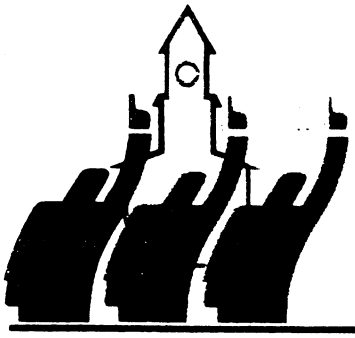
Public Testimony to the 1997-1999 Legislature Examples of SLAPPs Lawsuits

Prepared in May 1999



Oregon Communities
For A Voice In Annexations

Promoting & Protecting Citizen Involvement in Land Use Issues
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Representative Lane Shetterly, Chair
House Judicial Committee
And Members

03/23/99

Re: Anti-SLAPP Suite HB 2805 **TESTIMONY**

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 #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 phenomena 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 smokescreen. The plaintiffs are often corporations or powerful special interests, able to write off these costs on their taxes while the average citizen has no such privilege or resource. Although usually groundless, SLAPPS cost thousands of dollars taking years to defend and cannot be dismissed. In many cases the defendant will be found not guilty only to lose time and money, vowing never to speak on public policy issues again, including "Letters to the Editor".

Some brief examples of Oregon SLAPPs are:

- A citizen of Banks (560 residents) testified at a City Council meeting that a 400 home subdivision would overwhelm their 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 they did not remove their statement of support for higher System Development Charges (SDC's) in an upcoming ballot measure from the voter's pamphlet. (That statement was removed)
- A Columbia County Commissioner had a Recall petition filed against him. Each of the petitioners was notified that if they did not withdraw their petition that lawsuits would be filed against each of them. (SLAPPed) 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 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 bemoan the lack of citizen involvement. As we saw in the March 9th elections, only 22% of the people voted. Apathy and cynicism are pure poison to a free and open democratic society. We need only to look to Salem to see some of the root causes. "34 bills have been introduced to eliminate Oregon's open public record laws."*(Statesman Journal 2/15/99)* Over 70 bills have been introduced which would deny the public access and participation in the land use planning process, not to mention legislation covering other public policy issues (school curriculum, environmental, consumer affairs, etc).

Some issues facing our State: "The State is not living up to its goals" (*Oregonian 3/15/99)*; the legislature is fighting over the $200 million tax refund (kicker); our schools and education are in crisis; higher corporate and gas taxes are on their way; salmon and steelhead are now listed as endangered bringing new regulations for development, farming, and logging, etc., effecting millions of people.

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. HB-2805 will protect our citizens against this insidious form of legal and financial terrorism.

The '99 legislature should fight apathy and cynicism while protecting the First Amendment with the passage of this anti-SLAPP suit legislation (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.

Thank You for your support on this very important public policy issue.

Sencerly,

Jeffery R. Lamb

Jeffery R. Lamb
Chairman, OVCA

STATEMENT FOR PUBLIC HEARING ON HB-2805 MARCH 23,1999

My name is Larry DeBates and I live at 20630 SE Poco Lane, Amity, Or. 97101. I am here today as a private citizen to strongly support HB-2805 and urge you to approve it and move it to the House Floor.

About two years ago I volunteered to serve on the Citizens Involvement Advisory Committee of the Land Conservation and Development Committee. I soon learned there were many impediments to good citizen involvement in the public debate processes on land use issues. First, an individual's cost of both time and money are substantial just to be involved in the the public participation processes. Now however the threat of being sued in the process adds greatly to these costs and could even result in destroying a person's physical and financial health.

The newer more serious technique being used to inhibit public participation was brought to our committee's attention. It was the use of the SLAPP suit (Strategic Lawsuits Against Public Participation). It was becoming far to common throughout the state. Since one of the major goals of the Oregon Land Use Planning system is citizen involvement it was quite obvious that this was a serious problem that needed to be addressed by our committee.

We soon learned that the SLAPP suit activity was not unique to Oregon and many states had already addressed this issue with legislation that provided protection from SLAPP suits. Twelve states currently have SLAPP suit legislation and 10 more are considering it. We learned from reveiwing some of their experiences.

The public heard of the CIAC interest in this issue and came to give testimony of known SLAPP activities. These real cases were brought to the attention of our committee and eventually to the Land Conservation Development Commission. The Commission in turn followed the committee's recommendation to propose new legislation to protect citizen's from these lawsuits; consistent with Goal 1 of the Oregon Land use Planning Program. In the public testimony it was also pointed out by many that this was only the tip of the iceberg as there are many other cases out there where people have just dropped out after the threat of a lawsuit and have chosen to not be involved any more in the process. This is exactly what the proponents of these development proposals wanted - to silence the public participation.

The pro-development interests say that this legislation is unneeded. There is ample evidence however that there is a problem and as the proposed legislation moves through the system there are still two important things that need to be added as amendments in both bills. They are:

- The broadening of the immunity part of the Section 1 to cover more than just official proceedings. All participation in discussions of public issues should be protected in this Section. (i.e. letters to the editor,

public forum discussions, speechs etc.) Other states have that broader coverage in their laws.

-Add a Section that permits judges to rule upfront on motions for dismisal of judicial claims if the claim materially relates to the act of public participation as defined in Section I. It should also place the burden of proof, with evidence, on the filer of the lawsuit to show why immunity should not be granted.

There is a lot better legal language for the above two items, but this is my interpretation of what is needed in both bills now pending in the legislature to end up with good SLAPP suit legislation similar to other states. We need to continue with our efforts to get the best possible legislation for the citizens of our state.

Thank you for the opportunity to testify.

Also, I am providing for the record some examples of SLAPP suit activities that follow:

-In Banks a citizen who had testified at a city council meeting (along with others and some city officials) was sued by a developer. The suit was eventually dismissed but attorney fees for the one involved citizen was near $10000. Costs to the others is unknown. Development eventually went through as critics were silenced and defendants were advised by counsel to not testify again in later hearings.

-In Yachats four members of a group (Friends of 804) and the editor of the local paper were each sued for $230,000 by a title company owned by a local attorney for defamation. The local attorney had also functioned as the city attorney when a variance was given for a home to be built on an undersized lot that was supposedly not buildable when created by partition in 1979. Blocking some accesses to the 804 beach walking trail was also an issue that had not been noted by the title company when issuing a warranty deed on the undersized lot. Approximately 21/2 years later, after LUBA appearances and Court of Appeals Review on the land use issues, a five-day trial eventually was held in the Circuit Court in Eugene for defamation. After an hour deliberation the jury ruled unanimously in favor of the defendants. However, the judge dismissed a counter claim for attorney fees by the defendants who had incurred substantial legal fees throughout this process.

-In Yachats two city council members were sued by a logger/developer when they attempted to call a city council meeting to address the use of a city road to haul logs where an ordinance existed prohibiting trucks in excess of 10 tons. Three of the 5 Yachats city council members later decided the two council members acted outside their scope of authority by sending out a notice of a special meeting and were denied insurance protection as city officials. Four years later, the defendants have spent

approximately $20000 in legal fees and suffered indescribable mental anguish.

-In Florence a practicing attorney has written in to LCDC supporting the legislation as he stated "In the last two years, I am aware of at least five instances where citizens opposing developers have been threatened with lawsuits". There are other cases in Florence with potential suits regarding an outlet mall, Fred Meyer Store, and other developments.

-In Lincoln County a developer sued a number of people and public boards - including the Netarts Steering Committee. The county planning director has stated: "His strategy appears to be winning through intimidation". Legal costs have been incurred by these participating people defending themselves and numerous people have dropped out.

-In Columbia County a commissioner threatened to sue three citizens and anyone who helped them with a recall petition.

-In Salem a member of a citizens group was threatened with a lawsuit for information he put in the voters pamphlet regarding a development.

-In St. Paul a person has been sued by a developer for a letter to the editor she wrote published in the Newberg Graphic.

