a debate over public policy — including such local issues as zoning, wetlands preservation, school curriculum or consumer protection — into a private legal dispute. A SLAPP suit moves a political, policy dispute into the courtroom, where the party speaking out on the issue must defend her actions."

The committee persuaded the commission to draft legislation to minimize the opportunity for SLAPP suits in Oregon. This has been introduced as House Bill 2805. But time is drawing short for it to receive any attention.

The bill would grant civil immunity to any statements made "in the course of participating in an administrative, quasi-judicial or legislative proceeding conducted by a public body." It would also direct courts to award attorneys' fees and other costs to any defendant who prevails in a lawsuit by reason of this immunity.

Oregon would not be the first state to adopt such balance-righting legislation. Ten states have done so in recent years, including California and Washington.

SLAPP suits are inherently an abuse of the legal system. A state that tries so hard to promote citizen involvement in governmental decision making should be anxious to minimize the use of these involvement-discouraging tactics.

The Oregonian

April 1, 1999

Protecting citizen participation

Oregon takes pride in its level of citizen participation in government decisions. But here, as in other places across the country, dubious lawsuits threaten to chill that participation.

Called SLAPP, for "Strategic Lawsuits Against Public Participation," they haul citizens who speak out on things such as land-use issues into court on defamation or similar charges. The citizens are forced to spend time and money to defend themselves, even though many of the suits are thrown out.

The Legislature is considering a law, House Bill 2805, that would discourage such suits by granting people immunity for statements made as part of a decision-making proceeding by a public body. Nine other states have passed them.

These lawsuits are an abuse of the

legal process, and it's unfortunate that the problem apparently hasn't been solved there.

Writing a public-process privilege into the law seems like the difficult path to take. Oregon legislators are not exactly champions of free speech and it makes us nervous whenever they poke their noses into the topic.

The only other reasonable approach is for the legal profession itself to impose some ethical standards aimed at curbing these gratuitous attacks on free expression. But there seems to be little interest in that.

That leaves the lawmakers. And pursuing an end to SLAPP suits, one way or the other, is worth doing. In the end, after all, citizens who bother to walk through the doors of city hall with something legitimate to say shouldn't be kicked through the doors of a courtroom for saying it.

**The
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Slapping at SLAPP

Legislature should strengthen protection against lawsuits for witnesses at public hearings

The Oregon House Judiciary Committee on civil law has taken a needed step to keep people who voice their opinions before a public body from being slapped around.

The committee has approved and sent to the House floor House Bill 2805, which is aimed at countering what are called in the legal trade strategic lawsuits against public participation — or SLAPP, for short. These defamation suits by well-financed interests are designed to intimidate or punish citizens who speak against them at public hearings, such as on land-use applications.

Even citizens who ultimately win a spurious suit may face a heavy cost in defending themselves.

HB2805, sponsored by Rep. Kurt Schrader, D-Canby, would grant immunity from lawsuits to people participating in proceedings conducted by public bodies, except for statements they know be false and that are not material to the issues being considered. It also would require courts to expedite motions for summary judgment by defendants asserting this immunity.

The bill also provides for courts to award attorney fees, other costs and even punitive damages to defendants winning a suit under the immunity provision. This is necessary to discourage the SLAPP-style harassment.

The measure gives needed protection for good-faith comments while still discouraging spurious claims — such as about an applicant's personal affairs — that have nothing to do with the matter at hand — that a witness knows to be untrue. That provides a sensible balance between good-faith comment and unfounded accusation.

The Legislature should approve this reasonable extension of immunity that the law already provides witnesses before its own committees. The best public policy decisions are those made with the fullest possible public input.

People who are — as Schrader puts it — “just trying to give their two cents’ worth” shouldn’t have to spend thousands of dollars defending themselves from somebody who doesn’t like what they say.

