



## Factsheet: Kentucky's Anti-SLAPP Legislation

### What Are SLAPPs?

**“Strategic Lawsuits Against Public Participation” (SLAPPs)** are a particularly dangerous form of lawsuit. SLAPPs target civil society advocates, community leaders, journalists, whistleblowers, and everyday people who exercise their Constitutional rights. SLAPPs masquerade as ordinary civil lawsuits, but their true purpose is to silence criticism.

A SLAPP does not need to be successful in court to have its intended effect. The goal of a SLAPP is to retaliate against critics. Even a meritless lawsuit can drag on for years, draining a defendant's resources through costly and time-consuming litigation. The lawsuit can also take a toll on the defendant's reputation and morale. In many cases, SLAPP bullies hope that the lawsuit will end in a binding settlement that muzzles the critic's future rights to free speech.

As the First Amendment Project explains, “No one ever admits to filing a SLAPP.” SLAPPs will usually be disguised as lawsuits for defamation, interference with economic relations, and copyright infringement.

You can generally identify a SLAPP by its telltale signs:

- **Targets protected First Amendment activity:** Does the lawsuit target activity that is clearly a constitutionally protected form of free speech, peaceful protest, or petitioning of the government?
- **Exploits a power imbalance:** Is the plaintiff apparently trying to exploit its economic advantage to put pressure on the defendant?
- **Threatens to bankrupt the defendant:** Are the remedies sought unusually aggressive or disproportionate to the conduct targeted?
- **Attempts to remain in court as long as possible:** Is the plaintiff engaged in procedural maneuvers that appear intended to drag out the case or drive up costs, such as pursuing appeals with little prospect of success?
- **Casts a wide net:** Does the lawsuit target individuals as well as the organizations for which they work? Is the lawsuit part of a wider public relations offensive designed to bully or intimidate critics?
- **Follows a pattern of serial bullying:** Does the plaintiff have a history of using SLAPPs or threatening legal action in order to scare critics into silence?

If SLAPP bullies had their way, the impacts of their lawsuits would ripple through society, creating a chilling effect on free speech. People would stop criticizing the powerful for fear of retaliation. Public interest advocates would choose to stay silent, rather than to speak truth to power. Anti-SLAPP legislation defends our rights to speak out, to criticize, to engage, and to protest peacefully.

For more information about SLAPPs, [check out this segment](#) by comedian John Oliver on his show *Last Week Tonight*. In 2017, Oliver was the target of a SLAPP suit in West Virginia.

### **Kentucky Does Not Protect Its Citizens Against SLAPPs**

About half of the states have passed anti-SLAPP laws; Kentucky has not. As a result, numerous people have been targeted by SLAPPs in recent years. Even those who eventually prevailed in their cases were subjected to years of legal costs and stress—exactly the kind of intimidation effect that SLAPPs aim to have. Here are a few examples:

- In 2013, a man was fired and sued by his former employer, a mining company, after he filed a discrimination complaint against the company.<sup>1</sup> He filed the whistleblowing complaint with the federal Mine Safety and Health Administration. A court validated the complaint as legitimate, but the federal government ultimately decided not to pursue the investigation. Soon afterwards, the company sued the man, apparently in retaliation and to discourage other miners from filing complaints. The man won the case, but had to continue spending money on legal fees in the battle to get his job reinstated.<sup>2</sup>
- In 2013, the chairman of the Pike County Airport Board filed a lawsuit against two anonymous commentators on the website Topix, alleging they had defamed his work as a public official. He subpoenaed the website and an internet provider to unmask the commentators' identities. Both companies refused, but the trial court ordered that the identities be unmasked. Eventually, the Kentucky Supreme Court denied the request to unmask the anonymous commentators, after finding that the chairman failed to show his case had merit. However, by the time the plaintiff walked away from the suit, the defendants had been subjected to three years of litigation.<sup>3</sup>
- In 2010, a woman was sued by her doctor after posting comments online. She alleged that she suffered complications as a result of her doctor's negligence in a cosmetic surgery. Four years later, the judge dismissed the case, ruling that the woman was entitled to express her opinion and had written the comments in a way that were not defamatory.<sup>4</sup> Yet the woman was subjected to years of stress and legal costs.

The chilling effect of SLAPP lawsuits can be extremely damaging to a community. For every SLAPP lawsuit filed, countless others choose to self-censor themselves to avoid being sued.

Kentucky should pass a strong anti-SLAPP law, such as those passed in states as diverse as Colorado, Texas, Georgia, and California. These laws allow everyday citizens, not just big corporations, to speak up without fear on matters of public interest.

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<sup>1</sup> [https://www.huffpost.com/entry/kentucky-miner-sued-discrimination\\_n\\_2568701](https://www.huffpost.com/entry/kentucky-miner-sued-discrimination_n_2568701)

<sup>2</sup> [https://www.huffpost.com/entry/reuben-shemwell-kentucky-miner\\_n\\_3478735](https://www.huffpost.com/entry/reuben-shemwell-kentucky-miner_n_3478735)

<sup>3</sup> [https://www.citizen.org/wp-content/uploads/migration/doevcoleman\\_kentuckysupremecourt.pdf](https://www.citizen.org/wp-content/uploads/migration/doevcoleman_kentuckysupremecourt.pdf)

<sup>4</sup> Loftus v. Nazari, 21 F.Supp.3d 849 (2014)

### What Does this Bill Do?

- 1) **Protects the rights to free speech, to associate freely, and to participate in government.** The bill ensures that people can speak up on issues of public concern and religious expression, and cannot be sued into silence by a powerful individual or company.
- 2) **Allows SLAPP targets to petition to stop meritless cases before they are subjected to discovery.** This bill is based upon the SLAPP victim's ability to petition the court, asking for the case to be dismissed before it proceeds any further. The filing of this petition also stops the discovery process, which protects the SLAPP victim from the costly and drawn out process of being forced to provide intrusive, private information to the SLAPP filer. The discovery process is frequently used to intimidate the SLAPP victim, as well as the victim's friends and associates.
- 3) **Allows SLAPP targets to recover attorney's fees if the case is ruled a SLAPP.** This bill includes fee shifting provisions that ensure SLAPP victims are able to recoup attorney's fees and costs when they are SLAPPED. It also protects against misuse of the anti-SLAPP motion by providing a mechanism for a plaintiff to recoup its costs when the motion is filed against them in bad faith or solely to delay the proceeding.
- 4) **Deters future SLAPPs.** The bill requires the SLAPP bully to pay the attorney fees of the victim, and also gives the court discretion to impose sanctions.

### **About the "Protect the Protest" Task Force**

Protect the Protest (PtP) is a task force of 25 social justice, environmental, and civil liberties organizations that is committed to combating the threat of Strategic Lawsuits Against Public Participation (SLAPPs), which are commonly used to silence public watchdogs who criticize corporations and other powerful interests. For more information, please visit [www.protecttheprotest.org](http://www.protecttheprotest.org).