22250 Boulder Crest Lane SE
Amity, OR 97101

March 27, 1999

Representative Lane Shetterly, Chairman
House Civil Law Judiciary Committee
State Capitol
Salem, OR

Dear Chairman Shetterly and Committee Members:

I strongly urge you to approve **HB 2805** (and even strengthen it), which would protect citizens from being slapped with SLAPP (Strategic Lawsuits Against Public Participation) suits when they are simply exercising their rights in public issue matters. Let me explain why this legislation is so needed.

A very good friend, Arthur (Art) Hawkins of Hugo, a community north of St. Paul, Minnesota, was the victim of a SLAPP about seven years ago. Like Oregon presently, Minnesota citizens at that time lacked anti-SLAPP protection.

A developer proposed to place a large residential complex on the shores of Lake Amelia, a lake upon which the Hawkins' farm also fronts. Lake Amelia has perhaps the southern-most pair of breeding loons in the state. As you know, the loon is a symbol of northern wilderness. Loons will not tolerate disturbance. But this is not why Art and others opposed the development. All sorts of legal requirements were being circumvented or ignored by the developer. Art appeared in numerous public meetings to oppose the project, relying upon legal justifications, not merely emotion.

To make a very long, painful story short, the developer sued Hawkins for $50,000, claiming "defamation of character" and harm to his business. To anyone who is fortunate to know Art, personal defamation is the very last thing that one might expect of Art. He is a gentleman in the finest sense, expecting the best of his fellow citizens, and always giving them the benefit of the doubt.

The suit dragged on for nearly three years, during which the Hawkins encumbered legal costs of about $25,000, an amount that they could ill afford. Fortunately, Mr. Hawkins is fairly well known and very highly respected in the Twin Cities area. Hundreds of friends came to his aid by donating enough to cover his legal obligations.

Consequently, other citizens became fearful that they, like Mr. Hawkins, while simply exercising their rights of free speech, might be sued for publicly participating in other government issues. Thus, Minnesota Senator Jane Krentz introduced anti-SLAPP suit legislation. She doggedly pushed for its passage. Her bill passed unanimously in the Senate, and almost as handily in the House. Minnesota citizens now have protection from frivolous SLAPP suits.

When Art Hawkins first told me of his problem, I recall telling him that

such a travesty could never occur in Oregon. First, I explained, Oregon is renowned for its efforts to promote and provide for public participation at all levels of government. Secondly, for land use issues, Goal One of Oregon's Statewide Planning Goals specifically encourages public participation ("To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.").

How wrong I was, for I now understand that a number of Oregon citizens, while simply exercising their rights as individuals, have been subject to SLAPP suits. Others, no doubt, will document these most unfortunate situations.

If I may borrow a frequently used term from my lawyer friends, the threat of SLAPP suits are and will have a "chilling effect" upon the participation of citizens in public issues. Not to mention the denial of Constitutional rights of freedom of speech. The threats of SLAPPs are not confined to land use issues--they may threaten virtually every law making or regulatory activity.

In closing, I remind you of the "black effigy" episode that arose during the 1997 legislature. You will remember that a ruling or determination (I don't recall which) exonerated members of the legislature in their action and speech in reacting to the incident. You are clearly immune from such SLAPPs but we, as citizens, are not.

Indeed, in a far out scenario, those of us testifying before you this very afternoon may be potential SLAPP suit victims!

Thank you.

Sincerely yours,

Henry M. Reeves

Peggy Lynch

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March 24, 1999

Rep. Lane Shetterly, Chair of House Civil Judiciary Committee
and Members of the Committee
(hand delivered)

Re: HB 2805, Relating to Protection to Oregon citizens who participate in a lawful public process

This session many of you recognize me as a citizen interested in K-12 public education. But for even more years than I have been involved in our public schools--which is 25, I have been active in land use and other public policy issues. I was a part of a citizen group which helped develop the first community plan in Washington County, along with my neighbors who owned businesses, who built houses, owned apartments, commercial and industrial properties. And I spent the next twenty years advocating for and supporting that plan. Although I have now moved to the Corvallis area, my former neighbors in Washington County are now in the process of rewriting that plan to reflect the needs of tomorrow. And, again, all parties are invited to the table.

In my new community, I am participating in Benton County decisions by offering my perspective and knowledge of a wide variety of issues, including their wrestling with how they incorporate the new Corvallis Comprehensive Plan into their Comp Plan and testifying on a proposed Noise Ordinance. But beyond land use, I might want to offer my perspective on which organization should receive county funds for certain services or on other issues where one party might resent or be angry with my testimony. HB 2805 is not just about land use, but citizen participation in ALL public decisions.

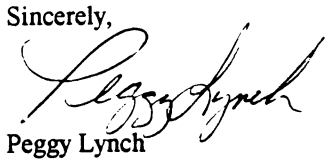
As a part of many public processes, I have seen the high value of a full complement of citizens participating in these decisions. As with each of you, your decisions are made better if you have the opportunity to hear all sides of any issue and can understand the interests of each party. We know that Oregon's success in land use is directly related to Goal 1, Citizen Involvement. That, at the end of the decision making, all parties have ownership in the decision if they feel they were a part of it.

But I have also seen times where one party to a decision making process tries to intimidate another--it has happened more than once to me--and we know that, nationwide, SLAPP suits occur. Many of us see this bill as a support for volunteers, but it is also protective of all parties to a public process. As long as citizens are lawfully engaged in said process, they should be protected from the threat of lawsuits. Therefore, I ask that you vote in favor of HB 2805, give it a "do pass" out of this committee, and advocate for its passage with your colleagues.

You know the kinds of complicated issues facing Oregonians. Beyond specific land use cases in local communities, we need to debate possible changes in our tax structure, who should or should not be covered under Oregon's Health Plan, whether or not smoking should be prohibited in all public places--to give examples of the diversity of said issues. We need open, honest debate on these critical issues. But open, honest debate cannot occur if some parties to the debate are too scared or intimidated to participate. Fear has no place in Oregon's decision making.

Oregon is at its best when ALL of Oregon's citizens help in developing public policy. Help assure that ALL voices are heard before those decisions are made.

Sincerely,



Peggy Lynch

RISING OAK RANCH

Mr. & Mrs. James L. Monroe
Owners

32871 Sand Ridge Road
Lebanon, Oregon 97355
(~~503~~ 541) 258-5139

March 24, 1999

HB 2805
Testimony in Support

Chair Shetterly, members of the Committee
House Civil Judiciary Committee
Salem, OR 97310

You are urged to support this legislation which would help citizens who participate in and provide valuable local perspective to local governments to avoid being forced into silence by civil suit-- or even the implied threat of a civil suit.

From the perspective of a now semi-retired rancher who has served on many local public service boards and committees and represented these organizations before local decision makers, there has been such an increase in implied and stated intimidation and threats to sue that many citizens refuse to participate. There are public service organizations that under no circumstances will appear at a hearing. Far more individuals will not participate, some even when their personal property or finance is threatened. It is the norm rather than the exception that at a local hearing the applicant (with supporters and possibly attorneys) appears. Drawing the truth from the promotion falls to the local staff, often overworked and under prepared. In the absence of concerned citizen participation the perceptive and probing questions just aren't asked.

In the decade that I have served on the board of the Linn County Farm Bureau we have represented county agriculture many times before local boards and commissions. It is difficult and sometimes impossible to convince affected farmers they should appear. Some give excuses, some give promises which they break, and some just tell you that they cannot take the chance of being sued. "Maybe I can win but what good will it do me if I have to go bankrupt to pay the legal bills".

At a county annual meeting a few years ago a member farmer who we had helped thanked us stating: "Thanks for carrying our water for us". HB 2805 will help our local citizens carry their own water when they want or need to. It deserves legislative adoption.