Publisher: Gary Sawyer
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OPINION

EDITORIAL

Slap down bogus attempts to muzzle citizens

THE ISSUE: State officials are concerned about lawsuits that intimidate citizens from speaking out in land-use cases.

WE SAY: Protect citizens with appropriate legislation, but also be cautious to keep people responsible for what they say.

Good government in a representative democracy requires that citizens be able to speak their minds and ask their elected officials to help them.

That's why SLAPPs are drawing more concern in Oregon. The acronym stands for strategic lawsuit against public participation. These happen when citizens speak out about such issues as land developments or environmental regulations and are sued by the developers or companies affected by the rules.

The main purpose of such suits is to intimidate the individuals — and other citizens — from continuing to speak out.

The suits often seek huge sums — one national study found the average claim was \$9 million. Even the threat of such a lawsuit can silence someone who, although convinced her views are right and can win in court, feels overwhelmed by the prospect of legal fees and years of litigation. A threat to sue one leader against a zoning change might frighten dozens of neighbors into silence as well.

At least nine states have adopted laws to protect citizens from SLAPPs.

Oregon's Department of Land Conservation and Development is focusing on the issue after reports about SLAPPs in this state. An advisory committee has been taking testimony, and the agency's staff has submitted proposed legislation. Gov. John Kitzhaber is expected to decide in July whether to sponsor it; if his administration doesn't, citizen groups are likely to recruit legislators to file a bill.

Before the Legislature acts, a few key questions need to be answered:

■ How widespread are SLAPPs in Oregon? So far, there is anecdotal evidence. Stories are circulated about suits in locations ranging from Banks and Newberg to Yachats and Florence. Getting complete data can help prove the need for the legislation and guide the kinds of provisions it includes.

■ What ways can be used to control SLAPPs? The draft legislation would give individuals power to ask a judge to quickly dismiss a SLAPP suit and to file a counter-suit. Are other methods available, such as sterner action against frivolous lawsuits of all types? More important, what else can be done to prevent these threats rather than simply bolstering defenses after suits are filed?

■ How can there be a proper balance of rights for all sides in these disputes? Citizens' rights to speak out have to be weighed against the damage of slander or other attacks on developers, for example.

That's a major concern with the draft legislation. It appears to give absolute immunity to citizens who speak to government bodies.

That sounds like a great protection of First Amendment rights — until one remembers that emotional disputes can prompt wild accusations. One man's SLAPP can be another man's legitimate defense of his reputation and livelihood. The problem is illustrated by the mean-spirited "flames" that sometimes circulate on the Internet. Our laws shouldn't excuse someone from being held responsible for malicious lies and speculative attacks no matter who the target is.

There's enough concern about SLAPPs to expect Oregon lawmakers to tackle the issue next year. It's important that any legislation they adopt will safeguard citizens' right to speak out but still hold them responsible for what they say.

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Protect us from SLAPPs

How would you like to go to a public hearing to oppose a new development on your street, only to be sued by the developer? It hasn't happened yet in the mid-valley, but outspoken opponents of some projects have been sued or threatened with lawsuits elsewhere in Oregon. That is wrong and should be kept from happening again.

They call the tactic SLAPP, for "strategic lawsuit against public participation." It is aptly named.

Even if such actions are eventually dismissed as groundless, their targets face aggravation and legal bills. Worse, the mere threat of such a suit may cause people never to speak up at all.

Oregon has cause to protect its residents from such harassment. The 1998 Legislature may be asked to pass a bill to that effect. The

Land Conservation and Development Commission was considering making the request.

But even if they are not asked – by people interested in land use hearings or anyone else – our lawmakers next year should pass an anti-SLAPP protection law.

Legislators have immunity from being sued for the things they say publicly during debate in their respective chambers, or for the votes they cast. Likewise, we have a public process for considering big land use decisions, and citizens ought to be protected in their right to take part. (hh)

■ You can reach D-H Editor Hasso Hering or leave a voice message at 812-6097. You may also listen to Hering's commentary at 5:45 and 6:45 a.m. and 5:45 p.m. weekdays on KGAL radio (AM 1580).

