Resources for Citizens

STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION

The First Amendment Project offers access to resources and information on Strategic Lawsuits Against Public Participation (SLAPPs) and open government, including a resource library, this online reference guide, manuals, and a SLAPP defense handbook and database. Below is a list of frequently asked questions regarding SLAPPs, the text of California Code of Civil Procedure §425.16 (California's Anti-SLAPP law), and a list of sources that will help you in fighting a SLAPP.

Frequently Asked Questions What is a SLAPP?
How to Protect Yourself.

- Speak the Truth.
- Check Insurance.
- Seek Legal Advice and Where to Find it

More information: In Depth Citizen's Guide to SLAPPs.

- Guarding Against the Chill, Our in Depth Manual for those who find themselves victims of a SLAPP
- Click here to down load a copy of *Guarding Against the Chill* 50K.

California's Anti-SLAPP law

California Code of Civil Procedure §425.16

What is a SLAPP?
Generally, a "SLAPP" is a (1) civil complaint or counterclaim; (2) filed against individuals or organizations; (3) arising from their communications to government or speech on an issue of public interest or concern. SLAPPs are often brought by corporations, real estate developers, government officials and others against individuals and community groups who oppose them on issues of public concern. SLAPP filers frequently use lawsuits based on ordinary civil claims such as defamation, conspiracy, malicious prosecution, nuisance, interference with contract and/or economic advantage, as a means of transforming public debate into lawsuits.

Most SLAPPs are ultimately legally unsuccessful. While most SLAPPs lose in court, they "succeed" in the public arena. This is because defending a SLAPP, even when the legal defense is strong, requires a substantial investment of money, time, and resources. The resulting effect is a "chill" on public participation in, and open debate on, important public issues. This "chilling" effect is not limited to the SLAPP target(s): fearful of being the target

of future litigation, others refrain from speaking on, or participating in, issues of public concern.

The filing of a SLAPP also impedes resolution of the public matter at issue, by removing the parties from the public decision-making forum, where the both cause and resolution of the dispute can be determined, and placing them before a court, where only the alleged "effects" of the public controversy may be determined. For example, imagine a company asks for a zoning variance to place an incinerator in a residential area. When local residents object to the city council, the company sues them for "interference with contract." The judge hearing the suit cannot decide the real issues -- the location of the incinerator -- but will have to spend considerable judicial resources to decide the side issues of the alleged "damages" or other consequences of the public debate on the real issues.

Every year, thousands of people are sued for participating in government or for speaking out on public issues. SLAPP targets have been sued for engaging in a wide variety of protected speech and protected expression activities, including:

- writing a letter to the editor
- circulating petitions
- calling a public official
- reporting police misconduct
- erecting a sign or displaying a banner on their property
- complaining to school officials about teacher misconduct or unsafe conditions in the
- school
- speaking at a public meeting
- reporting unlawful activities
- testifying before Congress or state legislatures
- speaking as an officer of an active public interest group
- filing a public interest lawsuit

In California, a new law to protect people from SLAPPs, Code of Civil Procedure section 425.16, took effect in 1993. The law allows a judge to decide at the outset of the suit whether the SLAPP has a "probability" of winning. If the judge finds that it does not, the SLAPP must be dismissed, and the SLAPP target wins his or her legal defense costs and attorneys' fees.

The expressive activity which is protected under the new California law is broad. Code of Civil Procedure section 425.16 states that activity which is protected under the law includes:

- any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law;

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

- any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest.

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HOW TO PROTECT YOURSELF

SPEAK THE TRUTH

Whether you are writing your government representative or speaking on an issue of public importance, always make sure your statements are factually correct. If your letters, reports, pamphlets, or other written documents are accurate, there will be no factual disputes later on. You may want to keep copies of all background materials and note sources of facts and figures quoted so that you can show where you obtained the information.

Understand that there are differences between statements of fact and statements of opinion. You may be legitimately sued for false statements of fact, but not for statements of opinion. Be careful. You will not be protected for stating, "In my opinion, Senator Squelch is a liar and a thief," unless, of course, your statement is entirely true. If your words contain an assertion of fact that is capable of being proven true or false -- i.e., that Squelch is or is not a liar and a thief -- you can be sued if it is shown that your statement is false, even though you tried to qualify the statement as "opinion."

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CHECK INSURANCE COVERAGE

If you are a homeowner and carry homeowner's insurance, check you policy for personal injury liability coverage. Many policies protect homeowners from personal injury lawsuits based on such things as defamation, nuisance, interference with contract, etc. If you can't tell whether your policy will protect you, consult your carrier. If your present policy does not cover you, ask about a rider which would extend coverage to such matters.

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SEEK LEGAL ADVICE

If you are planning to write to a government official or speak out on a public issue, and you are unsure if your statements could subject you to a lawsuit, contact a lawyer who can assist you.

WHERE TO FIND HELP

- First Amendment Project ("FAP"). 1736 Franklin Street, Eighth Floor, Oakland, California 94612 [510/208-7744]. FAP is a non-profit public interest law firm active in two main areas of First Amendment law: anti-SLAPP and open government. FAP provides legal representation to individuals and organizations to defend against SLAPPs. FAP also helps individuals, citizen groups, and the media gain access to government records and meetings through enforcement of local, state and federal public records, freedom of information, and open meeting laws.

- California Anti-SLAPP Project ("CASP"). 1611 Telegraph Avenue, Twelfth Floor, Oakland, California 94612 [510/835-0850]. CASP is dedicated to helping protect and

further the rights of Californians to participate in government and civic affairs and to speak freely about public issues. CASP maintains a resource and information center about California SLAPPs.

- SLAPP Resource Center. University of Denver School of Law, 1900 Olive Street, Denver, Colorado 80220 [303/871-6266]. The SLAPP Resource Center is run by University of Denver Professors George Pring and Penelope Canan, the leading authorities on SLAPPs. These scholars first coined the term "SLAPP" and have studied these cases extensively. Write for a free informational packet on SLAPPs.

- American Civil Liberties Union ("ACLU"). Northern California: 1663 Mission Street, Fourth Floor, San Francisco, California 94103; Southern California: 1616 Beverly Boulevard, Los Angeles, California 90026

- California First Amendment Coalition ("CFAC"). 926 "J" Street, Sacramento, California 94244 [916/447-2322]. CFAC is an excellent resource for up-to-the-minute information on speech, petition, and open-government laws in California. CFAC also maintains a lawyer referral service.

- Libel Defense Resource Center ("LDRC"). 404 Park Avenue South, New York, New York 10016.

- National Lawyers Guild ("NLG"). Northern California: Bay Area Chapter of the NLG, 558 Capp Street, San Francisco, California 94110 [415/285-5067]; Southern California: NLG Los Angeles, 8124 W. Third Street, Suite 201, Los Angeles, California 90048 [209/441-8721].

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

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

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Statewide Land Use Planning Program
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