James L. Monroe

James L. Monroe

March 24, 1999

Chair Shetterly and Members of the Committee
House Civil Judiciary Committee
State Capitol
Salem, Oregon 97310

Re: HB 2805 Testimony in Support

Chair Shetterly and Members of the Committee:

Thank you for sponsoring and expediting the hearing for this extremely important bill. I come before you this afternoon wearing two hats: 1) that of a volunteer 4-H leader of three Linn County groups and 2) that of a volunteer board member and president of Friends of Linn County, a land-use watch dog group of citizens concerned about preserving our farms and forests and upholding the state laws.

As a 4-H leader I have been increasingly aware of the possiblity of suits against the organization and us volunteer leaders. In fact, 4-H recently (Jan 23, 1999) sponsored my attendance at a "Non-profit Board Member and Volunteer Liability Workshop" organized by Lincoln County Commission on Children and Families and OSU Lincoln County Extension. Easily 100 volunteer leaders participated in this workshop that in some ways alleviated our fears and in other ways increased them. We learned that if we do the work we're supposed to do and leave a paper trail we'll be legally protected (i.e. we'll win the case) BUT we'll often have to pay an exhorbitant amount and give years of our lives to defend ourselves. We learned that the lawyers win no matter what, but the volunteer board member or leader is vulnerable.

As a board member and president of Friends of Linn County, I've encountered numerous folks who appreciate our group taking an out-front stance on land-use abuse because as individuals they are afraid of what they call "revenge suits." More recently as we've been recruiting new members and board leaders another problem has surfaced. We've been asked if we provide the legal protection for our members from wrongful, but costly law suits. We've asked other volunteer groups what they provide and have come up with nothing to offer unless we purchase costly (hundreds of dollars each year) insurance protection that we simply cannot afford. So... more and more, fewer and fewer of us are willing to walk that shaky volunteering-for-the-public-good limb.

So... because of this committee, I am now hopeful that that shaky limb will be supported. Please vote for HB 2805.

Thank you,

Katie Kohl

Katie Kohl
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March 24, 1999

To Judiciary - Civil Law Committee
Oregon House of Representatives
Rep. Lane Shetterly, Chair

Rep. Shetterly,

I understand you are holding a hearing regarding House Bill #2805 regarding SLAPP Suits. I apologize for my late submission. I am the sole owner and operator of my communication business and finding the time to correspond to you about this important matter has been difficult. However, after experiencing what many have described a SLAPP Suit first-hand, I felt it was important to try to relate it to you and your committee.

My entire media service, including me personally, was sued by an attorney over an article I wrote regarding his conflict of interest in a municipality decision regarding a zoning controversy. I also published a letter from a resident of the community regarding the conflict.

That report, and letter, resulted in a threatening letter from another attorney representing the attorney in question who demanded a retraction and hundreds of thousands of dollars or I would be sued. There was a minor incorrect part of the story, which didn't change the intent, and I corrected it.

That didn't stop them. I, and my corporation and businesses were sued for $450,000. That was scary. I believe its purpose was to intimidate me and to stop further stories. It did both. It also put me through a legal hell for the next to years and forced me to spend thousands of dollars to defend myself.

The outcome after a five-day jury trial was exoneration. It took the 12-person jury less than 45-minutes to see through the abuse of the legal system and come back in favor of the defendants.

The judge, however, decided that there would be no financial award and even though I won in a court of law, I was left with thousands of dollars of expenses and a damaged reputation in my community.

This was difficult. I work very hard to do the best I can. I have been fortunately recognized for my dedication for that commitment. I have won numerous community and statewide awards and this legal affair left a blemish on my record. It has been difficult, but I am slowly regaining the ground I lost.

However, I have not recouped my lost earnings during the two-years when I had to concentrate on defending myself, or the total respect from those involved who first sided with the attorney.

I've also lost something even greater during this ordeal. My mother.

She was the one who helped me start my media service and was a stockholder. She also was scared or intimidated by the financial jeopardy we were placed in.

Rep. Lane Shetterly, Chair
Oregon House of Representatives
Judiciary - Civil Law Committee
Page two

She passed away in July last year unexpectedly from an advanced state of cancer which none of us knew about. I've learned now that stress can be a great contributor to accelerating the growth of cancer within our bodies. I believe the lawsuit was the final push to her death.

What else has it done? I've been more reserved in my news coverage realizing that any one person can at any time sue me for hundreds of thousands of dollars without any real concern about whether or not they will be held responsible for their actions.

I've stayed especially away from stories involving attorneys knowing they can instigate a lawsuit without spending much money if any. They are also protected from being sued for instigating lawsuits through their own insurance which provides high priced lawyers to represent them if they are personally sued.

I was up against a power far greater than my own ability to defend. Thank goodness for the jury system, but unfortunately there is no recourse for me and I am now not as strong of a journalist as I used to be.

I hope you will consider SLAPP legislation, I hope you will stop the injustice of allowing individuals to sue others just to shut them up, or intimidate, without the fear of recourse.

Thank you for your time.

Matt Jarvis
President
Jarvis Communications, Inc.

339 Benton View Drive
Philomath, Oregon 97370
March 22, 1999

Representative Lane Shetterly, Chair
House Judicial Committee
H: 385 State Capitol Building
Salem, Oregon 97310

Subject: HOUSE BILL 2805

Dear Representative Shetterly:

As Chairperson of the House Judiciary Committee, please admit the following account as input regarding the impending hearing on SLAPP suits (HB 2805). 1990: February: A group of neighbors including my wife and myself formed an ad hoc neighborhood organization to present our concerns about a proposed development (Southwood III, Philomath; Mr. Gary Remington, developer). Our concerns were common to most development projects that impact neighborhoods negatively, i.e., slope-grading, water run-off, traffic, density, play areas for children, busing and financing, etc. As individuals in the organization, we stated our opinions and concerns in an appropriate format before the Philomath City Council and felt that we had a legitimate cause to go through an appeals process. A few persons, ourselves and two others, put up the major portion of the funding needed to support the Southwood citizens' organization for attorney fees, expert consultation, research for clarification of issues, etc. so that all of the facts assembled were up-dated, legally correct and documented.

1991-92: Our appeal had during this period gone to LUBA, been remanded to the City Council on four issues and was in the stage of final remand for approval to the State Courts. Mr. Remington, during this time, had a waiver of an existing ordinance and was given permission for a minor land partition on which to build a single family dwelling for a specific party. The person with whom he had contracted had threatened to sue him for undue delay, breach of contract, etc.

1992: April: A Benton County Sheriff brought to my home and to the home of Ms. Blenda Sanders, a Summons which stated that we had harassed Mr. Gary Remington and caused considerable damage to his reputation as well as harming him financially. Because any law suit suggests guilt on the part of the defendants, my wife and I, as well as Ms. Sanders, were extremely upset and embarrassed. We were also inexperienced in handling a legal suit. Ms. Sanders and I consulted Attorney James Walton (now deceased), who explained what a SLAPP suit is. Mr. Walton suggested that it would be logical and less expensive if I would inquire about my home owners' insurance (UNIGARD).

My agent for UNIGARD forwarded relevant information as a matter of policy to UNIGARD officials. I also consulted Attorney Ronald Marek and one other legal consultant. UNIGARD officials, Mr. Walton and the other consultants all agreed that there were no grounds for Mr. Remington's suit, and all recommended that, covered by insurance or not, it would be less expensive for me to pay a nominal amount rather than go through a lengthy, possibly more costly court proceeding. This meant, of course, an unwarranted financial output and the very sour taste of acknowledging Mr. Remington's charges.

In the next unsettling weeks I was unable to conceive any basis at all for such a suit unless it was either a devious way for Mr. Remington to effectively stop other financial backers from contributing further to the neighborhood association or an attempt to obtain monies for his own legal expenses. The former proved to be true. The impact affected our neighborhood association as a whole. A major backer, emotionally stressed by a possible suit against him and depressed by the slow process of our group's appeal, decided to move out of the area. Other neighborhood members chose to no longer contribute to the continuing costs and some disassociated themselves from the group, fearing the possibility of other law suits by Mr. Remington.