Oregon should limit lawsuits that undermine free speech

■ Citizens should not be sued for speaking out on public issues.

not from the government but from people intent on protecting their interests by sacrificing our freedoms.

Lawsuits have been filed or threatened in Oregon to stop people from influencing government or the public through their testimony, letters, petitions and other lobbying activities on controversial issues.

The individuals and companies using the tactic say they are only trying to stop the spread of inaccurate information, halt defamation and end other activities designed to harm their business enterprises.

What they really are doing is shutting down public debate and the free flow of information through long, expensive lawsuits.

The 1999 Legislature shouldn't let this abuse continue. Lawmakers should approve a proposal to shield residents from legal intimidation and reaffirm the right to free expression in Oregon.

Strategic lawsuits against public participation, or SLAPP suits, are a growing phenomenon across the United States in school curriculum debates and consumer protection cases. But most often, SLAPP suits are filed over real estate development, zoning and land-use questions. Landowners, developers and builders sue, alleging defamation or other injury.

That has been the case in Oregon.

Developers in Banks, Newberg and Tillamook County have filed lawsuits against citizens or public boards which opposed their proposals. In Salem, developer Larry Epping threatened to sue activist Jerry Scott for publishing profit estimates from a housing development. The estimates were contained in Scott's voters' pamphlet state-

Among the rights Americans defend most zealously are freedom of speech and freedom of petition the government for redress of grievances.

The latest threats to those rights come

Public meeting

The Citizen Involvement Advisory Committee of the state Department of Land Conservation and Development is considering a proposal to discourage strategic lawsuits against public participation. Citizens can review the proposal and comment during a committee meeting at 9 a.m. Friday at 1175 Court St. NE, Salem. Information: 373-0050.

ment in support of a measure to increase systems development charges on new construction.

It is clear that in some cases, public advocacy can cross the line into false and malicious statements that can harm private interests. The law provides remedies in such instances.

But it is wrong to threaten public critics with the loss of their businesses, homes or other assets merely for speaking out.

SLAPP suits are costly to defend and can take years to resolve, even though most are frivolous and eventually are dismissed by judges.

What makes these lawsuits so harmful is that they jeopardize what government needs most — the active involvement of citizens in important community matters. People, fearful of being sued, stay home and stay quiet and apathy spreads.

A proposal being considered by the Citizen Involvement Advisory Committee of the state Department of Land Conservation and Development would provide protection against SLAPP suits.

If it is approved by the 1999 Legislature, citizens would retain their right to participate in the processes of government, free of the threat of civil liability. A defendant in a SLAPP could recover court and other costs after the lawsuit was dismissed.

Oregon should follow the example of Washington, California and the seven other states that have passed similar statutes protecting free expression. Oregonians must keep the right to speak their minds.



Speech

EQUAL RIGHTS

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Anti-SLAPP bill introduced in Oregon Senate

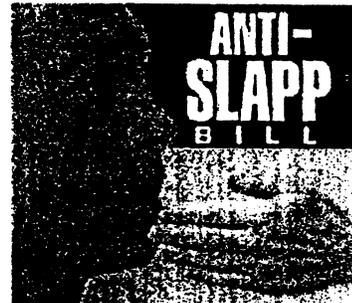
By David Hudson
First Amendment Center

1.29.99

What do you think? Have your say in [The Forum](#).

A measure introduced this week in the Oregon Senate would help protect citizens from groundless lawsuits filed to silence citizens who speak out on public issues at school boards, city council meetings and other public hearings.

Drafted by the Oregon Department of Land Conservation and Development, the Citizens Participation in Government Act of 1999 would protect people from SLAPP suits (strategic lawsuits against public participation) for statements made "in the course of participating in an administrative, quasi-judicial or legislative proceeding conducted by a public body."