The effect of Mr. Remington's SLAPP suit was both emotionally and financially stressful to my wife and to me. We do not feel that we were fairly treated by Mr. Remington and his attorneys or by the lack of protection from the state under the existing laws in Oregon.

Thank you for the courtesy of reading this account, Mr. Shetterly, and for the opportunity to contribute to a necessary change in our State Laws.

Respectfully Yours,

Marvin Durham
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Tillamook County

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January 28, 1997

TO: Board of Commissioners

FROM: Vic Affolter Vic

RE: Bates Law suit Against Members of Netarts Steering Committee

Attached is notice of a pending legal action by Todd Bates against some or all members of the Netarts Steering Committee. I have a few observations.

Mark Hoyt has represented Todd Bates in various other legal actions against individuals and entities that have done or said things that have displeased him, including Tillamook County on several occasions. So far not one of these lawsuits has been successful. However, this does not diminish the seriousness of the lawsuit as those sued will be compelled to defend themselves at considerable cost, regardless of the outcome.

My overriding concern is that this kind of lawsuit can chill any inclination that citizens may have to involve themselves in public efforts to improve the quality of life in their communities. Netarts Steering Committee members have invested considerable personal resources in planning for the future of their community in response to a request from the County to get involved with the current planning effort. The Netarts Bay Watershed Council is just one product of this effort.

Any such effort risks some degree of controversy. 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 1st Amendment Rights to unencumbered speech -- which is the reason why the American Civil Liberties Union assisted in successfully defending an earlier subject of one of Mr. Bates' lawsuits -- a suit remarkably similar to that which Bates is bringing against Mr. Hawkins.

John Andersen's letter reflected Netarts Steering Committee policy. It was validated by the Steering Committee prior to the appeal hearing before the Board of Commissioners. I cannot imagine what damage Mr. Andersen's letter did to Mr. Bates since the Board of Commissioners ruled in his favor in the matter at issue.

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.

VA:ns

Attachment

cc: Bill Sargent, County Counsel

Representative Lane Shetterly
Chair, House Judicial Committee
H; 385 State Capitol Building
Salem, Oregon 97310

March 22, 1999

Dear Representative Shetterly:

Please admit the following information regarding the impending hearing on SLAPP suits: (House Bill 2805):

In 1990 I became active in a neighborhood organization. We were not opposed to "growing more houses". We were opposed to the lack of attention to various impending problems. We all felt that the addition could be developed if more attention were given to planning.

The organization's appeal was in various stages for quite some months.

In April 1992, the Developer filed suit against my neighbor and co-organization member, Marvin Durham and myself. The Developer alleged:
"That the Defendants' actions pertaining to the LUBA appeal of the minor land partition approval and the Writs filed in the Benton County Circuit Court were caused by Defendants' ulterior motive to harass plaintiff or to cause Plaintiff financial harm."

There were additional allegations. None of the allegations had any foundation in fact!

Marvin Durham consulted his insurance company. His insurance company paid off a nominal sum as a "nuisance value", in lieu of the expense of possible litigation.

We opposed the suit, and ultimately settled at a "stand-off" situation. I was substantially impacted by the expense of counsel and by the consumption of my time, attention, and energy. At least, I was able to prevent this frivolous lawsuit from resulting in a "nuisance payment" and a record in court that inferred some error on our part. That was an option the Durhams did not have. Their insurance company chose to pay off the "nuisance".

We were all devastated by the experience.

The developer's motives were more deep rooted. By suing us, he scared off other organization members. This is even more heinous. Normal, responsible citizens were prevented by fear of a frivolous lawsuit from pursuing their convictions regarding local building ordinances.

I believe that many very unjustified lawsuits are filed. This has major impact in our society. It certainly adversely impacts the innocent defendant. At the least, anxiety and legal fees occur. It clogs our judicial system. It surely raises insurance premiums for everyone. It can literally wreck lives. Other ramifications abound.

I believe that a petitioner should be required to show reasonable foundation for allegations before filing suit. Certainly, this would originally place even more burden on the courts, but would ultimately place less.

Should there be other information that might be helpful, please feel free to contact me.

Thank you for considering our input.

Blenda Sanders

Blenda Sanders
471 Benton View Drive
Philomath, OR 97370
(541) 929-2463 fax: (541) 929-3247
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James K. Coons

John G. Cox

Douglas M. DuPriest

Stephen A. Hutchinson

Jessica L. Wood

Of Counsel
William H. Sherlock

March 24, 1999

A COPY FOR
YOUR INFORMATION

Chair Shetterly and Members of the
House Civil Judiciary Committee
c/o Aaron Felton, Counsel
State Capitol, Room 354
Salem, OR 97310

Via Fax 503/986-1009

RE: HB 2805

Dear Chair Shetterly and Committee Members:

I write in support of better protections from lawsuits being brought against those who participate in good faith in legislative and quasi-judicial proceedings before government agencies.

In May, 1995, with no thought of personal or financial gain, Corvallis resident Jennifer Ayotte appeared before the Oregon House Natural Resource Committee, and testified in support of existing laws protecting wetlands and against a bill she believed would weaken those laws.

Ms. Ayotte's reward for her act of civic mindedness was to be sued for libel and business slander by Mel Stewart, the person who had drafted the bill she testified against. Mr. Stewart sought to recover from Ms. Ayotte economic damages, damages for emotional distress and punitive damages. I assisted in defending Ms. Ayotte from those claims.

The lawsuit was filed despite the limited privilege that exists for persons testifying before the Legislature. The Complaint asserted that Ms. Ayotte was not protected by that privilege, alleging that she had acted maliciously. Not surprisingly, knowledge of the filing of the lawsuit spread among those interested in wetlands and Corvallis land use issues.

Several months after the case was filed, a local government hearing was held on a land use application Mr. Stewart had filed. Persons in the community deciding whether to participate in that proceeding had to weigh the knowledge that Mr. Stewart had already filed one lawsuit

seeking damages from a person who had chosen to speak publicly against his views.

There is little doubt that the pending lawsuit had a chilling effect on some who considered whether to testify regarding Mr. Stewart's land use proposal.

Later, in deposition, Mr. Stewart was unable to identify any economic damages he had suffered. And the words Ms. Ayotte supposedly had uttered that Mr. Stewart claimed had caused him to believe she was acting maliciously could not be found in the hearing transcript.

About ten months after the case had been filed, a judgment of dismissal was entered. Mr. Stewart had failed to keep the Court or our office aware of address changes and the case was dismissed because Mr. Stewart had failed to file an amended complaint on time. Perhaps, by that time, the lawsuit had already fulfilled its purpose.

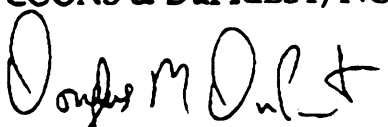
While Mr. Stewart denied his lawsuit was a tactic to discourage opposition to his land use application, the suit certainly had the effect of making persons justifiably concerned about the potentially significant personal costs and consequences of voicing concerns about his proposed development.

Having to defend the lawsuit was not pleasant experience for Ms. Ayotte, even though she knew the claims to be without merit. This story could happen again today. And those testifying in local land use proceedings have less legal protection than did Ms. Ayotte.

Please enter this letter into the hearing record on this matter. Thank you, in advance, for your time and consideration.

Respectfully submitted,

HUTCHINSON, ANDERSON, COX
COONS & DuPRIEST, P.C.



Douglas M. DuPriest

DEPT OF
APR 05 1999
LAND

WAKE-UP

April 5, 1999

Mitch Rohse, Policy Development Specialist
Dept. of Land Conservation and Development
1175 Court Street NE
Salem, OR 97310-0590

RE: **Testimony on HB-2805 SLAPP**

Dear Mr. Rohse:

Through my affiliation with OCVA and Jeff Lamb, I attended the March 24, 1999, hearing on HB-2805, Strategic Lawsuits Against Public Participation (SLAPP). I listened intently to the stories of the people of Oregon. The WAKE-UP organization (Wren Association to Keep our Environment Unlimitedly Protected) strongly urges the passage of House Bill 2805 to protect Oregon citizens against unlawful SLAPP suits.

As the coordinator of WAKE-UP, I am writing this letter at the suggestion of Jeff Lamb as he felt your agency, DLCD, would be interested in the quarry situation involving Benton County, a strip mine developer (Wild Rose), WAKE-UP (the opponents) and Goal 5. It is a classic case that demonstrates the SLAPP premise where the developer and landowner threatened to sue Benton County and in turn terrified the membership of WAKE-UP that they would also be sued for speaking out to defend their homes. No citizen should have to face huge lawyer bills for speaking out in the public process.

In the interest of time, I have attached the case history of this mis-use of Oregon land use laws and goals.

Sincerely,

Kay I. Wetz

Kay I. Wetz, WAKE-UP Coordinator

Attachments/8

Cc: Senator Cliff Trow
Representative Barbara Ross
Representative Lane Shetterly
Jeff Lamb, President OCVA

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October 9, 1998

DEPT OF
OCT 1 9 1998
LAND CONSERVATION AND DEVELOPMENT

Mitch Rohse
Oregon DLCD
1175 Court Street NE
Salem, OR 97310-0590

Dear Mitch:

Attached is the letter and accompanying material that was sent to Governor Kitzhaber regarding the SLAPP suit.

It's self-explanatory and should readily answer the question of whether a problem exists.

Here's what happened after the letter:

The SLAPP suit was dismissed via a summary dismissal because even if all the allegations were true, no laws were broken. My attorney cost was over $10,000.00 for speaking at a City Council meeting. I tried but failed to get my attorney fees back learning that you almost never get your attorney fees back in this kind of case.

According to the daughter of one of my co-defendants, 81 year old Richard Tramp, the trauma of the suit was the trigger that initiated a permanent decline in his health. I witnessed him break down on a couple of occasions.

And you may ask, how did Aho Construction come out? He sold the development before construction ever started to another developer, leaving Banks with 400 houses and the necessity to build a new school. Almost nobody spoke against his proposal the second time around and those of us that were being sued were advised not to.

Here's the reality. I spoke at a few public meetings about a lack of citizen involvement that occurred before Aho Construction became involved in the process. I was sued for $18.8 million dollars for racial discrimination. I and my family and the others that were sued learned a valuable lesson about the costs of speaking out. When citizens can't speak out about a development that will substantially alter their living environment it's time that the government do what other states have done, that is outlaw SLAPP suits.

Sincerely,

Terry Fleming
14051 NW Grandview PL.
Banks OR 97106
503-626-7841x106

Right Here In Oregon

You need to know that right here in Oregon, in Washington county, a small town and its' residents are under siege by an out-of-state developer. The City Council of Banks, population 560, decided that the developer, Aho Construction, filed for a final plat approval late, didn't include the proper materials, and that what it did file was incomplete. Based on its own public hearings, the unanimous vote of its Planning Commission which also held exhaustive public hearings, and the recommendation of its City Planner, its City Engineer, its City Land Use Attorney and its City Attorney, the City Council denied the application. Aho had ignored details like proper sidewalks, parks, access roads, and the impact on the fourth most crowded school district in the state. The school Board wrote with regard to the development that the impact on the Schools and the Community would be "Terrible and Irreversible" (See Attached). In fact, Aho didn't and doesn't own the majority of the development that it seeks approval for and is and was in a lawsuit with another developer over who controls the development.

Aho has re-applied for subdivision approval but this time it has improved its' chances of getting acceptance by filing a lawsuit against the mayor, members of the City Council, the Vice Chairman of the City Planning Commission, and many of the residents who testified at public hearings about the development. The lawsuit claims that under Federal and Oregon Fair Housing Statutes all of the 18 defendants discriminated against minorities and families with children because it was denied final plat approval on its plan to put in Low Income Housing which it claims attracts minorities and families with small children. The actual issues concerned such trivial details as the fact that the prior planning commission was conveniently disbanded, that a subdivision that would triple the size of the community was jammed through without public notices, that the developer promised one price of house that would result in junior high and high school kids and then switched to low income housing which results in elementary school kids for which there is no room, and that the developer walked out of all state level mediation efforts.

In effect Aho has silenced its critics in the upcoming approval process because the defendants on advice of council can't testify. Several states, including California and Washington, have outlawed this type of suit, known as a SLAPP suit (Strategic Lawsuit Against Public Participation), where a developer simply sues to intimidate

H.C. Agenda #5
3/6/98 CCDC

MICHAEL F. SHEEHAN
ATTORNEY AT LAW
33126 S.W. CALLAHAN ROAD
SCAPPOOSE, OREGON 97056
503-543-7172 FAX: 503-543-7172

February 27, 1998

Lawrence DeBates
Elizabeth Turner
Patricia Combs
Mary Palmer
Robert Moldenhauer
Michael Guyer
Citizen Involvement Advisory Committee
1175 Court St. N.E.
Salem, OR 97310-0590

RE: SLAPP Suits and Related Problems

Dear Committee:

I am a member of the Scappoose-Spitzenberg Citizen Planning Advisory Committee, Columbia County's Goal 1 entity for this area. I am writing to you to express concern and dismay over three ongoing major attacks on public participation in the land use area.

The first is the increasingly widespread tactic of developers and their elected allies to use SLAPPs ("strategic lawsuits against public participation") and threats of SLAPPs, to eliminate public participation in land use and related proceedings.

The second is the creation and use of increasingly onerous attorney fee provisions both in the LUBA statute and LUBA practice to increase substantially the risks of citizen participation.

The last are the even worse attorneys' fees provisions in 120-day proceedings in circuit court which have worked out so disastrously this last year for neighborhood people trying to particpate effectively in local land issues affecting their neighborhoods.

By way of illustration, permit me to call your attention to the following recent cases and situations:

Columbia County Three county citizens, upset by what they perceived to be the excessive pro-development bias of a current county commissioner, filed an official recall petition with the county clerk. The commissioner didn't like the idea of being

recalled and threatened to sue each of the three, *as well as anyone who helped* them, with the petition. They were each notified by the commissioner's private lawyer that they would be sued if they did not withdraw. They sought help based on first amendment grounds from the secretary of state's elections office and elsewhere, but got none ("the right to petition does not mean you don't get sued for petitioning") and, afraid to lose their homes if they lost and looming substantial attorney's fees even if they won, they withdrew the petition and have largely dropped out of community participation.

Washington County This last year a circuit court judge in Washington county awarded large attorney's fees ($30-40,000) against two women (in separate cases). The cases arose when the county let the 120-day time limit go by, at which point the developer went to circuit court for his writ under ORS 215.428. The women were faced with either abandoning their objections to the developers' proposals or following the cases to circuit court. They went to circuit court, got an unsympathetic judge and got socked. I can't imagine that either of them will be too inclined to do a lot of participating in the future.

LUBA and Attorney's Fees I enclose a copy of LUBA's eleven line *Order on Petition for Attorney Fees and Cost Bill*, in 32 LUBA95-197 (November 18, 1996). The frightening thing about this order is that there is no analysis, attorney's fees were just awarded, apparently off the cuff. While I have no objection to an award of attorney's fees in cases where one party or the other has filed his or her case frivolously or for some improper purpose, I believe in 99 of 100 cases this is not the case and the standard has to be high enough not to frighten off neighbors and others with the threat of significant attorney fee awards. ORS 197.830(14)(b) should be amended to reflect this; LUBA's order here is frightening in that there is no mention of why the award of attorney's fees was proper.

Three Cases From Columbia County I myself have had three cases in the last year involving the threat of significant attorney fee awards under ORS 34.120. This is the attorney's fee award provision associated with the 120-day rule. Under this provision attorney's fees are entirely in the discretion of the judge. Large fees could be awarded even though the citizens' participation and the positions taken were neither frivolous nor improper, it is purely discretionary with the judge.