"The intent of this bill is to limit and discourage the use of SLAPP suits to keep people from testifying at public hearings," said Mitch Rohse, policy development specialist for the land conservation department.

"We had lots of anecdotal evidence that many lawsuits have been filed against Oregon citizens to intimidate them from speaking out on matters of public concern," Rohse told *free!*

Jeffrey Lamb, chairman of Oregon Communities for a Voice in Annexation, applauds the proposed legislation. "SLAPP suits stifle public participation in our political system and are offensive to the First Amendment," he told *free!* "SLAPP suits represent a subversion of democracy and an erosion of constitutional rights."

Lamb says several members of his group, which promotes the right of citizens to speak out about land-use issues, have either been threatened with lawsuits or been the actual victims of baseless litigation filed by developers. Such practices amount to "legal and economic terrorism," according to Lamb.

The lawsuits are troubling, he says, because — even if they are baseless — they cost citizens thousands of dollars in legal fees. The proposed legislation addresses this problem by stating that "a court shall award reasonable attorney

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OPINION

ADVISER

Public must protect democratic process

By JEFFREY R. LAMB

And now for the rest of the story . . . Gazette-Times Feb. 24 article, "Neighbors win a round in quarry fight" and "County acts to close quarry."

What was not mentioned in this article was why the county commissioners "reluctantly" had a change of heart about Benton County land use laws and instructed the county counsel to file an injunction and restraining order to shut down this illegal mining operation.

The Wild Rose Quarry had been operating illegally since the county sent a certified letter on Sept. 11, 1998, ordering it to cease operations until a conditional use permit gained approval. Non-compliance could cost \$500 a day. This permit approval was denied by Benton County in December 1998, as was the quarry appeal to the commissioners in January 1999. The denial was based on the facts and the law.

The attorney for the mining operation threatened Benton County with a lawsuit if they tried to enforce our land-use laws

per their Sept. 11 shutdown order. It was repeatedly brought to the attention of the commissioners during the last six months that the threat of a lawsuit should not affect their decision to follow Benton County's charter and our land use regulations. However, the commissioners chose to turn a blind eye to these violations by not enforcing our ordinances.

So what is new? Why the change of heart? What was left out of the newspaper story? This is what: 525 citizens signed a petition and presented it to the commissioners at noon on Tuesday, Feb. 23, reminding them of the oath they took as public officials to uphold our charter and laws. It is a shame that the citizens must resort to petitioning their officials to uphold the law . . . but, hey, better late than never! People have a right to seek the protection of the law when they are being unjustly treated by industry, government or anybody else, but the people were ignored until this petition was presented to the commissioners.

Let's do the math on the potential violations at \$500 a day times five or six months of non-permitted operations. That adds up to a lot of money in my book; it is money the county will never see and the rock quarry will most likely

never be fined! Laws without teeth are useless.

Our county government has been in the news lately, in abundance. Some examples: The wholesale departure of department heads and other long-time county employees is a sign of internal county management troubles; public testimony on the rock quarry permit has been lost from the record; the League of Women Voters took exception over the lack of public input on the county's comprehensive plan update (i.e., no public input); the commissioners discussing public policy behind closed doors despite being told by staff that it violated the state's public open meeting laws (G-T editorial, "Commissioners snub public," Feb. 9), not to mention what this does to the public's trust; their attempt to pass an ordinance in December that would deny citizens the right to appeal planning decisions (which was a very bad idea); this was followed by a new policy limiting public testimony to three minutes (why even show up?). Much of this has been done in the name of efficiency and streamlining the process.

Benton County is, and has been, in a state of denial that problems exist, which is very damaging to the public's business.

Let's hope new commissioner Linda Modell will bring new ideas and fresh blood to county government . . . we need it!