In my cases, developers won twice when the county in one, and the city of St. Helens in the other, went over the 120 day limit (through no delay on our part) and I had to recommend to my clients that it was too dangerous to follow the litigation to circuit court. Developers in this county now know they have an automatic win if they can get the case to circuit court, since neither local governments, nor citizen groups, can afford the risk of challenging the developer in that forum.

My third case involved a client who brought me a letter from a local lawyer threatening to sue him if he continued objecting before the city to a development which would have a substantial impact on him and his neighbors. In this case he consciously took what he perceived to be a major chance and stuck with his objections (and eventually, together with his neighbors, he prevailed).

In conclusion, developer use of SLAPP suits, threats of SLAPP suits, or large anti-participation attorney's fee awards, are becoming a major artifact of citizen participation in land use proceedings in Oregon. Developers have lots of money, lots of lawyers, and a lot of clout in the legislature. Substantial and effective citizen participation on land use issues will be a thing of the past, and Goal 1 a dead letter, if something is not done to confront this issue soon.

I ask that your committee make a strong recommendation to LCDC that rules or legislation be drafted to correct this problem. I would be happy to assist in this process if that would be appropriate and useful to you.

Thank you for your time and effort on this.

Yours truly,

Michael F. Sheehan

\law\...\slapp.ltr

Debby A. Todd

P.O. Box O
Florence, Oregon 97439
541/997-2680

May 14, 1998

via Fax (503) 362-6705

Citizen Involvement Advisory Committee
1175 Court Street, N.E.
Salem, Oregon 97310-0590

RE: Public Comment, May 15, 1998 Meeting
Anti-SLAPP Suit Legislation

Ladies and Gentlemen:

I have personally witnessed many incidents of attempted (and too often successful) intimidation of citizens who try to exercise their right to participate in their government. In just the last few years, in a small town like Florence, for example:

A City of Florence employee (a rather large man) verbally and angrily threatened one citizen with a "libel suit" during a public hearing because the citizen (a physicist) dared to comment during his testimony that he believed the employee's (who is not a scientist or an engineer) calculations were incorrect.

The attorney of a politically well-connected lumberman in the Eugene area threatened a local Political Action Committee member with "personal lawsuits" unless his group stopped opposing the development the lumberman wanted to accomplish.

Involved in the same development dispute was a retired gentleman who had publicly stated his opposition to the proposed development plans. He was named in a lawsuit and sued for hundreds of thousands of dollars for "trespassing" (walking down an often used neighborhood path across undeveloped property to a public lake). The poor man was so frightened that his ailing wife would be left penniless after he died, even if he won, that he acquiesced to a "settlement", gave up his right to counter-sue, sold their beloved retirement cottage, and moved out of the state. Other residents in the area refused to testify because they were afraid of being sued as had the retired gentleman.

The City of Florence is being sued by the Oregon Shores Conservation Commission (OSCC) because they are dumping raw and untreated sewage into the Siuslaw River. The City has admitted to the dumping. Still, the City's attorneys are trying to force OSCC to divulge it's membership list, in my opinion, for the sole purpose of intimidating anyone in the Florence area who might be a

member of that group. Although it is my understanding that the decision to go forward with the lawsuit was made by the board of directors (not the membership), the threat of being drug into the lawsuit by the City has a number of supporters of the group "re-thinking" their membership.

A developer proposing a 40-store outlet mall on the outskirts of Florence, when informed that his proposal would likely be appealed, stated that the group opposing him "had better have a deep pocketbook." (quoted in local newspaper), and threatened to sue the group if they appealed his development to LUBA.

A group of property owners who are trying to encourage a large retail complex (Fred Meyer) to locate near (or on) their properties recently published a 1/4 page advertisement in the local newspaper. The advertisement, aimed at a local citizens group stated: "... if you appeal to LUBA and we can establish that the appeal is frivolous, we will have no choice but to go after your organization and its members for attorney's fees and economic damages. Do your members know that they could be personally liable for such costs?" (See enclosed)

This type of intimidation is becoming all too common in Oregon, as evidenced by a recent article in the Statesman Journal. That article listed numerous apparent SLAPP suits currently underway. The headline says, "Opponents say problem doesn't exist." Well, I'm here to tell you IT DOES EXIST.

I have volunteered time to a local citizens group that has, of necessity, chosen to keep the identity of individuals in the group concealed for this very reason. It is appalling that people have to hide behind organizations for fear of financial retribution for voicing their opinion. The citizens group is constantly receiving donations and comments from people who are too frightened of lawsuits to participate in local government openly. Usually, their comments are something like "Here's my donation, please keep it quiet. I agree with what your group said at the City Council meeting last night, but I just can't risk getting sued by that guy (the developer). Even if I won, the legal fees would destroy me. Personally, I'd be willing to take the risk because I don't agree with him, but I can't do that to my family."

I have reviewed the draft Citizen Participation in Government Act of 1999. I believe this proposed legislation will go a long way to reinstating the ability of everyday citizens to exercise their right of free speech, and their right (and community obligation) to share their opinions in public meetings without fear.

Isn't that what public participation is all about?

Thank you,

Debby Todd

P.O. Box 352
Yachats, Oregon
97498-0352
6 June 1998

DEPT OF
JUN 09 1998
LAND CONSERVA
AND DEVELOPME

Mr. Mitch Rohse
Policy Development Specialist
Division of Land Conservation and Development Commission
1175 Court Street N.E.
Salem, Oregon 97310-0590

I write this letter to express my support of and willingness to advance the public and private efforts for the creation and implementation of anti-SLAPP suit legislation in the state of Oregon.

Clearly and indisputably so, the First Amendment is the pith and essence of our American democracy and of our collective and individual liberties. Equally undisputable is that the pith and essence of the First Amendment guarantees unconditionally the people's right to participate in any and all political processes without the specter of threatened or actual SLAPP suits. Accordingly then such a specter should, indeed, must be, exorcised thoroughly and permanently in Oregon by the passage of effective anti-SLAPP legislation SOONEST.

The recent personal experience of having been victimized by a SLAPP suit wherein a former city of Yachats attorney named me (and five others) as defendant(s) in a bogus SLAPP suit to recover damages for alleged defamation and libel.This legal travesty lasted over two years finally ending in total vindication for all defendants after a five day trial before a full jury. The plaintiff did not appeal the unanimous verdict.

Notwithstanding, I am, as are my fellow defendants, still encumbered with the thousands of dollars of debt plus hundreds and hundreds of valuable hours of effort and energy in past, present and future legal commitments. Furthermore, ! was and am burdened by the chronic and continuing deprivation of use of property, anguish, anxiety, perturbation, mental and emotional strain, stress, upset and the engendering and exacerbating of a severe medical problem.

Cordially,

Joe Murray

Joe Murray (541) 547 3921

em: R. Kiselosky

Before the Oregon Department of Land Conservation & Development, Citizen Involvement Advisory Committee

Hearing on Strategic Lawsuits Against Public Participation (SLAPP)
held May 15, 1998 at State Capitol hearing room H-107

Testimony of Bob Kiselosky, 19 Surfside Drive, Yachats OR 97498

I have travelled here today from my home on the central Oregon coast in Yachats to relate to you my own experiences with SLAPP suits. This attack upon our constitutional rights of free speech and the petitioning of government is under attack by those who abuse the legal system for their personal benefit. Indeed, the very basis of our democratic system of government in Oregon, as well as throughout America, has come under attack by this growing, pernicious legal practice.