Meanwhile, the state Legislature is doing everything it can to eliminate Oregon's open public records laws; 34 bills are pending to limit the public's ability to be informed plus dozens of bills introduced to deny citizens access to the land use planning process. This fear of the public by government says a lot.

At a time when our government officials bemoan the lack of citizen involvement, their actions betray their hypocrisy by doing everything in their power to discourage that involvement. The public's sense of apathy, cynicism and disenfranchisement has never been greater or more damaging to our democratic way of life. We must continue to fight to preserve the democratic process lest the people lose their voice and we become a government of business, by business, for business with the motivating factor being financial gain at the loss of community livability and values. Exercise your rights to be involved!

Jeffrey R. Lamb is a Philomath resident who has been active on land-use issues.

Slapping citizens with lawsuits not the American way

Free speech rights stifled when citizens are sued for expressing opinions

A resident of the small Oregon town of Banks testified at a City Council meeting that a 400-home subdivision would overwhelm the community's schools. He and 17 other residents were subsequently SLAPPED with an \$18 million fair-housing lawsuit. They were found not guilty of discrimination, but it cost them \$18,000 to defend themselves.

Such SLAPPs (Strategic Lawsuits Against Public Participation) are designed to intimidate the public into silence over such critical issues as Oregon's land-use law. Most SLAPPs are baseless. They have no place in our courts.

The SLAPP phenomenon is not new, but it is increasing not only in Oregon but across the nation, according to Vanderbilt University's Freedom Forum. The growing number of SLAPP suits nationwide "is staggering," according to Robert Richards, director of the Pennsylvania Center for the First Amendment. This increasing threat to our First Amendment must be addressed.

Proponents of SLAPP suits try to paint this as a controversy over over public-policy issues such as land use and education. But the truth is that this is a First Amendment issue — freedom of speech. The Oregon Legislature can protect our

democratic system by passing anti-SLAPP legislation, House Bill 2805. This bill would protect citizens against this insidious form of legal and financial terrorism.

Right now our Legislature is fighting over the \$200 million tax "kicker" refund. Our schools are in crisis; higher corporate and gas taxes may be on the way; salmon and steelhead are now listed endangered, bringing likely new regulations on development. Such critical issues such as these cannot be addressed in a climate of fear and intimidation caused by SLAPP suits.

As we saw in the March 9 elections, citizen involvement is already at an all-time low. Only 22 percent of Oregonians voted in Salem, "34 bills have been introduced to eliminate Oregon's open public record laws," the Statesman Journal reported in February. More than 70 bills introduced would deny the public's participation in land-use planning and other issues like school curriculum, environmental and consumer affairs.

The cornerstone of American democracy is citizen involvement, but consider these SLAPPs that have stifled public comment:



DOMINA MARIE GRETHEN-TONG/OPART



● A Salem citizens group was threatened with a lawsuit if it did not remove from the Voters' Pamphlet its statement of support for higher System Development Charges in an upcoming ballot measure. The threat worked.

● A Columbia County commissioner had a recall petition filed against him. The peti-

tioners were told that if they did not withdraw their petition, suits would be filed. The group withdrew its petition and dropped out of community involvement.

● A St. Paul resident responsible for a local Voter Annexation Charter Amendment change, who had spoken out at planning meetings and written letters to the editor opposing development proposals, was SLAPPED with a \$500,000 defamation suit. Plaintiffs in these frivolous SLAPP suits are often corporations or powerful special interest groups that are able to write off their costs on their taxes. The average citizen has no such privilege or resource.

Usually groundless, SLAPPs cost thousands of dollars and time to defend and cannot be easily dismissed. In many cases, the defendants will be found not guilty, but are likely never to speak out again.

The Legislature must pass HB 2805 and protect Oregonians from being intimidated into silence. Apathy and cynicism are pure poison to a free and open democratic society. Citizens will participate only if they feel their voices will be heard. But SLAPP suits, by stifling these voices, represent a subversion of democracy and an erosion of constitutional rights.