You will no doubt hear testimony that will try to convince you that legislation to curb such suits is not really needed. You will hear that the judicial system in Oregon can adequately handle such lawsuits. I am here today to tell you that these claims are not so. Other states have recognized the necessity for legislation to identify and end these suits early in the legal process, and the time is overdue for Oregon to do the same. Judges in our state courts system are not specifically trained to recognize this type of lawsuit and early dismissals are, in fact, quite rare. This serves the purpose of the SLAPP plaintiffs: to drain the financial resources of targeted citizens and government officials by dragging the case through the courts as long as possible. The plaintiff is usually a corporation which can obtain tax deductions for the huge legal fees it may incur, while the citizen is afforded no such advantages. I want you all to dwell on the irony of that point for a moment; the citizen supports the judicial system with his or her taxes, and these same taxes are then allowed to subsidize an abuse of the judicial system and to chill the public rights to free speech and petitioning the government for redress of grievances. Our taxes, in effect, are used to undermine the basic constitutional rights granted by the First Amendment. This amounts to an abuse and perversion of our legal system which must not be allowed to continue if our democratic systems are to survive.

These lawsuits are most often initiated on the flimsiest of grounds and rarely succeed in the final outcome. But their success for the plaintiff should not be measured by the final judicial decision. Remember, the purpose of these suits is not ultimate victory, but rather to chill public debate and criticism and prevent citizen petitioning of government. Most often these lawsuits are brought against the targeted members of a community who oppose some proposed land development project and voice their objections publicly by speaking out in local government meetings or even by writing a letter to the editor of the local newspaper. If Oregon fails to join with the other states which have adopted legislation to end this epidemic of bogus lawsuits, then it is easy to predict that our state will soon lose any control over land use and development within its borders.

I can appreciate the reluctance of our state judges to quickly dismiss such cases because any Oregon citizen has the right to bring a lawsuit. A lawsuit can be described as the ultimate expression of the right of free speech. It can be a tricky legal exercise to balance the rights of the plaintiffs to bring the suit against the rights of the defendants to be free of abuses of the legal system and harassment just because they exercised their constitutional rights of free speech and petitioning of government. Usually the plaintiffs will prevent any early dismissal by loading the complaint with questions of fact which cannot be decided by the judge, but instead requires the process of a jury trial. According to the research of Law Professor George Pring and sociologist Penelope Canan, most judges are not experienced enough in this type of case to recognize them early on, and neither are most of the defense attorneys who may represent the unfortunate targeted defendants.

Speaking from my own experiences, I can tell you that I have been involved in such a lawsuit which has been dragging on through the courts for the last four years. Yes, four years of indescribable mental anguish and more than $20,000 in legal expenses. Along the way, I have become quite educated as to the nature and purpose of these SLAPP cases. My story began when I served as a member of the Yachats city council– an elected public official. A developer proposed a clear cut of a hillside in our city to construct 50 new houses. At the time our small city was struggling to upgrade its water and sewage treatment facilities. I, and another councilor, Mrs. Grethe Cooper, were opposed to allowing the development because of the inadequate capacities of the city infrastructure. The other 3 members of our city council were either intimidated by threats from the developer, or were favorable to the idea of unregulated development.

Mrs. Cooper and I were asked to attend a meeting of constituents who reside on a single lane, steep grade, gravel topped residential city street. Because of the steepness and narrowness of their street, it was one of only two streets within our city which was designated by ordinance as prohibited to trucks in excess of 10 tons. I'm sure you can all appreciate the public safety considerations which required this prohibition of heavy trucks on such a residential street. Mrs. Cooper and I attended the meeting of the residents on this street and listened to their complaints about how they would be held as virtual prisoners in their own homes for many weeks if the city allowed heavy log trucks to use the street for log removal operations by the developer. Some of the elderly residents expressed fears about a medical or other emergency occurring and the fact that access by ambulance or other emergency vehicles would be impeded by the presence of the logging operations. The bottom line was that it violated a city ordinance which expressly prohibited such trucking on that specific street.

At the end of the meeting, Mrs. Cooper and I decided to exercise the authority granted to us as city councilors by the city charter to call a special city council meeting to consider the violation of the ordinance if the logging operation was allowed. It should be noted also that an alternate method of log removal was available by means of a State Forest Service logging road which abutted the property, but this method would have required payments of road use fees to the state. The developer wanted to use our city street because it was a cheaper means to remove the logs from the site.

We complied with the city charter requirements to notify the other city officials of the special meeting and we sent a mailgram notification to the logging company hired by the developer, as required by Oregon statutes. The mailgram form of notification to an interested party was used because it was a Friday after business hours and attempts to establish telephone contact had failed. We simply wanted to satisfy the requirements of state laws and issue a prompt notice of the public meeting.

The mailgram notice was seized upon by the logging company as the excuse to file a lawsuit against the city, and councilor Cooper and me as individuals, and the suit alleges that we acted outside the scope of our authority by issuing such notification. Among the other allegations are violations of constitutional rights by the city ordinance and interference in a contract by councilor Cooper and me. It doesn't seem to matter that no contract even existed between the city and the logger. In fact, that was the main reason we called for the special meeting: to have the full city council consider whether such a contract could be permitted in light of the ordinance which prohibited heavy trucks from the residential street.

The meeting was held and a logging company representative attended and was represented by their attorney. There was a heavy attendance by city residents. Three of the city councilors, which composed the majority of our 5 member council, voted to ignore our ordinance and the safety concerns of our citizens and

allow the use of the street by the log trucks. I can only speculate as to their motives for such a vote by stating that they were either intimidated or more concerned with the profits of the logging company than public safety.

This sad tale goes even further. After the lawsuit was filed against Mrs. Cooper and me, the same 3 members of the city council decided that we acted outside the scope of our authority as city councilors by sending the notification of the special city council meeting. They thereby denied us the indemnification for our legal costs under the city's insurance coverage and forced us into a situation where we would have to personally bear all legal expenses for our defense. We were thus denied any insurance protections as city officials and had to resign our elected offices or face the very real possibility of more bogus lawsuits to stifle our resistance and to drain us financially. We were elected by a majority of the city voters, yet we were prevented from representing those who elected us. Think about what this means for our system of local government in Oregon and for the democratic principles upon which the very foundation of "government by the people" rests.

A simple matter of a group of local citizens petitioning their elected officials to redress a serious problem involving public safety was turned into a legal dispute to benefit the private interests of a logging company and developer. I know this may sound illogical at best, but the reality for me and councilor Cooper has been more than four years of litigation through the state and federal courts and the case is still pending in Lincoln County Circuit Court after a voluntary dismissal by the plaintiff in the federal court system. Think about this when someone attempts to convince you that these cases will be adequately dealt with by the judges and court system without any need for preventive legislation.

Councilor Cooper and I have managed to stick it out and continue our long legal struggle. But I now have to ask myself if it was really worth it. Public debate and objections to unregulated development in Yachats is practically nonexistent today. After the example of councilor Cooper and me, few people are willing to step forward to publicly raise objections to the gross overdevelopment which continues unabated in Yachats. A few years ago some citizens raised a public objection to development allowed by the city along the historic oceanfront 804 hiking trail and state park. Some wrote letters to the editor and challenged the city officials in public meetings. They too became the targets of other SLAPP suits. Our sewer and water facilities are beyond their capacities, yet permits continue to be issued for housing developments and condos. The city government has become little more than a rubber stamp puppet of the developers and is beyond any control of the citizens. Indeed, the citizens don't even try to exercise such control. Our city once had an abundance of volunteers to fill positions on various committees. Now several committees have been discontinued due to lack of participation. Our city has suffered a political atrophy and citizen participation has withered.

City ordinances are routinely ignored or rescinded when they present any obstacles to development. Housing developments and commercial buildings are constructed on both city and state public property, then city, county and state officials are pressured to vacate the property and relinquish it to private owners. A fear of retaliation by SLAPP suits for any public objections permeates the political atmosphere in our city. Citizen participation and democracy in Yachats have become little more than vague memories.

In closing I would like to ask this committee to consider the interests of all Oregonians in the proposed legislation to guarantee their rights of free speech and petitioning and to ponder the words of the New York State Legislature when they adopted their 1992 anti-SLAPP Citizen Participation Act:

"The legislature hereby declares it to be the policy of the state that the rights of citizens to participate freely in the public process must be safeguarded with great diligence. The laws...must provide the utmost protection for the free exercise of speech, petition and association rights, particularly...in a public forum with respect to issues of public concern. The threat of...litigation...can be and has been used as a means of harassing, intimidating or punishing individuals, unincorporated associations, not-for-profit corporations and others who have involved themselves in public affairs."

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May 14, 1998

via fax: (503) 362-6705

Citizen Involvement Advisory Committee
1175 Court Street, N.E.
Salem, Oregon 97310

RE: Anti-SLAPP Suit Legislation
Public Comment for May 15, 1998 Meeting

Dear Committee:

I am a practicing attorney in Florence, Oregon. I participate in many lawsuits, primarily as plaintiff's counsel. For 17 years, until 1995, I served as city attorney for Dunes City. In that capacity, I attended many public hearings. It was my perception that the city council almost always found citizen input helpful. On many occasions, I can recall problems being brought to the attention of the city council by citizens testifying during hearings. On many occasions, I suspected that developers were trying to conceal these problems from the city council. This invaluable citizen input allowed the City, it's council and it's residents to take steps to address these problems.

In our small town of Florence, population 6,000, I have had occasion to observe what I see to be a very disturbing trend. Recently, it has become almost routine for developers who are being opposed by local citizens to threaten lawsuits. As an attorney, I am well aware that the average citizen, looking at hiring someone like me to defend them against a frivolous lawsuit, faces the possibility of paying thousands of dollars in attorney fees. Certainly, such a prospect must have an intimidating impact on a citizen's willingness to appear and testify at public hearings.

There is well established precedent for declaring testimony at public meetings to be absolutely privileged. Testimony at trial is absolutely privileged. Reports to enforcement agencies, the Oregon State Bar, etc. are absolutely privileged. Privileged means that the person cannot be sued for the statements they have made.

In the last two years, I am aware of at least five instances where citizens opposing developers have been threatened with lawsuits. On at least two occasions, I have offered pro bono (free) defense in order to enable these citizens to continue participating in the public process, if they so chose. I must confess that those offers were not entirely altruistic. The threat of litigation was so patently ridiculous and obviously meant for the purpose of intimidation, that I was confident I could obtain dismissal. Further, I expected to successfully prosecute the offending developer in a subsequent lawsuit for abuse of process,and obtain a handsome legal fee for my efforts.

I am not sure that my confidence was sufficient in either instance to enable the citizen to continue their participation. But I think these stories give some context to the problems you are attempting to address in your draft legislation. I support that legislation whole heartedly.

If I can be of further assistance, please contact me.

Respectfully,

D. Ronald Gerber
Attorney at Law

June 6, 1998

Jeffrey Lamb, OCVA Chairman
P.O.Box 248
Philomath, OR 97370

Dear Mr. Lamb,

It was a pleasure talking with you, and I want to thank you for your initiative in helping DLCD draft legislation against "SLAPP" Suits. I did not know about the meeting on May 15, 1998 or I would have been there. I am 77 years old and have been a social activist for over 55 years. Some of my concerns have been with social justice, development and environmental concerns. I have lived in Oregon since 1958.

I have written letters to the editor for many years, in Corvallis, Eugene, and Yachats where I lived from 1989 to November of 1997. I found that information provided in the local papers often did not accurately discuss issues, if it covered them at all, which people needed to know about. As a result of one such letter in 1995, I was one of a group of five persons on the coast "slapped" by a former city attorney of Yachats, James Ruggeri.

I moved to Yachats shortly after the "Save the 804 Trail" committee had succeeded in saving that lovely section of the coast for public access. So, when the Yachats Planning Commission granted a building permit on an undersized lot adjoining the 804, several concerned citizens organized to appeal the decision to grant variances for less set-backs from the 804 and to allow even more coverage of the lot. Our group became the Friends of the Historic 804 County Road and Hiking Trail, Inc. with a mailing list over 250. We won this initial appeal and the variances were denied. The city attorney, James Ruggeri, presided over the second hearing and told us that we could not discuss whether or not it was a "buildable lot" even though an earlier city attorney had warned in 1979 when the lot was partitioned that it would create an unbuildable lot. During this hearing, Mr. Ruggeri never mentioned that he had a conflict of interest.

Five days after our hearing on the variances, the Yachats Planning Commission granted a building permit to Mr. Forrester, in spite of all the evidence we had presented at the hearing. When we tried to appeal that decision to the City Council, we were told that it was an administrative decision and could not be appealed.

We then took it to court asking for a temporary injunction to prevent building, and a writ of mandamus requiring the City of Yachats to abide by its ordinances. The Circuit Court judge denied the temporary injunction and said that the city officials could interpret their ordinance as they wished. We appealed this to the Court of Appeals and also appealed to the Land Use Board of Appeals (LUBA). LUBA ruled for us in March 1995 remanding the case back to the City of Yachats for a hearing. This was appealed to the Court of Appeals by Mr. Forrester. The Court of Appeals also ruled for us and Mr. Forrester again appealed that decision to the Oregon Supreme Court who refused to hear the case. Two years later we finally had a hearing in Yachats in March 1997.

In the meantime, construction on Mr. Forrester' house was continuing. He also had a four foot high fence constructed over a roadway easement on Coolidge Lane which was on the deeds of most of the residents there. So they were denied access to the 804.

Four of those with clear title filed a suit to get their easement back. These people had been among the supporters of Friends of the 804 and felt that if that case went against Mr. Forrester they would get their roadway easement to the 804 back.

I wrote my letter to the editor of the local paper when we learned that LUBA had ruled that we should have had a hearing in March 1995. In it I explained that Mr. and Mrs. Ruggeri owned the title insurance company, Security Title, which had prepared the warranty deed for Mr. Forrester and that Mr. Ruggeri had presided over the variance appeal without mentioning any conflict of interest. Also, that Security Title had not mentioned the Coolidge Lane roadway easement on the warranty deed although it mentioned two other easements. Friends of 804 had only learned these facts a month earlier.

A year later four members of Friends of 804 and the editor of the local paper which had printed my letter were sued by Mr. Ruggeri for $230,000 each, claiming we had defamed him and his title insurance company. Mr. Ruggeri also sued the attorney for Friends of the 804 on a separate suit, later dismissed. This was in March 1996.

In late October 1997, we had a five-day trial in Circuit Court for defamation. Mr. Ruggeri had earlier taken himself off the suit leaving it as a case where he claimed we had injured his title insurance company. My letter to the editor was written because I thought Mr. Ruggeri had a clear conflict of interest. Three of our group succeeded in our request that our trial not be heard by any of the Lincoln County Circuit Court judges because of their earlier involvement in 804 cases. One judge had been overturned at the Court of Appeals and the other had made conflicting rulings. So our case was heard before Judge William Beckett of Eugene. There were 12 jurors and two alternates. The jury decided unanimously FOR US in less than an hour. However the judge dismissed our counter claim for attorney fees. In a classic SLAPP suit, legal fees are the big expense which keeps ordinary people from getting involved in a legal dispute. Ours were substantial.

This experience has had a chilling effect on public participation in Yachats and on media coverage of events there. I feel very strongly that SLAPP suits should be banned in Oregon and I hope the proposed legislation goes forward at once. As it is now, people are silenced and discouraged from participating in public affairs. Even freedom of the press apparently is under fire. Some have written very libelous and false letters to the editor attacking us, but we do not want any more legal confrontations. We would just like to feel safe in writing letters and speaking out against injustice. And I feel that public officials should be accountable and observe the laws, including those to protect legitimate land-use laws and the environment we all share. At present, flagrant disregard of the laws prevails in Yachats and people are afraid to speak out. I am also concerned.

Because none of the local judges nor Judge Beckett seemed to be aware of the SLAPP concept, Friends of 804 began donating literature on SLAPP suits to the Lincoln County Courthouse library. Please let me know if I can be helpful in stopping this SLAPP suit epidemic.

Sincerely yours,

Portia B. Foster

Portia B. Foster
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