Jeffrey R. Lamb of Philomath is chairman of Oregon Communities for a Voice in Annexations, a group that has been involved in 24 voter annexation charter amendments. Several members have been sued or threatened with lawsuits.

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Democracy's foundation is under attack

By JEFF LAMB

EROSION OF DEMOCRACY comes to us in many forms.

The Founding Fathers realized that the cornerstone of our democracy is freedom of speech, making the First Amendment the foundation of the U.S. Constitution. What does the First Amendment have to do with Oregon land use law and public policy? Everything!

Oregon has 19 land use planning goals. Goal No. 1, the cornerstone, is citizen involvement. Citizen involvement and democracy are under attack by powerful special interest groups that want to stifle citizen input on numerous public policy issues.

"Strategic Lawsuits Against Public Participation," SLAPP suits, are not a new phenomenon but they are definitely a growing problem, not only in Oregon but across the nation, according to Vanderbilt University's Freedom Forum.

"The number of SLAPP suits nationwide is staggering" according to Robert Richards, founding director of Pennsylvania Center for the First Amendment. "For every thousand that have been identified, there are probably thousands and thousands that have not been."

These suits are designed to intimidate the public into silence.

The plaintiffs in these frivolous SLAPP suits cite "slander" or "defamation of character" as their grievance. This is a smoke-screen. The plaintiffs are often corporations or powerful special interests, able to write off legal costs on their taxes while the average citizen has no such provision.

Public policy issues facing Oregon's future cannot be addressed or debated in a climate of fear and intimidation. No citizen should have to face the threat of financial devastation for exercising his or her right to take part in the public process.

SLAPPs cost thousands of dollars, take years to defend and cannot be easily dismissed. In many cases the defendant is found not guilty, losing only time and money, and vowing never to speak on public policy issues again, including writing letters to the editor.

Some brief examples of Oregon SLAPPs include:

● A citizen of Banks (560 residents) testified at a City Council meeting that a 400-home subdivision would overwhelm schools. He and 17 other residents were SLAPPed with an \$18 million discrimination lawsuit. They were found not guilty, but it cost them \$18,000.

● A Salem citizens' group was threatened with a lawsuit if it did not remove its statement of support for higher systems development charges in an upcoming ballot measure from the Voter's Pamphlet. This threat worked.

● A Columbia County commissioner had a recall petition filed against him. The petitioners were all notified that if they did not withdraw their petition, lawsuits would be filed against each of them. The group withdrew its petition and dropped out of

local voter annexation charter amendment change, who had spoken out at planning commission meetings as well as with letters to the editor opposing development proposals, was SLAPPed with a \$500,000 defamation suit.

SLAPPs are hard to track and very effective: Sue a few and silence the rest!

No matter what the issue, government officials between the lack of citizen involvement. As we saw in the March 9 elections, only 22 percent of the people voted. Apathy and cynicism are pure poison to a free and open democratic society.

We need only look to Salem to see some of the root causes. The Statesman Journal reported in February that 34 bills have been introduced to eliminate Oregon's open public record laws. More than 70 bills have been introduced that would deny the public access and participation in the land use planning process, not to mention legislation covering other public policy issues (school curriculum, environment, consumer affairs, etc.).

Some issues facing Oregon: "The state is not living up to its goals" (Oregonian March 15). Could it be that we are growing

schools are in crisis, higher corporate and gas taxes may be on the way; salmon and steelhead are now listed as endangered, bringing new regulations for development, farming, logging, etc., while affecting millions of people. This will bring major change.

These public policy issues facing Oregon's future cannot be addressed or debated in a climate of fear and intimidation. No citizen should have to face the threat of financial devastation for exercising his or her right to take part in the public process. House Bill 2805 will protect our citizens against this insidious form of legal and financial terrorism.

Ten states have passed anti-SLAPP suit legislation, and Oregon is among 10 new states now considering doing the same thing.

Baseless lawsuits have no place in our courts. The 1999 Legislature must fight apathy and cynicism while protecting the First Amendment with the passage of this anti-SLAPP legislation. Contact your legislator in support of HB 2805.

Citizens will only participate if they feel their voices will be heard. SLAPP suits stifle public participation in our political system and are offensive to the First Amendment. They represent a subversion of democracy and an erosion of constitutional rights.

Jeff Lamb is a Philomath businessman and chairman of Oregon Communities for a Voice in Annexations, which promotes city

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SLAPP suits have no place in Oregon

SLAPP Suits are Strategic Litigation Against Public Participation. Unfortunately, lawsuits designed to intimidate, harass, frighten and punish those who would exercise their rights to participate in the public processes that shape their own communities are a growing problem in Oregon and the rest of the country. These outrageous suits have now found their way to our own community. As reported by The Graphic, St. Paul resident and activist Mary McKay has been sued by Newberg builder Dan Smith for her letter to The Graphic published in November. McKay wrote in reply to a Graphic article about a controversial St. Paul development backed by Smith. The suit, filed by Smith and his wife, Jennifer, serves as a wake-up call for those of us who naively thought that the freedom to openly speak and publish on controversial public issues was protected by the First Amendment of the Constitution.

When I read the suit and then reread McKay's letter, I cannot help but feel that Smith and his wife are engaged in an attempt to misuse the legal system as a means to silence their opponents. So far their tactic seems to be working. Since the suit was filed, McKay and other St. Paul residents have refused to comment to the press, because they feared they might be sued.

The suit itself singles out, as the basis of a defamation of character suit, statements of McKay like, "If truly their interests were in protecting the historic legacy of their ancestors, they would not be proposing houses jammed up against the oldest pioneer cemetery

in the state of Oregon." The essential freedoms we take for granted as Americans are threatened by this sort of SLAPP suit. We may agree or disagree with what McKay said, but we should all defend her right to say it, shout it, or write it in a letter to the newspaper.

The suit filed by the Smiths may seem particularly outrageous, but it is by no means an isolated incident. On Feb. 20, an LCDC advisory committee heard chilling testimony from Bill Hawkins, a member of the Netarts Steering Committee, a community advisory group originally formed at the request of Tillamook County. In brief, the advisory group, after several workshops, agreed with the Tillamook County Planning Department that a road within a proposed development should be public, rather than private. Although the commissioners sided with the developer (Todd Bates) and allowed a private road, the developer still served written notice of intent to sue the Netarts Steering Committee and its individual members, specifically naming Hawkins and another individual.

Other incidents of SLAPP activities in O

gon include:

— Citizens who successfully appealed the illegal operation of a gravel pit near their house were sued. They had to pay an attorney to get the lawsuit dismissed.

— A group, which successfully appealed a permit to develop a factory outlet mall in their city, was threatened with litigation if it continued to oppose the mall during remand proceedings. The group did not participate further.

In commenting on the Netarts case, Vic Affolter, the Tillamook County planning director sharply criticized both the suit filed by Bates and SLAPP suits in general. In his ringing defense of our most basic rights Affolter said: "If citizens must fear costly lawsuits for expressing their views on community issues, then we can expect that many will respond with cautious silence. This makes a sham of First Amendment rights to unencumbered speech ... Mr. Bates' strategy appears to be one of 'winning through intimidation.' I, for one, will not be intimidated. And I must defend the right of others to express their views, even if I may disagree with what they say. This kind of litigation is exactly what discourages citizens from getting involved with public issues. Our society might work more efficiently without the sometimes annoying involvement of concerned citizens, but it would not be the kind of democratic society that we value so dearly."

Well said, Mr. Affolter. SLAPP suits have no place in Newberg, St. Paul, or anywhere else in Oregon or the United States.

Sid Friedman is a member of the Yamhill County Planning Commission.

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